
STATUTORY INSTRUMENTS

2003 No. 2093 (C.85)

INSOLVENCY

COMPANIES

INDIVIDUALS

**The Enterprise Act 2002 (Commencement No. 4 and
Transitional Provisions and Savings) Order 2003**

Made - - - - *8th August 2003*

The Secretary of State, in exercise of the powers conferred upon her by sections 276(2) and 279 of the Enterprise Act 2002⁽¹⁾ hereby makes the following Order:—

Citation and interpretation

1.—(1) This Order may be cited as the Enterprise Act 2002 (Commencement No. 4 and Transitional Provisions and Savings) Order 2003.

(2) In this Order, except where otherwise stated, references to sections and Schedules are references to sections of, and Schedules to, the Enterprise Act 2002.

(3) In this Order references to sequestration are references to sequestration within the meaning of the Bankruptcy (Scotland) Act 1985⁽²⁾.

(4) Except in relation to sequestration, expressions used in this Order which are used in the Insolvency Act 1986⁽³⁾ shall have the same meaning as in that Act.

(5) In articles 4, 5 and 6 references to provisions of, and procedures under, the Insolvency Act 1986 include references to those provisions and procedures as they are applied by or under the provisions of any enactment.

Appointed days

2.—(1) Subject as set out in this Order, the day appointed for the coming into force of the provisions in Schedule 1 to this Order is 15th September 2003 (hereafter referred to as “the first commencement date”).

(1) 2002 c. 40.

(2) 1985 c. 36.

(3) 1986 c. 45.

(2) Subject as set out in this Order, the day appointed for the coming into force of the provisions in Schedule 2 to this Order is 1st April 2004 (hereafter referred to as “the second commencement date”).

Administration—transitional provisions

3.—(1) In this article “the former administration provisions” means the law relating to administration under Part II of the Insolvency Act 1986 and section 62(2)(a) of the Criminal Justice Act 1988⁽⁴⁾ without the amendments and repeals made by the provisions of the Enterprise Act 2002 mentioned in paragraph (2).

(2) In a case where a petition for an administration order has been presented before the first commencement date—

- (a) section 248 and Schedules 16 and 17; and
- (b) section 278(2) and Schedule 26 as respects the repeals relating to sections 212, 230(1), 231, 232, 240(1) and 245(3) of the Insolvency Act 1986, the entries in Schedule 10 to the Insolvency Act 1986 in respect of sections 12(2), 15(8), 18(5), 21(3), 22(6), 23(3), 24(7) and 27(6) of that Act and section 62(2)(a) of the Criminal Justice Act 1988,

shall have no effect.

(3) The former administration provisions shall continue to apply insofar as is necessary to give effect to—

- (a) the Insolvent Partnerships Order 1994⁽⁵⁾;
- (b) regulation 5 of the Limited Liability Partnerships Regulations 2001⁽⁶⁾; and
- (c) the Financial Services and Markets Act 2000 (Administration Orders relating to Insurers) Order 2002⁽⁷⁾.

Abolition of Crown preference—transitional provisions

4.—(1) This article applies to a case where before the first commencement date—

- (a) a petition for an administration order pursuant to Part II of the Insolvency Act 1986 is presented;
- (b) a voluntary arrangement under Part I of the Insolvency Act 1986 has effect;
- (c) a receiver is appointed under the terms of a charge (which when created was a floating charge) in relation to the property of a company subject to the charge;
- (d) a petition for a winding-up order is presented;
- (e) a resolution for the winding up of the company is passed;
- (f) a petition for a bankruptcy order (or, in Scotland, for sequestration) is presented; or
- (g) a voluntary arrangement pursuant to Part VIII of the Insolvency Act 1986 has effect.

(2) This article also applies to a case where proposals for a voluntary arrangement under Part I of the Insolvency Act 1986 are made (whether before or after the first commencement date) by—

- (a) a liquidator in a winding up where the winding-up petition is presented or, as the case may be, the resolution for winding up is passed, before the first commencement date; or

(4) 1988 c. 33.

(5) S.I. 1994/2421 as amended by S.I. 1996/1308, S.I. 2001/767, S.I. 2002/1308 and S.I. 2002/2708.

(6) S.I. 2001/1090.

(7) S.I. 2002/1242.

- (b) an administrator appointed in relation to an administration under Part II of the Insolvency Act 1986 where the administration order is made on a petition which is presented before the first commencement date.
- (3) This article also applies to a case in which a proposal for a voluntary arrangement under Part VIII of the Insolvency Act 1986 is made (whether before or after the first commencement date) by a person who was adjudged bankrupt on a petition which was presented before the first commencement date.
- (4) In a case to which this article applies—
 - (a) the provisions of section 251; and
 - (b) the provisions of section 278(2) and Schedule 26 as respects the repeals relating to paragraphs 1 to 3 and 8 to 8C in Schedule 3 to the Bankruptcy (Scotland) Act 1985⁽⁸⁾, paragraphs 1 to 7 of Schedule 6 to the Insolvency Act 1986⁽⁹⁾, the table in paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988⁽¹⁰⁾, paragraphs 21A and 22 of Schedule 2 to the Finance Act 1991⁽¹¹⁾, paragraph 73 of Schedule 2 to the Social Security (Consequential Provisions) Act 1992⁽¹²⁾, sections 36(1) to (3) of the Finance Act 1993⁽¹³⁾, paragraphs 13(1) and 13(2) of Schedule 6 and paragraph 7(2) of Schedule 7 to the Finance Act 1994⁽¹⁴⁾, paragraph 8 of Schedule 14 to the Value Added Tax Act 1994⁽¹⁵⁾, section 17 of the Finance Act 1995⁽¹⁶⁾, paragraphs 12(1) and 12(2) of Schedule 5 to the Finance Act 1996⁽¹⁷⁾, sections 166(7)(a), 183(3)(a) and 189(4) of the Employment Rights Act 1996⁽¹⁸⁾, paragraph 6 of Schedule 2 to the Finance Act 1997⁽¹⁹⁾, paragraphs 2 and 3 of Schedule 7 to the Finance Act 2000⁽²⁰⁾ and paragraphs 17(1) and (2) and 18 of Schedule 5 to the Finance Act 2001⁽²¹⁾,

shall not have effect.

Liquidator's powers

5. The insertion of paragraph 3A into Schedule 4 of the Insolvency Act 1986 by section 253 (Liquidator's powers) shall have no effect in relation to any proceedings of a kind mentioned in paragraph 3A which were commenced prior to the first commencement date.

Powers of trustee in bankruptcy

6. The insertion of paragraph 2A into Schedule 5 of the Insolvency Act 1986 by section 262 (Powers of Trustee) shall have no effect in relation to any proceedings of a kind mentioned in paragraph 2A which were commenced prior to the first commencement date.

(8) 1985 c. 36.

(9) 1986 c. 45.

(10) 1988 c. 1.

(11) 1991 c. 31. Paragraph 21A was inserted into Schedule 2 by s. 9 of the Finance (No.2) Act 1992 (c. 48).

(12) 1992 c. 6.

(13) 1993 c. 34.

(14) 1994 c. 9.

(15) 1994 c. 23.

(16) 1995 c. 4.

(17) 1996 c. 8.

(18) 1996 c. 18.

(19) 1997 c. 16.

(20) 2000 c. 17.

(21) 2001 c. 9.

Bankruptcy restrictions orders

7. Where a court is considering whether or not a bankruptcy restrictions order should be made pursuant to the provisions of section 281A and Schedule 4A to the Insolvency Act 1986, it shall not take into account any conduct of the bankrupt before the second commencement date.

Transitional provisions—old summary cases

8.—(1) This article applies to a bankruptcy (other than one where the bankrupt has received his discharge) where a certificate of summary administration under section 275 of the Insolvency Act 1986 is in force on the second commencement date.

(2) In a case to which this article applies sections 275, 292(1), 293(1), 294(1), 297, 298(3), 300(5), 300(6) and 300(7) of the Insolvency Act 1986 shall continue to have effect.

(3) Where on or after the second commencement date the court revokes a certificate of summary administration under section 275(3) of the Insolvency Act 1986 as it has effect by virtue of paragraph (2), the relevant period for the purposes of paragraph 4(1)(b) of Schedule 19 shall be the period specified in section 279(1)(b) of the Insolvency Act 1986 as it had effect immediately prior to the second commencement date.

8th August 2003

Nigel Griffiths
Parliamentary Under-Secretary of State for
Small Business and Enterprise,
Department of Trade and Industry

SCHEDULE 1

Article 2(1)

The provisions referred to in Article 2(1) are—

- section 248 (replacement of Part II of the Insolvency Act 1986), and Schedules 16 and 17 (except paragraphs 14 and 59 of Schedule 17)
- section 249 (special administration regimes)
- section 250 (prohibition of appointment of administrative receivers) (to the extent it is not already in force) and Schedule 18
- section 251 (abolition of Crown preference)
- section 252 (unsecured creditors)
- section 253 (liquidator's powers)
- section 254 (application of insolvency law to foreign company)
- section 255 (application of law about company arrangement or administration to non-company)
- section 262 (powers of trustee in bankruptcy)
- section 278(2) and Schedule 26 (but only insofar as is necessary to give effect to the repeals relating to paragraphs 1 to 3 and 8 to 8C of Schedule 3 to the Bankruptcy (Scotland) Act 1985⁽²²⁾, section 212, 230(1), 231, 232, 240(1), 245(3) and Schedule 10 to the Insolvency Act 1986⁽²³⁾ (except those relating to the entries relating to sections 31, 361 and 362), paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988⁽²⁴⁾, section 62(2)(a) of the Criminal Justice Act 1988⁽²⁵⁾, paragraphs 21A and 22 of Schedule 2 to the Finance Act 1991⁽²⁶⁾, paragraph 73 of Schedule 2 to the Social Security (Consequential Provisions) Act 1992⁽²⁷⁾, sections 36(1) to (3) of the Finance Act 1993⁽²⁸⁾, paragraphs 13(1) and 13(2) of Schedule 6 and paragraph 7(2) of Schedule 7 to the Finance Act 1994⁽²⁹⁾, paragraph 8 of Schedule 14 to the Value Added Tax Act 1994⁽³⁰⁾, section 17 of the Finance Act 1995⁽³¹⁾, paragraphs 12(1) and 12(2) of Schedule 5 to the Finance Act 1996⁽³²⁾, sections 166(7)(a), 183(3)(a) and 189(4) of the Employment Rights Act 1996⁽³³⁾, paragraph 6 of Schedule 2 to the Finance Act 1997⁽³⁴⁾, paragraphs 2 and 3 of Schedule 7 to the Finance Act 2000⁽³⁵⁾ and paragraphs 17(1) and (2) and 18 of Schedule 5 to the Finance Act 2001⁽³⁶⁾).

SCHEDULE 2

Article 2(2)

The provisions referred to in Article 2(2) are—

- section 256 (duration of bankruptcy) and Schedule 19 (except paragraph 8 of Schedule 19)

⁽²²⁾ 1985 c. 36.

⁽²³⁾ 1986 c. 45.

⁽²⁴⁾ 1988 c. 1.

⁽²⁵⁾ 1988 c. 33.

⁽²⁶⁾ 1991 c. 31. Paragraph 21A was inserted into Schedule 2 by s. 9 of the Finance (No.2) Act 1992 (c. 48).

⁽²⁷⁾ 1992 c. 6.

⁽²⁸⁾ 1993 c. 34.

⁽²⁹⁾ 1994 c. 9.

⁽³⁰⁾ 1994 c. 23.

⁽³¹⁾ 1995 c. 4.

⁽³²⁾ 1996 c. 8.

⁽³³⁾ 1996 c. 18.

⁽³⁴⁾ 1997 c. 16.

⁽³⁵⁾ 2000 c. 17.

⁽³⁶⁾ 2001 c. 9.

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section 257 (post discharge restrictions) and Schedules 20 and 21
section 258 (investigation by official receiver)
section 259 (income payments order)
section 260 (income payments agreement)
section 261 (bankrupt's home)
section 263 (repeal of certain bankruptcy offences)
section 264 (individual voluntary arrangements) and Schedule 22
section 265 (disqualification from office: justice of the peace)
section 266 (disqualification from office: Parliament)
section 267 (disqualification from office: local government)
section 268 (disqualification from office: general)
section 269 (minor and consequential amendments) and Schedule 23
section 270 (fees)
section 271 (Insolvency Services Account: interest)
section 272 (Insolvency Services Account)
section 278(2) and Schedule 26 (but only insofar as is necessary to give effect to the repeals relating to sections 81(1) and 82(2) of the Local Government Act 1972⁽³⁷⁾, paragraph 22 of Schedule 8 to the Insolvency Act 1985⁽³⁸⁾, sections 275, 282(5), 292(1)(a), 293(1), 294(1), 297, 298(3), 300, 310(1), 361, 362, 405, 427 of the Insolvency Act 1986⁽³⁹⁾, the entries relating to sections 31, 361 and 362 in Schedule 10 to the Insolvency Act 1986 and section 65 of the Justices of the Peace Act 1997⁽⁴⁰⁾).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force with minor exceptions the provisions of the Enterprise Act 2002 relating to insolvency.

The following provisions are brought into force on 15th September 2003 (“the first commencement date”):

section 248 (replacement of Part II of the Insolvency Act 1986), and Schedules 16 and 17 (except paragraphs 14 and 59 of Schedule 17)
section 249 (special administration regimes)
section 250 (prohibition of appointment of administrative receivers) (to the extent it is not already in force) and Schedule 18
section 251 (abolition of crown preference)

⁽³⁷⁾ 1972 c. 70.

⁽³⁸⁾ 1985 c. 65.

⁽³⁹⁾ 1986 c. 45.

⁽⁴⁰⁾ 1997 c. 25.

section 252 (unsecured creditors)
section 253 (liquidator's powers)
section 254 (application of insolvency law to foreign company)
section 255 (application of law about company arrangement or administration to non-company)
section 262 (powers of trustee in bankruptcy)
section 278(2) and Schedule 26 (but only insofar as is necessary to give effect to the repeals relating to paragraphs 1 to 3 and 8 to 8C of Schedule 3 to the Bankruptcy (Scotland) Act 1985, sections 212, 230(1), 231, 232, 240(1), 245(3) and Schedule 10 to the Insolvency Act 1986 (except those relating to the entries relating to sections 31, 361 and 362), paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988, section 62(2)(a) of the Criminal Justice Act 1988, paragraphs 21A and 22 of Schedule 2 to the Finance Act 1991, paragraph 73 of Schedule 2 to the Social Security (Consequential Provisions) Act 1992, sections 36(1) to (3) of the Finance Act 1993, paragraphs 13(1) and 13(2) of Schedule 6 and paragraph 7(2) of Schedule 7 to the Finance Act 1994, paragraph 8 of Schedule 14 to the Value Added Tax Act 1994, section 17 of the Finance Act 1995, paragraphs 12(1) and 12(2) of Schedule 5 to the Finance Act 1996, sections 166(7)(a), 183(3)(a) and 189(4) of the Employment Rights Act 1996, paragraph 6 of Schedule 2 to the Finance Act 1997, paragraphs 2 and 3 of Schedule 7 to the Finance Act 2000 and paragraphs 17(1) and (2) and 18 of Schedule 5 to the Finance Act 2001).

The following provisions are brought into force on 1st April 2004 ("the second commencement date"):

section 256 (duration of bankruptcy) and Schedule 19 (except paragraph 8 of Schedule 19)
section 257 (post discharge restrictions) and Schedules 20 and 21
section 258 (investigation by official receiver)
section 259 (income payments order)
section 260 (income payments agreement)
section 261 (bankrupt's home)
section 263 (repeal of certain bankruptcy offences)
section 264 (individual voluntary arrangements) and Schedule 22
section 265 (disqualification from office: justice of the peace)
section 266 (disqualification from office: Parliament)
section 267 (disqualification from office: local government)
section 268 (disqualification from office: general)
section 269 (minor and consequential amendments) and Schedule 23
section 270 (fees)
section 271 (Insolvency Services Account: interest)
section 272 (Insolvency Services Account)
section 278(2) and Schedule 26 (but only insofar as is necessary to give effect to the repeals relating to sections 81(1) and 82(2) of the Local Government Act 1972, paragraph 22 of Schedule 8 to the Insolvency Act 1985, sections 275, 282(5), 292(1)(a), 293(1), 294(1), 297, 298(3), 300, 310(1), 361, 362, 405, 427 of the Insolvency Act 1986, the entries relating to sections 31, 361 and 362 in Schedule 10 to the Insolvency Act 1986 and section 65 of the Justices of the Peace Act 1997).

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The main features of the provisions brought into force by this Order on [] are the replacement of the provisions relating to the procedure of administration under Part II of the Insolvency Act 1986, the prohibition (subject to certain exceptions) on the appointment of administrative receivers, the abolition of Crown preference and the creation out of assets subject to a floating charge of a fund for the benefit of unsecured creditors. The remaining provisions of the Enterprise Act 2002 relating to individual insolvency in England and Wales and miscellaneous matters are brought into force from the 1st April 2004. These include the reduction in the period of bankruptcy for those bankrupts who co-operate with the Official Receiver from 3 years to a maximum of one year, the introduction of a procedure under which the court may make an order imposing restrictions on bankrupts who have been guilty of misconduct and provisions which provide for the official receiver to act in certain types of individual voluntary arrangement.

The Order contains a number of transitional and saving provisions. These are as follows.

Article 3 of the Order contains transitional provisions in relation to cases where petitions for administration orders were presented prior to the first commencement date. The old law will continue to apply in those cases. It also saves the operation of the old law for the purposes of giving effect to the Insolvent Partnerships Order 1994, regulation 5 of the Limited Liability Partnerships Regulations 2001; and the Financial Services and Markets Act 2000 (Administration Orders relating to Insurers) Order 2002. Article 4 of the Order contains transitional provisions in relation to the abolition of preferential status for Crown debts. Broadly speaking preferential status will continue to apply in those cases which were started before the first commencement date. The provisions of article 4 (and articles 5 and 6) apply in cases where the provisions of the Insolvency Act 1986 are applied to other situations, for example in relation to insolvent partnerships (*See article 1(5)*).

Articles 5 and 6 make transitional provisions in relation to certain types of proceedings taken by liquidators and trustees in bankruptcy. Section 253 of the Enterprise Act 2002 amends Schedule 4 to the Insolvency Act 1986 so that proceedings under sections 213, 214, 238, 239, 242, 243 or 423 can only be brought with sanction (usually from the creditors' committee). Similarly section 262 of the Enterprise Act 2002 amends Schedule 5 to the Insolvency Act 1986 to provide that a trustee in bankruptcy can only bring proceedings under sections 339, 340 or 423 with sanction (usually from the creditors' committee). Articles 5 and 6 provide that these amendments to the 1986 Act are not to affect any proceedings that are already on foot under the provisions of the Insolvency Act 1986 mentioned above.

Article 7 provides that where a court is considering whether to make a bankruptcy restrictions order it cannot take into account any conduct of the bankrupt which occurred prior to the second commencement date.

Article 8 contains transitional provisions in relation to existing bankruptcies in England and Wales where a certificate of summary administration was in force.

A regulatory impact assessment identifying the costs of the insolvency provisions of the Enterprise Act 2002 to business and the exchequer was published at the time the Act received Royal Assent in November 2002. It is available from www.dti.gov.uk/enterpriseact/rias.htm.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Act have been brought into force by commencement order made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Sections 1 to 4,	01.04.03	2003/766
Sections 5 to 7	20.06.03	2003/1397

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Sections 8, 9 and 10	01.04.03	2003/766
Section 11	20.06.03	2003/1397
Section 12	01.04.03	2003/766
Section 13(1) to (5)	01.04.03	2003/766
Section 13(6) (partially)	18.03.03	2003/765
Section 13(6) (remaining purposes)	01.04.03	2003/766
Section 14(1) to 14(5)	01.04.03	2003/766
Section 14(6) (partially)	01.04.03	2003/766
Section 14(6) (remaining purposes)	20.06.03	2003/1397
Section 15	01.04.03	2003/766
Sections 16 to 69	20.06.03	2003/1397
Sections 71 to 120	20.06.03	2003/1397
Section 121	20.06.03	2003/1397
Sections 122 to 130	20.06.03	2003/1397
Part 4 of the Act (sections 131 to 184)	20.06.03	2003/1397
Section 185 (partially)	01.04.03	2003/766
Section 185 (partially)	20.06.03	2003/1397
Section 186	01.04.03	2003/766
Section 187	20.06.03	2003/1397
Part 6 (Sections 188 to 202)	20.06.03	2003/1397
Sections 203 to 206	20.06.03	2003/1397
Section 207	01.04.03	2003/766
Sections 208 and 209	20.06.03	2003/1397
Part 8 (Sections 210 to 236)	20.06.03	2003/1397
Part 9 (Sections 237 to 247)	20.06.03	2003/1397
Section 250(1) (partially)	18.03.03	2003/765
Section 273	18.03.03	2003/765
Section 274	01.04.03	2003/766
Section 275	18.03.03	2003/765
Section 276(1) (partially)	18.03.03	2003/765
Section 276(1) (partially)	01.04.03	2003/766
Section 276(1) (remaining purposes)	20.06.03	2003/1397

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 276(2) to (4)	18.03.03	2003/765
Section 277	18.03.03	2003/765
Section 278 (partially)	01.04.03	2003/766
Section 278 (partially)	20.06.03	2003/1397
Schedules 1 and 2	01.04.03	2003/766
Schedule 3, Parts 1 and 3	01.04.03	2003/766
Schedule 3, Part 2	18.03.03	2003/765
Schedule 4 (partially)	01.04.03	2003/766
Schedule 4 (remaining purposes)	20.06.03	2003/1397
Schedule 5 (partially)	01.04.03	2003/766
Schedule 7	20.06.03	2003/1397
Schedule 8	20.06.03	2003/1397
Schedule 9 (partially)	20.06.03	2003/1397
Schedule 10	20.06.03	2003/1397
Schedule 11 (partially)	01.04.03	2003/766
Schedule 11 (partially)	20.06.03	2003/1397
Schedule 12	20.06.03	2003/1397
Schedule 13	20.06.03	2003/1397
Schedule 14	20.06.03	2003/1397
Schedule 15	20.06.03	2003/1397
Schedule 24 (partially)	18.03.03	2003/765
Schedule 24 (partially)	01.04.03	2003/766
Schedule 24 (remaining purposes)	20.06.03	2003/1397
Schedule 25 (partially)	01.04.03	2003/766
Schedule 25 (partially)	20.06.03	2003/1397
Schedule 26 (partially)	01.04.03	2003/766
Schedule 26 (partially)	20.06.03	2003/1397