

Changes to legislation: There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, SCHEDULE 18. (See end of Document for details)

SCHEDULES

SCHEDULE 18

Section 71(2)

ADJUDICATORS: BANKRUPTCY APPLICATIONS BY DEBTORS AND BANKRUPTCY ORDERS

Commencement Information

II Sch. 18 partly in force; sch. 18 in force for specified purposes at Royal Assent, see s.103(1)(i)

“CHAPTER A1

ADJUDICATORS: BANKRUPTCY APPLICATIONS BY DEBTORS AND BANKRUPTCY ORDERS

Bankruptcy applications to an adjudicator

263(1) An individual may make an application to an adjudicator in accordance with this Chapter for a bankruptcy order to be made against him or her.

(2) An individual may make a bankruptcy application only on the ground that the individual is unable to pay his or her debts.

Debtors against whom an adjudicator may make a bankruptcy order

263(1) An adjudicator has jurisdiction to determine a bankruptcy application only if—

- (a) the centre of the debtor's main interests is in England and Wales, or
- (b) the centre of the debtor's main interests is not in a member state of the European Union which has adopted the EC Regulation, but the test in subsection (2) is met.

(2) The test is that—

- (a) the debtor is domiciled in England and Wales, or
- (b) at any time in the period of three years ending with the day on which the application is made to the adjudicator, the debtor—
 - (i) has been ordinarily resident, or has had a place of residence, in England and Wales, or
 - (ii) has carried on business in England and Wales.

(3) The reference in subsection (2) to the debtor carrying on business includes—

- (a) the carrying on of business by a firm or partnership of which the debtor is a member, and
- (b) the carrying on of business by an agent or manager for the debtor or for such a firm or partnership.

(4) In this section, references to the centre of the debtor's main interests have the same meaning as in Article 3 of the EC Regulation.

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Conditions applying to bankruptcy application

- 263~~I~~**I**) A bankruptcy application must include—
- (a) such particulars of the debtor's creditors, debts and other liabilities, and assets, as may be prescribed, and
 - (b) such other information as may be prescribed.
- (2) A bankruptcy application is not to be regarded as having been made unless any fee or deposit required in connection with the application by an order under section 415 has been paid to such person, and within such period, as may be prescribed.
- (3) A bankruptcy application may not be withdrawn.
- (4) A debtor must notify the adjudicator if, at any time before a bankruptcy order is made against the debtor or the adjudicator refuses to make such an order—
- (a) the debtor becomes able to pay his or her debts, or
 - (b) a bankruptcy petition has been presented to the court in relation to the debtor.

Determination of bankruptcy application

- 263~~K~~**K**) After receiving a bankruptcy application, an adjudicator must determine whether the following requirements are met—
- (a) the adjudicator had jurisdiction under section 263I to determine the application on the date the application was made,
 - (b) the debtor is unable to pay his or her debts at the date of the determination,
 - (c) no bankruptcy petition is pending in relation to the debtor at the date of the determination, and
 - (d) no bankruptcy order has been made in respect of any of the debts which are the subject of the application at the date of the determination.
- (2) If the adjudicator is satisfied that each of the requirements in subsection (1) are met, the adjudicator must make a bankruptcy order against the debtor.
- (3) If the adjudicator is not so satisfied, the adjudicator must refuse to make a bankruptcy order against the debtor.
- (4) The adjudicator must make a bankruptcy order against the debtor or refuse to make such an order before the end of the prescribed period (“the determination period”).

Adjudicator's requests for further information

- 263~~L~~**L**) An adjudicator may at any time during the determination period request from the debtor information that the adjudicator considers necessary for the purpose of determining whether a bankruptcy order must be made.
- (2) The adjudicator may specify a date before which information requested under subsection (1) must be provided; but that date must not be after the end of the determination period.
- (3) If the rules so prescribe, a request under subsection (1) may include a request for information to be given orally.
- (4) The rules may make provision enabling or requiring an adjudicator to request information from persons of a prescribed description in prescribed circumstances.

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Making of bankruptcy order

263M) This section applies where an adjudicator makes a bankruptcy order as a result of a bankruptcy application.

- (2) The order must be made in the prescribed form.
- (3) The adjudicator must—
 - (a) give a copy of the order to the debtor, and
 - (b) give notice of the order to persons of such description as may be prescribed.

Refusal to make a bankruptcy order: review and appeal etc.

263N) Where an adjudicator refuses to make a bankruptcy order on a bankruptcy application, the adjudicator must give notice to the debtor—

- (a) giving the reasons for the refusal, and
 - (b) explaining the effect of subsections (2) to (5).
- (2) If requested by the debtor before the end of the prescribed period, the adjudicator must review the information which was available to the adjudicator when the determination that resulted in the refusal was made.
 - (3) Following a review under subsection (2) the adjudicator must—
 - (a) confirm the refusal to make a bankruptcy order, or
 - (b) make a bankruptcy order against the debtor.
 - (4) Where the adjudicator confirms a refusal under subsection (3), the adjudicator must give notice to the debtor—
 - (a) giving the reasons for the confirmation, and
 - (b) explaining the effect of subsection (5).
 - (5) If the refusal is confirmed under subsection (3), the debtor may appeal against the refusal to the court before the end of the prescribed period.

False representations and omissions

263O) It is an offence knowingly or recklessly to make any false representation or omission in—

- (a) making a bankruptcy application to an adjudicator, or
 - (b) providing any information to an adjudicator in connection with a bankruptcy application.
- (2) It is an offence knowingly or recklessly to fail to notify an adjudicator of a matter in accordance with a requirement imposed by or under this Part.
 - (3) It is immaterial for the purposes of an offence under this section whether or not a bankruptcy order is made as a result of the application.
 - (4) It is not a defence in proceedings for an offence under this section that anything relied on, in whole or in part, as constituting the offence was done outside England and Wales.
 - (5) Proceedings for an offence under this section may only be instituted—
 - (a) by the Secretary of State, or
 - (b) by or with the consent of the Director of Public Prosecutions.”

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