



# Insolvency Act 1985

## 1985 CHAPTER 65

### PART III

#### INDIVIDUAL INSOLVENCY

### CHAPTER IV

#### TRUSTEES IN BANKRUPTCY

##### *Tenure of office as trustee*

#### **139 Power to make appointments**

- (1) The power to appoint a person as trustee of a bankrupt's estate (whether the first such trustee or a trustee appointed to fill any vacancy) shall be exercisable—
  - (a) except at a time when a certificate for the summary administration of the bankrupt's estate is in force, by a general meeting of the bankrupt's creditors;
  - (b) under section 142(2), 143(2) or 147(6) below, by the Secretary of State; or
  - (c) under section 144 below, by the court.
- (2) No person may be appointed as trustee of a bankrupt's estate unless he is, at the time of the appointment, qualified to act as an insolvency practitioner in relation to the bankrupt.
- (3) Any power to appoint a person as trustee of a bankrupt's estate shall include power to appoint two or more persons as joint trustees of that estate; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.
- (4) The appointment of any person as trustee of a bankrupt's estate shall take effect only if that person accepts the appointment in accordance with the rules.

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- (5) Subject to subsection (4) above, the appointment of any person as trustee of a bankrupt's estate shall take effect at the time specified in his certificate of appointment.
- (6) This section is without prejudice to the provisions of this Chapter under which the official receiver is, in certain circumstances, to be trustee of a bankrupt's estate.

#### **140 Summing of meeting to appoint first trustee**

- (1) Subject to sections 141(3) and 144(6) below, where a bankruptcy order has been made otherwise than on a petition under section 119(1)(d) above and no certificate for the summary administration of the bankrupt's estate has been issued, it shall be the duty of the official receiver, as soon as practicable in the period of twelve weeks beginning with the day on which the order was made, to decide whether to summon a general meeting of the bankrupt's creditors for the purpose of appointing a trustee of the bankrupt's estate.
- (2) Subject to section 141(3) below, if the official receiver decides not to summon such a meeting, he shall, before the end of the said period of twelve weeks, give notice of his decision to the court and to every creditor of the bankrupt who is known to the official receiver or is identified in the bankrupt's statement of affairs.
- (3) As from the giving to the court of a notice under subsection (2) above, the official receiver shall be trustee of the bankrupt's estate.

#### **141 Power of creditors to require meeting to be summoned**

- (1) Where in the case of any bankruptcy—
  - (a) the official receiver has not yet summoned, or has decided not to summon, a general meeting of the bankrupt's creditors for the purpose of appointing the trustee of the bankrupt's estate ; and
  - (b) a certificate for the summary administration of the bankrupt's estate is not for the time being in force. any creditor of the bankrupt may request the official receiver to summon such a meeting for that purpose.
- (2) If such a request appears to the official receiver to be made with the concurrence of not less than one-quarter, in value, of the bankrupt's creditors (including the creditor making the request), it shall be the duty of the official receiver to summon the requested meeting.
- (3) Accordingly, where the duty imposed by subsection (2) above has arisen, the official receiver shall be required neither to reach a decision for the purposes of subsection (1) of section 140 above nor (if he has reached one) to serve any notice under subsection (2) of that section.

#### **142 Failure of meeting to appoint trustee**

- (1) If a meeting summoned under section 140 or 141 above is held but no appointment of a person as trustee of the bankrupt's estate is made, it shall be the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.
- (2) On a reference made in pursuance of a decision under subsection (1) above, the Secretary of State shall either make an appointment or decline to make one.

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- (3) If—
  - (a) the official receiver decides not to refer the need for an appointment to the Secretary of State; or
  - (b) on such a reference the Secretary of State declines to make an appointment, the official receiver shall give notice of his decision or, as the case may be, of the Secretary of State's decision to the court.
- (4) As from the giving of a notice under subsection (3) above in a case in which no notice has been given under section 140(2) above, the official receiver shall be trustee of the bankrupt's estate.

### **143 Appointment of trustee by Secretary of State**

- (1) At any time when the official receiver is the trustee of a bankrupt's estate by virtue of any provision of this Chapter other than section 144(1) below he may apply to the Secretary of State for the appointment of a person as trustee of that estate instead of the official receiver.
- (2) On an application under subsection (1) above the Secretary of State shall either make an appointment or decline to make one.
- (3) An application may be made under subsection (1) above notwithstanding that the Secretary of State has declined to make an appointment either on a previous application under that subsection or on a reference made in pursuance of section 142 above or section 147(4) below.
- (4) Where the trustee of a bankrupt's estate has been appointed by the Secretary of State (whether under this section or otherwise), the trustee shall give notice to the bankrupt's creditors of his appointment or, if the court so allows, shall advertise his appointment in accordance with the directions of the court and in that notice or advertisement shall—
  - (a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a committee under section 148 below; and
  - (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

### **144 Special cases**

- (1) Where a bankruptcy order is made on a petition under section 119(1)(d) above, the official receiver shall be trustee of the bankrupt's estate.
- (2) Subject to subsection (3) below, where the court issues a certificate for the summary administration of a bankrupt's estate, the official receiver shall, as from the issue of that certificate, be trustee of the bankrupt's estate.
- (3) Where such a certificate is issued or is in force, the court may, if it thinks fit, appoint a person other than the official receiver as trustee of the bankrupt's estate.
- (4) Where a bankruptcy order is made in a case in which a report has been submitted to the court under section 123(3) above but no certificate for the summary administration of the bankrupt's estate is issued, the court, if it thinks fit, may on making the order appoint the person who made the report as trustee of the bankrupt's estate.

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- (5) Where a bankruptcy order is made (whether or not on a petition under section 119(1) (c) above) at a time when there is a supervisor of a composition or scheme approved in relation to the bankrupt under Chapter I of this Part, the court, if it thinks fit, may on making the order appoint the supervisor of the composition or scheme as trustee of the bankrupt's estate.
- (6) Where an appointment is made under subsection (4) or (5) above, the official receiver shall not be under the duty imposed by section 140(1) above.
- (7) Where the trustee of a bankrupt's estate has been appointed by the court, the trustee shall give notice to the bankrupt's creditors of his appointment or, if the court so allows, shall advertise his appointment in accordance with the directions of the court and in that notice or advertisement shall—
  - (a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a committee under section 148 below ; and
  - (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

#### **145 Removal of trustee and vacation of office**

- (1) Subject to the following provisions of this section, the trustee of a bankrupt's estate may be removed from office only by an order of the court or by a general meeting of the bankrupt's creditors summoned specially for that purpose in accordance with the rules.
- (2) Where the official receiver is trustee of a bankrupt's estate by virtue of section 144(1) above, he shall not be removed from office under this section.
- (3) A general meeting of the bankrupt's creditors shall not be held for the purpose of removing the trustee of his estate at any time when a certificate for the summary administration of that estate is in force.
- (4) Where the official receiver is the trustee of a bankrupt's estate by virtue of section 140(3) or 142(4) above or a trustee is appointed by the Secretary of State or, otherwise than under section 144(5) above, by the court, a general meeting of the bankrupt's creditors shall be summoned for the purpose of replacing the trustee only if the trustee thinks fit or the court so directs or the meeting is requested by one of the bankrupt's creditors with the concurrence of not less than one-quarter, in value, of those creditors (including the creditor making the request).
- (5) The trustee of a bankrupt's estate who was appointed by the Secretary of State may be removed from office by a direction of the Secretary of State.
- (6) The trustee of a bankrupt's estate, not being the official receiver, shall vacate office if he ceases to be a person who is for the time being qualified to act as an insolvency practitioner in relation to the bankrupt.
- (7) The trustee of a bankrupt's estate may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.
- (8) The trustee of a bankrupt's estate shall vacate office on giving notice to the court that a final meeting has been held under section 168 below and of the decisions (if any) of that meeting.

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(9) The trustee of a bankrupt's estate shall vacate office if the bankruptcy order is annulled.

#### **146 Release of trustee**

- (1) Where the official receiver has ceased to be the trustee of a bankrupt's estate and a person is appointed in his stead, the official receiver shall have his release with effect from the following time, that is to say—
  - (a) where that person is appointed by a general meeting of the bankrupt's creditors or by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced ; and
  - (b) where that person is appointed by the court, such time as the court may determine.
- (2) If the official receiver while he is the trustee of a bankrupt's estate gives notice to the Secretary of State that the administration of the bankrupt's estate in accordance with Chapter V of this Part is for practical purposes complete, he shall have his release with effect from such time as the Secretary of State may determine.
- (3) A person other than the official receiver who has ceased to be the trustee of a bankrupt's estate shall have his release with effect from the following time, that is to say—
  - (a) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has not resolved against his release or who has died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office ;
  - (b) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has resolved against his release or by the court or the Secretary of State or who has vacated office under section 145(6) above, such time as the Secretary of State may, on an application by that person, determine;
  - (c) in the case of a person who has resigned, such time as may be prescribed;
  - (d) in the case of a person who has vacated office under subsection (8) of section 145 above—
    - (i) if the final meeting referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine; and
    - (ii) if that meeting has not resolved against that person's release, the time at which he vacated office.
- (4) Where a bankruptcy order is annulled the trustee of the bankrupt's estate at the time of the annulment shall have his release with effect from such time as the court may determine.
- (5) Where the official receiver or the trustee of a bankrupt's estate has his release under this section, he shall, with effect from the time specified in the preceding provisions of this section, be discharged from all liability both in respect of acts or omissions of his in the administration of the bankrupt's estate and otherwise in relation to his conduct as trustee; but nothing in this section shall prevent the exercise, in relation to a person who has had his release under this section, of the court's powers under section 151 below.

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#### **147 Vacancy in office of trustee**

- (1) This section applies where the appointment of any person as trustee of a bankrupt's estate fails to take effect or, such an appointment having taken effect, there is otherwise a vacancy in the office of trustee of a bankrupt's estate.
- (2) The official receiver shall be trustee until the vacancy is filled.
- (3) The official receiver may summon a general meeting of the bankrupt's creditors for the purpose of filling the vacancy and shall summon such a meeting if required to do so in pursuance of section 160(8) below.
- (4) If at the end of the period of twenty-eight days beginning with the day on which the vacancy first came to the official receiver's attention he has not summoned, and is not proposing to summon, a general meeting of creditors for the purpose of filling the vacancy, he shall refer the need for an appointment to the Secretary of State.
- (5) Where a certificate for the summary administration of the bankrupt's estate is for the time being in force—
  - (a) the official receiver may refer the need to fill any vacancy to the court or, if the vacancy arises because a person appointed by the Secretary of State has ceased to hold office, to the court or the Secretary of State; and
  - (b) subsections (3) and (4) above shall not apply.
- (6) On a reference to the Secretary of State under subsection (4) or (5) above the Secretary of State shall either make an appointment or decline to make one.
- (7) If on a reference under subsection (4) or (5) above no appointment is made, the official receiver shall continue to be trustee of the bankrupt's estate but without prejudice to his power to make a further reference.
- (8) References in this section to a vacancy include references to a case where it is necessary, in relation to any property which is or may be comprised in a bankrupt's estate, to revive the trusteeship of that estate after the holding of a final meeting summoned under section 168 below or the giving of a notice under section 146(2) above.