Insolvency Act 1986

1986 CHAPTER 45

PART IX

BANKRUPTCY

Modifications etc. (not altering text)

C1 Pt. IX (ss. 264-371) excluded by Drug Trafficking Offences Act 1986 (c. 32, SIF 39:1), **s. 15(1)(7)**
Pt. IX excluded by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 84, 123, **Sch. 8 para. 16**

C2 Pt. IX (ss. 264-371) amended by Criminal Justice (Scotland) Act 1987 (c.41, SIF 39:1), **ss. 30(6)**, 34(1), 47(4)(a)

C3 Pt. IX (except ss. 269, 270, 287, 297) applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(7)-(9), Sch. 4 Pt. II, **Sch. 7** (as amended (1.7.2005) by S.I. 2005/1516, **art. 10**)
Pt. IX (except ss. 273, 274, 287, 297) applied (1.12.1994) by S.I. 1994/2421, **art. 10(4)(5)(a)**

C4 Pt. IX (except ss. 273, 274, 287) applied (1.12.1994) by S.I. 1994/2421, art. 11(1)(2)(a), **Sch. 7** (as amended (1.7.2005) by S.I. 2005/1516, **art. 10** and S.I. 1994/2421, Sch. 7 para. 21 (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **15** (with art. 3))

C5 Pt. IX (ss. 264-371) modified (3.2.1995) by 1994 c. 37, ss. 32(1), 69(2), **Sch. 2 para. 5** (with s. 66(2))
Pt. IX modified (31.3.1996) by 1995 c. 20, s. 110(1), **Sch. 4 para. 2(1)**; S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, Sch. 2)
Pt. IX modified (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 2(1)**
Pt. IX modified (1.9.2001 subject to art. 3 of the commencing S.I.) by 2001 c. 17, s. 1(3), **Sch. 6 para. 9(1)** (with s. 78); S.I. 2001/2161, **arts. 2**, 3 (as amended by S.I. 2001/2304, **art. 2**)
Pt. IX modified (24.3.2003) by 2002 c. 29, ss. 417, 458(1)(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4))

C6 Pt. IX (ss. 264-371) restricted (6.4.1996 for the purpose only of authorising the making of regulations) by 1995 c. 26, **ss. 91(3)**, 180(1) (with s. 121(5)); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

C7 Second Group of Parts (Pts. 8-11) modified (31.12.1996) by 1991 c. 57, **Sch. 10** (as substituted by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **art. 3**)
Second Group of Parts (Pts. 8-11) modified (11.11.1999 for specified purposes and 6.4.2002 otherwise) by 1999 c. 30, **s. 12(1)**; S.I. 2002/153, **art. 2(b)**

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F1CHAPTER A1

ADJUDICATORS: BANKRUPTCY APPLICATIONS BY DEBTORS AND BANKRUPTCY ORDERS

Textual Amendments

F1 Pt. 9 Ch. A1 inserted (25.4.2013 for specified purposes, 6.4.2016 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(1)(i)(3), **Sch. 18**; S.I. 2016/191, art. 2

263H Bankruptcy applications to an adjudicator

(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.

263I Debtors against whom an adjudicator may make a bankruptcy order

(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 **[**F2EU 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 **[**F3EU Regulation**]** .

Textual Amendments

F2 Words in s. 263I(1)(b) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 18** (with regs. 3, 4)

F3 Words in s. 263I(4) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 18** (with regs. 3, 4)

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

263J Conditions applying to bankruptcy application

(1) 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.

263K Determination of bankruptcy application

(1) 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”).

263L Adjudicator's requests for further information

(1) 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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263M Making of bankruptcy order

(1) 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.

263N Refusal to make a bankruptcy order: review and appeal etc.

(1) 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.

263O False representations and omissions

(1) 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

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(b) by or with the consent of the Director of Public Prosecutions.**]**

CHAPTER I

[[F4]THE COURT: BANKRUPTCY PETITIONS AND BANKRUPTCY ORDERS]

Textual Amendments

F4 Pt. 9 Ch. 1 heading substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 5**; S.I. 2016/191, art. 2 (with art. 3)

Preliminary

264 Who may present a bankruptcy petition.

(1) A petition for a bankruptcy order to be made against an individual may be presented to the court in accordance with the following provisions of this Part—

(a) by one of the individual's creditors or jointly by more than one of them,

[F5](b) . . . . . .

[[F6](ba) by a temporary administrator (within the meaning of [[F7]Article 52 of the EU Regulation]),

[[F8](bb) by an insolvency practitioner (within the meaning of Article 2(5) of the EU Regulation) appointed in proceedings by virtue of Article 3(1) of the EU Regulation,]]

(c) by the supervisor of, or any person (other than the individual) who is for the time being bound by, a voluntary arrangement proposed by the individual and approved under Part VIII, or

(d) where a criminal bankruptcy order has been made against the individual, by the Official Petitioner or by any person specified in the order in pursuance of section 39(3)(b) of the [M1]Powers of Criminal Courts Act 1973.

(2) Subject to those provisions, the court may make a bankruptcy order on any such petition.

Textual Amendments

F5 S. 264(1)(b) omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 6**; S.I. 2016/191, art. 2 (with art. 3)

F6 S. 264(1)(ba)(bb) inserted (31.5.2002) by S.I. 2002/1240, **reg. 13**

F7 Words in s. 264(1)(ba) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 19(a)** (with regs. 3, 4)

F8 S. 264(1)(bb) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 19(b)** (with regs. 3, 4)

Modifications etc. (not altering text)

C8 S. 264 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 2** (as amended (1.12.2001) by S.I. 2001/3649, **art. 469**)

C9 S. 264 amended (20.7.2001 for certain purposes and otherwise 1.12.2001) by 2000 c. 8, **s. 372(1)**; S.I. 2001/2632, art. 2, **Sch. Pt. I**; S.I. 2001/3538, **art. 2(1)**

C10 S. 264 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II (as amended (31.5.2002) by S.I. 2002/1309, art. 3(1)(4); (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, Sch. 2 para. 2(7)(a); and (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 3 para. 1(2)**)

C11 S. 264 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 10(1)(a)(6), Sch. 4 Pts. I, II paras. 1, 8, Sch. 6 para. 2 (as amended (1.7.2005) by S.I. 2005/1516, art. 5(b); and (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 2 para. 6**)

Marginal Citations

M1 1973 c. 62.

[F9 265 Creditor's petition: debtors against whom the court may make a bankruptcy order.

(1) A bankruptcy petition may be presented to the court under section 264(1)(a) 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 **[**F10EU 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 petition is presented, 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 **[**F11EU Regulation**].]**

Textual Amendments

F9 S. 265 substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 7**; S.I. 2016/191, art. 2 (with art. 3)

F10 Words in s. 265(1)(b) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 20** (with regs. 3, 4)

F11 Words in s. 265(4) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 20** (with regs. 3, 4)

Modifications etc. (not altering text)

C12 S. 265 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 3**

C13 S. 265 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. 2 (as amended) (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 3 para. 1(2)**

C14 S. 265 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 3 para. 1(3)(c)**)

C15 S. 265 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(1)(a), Sch. 4 Pt. II para. 5, **Sch. 6** (as amended (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 2 para. 3**)

266 Other preliminary conditions.

(1) Where a bankruptcy petition relating to an individual is presented by a person who is entitled to present a petition under two or more paragraphs of section 264(1), the petition is to be treated for the purposes of this Part as a petition under such one of those paragraphs as may be specified in the petition.

(2) A bankruptcy petition shall not be withdrawn without the leave of the court.

(3) The court has a general power, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, to dismiss a bankruptcy petition or to stay proceedings on such a petition; and, where it stays proceedings on a petition, it may do so on such terms and conditions as it thinks fit.

(4) Without prejudice to subsection (3), where a petition under section 264(1)(a) [F12]... or (c) in respect of an individual is pending at a time when a criminal bankruptcy order is made against him, or is presented after such an order has been so made, the court may on the application of the Official Petitioner dismiss the petition if it appears to it appropriate to do so.

Textual Amendments

F12 Word in s. 266(4) omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 8**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C16 S. 266 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (31.5.2002) by S.I. 2002/1309, **art. 3(2)(4)**)

C17 S. 266 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 4**

Creditor's petition

267 Grounds of creditor's petition.

(1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.

(2) Subject to the next three sections, a creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented—

(a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,

(b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,

(c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and

(d) there is no outstanding application to set aside a statutory demand served (under section 268 below) in respect of the debt or any of the debts.

[[F13](3) A debt is not to be regarded for the purposes of subsection (2) as a debt for a liquidated sum by reason only that the amount of the debt is specified in a criminal bankruptcy order.**]**

(4) "The bankruptcy level" is **[**[F14]£5,000**]** but the Secretary of State may by order in a statutory instrument substitute any amount specified in the order for that amount or (as the case may be) for the amount which by virtue of such an order is for the time being the amount of the bankruptcy level.

(5) An order shall not be made under subsection (4) unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

Textual Amendments

F13 S. 267(3) repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**

F14 Word in s. 267(4) substituted (1.10.2015) by The Insolvency Act 1986 (Amendment) Order 2015 (S.I. 2015/922), arts. 1, **2** (with art. 3)

Modifications etc. (not altering text)

C18 S. 267 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 267 extended (1.4.1992) by S.I. 1992/613, **reg. 49(1)**
S. 267: power to modify conferred (6.3.1992) by Local Government Finance Act 1992 (c. 14), s. 14(3), **Sch. 4 para. 9(1)** (with s. 118(1)(2)(4))

C19 S. 267 modified by S.I. 1989/1058, **reg. 18(1)**

C20 S. 267 modified by S.I. 1989/438, **reg. 43(1)**

C21 S. 267 power to amend conferred by Local Government Finance Act 1988 (c. 41, SIF 81:1), s. 22, **Sch. 4 para. 9(1)**

C22 S. 267 modified (6.4.2010) by The Community Infrastructure Levy Regulations 2010 (S.I. 2010/948), **reg. 105(1)**

C23 S. 267 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 6(b)** (as amended) (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 2 para. 5**)

268 Definition of "inability to pay", etc.; the statutory demand.

(1) For the purposes of section 267(2)(c), the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—

(a) the petitioning creditor to whom the debt is owed has served on the debtor a demand (known as "the statutory demand") in the prescribed form requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the demand has been neither complied with nor set aside in accordance with the rules, or

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(b) execution or other process issued in respect of the debt on a judgment or order of any court in favour of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed, has been returned unsatisfied in whole or in part.

(2) For the purposes of section 267(2)(c) the debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and—

(a) the petitioning creditor to whom it is owed has served on the debtor a demand (also known as "the statutory demand") in the prescribed form requiring him to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due,

(b) at least 3 weeks have elapsed since the demand was served, and

(c) the demand has been neither complied with nor set aside in accordance with the rules.

Modifications etc. (not altering text)

C24 S. 268 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 7(b)**

269 Creditor with security.

(1) A debt which is the debt, or one of the debts, in respect of which a creditor's petition is presented need not be unsecured if either—

(a) the petition contains a statement by the person having the right to enforce the security that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of all the bankrupt's creditors, or

(b) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of the estimated value at the date of the petition of the security for the secured part of the debt.

(2) In a case falling within subsection (1)(b) the secured and unsecured parts of the debt are to be treated for the purposes of sections 267 to 270 as separate debts.

Modifications etc. (not altering text)

C25 S. 269 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

270 Expedited petition.

In the case of a creditor's petition presented wholly or partly in respect of a debt which is the subject of a statutory demand under section 268, the petition may be presented before the end of the 3-week period there mentioned if there is a serious possibility that the debtor's property or the value of any of his property will be significantly diminished during that period and the petition contains a statement to that effect.

271 Proceedings on creditor's petition.

(1) The court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either—

(a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for, or

(b) a debt which the debtor has no reasonable prospect of being able to pay when it falls due.

(2) In a case in which the petition contains such a statement as is required by section 270, the court shall not make a bankruptcy order until at least 3 weeks have elapsed since the service of any statutory demand under section 268.

(3) The court may dismiss the petition if it is satisfied that the debtor is able to pay all his debts or is satisfied—

(a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented,

(b) that the acceptance of that offer would have required the dismissal of the petition, and

(c) that the offer has been unreasonably refused;

and, in determining for the purposes of this subsection whether the debtor is able to pay all his debts, the court shall take into account his contingent and prospective liabilities.

(4) In determining for the purposes of this section what constitutes a reasonable prospect that a debtor will be able to pay a debt when it falls due, it is to be assumed that the prospect given by the facts and other matters known to the creditor at the time he entered into the transaction resulting in the debt was a reasonable prospect.

(5) Nothing in sections 267 to 271 prejudices the power of the court, in accordance with the rules, to authorise a creditor's petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of those sections had been done only by or in relation to the remaining creditors or debts.

Modifications etc. (not altering text)

C26 S. 271 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(1)(a), Sch. 4 Pt. II para. 9, **Sch. 6 para. 3** (as amended (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 2 para. 3**)

C27 S. 271 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 3 para. 1(2)(3)(d)**)

F15 …

Textual Amendments

F15 Ss. 272-274A and crossheading repealed (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 9(1)**; S.I. 2016/191, art. 2 (with arts. 3, 4)

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[F15]272 Grounds of debtor's petition.

. . . . . .

[F15]273 Appointment of insolvency practitioner by the court.

. . . . . .

[F15]274 Action on report of insolvency practitioner.

. . . . . .

[F15]274A Debtor who meets conditions for a debt relief order

. . . . . .

275 Summary administration.

[F16] . . . . . .

Textual Amendments

F16 S. 275 repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 2, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Other cases for special consideration

276 Default in connection with voluntary arrangement.

(1) The court shall not make a bankruptcy order on a petition under section 264(1)(c) (supervisor of, or person bound by, voluntary arrangement proposed and approved) unless it is satisfied—

(a) that the debtor has failed to comply with his obligations under the voluntary arrangement, or

(b) that information which was false or misleading in any material particular or which contained material omissions—

(i) was contained in any statement of affairs or other document supplied by the debtor under Part VIII to any person, or

(ii) was otherwise made available by the debtor to his creditors **[**[F17]in connection with a creditors' decision procedure instigated**]** under that Part, or

(c) that the debtor has failed to do all such things as may for the purposes of the voluntary arrangement have been reasonably required of him by the supervisor of the arrangement.

(2) Where a bankruptcy order is made on a petition under section 264(1)(c), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.

Textual Amendments

F17 Words in s. 276(1)(b)(ii) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 73**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

Modifications etc. (not altering text)

C28 S.276(2) applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

[[F18]277 Petition based on criminal bankruptcy order.

(1) Subject to section 266(3), the court shall make a bankruptcy order on a petition under section 264(1)(d) on production of a copy of the criminal bankruptcy order on which the petition is based.

This does not apply if it appears to the court that the criminal bankruptcy order has been rescinded on appeal.

(2) Subject to the provisions of this Part, the fact that an appeal is pending against any conviction by virtue of which a criminal bankruptcy order was made does not affect any proceedings on a petition under section 264(1)(d) based on that order.

(3) For the purposes of this section, an appeal against a conviction is pending—

(a) in any case, until the expiration of the period of 28 days beginning with the date of conviction;

(b) if notice of appeal to the Court of Appeal is given during that period and during that period the appellant notifies the official receiver of it, until the determination of the appeal and thereafter for so long as an appeal to the **[**[F19]Supreme Court**]** is pending within the meaning of **[**[F20]subsection (4).

(4) For the purposes of subsection (3)(b) an appeal to the Supreme Court shall be treated as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and for the purposes of this subsection an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.**]]**

Textual Amendments

F18 S. 277 repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**

F19 Words in s. 277(3)(b) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148, **Sch. 9 para. 44(a)**; S.I. 2009/1604, **art. 2(d)**

F20 S. 277(4) and words substituted (1.10.2009) for words in s. 277(3)(b) by Constitutional Reform Act 2005 (c. 4), ss. 40(4), 148, **Sch. 9 para. 44(b)**; S.I. 2009/1604, **art. 2(d)**

Modifications etc. (not altering text)

C29 S. 277 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F21 CHAPTER IA

COMMENCEMENT AND DURATION OF BANKRUPTCY]

Textual Amendments

F21 Pt. 9 Ch. 1A heading substituted for s. 278 cross-heading (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 10**; S.I. 2016/191, art. 2 (with art. 3)

278 Commencement and continuance.

The bankruptcy of an individual against whom a bankruptcy order has been made—

(a) commences with the day on which the order is made, and

(b) continues until the individual is discharged under F22... this Chapter.

Textual Amendments

F22 Words in s. 278(b) omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 11**; S.I. 2016/191, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C30 S. 278 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 278 applied (7.2.1994) by 1993 c. 48, **s. 144(4)(a)(ii)** (with s. 6(8)); S.I. 1994/86, **art. 2**

[F23 279 Duration

(1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.

F24(2) . . . . . .

(3) On the application of the official receiver or the trustee of a bankrupt's estate, the court may order that the period specified in subsection (1) shall cease to run until—

(a) the end of a specified period, or

(b) the fulfilment of a specified condition.

(4) The court may make an order under subsection (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.

(5) In subsection (3)(b) "condition" includes a condition requiring that the court be satisfied of something.

(6) In the case of an individual who is [F25made] bankrupt on a petition under section 264(1)(d)—

(a) subsections (1) to (5) shall not apply, and

(b) the bankrupt is discharged from bankruptcy by an order of the court under section 280.

(7) This section is without prejudice to any power of the court to annul a bankruptcy order.]

Textual Amendments

F23 S. 279 substituted (1.4.2004) by 2002 c. 40, ss. 256, 279 (with s. 249(6), Sch. 19); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F24 S. 279(2) omitted (1.10.2013) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 21 para. 5**; S.I. 2013/2227, art. 2(n) (with art. 6)

F25 Word in 279(6) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 12**; S.I. 2016/191, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C31 S. 279 excluded (1.4.2004) by 2002 c. 40, ss. 256(2), 279, Sch. 19 para. 3 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

C32 S. 279(3)-(5) applied (1.4.2004) by 2002 c. 40, ss. 256(2), 279, Sch. 19 paras. 4(3), 5(5) (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

280 Discharge by order of the court.

(1) An application for an order of the court discharging an individual from bankruptcy in a case falling within **[**[F26]section 279(6)**]** may be made by the bankrupt at any time after the end of the period of 5 years beginning with the **[**[F27]date on which the bankruptcy commences**]**.

(2) On an application under this section the court may—

(a) refuse to discharge the bankrupt from bankruptcy,

(b) make an order discharging him absolutely, or

(c) make an order discharging him subject to such conditions with respect to any income which may subsequently become due to him, or with respect to property devolving upon him, or acquired by him, after his discharge, as may be specified in the order.

(3) The court may provide for an order falling within subsection (2)(b) or (c) to have immediate effect or to have its effect suspended for such period, or until the fulfilment of such conditions (including a condition requiring the court to be satisfied as to any matter), as may be specified in the order.

Textual Amendments

F26 Words in s. 280(1) substituted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 3(a) (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F27 Words in s. 280(1) substituted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 3(b) (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C33 S. 280 applied (1.4.2004) by 2002 c. 40, ss. 256(2), 279, Sch. 19 para. 6 (with s. 249(6), Sch. 19 para. 8); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

281 Effect of discharge.

(1) Subject as follows, where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts, but has no effect—

Status: *Point in time view as at 01/12/2020.*
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(a) on the functions (so far as they remain to be carried out) of the trustee of his estate, or

(b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part;

and, in particular, discharge does not affect the right of any creditor of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released.

(2) Discharge does not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is released.

(3) Discharge does not release the bankrupt from any bankruptcy debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was a party.

(4) Discharge does not release the bankrupt from any liability in respect of a fine imposed for an offence or from any liability under a recognisance except, in the case of a penalty imposed for an offence under an enactment relating to the public revenue or of a recognisance, with the consent of the Treasury.

[[F28](4A) In subsection (4) the reference to a fine **[**[F29]imposed for an offence**]** includes a reference to **[**[F30]—

(a) a charge ordered to be paid under **[**[F31]section 46 of the Sentencing Code**]** (criminal courts charge), whether on conviction or otherwise;

(b)**]** a confiscation order under Part 2, 3 or 4 of the Proceeds of Crime Act 2002.**]**

(5) Discharge does not, except to such extent and on such conditions as the court may direct, release the bankrupt from any bankruptcy debt which—

(a) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, **[**[F32]or to pay damages by virtue of Part I of the Consumer Protection Act 1987, being in either case**]** damages in respect of personal injuries to any person, or

(b) arises under any order made in family proceedings **[**[F33]or under a **[**[F34]maintenance calculation**]** made under the Child Support Act 1991**]**. . ..

(6) Discharge does not release the bankrupt from such other bankruptcy debts, not being debts provable in his bankruptcy, as are prescribed.

(7) Discharge does not release any person other than the bankrupt from any liability (whether as partner or co-trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in the nature of such a surety.

(8) In this section—

[[F35]"family proceedings" means—

(a) **[**[F36]proceedings in the family court;**]** and

(b) family proceedings within the meaning of Part V of the [M2] Matrimonial and Family Proceedings Act 1984.**]**

"fine" means the same as in the Magistrates' Courts Act 1980; and

"personal injuries" includes death and any disease or other impairment of a person's physical or mental condition.

Textual Amendments

F28 S. 281(4A) inserted (24.3.2003) by 2002 c. 29, ss. 456, 458(1)(3), Sch. 11 para. 16(2); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4)); S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F29 Words in s. 281(4A) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 12 para. 6(a)**; S.I. 2015/778, art. 3, Sch. 1 para. 78

F30 Words in s. 281(4A) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 12 para. 6(b)**; S.I. 2015/778, art. 3, Sch. 1 para. 78

F31 Words in s. 281(4A) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 88** (with Sch. 27); S.I. 2020/1236, reg. 2

F32 Words substituted by Consumer Protection Act 1987 (c. 43, SIF 109:1), ss. 41(2), 47(1)(2), 48, **Sch. 4 para. 12**

F33 Words in s. 281(5)(b) inserted (5.4.1993) by Child Support Act 1991 (c. 48), s. 58(13), **Sch. 5 para. 7**; S.I. 1992/2644, **art. 2**

F34 Words in s. 281(5)(b) substituted (3.3.2003 for specified purposes, otherwise prosp.) by 2000 c. 19, ss. 26, 86(1)(2), Sch. 3 para. 6 (with s. 83(6)); S.I. 2003/192, **art. 3**, Sch.

F35 Definition of "family proceedings" substituted (14.10.1991) for the definitions of "domestic proceedings" and "family proceedings" by Children Act 1989 (c. 41, SIF 20), ss. 92, 108(6), Sch. 11 Pt. II para. 11(2), **Sch. 14 para. 1(1)**; S.I. 1991/828, **art. 3(2)**

F36 Words in s. 281(8) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 10 para. 74**; S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Modifications etc. (not altering text)

C34 S. 281(4) extended by Drug Trafficking Offences Act 1986 (c. 32, SIF 39:1), **s. 39(5)**
S. 281(4) extended (3.2.1995) by 1994 c. 37, **ss. 65(3)**, 69(2) (with s. 66(2))
S. 281(4) extended (31.3.1996) by 1995 c. 20, **s. 113(6)**; S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, Sch. 2)
S. 281(4) extended (S.) (1.4.1996) by 1995 c. 43, **ss. 47(4)**, 50(2)

C35 S. 281(4) amended by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), SS. 123, 170, Sch. 8 para. 6, Sch. 15 para. 110

C36 S. 281(4) amended by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), SS. 45(4), 47(4)(a).

Marginal Citations

M2 1984 c.42**(49:3).**

[F37 281A Post-discharge restrictions

Schedule 4A to this Act (bankruptcy restrictions order and bankruptcy restrictions undertaking) shall have effect.]

Textual Amendments

F37 S. 281A inserted (1.4.2004) by 2002 c. 40, ss. 257(1), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (with arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

282 Court's power to annul bankruptcy order.

(1) The court may annul a bankruptcy order if it at any time appears to the court—

(a) that, on any grounds existing at the time the order was made, the order ought not to have been made, or

(b) that, to the extent required by the rules, the bankruptcy debts and the expenses of the bankruptcy have all, since the making of the order, been either paid or secured for to the satisfaction of the court.

(2) The court may annul a bankruptcy order made against an individual on a petition under paragraph (a)[F38]... or (c) of section 264(1) **[**[F39]or on a bankruptcy application**]** if it at any time appears to the court, on an application by the Official Petitioner—

(a) that the petition was pending **[**[F40]or the application was ongoing**]** at a time when a criminal bankruptcy order was made against the individual or was presented after such an order was so made, and

(b) no appeal is pending (within the meaning of section 277) against the individual's conviction of any offence by virtue of which the criminal bankruptcy order was made;

and the court shall annul a bankruptcy order made on a petition under section 264(1)(d) if it at any time appears to the court that the criminal bankruptcy order on which the petition was based has been rescinded in consequence of an appeal.

(3) The court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.

(4) Where the court annuls a bankruptcy order (whether under this section or under section 261 [F41]... in Part VIII)—

(a) any sale or other disposition of property, payment made or other thing duly done, under any provision in this Group of Parts, by or under the authority of the official receiver or a trustee of the bankrupt's estate or by the court is valid, but

(b) if any of the bankrupt's estate is then vested, under any such provision, in such a trustee, it shall vest in such person as the court may appoint or, in default of any such appointment, revert to the bankrupt on such terms (if any) as the court may direct;

and the court may include in its order such supplemental provisions as may be authorised by the rules.

(5) [F42]. . . . . .

Textual Amendments

F38 Word in s. 282(2) omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 13(a)**; S.I. 2016/191, art. 2 (with art. 3)

F39 Words in s. 282(2) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 13(b)**; S.I. 2016/191, art. 2 (with art. 3)

F40 Words in s. 282(2)(a) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 13(c)**; S.I. 2016/191, art. 2 (with art. 3)

F41 Words in s. 282(4) omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 135(2)(a)**, 164(3)(i)(iv) (with s. 135(4))

F42 S. 282(5) repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 4(b), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (with arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C37 S. 282(1) applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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C38 S. 282(4) applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

CHAPTER II

PROTECTION OF BANKRUPT'S ESTATE AND INVESTIGATION OF HIS AFFAIRS

283 Definition of bankrupt's estate.

(1) Subject as follows, a bankrupt's estate for the purposes of any of this Group of Parts comprises—

(a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy, and

(b) any property which by virtue of any of the following provisions of this Part is comprised in that estate or is treated as falling with the preceding paragraph.

(2) Subsection (1) does not apply to—

(a) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment, business or vocation;

(b) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family.

This subsection is subject to section 308 in Chapter IV (certain excluded property reclaimable by trustee).

(3) Subsection (1) does not apply to—

(a) property held by the bankrupt on trust for any other person, or

(b) the right of nomination to a vacant ecclesiastical benefice.

[[F43](3A) Subject to section 308A in Chapter IV, subsection (1) does not apply to—

(a) a tenancy which is an assured tenancy or an assured agricultural occupancy, within the meaning of Part I of the Housing Act 1988, and the terms of which inhibit an assignment as mentioned in section 127(5) of the [M3] Rent Act 1977, or

(b) a protected tenancy, within the meaning of the Rent Act 1977, in respect of which, by virtue of any provision of Part IX of that Act, no premium can lawfully be required as a condition of assignment, or

(c) a tenancy of a dwelling-house by virtue of which the bankrupt is, within the meaning of the [M4] Rent (Agriculture) Act 1976, a protected occupier of the dwelling-house, and the terms of which inhibit an assignment as mentioned in section 127(5) of the Rent Act 1977, or

(d) a secure tenancy, within the meaning of Part IV of the [M5] Housing Act 1985, which is not capable of being assigned, except in the cases mentioned in section 91(3) of that Act.**]**

(4) References in any of this Group of Parts to property, in relation to a bankrupt, include references to any power exercisable by him over or in respect of property except in so far as the power is exercisable over or in respect of property not for the time being comprised in the bankrupt's estate and—

(a) is so exercisable at a time after either the official receiver has had his release in respect of that estate under section 299(2) in chapter III or **[**[F44]the trustee of that estate has vacated office under section 298(8)**]**, or

(b) cannot be so exercised for the benefit of the bankrupt;

and a power exercisable over or in respect of property is deemed for the purposes of any of this Group of Parts to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person (whether or not it becomes so exercisable at that time).

(5) For the purposes of any such provision in this Group of Parts, property comprised in a bankrupt's estate is so comprised subject to the rights of any person other than the bankrupt (whether as a secured creditor of the bankrupt or otherwise) in relation thereto, but disregarding—

(a) any rights in relation to which a statement such as is required by section 269(1)(a) was made in the petition on which the bankrupt was **[**[F45]made**]** bankrupt, and

(b) any rights which have been otherwise given up in accordance with the rules.

(6) This section has effect subject to the provisions of any enactment not contained in this Act under which any property is to be excluded from a bankrupt's estate.

Textual Amendments

F43 S. 283(3A) inserted (E.W.) by Housing Act 1988 (c. 50, SIF 75:1), **s. 117(1)**

F44 Words in s. 283(4)(a) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 74**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

F45 Word in s. 283(5)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 14**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C39 S. 283 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C40 S. 283 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 28**

C41 S. 283 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 7**

Marginal Citations

M3 1977 c.42**(75:3).**

M4 1976 c.80**(75:3)**

M5 1985 c.68**(61).**

[[F46]283A Bankrupt's home ceasing to form part of estate

(1) This section applies where property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(a) the bankrupt,

(b) the bankrupt's spouse **[**[F47]or civil partner**]**, or

(c) a former spouse **[**[F48]or former civil partner**]** of the bankrupt.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) At the end of the period of three years beginning with the date of the bankruptcy the interest mentioned in subsection (1) shall—
  (a) cease to be comprised in the bankrupt's estate, and
  (b) vest in the bankrupt (without conveyance, assignment or transfer).

(3) Subsection (2) shall not apply if during the period mentioned in that subsection—
  (a) the trustee realises the interest mentioned in subsection (1),
  (b) the trustee applies for an order for sale in respect of the dwelling-house,
  (c) the trustee applies for an order for possession of the dwelling-house,
  (d) the trustee applies for an order under section 313 in Chapter IV in respect of that interest, or
  (e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in subsection (1) shall cease to form part of the estate.

(4) Where an application of a kind described in subsection (3)(b) to (d) is made during the period mentioned in subsection (2) and is dismissed, unless the court orders otherwise the interest to which the application relates shall on the dismissal of the application—
  (a) cease to be comprised in the bankrupt's estate, and
  (b) vest in the bankrupt (without conveyance, assignment or transfer).

(5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of three months beginning with the date of the bankruptcy, the period of three years mentioned in subsection (2)—
  (a) shall not begin with the date of the bankruptcy, but
  (b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt's interest.

(6) The court may substitute for the period of three years mentioned in subsection (2) a longer period—
  (a) in prescribed circumstances, and
  (b) in such other circumstances as the court thinks appropriate.

(7) The rules may make provision for this section to have effect with the substitution of a shorter period for the period of three years mentioned in subsection (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).

(8) The rules may also, in particular, make provision—
  (a) requiring or enabling the trustee of a bankrupt's estate to give notice that this section applies or does not apply;
  (b) about the effect of a notice under paragraph (a);
  (c) requiring the trustee of a bankrupt's estate to make an application to the Chief Land Registrar.

(9) Rules under subsection (8)(b) may, in particular—
  (a) disapply this section;
  (b) enable a court to disapply this section;
  (c) make provision in consequence of a disapplication of this section;

(d) enable a court to make provision in consequence of a disapplication of this section;

(e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.**]**

Textual Amendments

F46 S. 283A inserted (1.4.2004) by 2002 c. 40, ss. 261(1), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F47 Words in s. 283A(1)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 113(a)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

F48 Words in s. 283A(1)(c) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 113(b)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

Modifications etc. (not altering text)

C42 S. 283A modified (1.7.2005) by S.I. 1994/2421, Sch. 4 Pt. II para. 28A (as inserted (1.7.2005) by S.I. 2005/1516, **art. 9(4)**)
S. 283A modified (1.7.2005) by S.I. 1994/2421, Sch. 7 para. 7A (as inserted (1.7.2005) by S.I. 2005/1516, **art. 10(4)**)

C43 S. 283A(4)-(9) applied (with modifications) by 2002 c. 40, ss. 261(10), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

284 Restrictions on dispositions of property.

(1) Where a person is **[**[F49]made**]** bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.

(2) Subsection (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid shall hold the sum paid for the bankrupt as part of his estate.

(3) This section applies to the period beginning with the day of the **[**[F50]making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition**]** and ending with the vesting, under Chapter IV of this Part, of the bankrupt's estate in a trustee.

(4) The preceding provisions of this section do not give a remedy against any person—

(a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the **[**[F51]bankruptcy application had been made or (as the case may be) that the bankruptcy**]** petition had been presented, or

(b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this subsection, no remedy.

(5) Where after the commencement of his bankruptcy the bankrupt has incurred a debt to a banker or other person by reason of the making of a payment which is void under this section, that debt is deemed for the purposes of any of this Group of Parts to have been incurred before the commencement of the bankruptcy unless—

(a) that banker or person had notice of the bankruptcy before the debt was incurred, or

(b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.

(6) A disposition of property is void under this section notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate; but nothing in this section affects any disposition made by a person of property held by him on trust for any other person.

Textual Amendments

F49 Word in s. 284(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 15(2)**; S.I. 2016/191, art. 2 (with art. 3)

F50 Words in s. 284(3) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 15(3)**; S.I. 2016/191, art. 2 (with art. 3)

F51 Words in s. 284(4)(a) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 15(4)**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C44 S. 284 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C45 S. 284 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 164(3), 175(4), 182(4), **Sch. 22 para. 11(4)**; S.I. 1991/878, art. 2, **Sch.** (with art. 3(4)).
S. 284 excluded (15.8.1995) by S.I. 1995/2049, **reg. 21(5)-(8)**

C46 S. 284 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 7(2)**; S.I. 1991/878, art. 2, **Sch.** .

C47 S. 284 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 29**

C48 S. 284 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 8**

C49 S. 284 excluded (11.12.1999) by S.I. 1999/2979, regs. 16(3), 19(3) (as amended (2.2.2006) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2006 (S.I. 2006/50), **reg. 2(8)(10)** and as amended (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 6(a)**)

285 Restriction on proceedings and remedies.

(1) At any time when **[**[F52]proceedings on a bankruptcy application are ongoing or**]** proceedings on a bankruptcy petition are pending or an individual has been **[**[F53]made**]** bankrupt the court may stay any action, execution or other legal process against the property or person of the debtor or, as the case may be, of the bankrupt.

(2) Any court in which proceedings are pending against any individual may, on proof that **[**[F54]a bankruptcy application has been made or**]** a bankruptcy petition has been presented in respect of that individual or that he is an undischarged bankrupt, either stay the proceedings or allow them to continue on such terms as it thinks fit.

(3) After the making of a bankruptcy order no person who is a creditor of the bankrupt in respect of a debt provable in the bankruptcy shall—

(a) have any remedy against the property or person of the bankrupt in respect of that debt, or

(b) before the discharge of the bankrupt, commence any action or other legal proceedings against the bankrupt except with the leave of the court and on such terms as the court may impose.

This is subject to sections 346 (enforcement procedures) and 347 (limited right to distress).

(4) Subject as follows, subsection (3) does not affect the right of a secured creditor of the bankrupt to enforce his security.

(5) Where any goods of an undischarged bankrupt are held by any person by way of pledge, pawn or other security, the official receiver may, after giving notice in writing of his intention to do so, inspect the goods.

Where such a notice has been given to any person, that person is not entitled, without leave of the court, to realise his security unless he has given the trustee of the bankrupt's estate a reasonable opportunity of inspecting the goods and of exercising the bankrupt's right of redemption.

(6) References in this section to the property or goods of the bankrupt are to any of his property or goods, whether or not comprised in his estate.

Textual Amendments

F52 Words in s. 285(1) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 16(2)(a)**; S.I. 2016/191, art. 2 (with art. 3)

F53 Word in s. 285(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 16(2)(b)**; S.I. 2016/191, art. 2 (with art. 3)

F54 Words in s. 285(2) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 16(3)**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C50 S. 285 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C51 S. 285 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 161(4), 182(4), **Sch. 22 para. 5(2)**; S.I. 1991/878, art. 2, **Sch.** .

C52 S. 285(3) modified (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 12(4)**; S.I. 1991/878, art. 2, **Sch.** .

286 Power to appoint interim receiver.

(1) The court may, if it is shown to be necessary for the protection of the debtor's property, at any time after the presentation of a bankruptcy petition and before making a bankruptcy order, appoint the official receiver **[**[F55]or an insolvency practitioner**]** to be interim receiver of the debtor's property.

[F56](2) . . . . . .

(3) The court may by an order appointing any person to be an interim receiver direct that his powers shall be limited or restricted in any respect; but, save as so directed, an interim receiver has, in relation to the debtor's property, all the rights, powers, duties and immunities **[**[F57]given by**]** the next section.

(4) An order of the court appointing any person to be an interim receiver shall require that person to take immediate possession of the debtor's property or, as the case may be, the part of it to which his powers as interim receiver are limited.

(5) Where an interim receiver has been appointed, the debtor shall give him such inventory of his property and such other information, and shall attend on the interim receiver at

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

such times, as the latter may for the purpose of carrying out his functions under this section reasonably require.

(6) Where an interim receiver is appointed, section 285(3) applies for the period between the appointment and the making of a bankruptcy order on the petition, or the dismissal of the petition, as if the appointment were the making of such an order.

(7) A person ceases to be interim receiver of a debtor's property if the bankruptcy petition relating to the debtor is dismissed, if a bankruptcy order is made on the petition or if the court by order otherwise terminates the appointment.

(8) References in this section to the debtor's property are to all his property, whether or not it would be comprised in his estate if he were **[**[F58]made**]** bankrupt.

Textual Amendments

F55 Words in s. 286(1) inserted (6.4.2017) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 13(1)** (with Sch. 6 para. 13(2)); S.I. 2016/1016, art. 2(b)

F56 S. 286(2) omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 17(2)**; S.I. 2016/191, art. 2 (with art. 3)

F57 Words in s. 286(3) substituted (6.4.2017) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 2**; S.I. 2016/1020, reg. 4(f)

F58 Word in s. 286(8) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 17(3)**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C53 S. 286(1)(3)-(8) applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

287 [[F59]Powers of interim receiver].

(1) **[**[F60]An interim receiver appointed under section 286**]** is the receiver and (subject to section 370 (special manager)) the manager of the **[**[F61]debtor's property**]** and is under a duty to act as such.

(2) The function of **[**[F62]an interim**]** receiver while acting as receiver or manager of the **[**[F63]debtor's property**]** under this section is to protect **[**[F64]the property**]**; and for this purpose—

(a) he has the same powers as if he were a receiver or manager appointed by the High Court, and

(b) he is entitled to sell or otherwise dispose of any perishable goods comprised in **[**[F64]the property**]** and any other goods so comprised the value of which is likely to diminish if they are not disposed of.

(3) **[**[F65]An interim**]** receiver while acting as receiver or manager **[**[F66]of the debtor's property**]** under this section—

(a) shall take all such steps as he thinks fit for protecting **[**[F67]the debtor's property,**]**

[[F68](b) is not required to do anything that involves his incurring expenditure, except in pursuance of directions given by—

(i) the Secretary of State, where the official receiver is the interim receiver, or

(ii) the court, in any other case,**]**

(c) may, if he thinks fit (and shall, if so directed by the court) at any time **[**[F69]seek a decision on a matter from**]** the **[**[F70]debtor's**]** creditors.

(4) Where—

[[F71](a) an interim receiver acting as receiver or manager of the debtor's property under this section seizes or disposes of any property which is not the debtor's property, and**]**

(b) at the time of the seizure or disposal the **[**[F72]interim receiver**]** believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the **[**[F73]interim receiver is**]** not to be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by his negligence; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the **[**[F74]interim receivership**]** as were incurred in connection with the seizure or disposal.

[F75](5) . . . . . .

Textual Amendments

F59 S. 287 heading substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(2)**; S.I. 2016/1020, reg. 4(f)

F60 Words in s. 287(1) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(3)(a)**; S.I. 2016/1020, reg. 4(f)

F61 Words in s. 287(1) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(3)(b)**; S.I. 2016/1020, reg. 4(f)

F62 Words in s. 287(2) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(4)(a)**; S.I. 2016/1020, reg. 4(f)

F63 Words in s. 287(2) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(4)(b)**; S.I. 2016/1020, reg. 4(f)

F64 Words in s. 287(2) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(4)(c)**; S.I. 2016/1020, reg. 4(f)

F65 Words in s. 287(3) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(5)(a)**; S.I. 2016/1020, reg. 4(f)

F66 Words in s. 287(3) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(5)(b)**; S.I. 2016/1020, reg. 4(f)

F67 Words in s. 287(3)(a) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(5)(c)**; S.I. 2016/1020, reg. 4(f)

F68 S. 287(3)(b) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(5)(d)**; S.I. 2016/1020, reg. 4(f)

F69 Words in s. 287(3)(c) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 75**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

F70 Word in s. 287(3)(c) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(5)(e)**; S.I. 2016/1020, reg. 4(f)

F71 S. 287(4)(a) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(6)(a)**; S.I. 2016/1020, reg. 4(f)

F72 Words in s. 287(4)(b) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(6)(b)**; S.I. 2016/1020, reg. 4(f)

F73 Words in s. 287(4) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(6)(c)**; S.I. 2016/1020, reg. 4(f)

F74 Words in s. 287(4) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(6)(d)**; S.I. 2016/1020, reg. 4(f)

F75 S. 287(5) omitted (6.4.2017 for E.W.) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 3(7)**; S.I. 2016/1020, reg. 4(f)

Modifications etc. (not altering text)

C54 S.287 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

288 Statement of affairs.

(1) Where a bankruptcy order has been made otherwise than on a **[**[F76]bankruptcy application**]**, **[**[F77]the official receiver may at any time before the discharge of the bankrupt require the bankrupt to submit to the official receiver a statement of affairs.**]**

(2) The statement of affairs shall contain—

(a) such particulars of the bankrupt's creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(b) such other information as may be prescribed.

[[F78](2A) Where a bankrupt is required under subsection (1) to submit a statement of affairs to the official receiver, the bankrupt shall do so (subject to subsection (3)) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to the bankrupt by the official receiver.**]**

(3) The official receiver may, if he thinks fit—

(a) release **[**[F79]a bankrupt from an obligation imposed on the bankrupt**]** under subsection (1), or

[[F80](b) either when giving the notice mentioned in subsection (2A) or subsequently, extend the period mentioned in that subsection,**]**

and where the official receiver has refused to exercise a power conferred by this section, the court, if it thinks fit, may exercise it.

(4) A bankrupt who—

(a) without reasonable excuse fails to comply with **[**[F81]an obligation imposed under**]** his section, or

(b) without reasonable excuse submits a statement of affairs that does not comply with the prescribed requirements,

is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Textual Amendments

F76 Words in s. 288(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 18**; S.I. 2016/191, art. 2 (with art. 3)

F77 Words in s. 288(1) substituted (6.4.2017) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 15(2)**; S.I. 2016/1016, art. 2(b) (with art. 3)

F78 S. 288(2A) inserted (6.4.2017) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 15(3)**; S.I. 2016/1016, art. 2(b) (with art. 3)

F79 Words in s. 288(3)(a) substituted (6.4.2017) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 15(4)**; S.I. 2016/1016, art. 2(b) (with art. 3)

F80 S. 288(3)(b) substituted (6.4.2017) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 15(5)**; S.I. 2016/1016, art. 2(b) (with art. 3)

F81 Words in s. 288(4)(a) substituted (6.4.2017) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 15(6)**; S.I. 2016/1016, art. 2(b) (with art. 3)

Modifications etc. (not altering text)

C55 S. 288 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), art. 13, **Sch. 1 para. 1(a)**

C56 S. 288 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 2 para. 2(8)(b)**)

C57 S. 288 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 10**

C58 S. 288(1)(2) modified by S.I. 1986/1999, art. 5, **Sch. 2**

[F82 289 Investigatory duties of official receiver

(1) The official receiver shall—

(a) investigate the conduct and affairs of each bankrupt (including his conduct and affairs before the making of the bankruptcy order), and

(b) make such report (if any) to the court as the official receiver thinks fit.

(2) Subsection (1) shall not apply to a case in which the official receiver thinks an investigation under that subsection unnecessary.

(3) Where a bankrupt makes an application for discharge under section 280—

(a) the official receiver shall make a report to the court about such matters as may be prescribed, and

(b) the court shall consider the report before determining the application.

(4) A report by the official receiver under this section shall in any proceedings be prima facie evidence of the facts stated in it.]

Textual Amendments

F82 S. 289 substituted (1.4.2004) by 2002 c. 40, ss. 258, 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C59 S.289 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

290 Public examination of bankrupt.

(1) Where a bankruptcy order has been made, the official receiver may at any time before the discharge of the bankrupt apply to the court for the public examination of the bankrupt.

(2) Unless the court otherwise orders, the official receiver shall make an application under subsection (1) if notice requiring him to do so is given to him, in accordance with the rules, by one of the bankrupt's creditors with the concurrence of not less than one-half, in value, of those creditors (including the creditor giving notice).

(3) On an application under subsection (1), the court shall direct that a public examination of the bankrupt shall be held on a day appointed by the court; and the bankrupt shall attend on that day and be publicly examined as to his affairs, dealings and property.

(4) The following may take part in the public examination of the bankrupt and may question him concerning his affairs, dealings and property and the causes of his failure, namely—

(a) the official receiver and, in the case of an individual **[**[F83]made**]** bankrupt on a petition under section 264(1)(d), the Official Petitioner,

(b) the trustee of the bankrupt's estate, if his appointment has taken effect,

(c) any person who has been appointed as special manager of the bankrupt's estate or business,

(d) any creditor of the bankrupt who has tendered a proof in the bankruptcy.

(5) If a bankrupt without reasonable excuse fails at any time to attend his public examination under this section he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Textual Amendments

F83 Word in s. 290(4)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 19**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C60 S. 290 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 9**

291 Duties of bankrupt in relation to official receiver.

[F84](1) . . . . . .

[F84](2) . . . . . .

[F84](3) . . . . . .

[[F85](4) The bankrupt shall give the official receiver such inventory of his estate and such other information, and shall attend on the official receiver at such times, as the official receiver may reasonably require—

(a) for a purpose of this Chapter, or

(b) in connection with the making of a bankruptcy restrictions order.**]**

(5) Subsection (4) applies to a bankrupt after his discharge.

(6) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this section, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Textual Amendments

F84 S. 291(1)-(3) omitted (6.4.2017 for E.W.) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 4**; S.I. 2016/1020, reg. 4(f)

F85 S. 291(4) substituted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 5 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C61 S. 291 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

CHAPTER III

TRUSTEES IN BANKRUPTCY

Tenure of office as trustee

[F86 291A First trustee in bankruptcy

(1) On the making of a bankruptcy order the official receiver becomes trustee of the bankrupt's estate, unless the court appoints another person under subsection (2).

(2) If when the order is made there is a supervisor of a voluntary arrangement approved in relation to the bankrupt under Part 8, the court may on making the order appoint the supervisor of the arrangement as the trustee.

(3) Where a person becomes trustee of a bankrupt's estate under this section, the person must give notice of that fact to the bankrupt's creditors (or, if the court so allows, advertise it in accordance with the court's directions).

(4) A notice or advertisement given by a trustee appointed under subsection (2) must explain the procedure for establishing a creditors' committee under section 301.**]**

Textual Amendments

F86 S. 291A inserted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 133(1)**, 164(1); S.I. 2016/1020, reg. 4(f)

292 [F87 Appointment of trustees: general provision]

[F88 (1) This section applies to any appointment of a person (other than the official receiver) as trustee of a bankrupt's estate.**]**

(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 includes power to appoint two or more persons as joint trustees; 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 takes effect only if that person accepts the appointment in accordance with the rules. Subject to this, the appointment of any person as trustee takes effect at the time specified in his certificate of appointment.

F89 (5) . . . . . .

Textual Amendments

F87 S. 292 heading substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 5(2)**; S.I. 2016/1020, reg. 4(f)

F88 S. 292(1) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 5(3)**; S.I. 2016/1020, reg. 4(f)

F89 S. 292(5) omitted (6.4.2017 for E.W.) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 5(4)**; S.I. 2016/1020, reg. 4(f)

Modifications etc. (not altering text)

C62 S. 292 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 2 para. 2(7)(c)**)

C63 S. 292 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 26**

C64 S. 292 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 10**

[F90]293 Summoning of meeting to appoint first trustee.

. . . . . .

Textual Amendments

F90 Ss. 293-295 omitted (6.4.2017 for E.W.) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 6**; S.I. 2016/1020, reg. 4(f)

[F90]294 Power of creditors to requisition meeting.

. . . . . .

Textual Amendments

F90 Ss. 293-295 omitted (6.4.2017 for E.W.) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 6**; S.I. 2016/1020, reg. 4(f)

[F90]295 Failure of meeting to appoint trustee.

. . . . . .

Textual Amendments

F90 Ss. 293-295 omitted (6.4.2017 for E.W.) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 6**; S.I. 2016/1020, reg. 4(f)

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

296 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 [F91]... he may apply to the Secretary of State for the appointment of a person as trustee instead of the official receiver.

(2) On an application under subsection (1) the Secretary of State shall either make an appointment or decline to make one.

(3) Such an application may be made notwithstanding that the Secretary of State has declined to make an appointment either on a previous application under subsection (1) [F92]... or under section 300(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 court's directions.

(5) In that notice or advertisement the trustee shall **[**[F93]explain the procedure for establishing a creditors' committee under section 301.**]**

Textual Amendments

F91 Words in s. 296(1) omitted (6.4.2017 for E.W.) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 7(a)**; S.I. 2016/1020, reg. 4(f)

F92 Words in s. 296(3) omitted (6.4.2017 for E.W.) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 7(b)**; S.I. 2016/1020, reg. 4(f)

F93 Words in s. 296(5) substituted for s. 296(5)(a)(b) (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 76**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

Modifications etc. (not altering text)

C65 S. 296 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 2 para. 2(7)(c)**)

C66 S. 296 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 12**

C67 S. 296 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 13**

[F94]297 Special cases.

. . . . . .

Textual Amendments

F94 S. 297 omitted (6.4.2017 for E.W.) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 8**; S.I. 2016/1020, reg. 4(f)

298 Removal of trustee; vacation of office.

(1) Subject as follows, the trustee of a bankrupt's estate may be removed from office only by an order of the court or by a **[**[F95]decision of the bankrupt's creditors made by a

creditors' decision procedure instigated**]** specially for that purpose in accordance with the rules.

[F96](2) . . . . . .

(3) [F97]. . . . . .

(4) Where the official receiver is trustee by virtue of **[**[F98]section 291A(1)**]** or a trustee is appointed by the Secretary of State or (otherwise than under **[**[F99]section 291A(2)**]**) by the court, a **[**[F100]creditors' decision procedure may be instigated**]** for the purpose of **[**[F101]removing**]** the trustee only if—

(a) the trustee thinks fit, or

(b) the court so directs, or

(c) [F102]... one of the bankrupt's creditors **[**[F103]so requests,**]** with the concurrence of not less than one-quarter, in value, of the creditors (including the creditor making the request).

[[F104](4A) Where the bankrupt's creditors decide to remove a trustee, they may in accordance with the rules appoint another person as trustee in his place.

(4B) Where the decision to remove a trustee is made under subsection (4), the decision does not take effect until the bankrupt's creditors appoint another person as trustee in his place.**]**

(5) If the trustee was appointed by the Secretary of State, he may be removed by a direction of the Secretary of State.

(6) The trustee (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 may, in the prescribed circumstances, resign his office by giving notice of his resignation to the **[**[F105]prescribed person**]**.

(8) The trustee shall vacate office on giving notice to the **[**[F105]prescribed person**]** that **[**[F106]the trustee has given notice under section 331(2).**]**

[[F107](8A) A notice under subsection (8)—

(a) must not be given before the end of the period prescribed by the rules as the period within which the bankrupt's creditors may object to the trustee's release, and

(b) must state whether any of the bankrupt's creditors objected to the trustee's release.**]**

(9) The trustee shall vacate office if the bankruptcy order is annulled.

Textual Amendments

F95 Words in s. 298(1) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 77(2)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F96 S. 298(2) omitted (6.4.2017 for E.W.) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 9(2)**; S.I. 2016/1020, reg. 4(f)

F97 S. 298(3) repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 10, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F98 Words in s. 298(4) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 9(3)(a)**; S.I. 2016/1020, reg. 4(f)

F99 Words in s. 298(4) substituted (6.4.2017 for E.W.) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 10 para. 9(3)(b)**; S.I. 2016/1020, reg. 4(f)

F100 Words in s. 298(4) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 77(3)(a)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F101 Word in s. 298(4) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 77(3)(b)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F102 Words in s. 298(4)(c) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 77(3)(c)(i)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F103 Words in s. 298(4)(c) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 77(3)(c)(ii)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F104 S. 298(4A)(4B) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 77(4)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F105 Words in s. 298(7)(8) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 23**; S.I. 2016/191, art. 2 (with art. 3)

F106 Words in s. 298(8) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 77(5)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F107 S. 298(8A) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 77(6)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

Modifications etc. (not altering text)

C68 Ss. 298–307 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 2 para. 2(7)(c)**)

C69 S. 298 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 15** (as amended (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 2 para. 7(3)**; and (23.7.2019) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2019 (S.I. 2019/1058), **regs. 1**, 3(2))

299 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 [F108]... the bankrupt's creditors or by the Secretary of State, the time at which the official receiver gives notice **[**[F109]under this paragraph to the prescribed person**]** 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 gives notice to the Secretary of State that the administration of the bankrupt's estate in accordance with Chapter IV 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 shall have his release with effect from the following time, that is to say—

(a) in the **[**[F110]following cases**]**, the time at which notice is given to the **[**[F111]prescribed person**]** in accordance with the rules that that person has ceased to hold office **[**[F112]—

(i) the person has been removed from office by a decision of the bankrupt's creditors and the creditors have not decided against his release,

(ii) the person has died;**]**

[[F113](b) in the following cases, such time as the Secretary of State may, on an application by the person, determine—

(i) the person has been removed from office by a decision of the bankrupt's creditors and the creditors have decided against his release,

(ii) the person has been removed from office by the court or by the Secretary of State,

(iii) the person has vacated office under section 298(6);**]**

(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 section 298(8)—

[[F114](i) if any of the bankrupt's creditors objected to the person's release before the end of the period for so objecting prescribed by the rules, such time as the Secretary of State may, on an application by that person, determine, and

(ii) otherwise, the time at which the person vacated office.**]**

[[F115](3A) Where the person is removed from office by a decision of the bankrupt's creditors, any decision of the bankrupt's creditors as to whether the person should have his release must be made by a creditors' decision procedure.**]**

(4) Where a bankruptcy order is annulled, the trustee at the time of the annulment has his release with effect from such time as the court may determine.

(5) Where the offical receiver or the trustee has his release under this section, he shall, with effect from the time specified in the preceeding provisions of this section, be discharged from all liability both in respect of acts or omissions of his in the administration of the estate and otherwise in relation to his conduct as trustee.

But nothing in this section prevents the exercise, in relation to a person who has had his release under this section, of the court's powers under section 304.

Textual Amendments

F108 Words in s. 299(1)(a) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 78(2)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F109 Words in s. 299(1)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 24(2)**; S.I. 2016/191, art. 2 (with art. 3)

F110 Words in s. 299(3)(a) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 78(3)(a)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F111 Words in s. 299(3)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 24(3)**; S.I. 2016/191, art. 2 (with art. 3)

F112 Words in s. 299(3)(a) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 78(3)(b)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F113 S. 299(3)(b) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 78(4)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F114 S. 299(3)(d)(i)(ii) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 78(5)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F115 S. 299(3A) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 78(6)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

Modifications etc. (not altering text)

C70 Ss. 298–307 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 2 para. 2(7)(c)**)

C71 S. 299 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 22**

C72 S. 299 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 16**

300 Vacancy in office as 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.

(2) The official receiver shall be trustee until the vacancy is filled.

[[F116](3) The official receiver may ask the bankrupt's creditors to appoint a person as trustee, and must do so if so requested by not less than one tenth in value of the bankrupt's creditors.

(3A) If the official receiver makes such a request the bankrupt's creditors may in accordance with the rules appoint a person as trustee.**]**

(4) If at the end of the period of 28 days beginning with the day on which the vacancy first came to the offical receiver's attention he has not **[**[F117]asked, and is not proposing to ask, the bankrupt's creditors to appoint a person as trustee**]**, he shall refer the need for an appointment to the Secretary of State.

[F118](5) . . . . . .

(6) On a reference to the Secretary of State under subsection (4) [F119]. . . the Secretary of State shall either make an appointment or decline to make one.

(7) If on a reference under subsection (4) [F119]. . . 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 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 **[**[F120]vacation of office by the trustee under section 298(8)**]** or the giving by the official receiver of notice under section 299(2).

Textual Amendments

F116 S. 300(3)(3A) substituted for s. 300(3) (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 79(2)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F117 Words in s. 300(4) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 79(3)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F118 S. 300(5) repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 11(a), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F119 Words in s. 300(6)(7) repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 11(b), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F120 Words in s. 300(8) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 79(4)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

Modifications etc. (not altering text)

C73 Ss. 298-307 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 2 para. 2(7)(c)**)

C74 S. 300 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 12**

C75 S. 300 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 17**

Control of trustee

301 Creditors' committee.

(1) Subject as follows, a **[**[F121]bankrupt's creditors**]** may, in accordance with the rules, establish a committee (known as "the creditors' committee") to exercise the functions conferred on it by or under this Act.

(2) **[**[F122]The**]** bankrupt's creditors shall not establish such a committee, or confer any functions on such a committee, at any time when the official receiver is the trustee of the bankrupt's estate, except in connection with **[**[F123]the appointment**]** of a person to be trustee instead of the official receiver.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F121 Words in s. 301(1) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 80(2)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F122 Word in s. 301(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 80(3)(a)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

F123 Words in s. 301(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 80(3)(b)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e)

Modifications etc. (not altering text)

C76 Ss. 298–307 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 2 para. 2(7)(c)**)

C77 S. 301 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 16**

C78 S. 301 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 18**
S. 301 amended (1.12.2001) by 2000 c. 8, **s. 374(4)(b)**; S.I. 2001/3538, **art. 2(1)**

302 Exercise by Secretary of State of functions of creditors' committee.

(1) The creditors' committee is not to be able or required to carry out its functions at any time when the official receiver is trustee of the bankrupt's estate; but at any such time the functions of the committee under this Act shall be vested in the Secretary of State, except to the extent that the rules otherwise provide.

(2) Where in the case of any bankruptcy there is for the time being no creditors' committee and the trustee of the bankrupt's estate is a person other than the official receiver, the functions of such a committee shall be vested in the Secretary of State, except to the extent that the rules otherwise provide.

Modifications etc. (not altering text)

C79 Ss. 298–307 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 2 para. 2(7)(c)**)

C80 S. 302 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 16**

303 General control of trustee by the court.

(1) If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt's estate, he may apply to the court; and on such an application the court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks fit.

(2) The trustee of a bankrupt's estate may apply to the court for directions in relation to any particular matter arising under the bankruptcy.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[[F124](2A) Where at any time after a bankruptcy petition has been presented to the court against any person, whether under the provisions of the Insolvent Partnerships Order 1994 or not, the attention of the court is drawn to the fact that the person in question is a member of an insolvent partnership, the court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(2B) Where a bankruptcy petition has been presented against more than one individual in the circumstances mentioned in subsection (2A) above, the court may give such directions for consolidating the proceedings, or any of them, as it thinks just.

(2C) Any order or directions under subsection (2A) or (2B) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.**]**

Textual Amendments

F124 S. 303(2A)-(2C) inserted (1.12.1994) by S.I. 1994/2421, **art. 14(2)**

Modifications etc. (not altering text)

C81 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C82 S. 303 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 20**

304 Liability of trustee.

(1) Where on an application under this section the court is satisfied—

(a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate, or

(b) that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his functions,

the court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other property (together with interest at such rate as the court thinks just) or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just.

This is without prejudice to any liability arising apart from this section.

(2) An application under this section may be made by the official receiver, the Secretary of State, a creditor of the bankrupt or (whether or not there is, or is likely to be, a surplus for the purposes of section 330(5) (final distribution)) the bankrupt himself.

But the leave of the court is required for the making of an application if it is to be made by the bankrupt or if it is to be made after the trustee has had his release under section 299.

(3) Where—

(a) the trustee seizes or disposes of any property which is not comprised in the bankrupts estate, and

(b) at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the trustee is not liable to any person (whether under this section or otherwise) in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the trustee; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

Modifications etc. (not altering text)

C83 Ss. 298-307 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 304 applied (10.8.2005) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 31** (as amended (10.8.2005) by S.I. 2005/1998, **regs. 2(3)**, {40(1)-(4)(10)(a)})

CHAPTER IV

ADMINISTRATION BY TRUSTEE

Preliminary

305 General functions of trustee.

(1) This Chapter applies in relation to any bankruptcy where either—
(a) the appointment of a person as trustee of a bankrupt's estate takes effect, or
(b) the official receiver becomes trustee of a bankrupt's estate.

(2) The function of the trustee is to get in, realise and distribute the bankrupt's estate in accordance with the following provisions of this Chapter; and in the carrying out of that function and in the management of the bankrupt's estate the trustee is entitled, subject to those provisions, to use his own discretion.

(3) It is the duty of the trustee, if he is not the official receiver—
(a) to furnish the official receiver with such information,
(b) to produce to the offical receiver, and permit inspection by the official receiver of, such books, papers and other records, and
(c) to give the official receiver such other assistance,

as the official receiver may reasonably require for the purpose of enabling him to carry out his functions in relation to the bankruptcy.

(4) The official name of the trustee shall be "the trustee of the estate of ....., a bankrupt" (inserting the name of the bankrupt); but he may be referred to as "the trustee in bankruptcy" of the particular bankrupt.

Modifications etc. (not altering text)

C84 S. 305 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), art. 13, **Sch. 1 para. 1(b)**

C85 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C86 S. 305 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 17**
C87 S. 305 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 19**

Acquisition, control and realisation of bankrupt's estate

306 Vesting of bankrupt's estate in trustee.

(1) The bankrupt's estate shall vest in the trustee immediately on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

(2) Where any property which is, or is to be, comprised in the bankrupt's estate vests in the trustee (whether under this section or under any other provision of this Part), it shall so vest without any conveyance, assignment or transfer.

Modifications etc. (not altering text)
C88 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

[F125 306A Property subject to restraint order

(1) This section applies where—
(a) property is excluded from the bankrupt's estate by virtue of section 417(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),
(b) an order under **[**F126 section 50, 67A, 128, 131A, 198 or 215A**]** of that Act has not been made in respect of the property, F127 ...
(c) the restraint order is discharged **[**F128, and
(d) immediately after the discharge of the restraint order the property is not detained under or by virtue of section 44A, 47J, 122A, 127J, 193A or 195J of that Act.**]**

[F129 (2) The property vests in the trustee as part of the bankrupt's estate.**]**

(3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).**]**

Textual Amendments
F125 Ss. 306A-306C inserted (24.3.2003) by 2002 c. 29, ss. 456, 458(1)(3), Sch. 11 para. 16(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4)); S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)
F126 Words in s. 306A(1)(b) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 54(2)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(g); S.I. 2016/147, art. 3(i)
F127 Word in s. 306A(1)(b) repealed (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 8 Pt. 4**; S.I. 2015/983, art. 2(2)(f)
F128 S. 306A(1)(d) and word inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 54(2)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(g); S.I. 2016/147, art. 3(i)

F129 S. 306A(2) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 54(3)**; S.I. 2015/983, arts. 2(2)(e), 3(g)

[F130 306AA Property released from detention

(1) This section applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 417(2)(b) of the Proceeds of Crime Act 2002 (property detained under certain provisions),

(b) no order is in force in respect of the property under section 41, 50, 120, 128, 190 or 198 of that Act, and

(c) the property is released.

(2) The property vests in the trustee as part of the bankrupt's estate.**]**

Textual Amendments

F130 S. 306AA inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 55**; S.I. 2015/983, arts. 2(2)(e), 3(h)

F131 306B Property in respect of which receivership or administration order made

(1) This section applies where—

(a) property is excluded from the bankrupt's estate by virtue of **[**F132 section 417(2)(c)**]** of the Proceeds of Crime Act 2002 (property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),

(b) a confiscation order is made under section 6, 92 or 156 of that Act,

(c) the amount payable under the confiscation order is fully paid, and

(d) any of the property remains in the hands of the receiver or administrator (as the case may be).

(2) The property vests in the trustee as part of the bankrupt's estate.

Textual Amendments

F131 Ss. 306A-306C inserted (24.3.2003) by 2002 c. 29, ss. 456, 458(1)(3), Sch. 11 para. 16(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4)); S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F132 Words in s. 306B(1)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 56**; S.I. 2015/983, arts. 2(2)(e), 3(h)

[F133 306BA Property in respect of which realisation order made

(1) This section applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 417(2)(d) of the Proceeds of Crime Act 2002 (property in respect of which an order has been made authorising realisation of the property by an appropriate officer),

(b) a confiscation order is made under section 6, 92 or 156 of that Act,

(c) the amount payable under the confiscation order is fully paid, and

(d) any of the property remains in the hands of the appropriate officer.

(2) The property vests in the trustee as part of the bankrupt's estate.**]**

Textual Amendments

F133 S. 306BA inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 57**; S.I. 2015/983, arts. 2(2)(e), 3(h)

[F134]306C Property subject to certain orders where confiscation order discharged or quashed

(1) This section applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 417(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property **[**[F135]excluded from bankrupt's estate**]**),

(b) a confiscation order is made under section 6, 92 or 156 of that Act, and

(c) the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.

[[F136](2) Any such property vests in the trustee as part of the bankrupt's estate if it is in the hands of—

(a) a receiver appointed under Part 2 or 4 of that Act,

(b) an administrator appointed under Part 3 of that Act,

(c) an appropriate officer (within the meaning of section 41A, 120A or 190A of that Act).**]**

(3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).

Textual Amendments

F134 Ss. 306A-306C inserted (24.3.2003) by 2002 c. 29, ss. 456, 458(1)(3), Sch. 11 para. 16(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4)); S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F135 Words in s. 306C(1)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 58(2)**; S.I. 2015/983, arts. 2(2)(e), 3(i)

F136 S. 306C(2) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 58(3)**; S.I. 2015/983, arts. 2(2)(e), 3(i); S.I. 2016/147, art. 3(i)

307 After-acquired property.

(1) Subject to this section and section 309, the trustee may by notice in writing claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt since the commencement of the bankruptcy.

(2) A notice under this section shall not be served in respect of—

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) any property falling within subsection (2) or (3) of section 283 in Chapter II,

[[F137](aa) any property vesting in the bankrupt by virtue of section 283A in Chapter II,**]**

(b) any property which by virtue of any other enactment is excluded from the bankrupt's estate, or

(c) without prejudice to section 280(2)(c) (order of court on application for discharge), any property which is acquired by, or devolves upon, the bankrupt after his discharge.

(3) **[**[F138]Subject to subsections (4) and (4A)**]** , upon the service on the bankrupt of a notice under this section the property to which the notice relates shall vest in the trustee as part of the bankrupt's estate; and the trustee's title to that property has relation back to the time at which the property was acquired by, or devolved upon, the bankrupt.

(4) Where, whether before or after service **[**[F139]on the bankrupt**]** of a notice under this section—

(a) a person acquires property in good faith, for value and without notice of the bankruptcy, [F140]...

[F140](b) . . . . . .

the trustee is not in respect of that property [F141]... entitled by virtue of this section to any remedy against that person [F142]..., or any person whose title to any property derives from that person [F142]....

[[F143](4A) Where a banker enters into a transaction before service on the banker of a notice under this section (and whether before or after service on the bankrupt of a notice under this section) the trustee is not in respect of that transaction entitled by virtue of this section to any remedy against the banker.

This subsection applies whether or not the banker has notice of the bankruptcy.**]**

(5) References in this section to property do not include any property which, as part of the bankrupt's income, may be the subject of an income payments order under section 310.

Textual Amendments

F137 S. 307(2)(aa) inserted (1.4.2004) by 2002 c. 40, ss. 261(4), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F138 Words in s. 307(3) substituted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 16(2)**; S.I. 2015/1732, art. 2(e)(v)

F139 Words in s. 307(4) inserted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 16(3)(a)**; S.I. 2015/1732, art. 2(e)(v)

F140 S. 307(4)(b) and word omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 16(3)(b)**; S.I. 2015/1732, art. 2(e)(v)

F141 Words in s. 307(4) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 16(3)(c)(i)**; S.I. 2015/1732, art. 2(e)(v)

F142 Words in s. 307(4) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 16(3)(c)(ii)**; S.I. 2015/1732, art. 2(e)(v)

F143 S. 307(4A) inserted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 16(4)**; S.I. 2015/1732, art. 2(e)(v)

Modifications etc. (not altering text)

C89 Ss. 298-307 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C90 S. 307 amended by Education (Student Loans) Act 1990 (c. 6, SIF 41:1, 2), s. 1(5), **Sch. 2 para. 5(1)**

C91 S. 307 restricted (12.8.1998) by S.I. 1998/2003, **reg. 13(1)**

S. 307 restricted (25.2.2002) by S.I. 2002/195, **reg. 40(1)**
S. 307 restricted (1.3.2005) by The Education (Student Support) Regulations 2005 (S.I. 2005/52), **reg. 28(1)** (with reg. 3(6)-(9))

C92 S. 307 excluded (16.6.2016) by The Education (Postgraduate Masters Degree Loans) Regulations 2016 (S.I. 2016/606), regs. 1(1), **97(1)(a)**

308 Vesting in trustee of certain items of excess value.

(1) Subject to **[**[F144]section 309**]**, where—

(a) property is excluded by virtue of section 283(2) (tools of trade, household effects, etc.) from the bankrupt's estate, and

(b) it appears to the trustee that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it,

the trustee may by notice in writing claim that property or, as the case may be, that part of it, for the bankrupt's estate.

(2) Upon the service on the bankrupt of a notice under this section, the property to which the notice relates vests in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that property has relation back to the commencement of the bankruptcy.

(3) The trustee shall apply funds comprised in the estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any property vested in the trustee under this section; and the duty imposed by this subsection has priority over the obligation of the trustee to distribute the estate.

(4) For the purposes of this section property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

Textual Amendments

F144 Words substituted by Housing Act 1988 (c. 50, SIF 61, 75:1), s. 140, **Sch. 17 Pt. I para. 73**

Modifications etc. (not altering text)

C93 S. 308 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

[[F145]308A Vesting in trustee of certain tenancies.

Upon the service on the bankrupt by the trustee of a notice in writing under this section, any tenancy—

(a) which is excluded by virtue of section 283(3A) from the bankrupt's estate, and

(b) to which the notice relates,

vests in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that tenancy has relation back to the commencement of the bankruptcy.**]**

Textual Amendments

F145 S. 308A inserted by Housing Act 1988 (c. 50, SIF 75:1), **s. 117(2)**

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

309 Time-limit for notice under s. 307 or 308.

(1) Except with the leave of the court, a notice shall not be served—

(a) under section 307, after the end of the period of 42 days beginning with the day on which it first came to the knowledge of the trustee that property in question had been acquired by, or had devolved upon, the bankrupt;

(b) under section 308 **[**[F146]or section 308A**]**, after the end of the period of 42 days beginning with the day on which the property **[**[F147]or tenancy**]** in question first came to the knowledge of the trustee.

(2) For the purposes of this section—

(a) any thing which comes to the knowledge of the trustee is deemed in relation to any successor of his as trustee to have come to the knowledge of the sucessor at the same time; and

(b) any thing which comes (otherwise than under paragraph (a)) to the knowledge of a person before he is the trustee is deemed to come to his knowledge on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

Textual Amendments

F146 Words inserted by Housing Act 1988 (c. 50, SIF 75:1), **s. 117(3)(a)**

F147 Words inserted by Housing Act 1988 (c. 50, SIF 75:1), **s. 117(3)(b)**

Modifications etc. (not altering text)

C94 S. 309 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

310 Income payments orders.

(1) The court may [F148]. . . make an order ("an income payments order") claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.

[[F149](1A) An income payments order may be made only on an application instituted—

(a) by the trustee, and

(b) before the discharge of the bankrupt.**]**

(2) The court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt **[**[F150]when taken together with any payments to which subsection (8) applies**]** below what appears to the court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.

(3) An income payments order shall, in respect of any payment of income to which it is to apply, either—

(a) require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order, or

(b) require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.

(4) Where the court makes an income payments order it may, if it thinks fit, discharge or vary any attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Sums received by the trustee under an income payments order form part of the bankrupt's estate.

[[F151](6) An income payments order must specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of three years beginning with the date on which the order is made.

(6A) An income payments order may (subject to subsection (6)(b)) be varied on the application of the trustee or the bankrupt (whether before or after discharge).**]**

(7) For the purposes of this section the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment **[**[F152]and **[**[F153] (despite anything in section 11 or 12 of the Welfare Reform and Pensions Act 1999)**]** any payment under a pension scheme but excluding any payment to which subsection (8) applies..

(8) This subsection applies to—

(a) payments by way of guaranteed minimum pension; [F154]...

[F154](b) . . . . . .

(9) In this section, "guaranteed minimum pension" **[**[F155]has**]** the same meaning as in the Pension Schemes Act 1993.**]**

Textual Amendments

F148 Words in s. 310(1) repealed (1.4.2004) by 2002 c. 40, ss. 259(2), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F149 S. 310(1A) inserted (1.4.2004) by 2002 c. 40, ss. 259(3), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F150 Words in s. 310(2) inserted (6.4.1997) by 1995 c. 26, s. 122, **Sch. 3 para. 15(a)** (with s. 121(5)); S.I. 1997/664, art. 2(3), **Sch. Pt. II** (with transitional adaptations, modifications and savings in arts. 3-14)

F151 S. 310(6)(6A) substituted (1.4.2004) for s. 310(6) by 2002 c. 40, ss. 259(4), 279, (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F152 S. 310(8)(9) and words preceding them added (6.4.1997) by 1995 c. 26, s. 122, **Sch. 3 para. 15(b)** (with s. 121(5)); S.I. 1997/664, art. 2(3), **Sch. Pt. II** (with transitional adaptations, modifications and savings in arts. 3-14)

F153 Words in s. 310(7) inserted (11.11.1999 for the purpose only of any exercise of power to make regulations, otherwise 29.5.2000) by 1999 c. 30, ss. 18, 89(5), **Sch. 2 para. 2**; S.I. 2000/1382, **art. 2(e)**

F154 S. 310(8)(b) and word omitted (6.4.2012) by S.I. 2011/1730, art. 3(2) (as substituted) by virtue of The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No.2) (Amendment) Order 2012 (S.I. 2012/709), arts. 1(2), **2(2)**

F155 Word in s. 310(9) substituted (6.4.2012) by S.I. 2011/1730, art. 3(3) (as substituted) by The Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No.2) (Amendment) Order 2012 (S.I. 2012/709), arts. 1(2), **2(2)**

Modifications etc. (not altering text)

C95 S. 310 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C96 S. 310 amended by Education (Student Loans) Act 1990 (c. 6, SIF 41:1, 2), s. 1(5), **Sch. 2 para. 5(1)**

C97 S. 310 restricted (12.8.1998) by S.I. 1998/2003, **reg. 13(1)**
S. 310 restricted (25.2.2002) by S.I. 2002/195, **reg. 40(1)**

S. 310 restricted (1.3.2005) by The Education (Student Support) Regulations 2005 (S.I. 2005/52), **reg. 28(1)** (with reg. 3(6)-(9))

C98 S. 310 excluded (16.6.2016) by The Education (Postgraduate Masters Degree Loans) Regulations 2016 (S.I. 2016/606), regs. 1(1), **97(1)(a)**

[F156 310A Income payments agreement

(1) In this section "income payments agreement" means a written agreement between a bankrupt and his trustee or between a bankrupt and the official receiver which provides—

(a) that the bankrupt is to pay to the trustee or the official receiver an amount equal to a specified part or proportion of the bankrupt's income for a specified period, or

(b) that a third person is to pay to the trustee or the official receiver a specified proportion of money due to the bankrupt by way of income for a specified period.

(2) A provision of an income payments agreement of a kind specified in subsection (1)(a) or (b) may be enforced as if it were a provision of an income payments order.

(3) While an income payments agreement is in force the court may, on the application of the bankrupt, his trustee or the official receiver, discharge or vary an attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(4) The following provisions of section 310 shall apply to an income payments agreement as they apply to an income payments order—

(a) subsection (5) (receipts to form part of estate), and

(b) subsections (7) to (9) (meaning of income).

(5) An income payments agreement must specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of three years beginning with the date on which the agreement is made.

(6) An income payments agreement may (subject to subsection (5)(b)) be varied—

(a) by written agreement between the parties, or

(b) by the court on an application made by the bankrupt, the trustee or the official receiver.

(7) The court—

(a) may not vary an income payments agreement so as to include provision of a kind which could not be included in an income payments order, and

(b) shall grant an application to vary an income payments agreement if and to the extent that the court thinks variation necessary to avoid the effect mentioned in section 310(2).]

Textual Amendments

F156 S. 310A inserted (1.4.2004) by 2002 c. 40, ss. 260, 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C99 S. 310A excluded (16.6.2016) by The Education (Postgraduate Masters Degree Loans) Regulations 2016 (S.I. 2016/606), regs. 1(1), **97(1)(a)**

311 Acquisition by trustee of control.

(1) The trustee shall take possession of all books, papers and other records which relate to the bankrupt's estate or affairs and which belong to him or are in his possession or under his control (including any which would be privileged from disclosure in any proceedings).

(2) In relation to, and for the purpose of acquiring or retaining possession of, the bankrupt's estate, the trustee is in the same position as if her were a receiver of property appointed by the High Court; and the court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the bankrupt's estate consists of stock or shares in a company, shares in a ship or any other property transferable in the books of a company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the estate consists of things in action, they are deemed to have been assigned to the trustee; but notice of the deemed assignment need not be given except in so far as it is necessary, in a case where the deemed assignment is from the bankrupt himself for protecting the priority of the trustee.

(5) Where any goods comprised in the estate are held by any person by way of pledge, pawn or other security and no notice has been served in respect of those goods by the official receiver under subsection (5) of section 285 (restriction on realising security), the trustee may serve such a notice in respect of the goods; and whether or not a notice has been served under this subsection or that subsection, the trustee may, if he thinks fit, exercise the bankrupt's right of redemption in respect of any such goods.

(6) A notice served by the trustee under subsection (5) has the same effect as a notice served by the official receiver under section 285(5).

Modifications etc. (not altering text)

C100 S. 311 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

312 Obligation to surrender control to trustee.

(1) The bankrupt shall deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession.

This is without prejudice to the general duties of the bankrupt under section 333 in this Chapter.

(2) If any of the following is in possession of any property, books, papers or other records of which the trustee is required to take possession, namely—

(a) the official receiver,

(b) a person who has ceased to be trustee of the bankrupt's estate, or

(c) a person who has been the supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII,

the official receiver or, as the case may be, that person shall deliver up possession of the property, books, papers or records to the trustee.

(3) Any banker or agent of the bankrupt or any other person who holds any property to the account of, or for, the bankrupt shall pay or deliver to the trustee all property in his possession or under his control which forms part of the bankrupt's estate and which he is not by law entitled to retain as against the bankrupt or trustee.

(4) If any person without reasonable excuse fails to comply with any obligation imposed by this section, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Modifications etc. (not altering text)

C101 S. 312 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C102 S. 312 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 20**

313 Charge on bankrupt's home.

(1) Where any property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse **[**[F157]or by his civil partner or former civil partner**]** is comprised in the bankrupt's estate and the trustee is, for any reason, unable for the time being to realise that property, the trustee may apply to the court for an order imposing a charge on the property for the benefit of the bankrupt's estate.

(2) If on an application under this section the court imposes a charge on any property, the benefit of that charge shall be comprised in the bankrupt's estate and is enforceable **[**[F158], up to the charged value from time to time,**]** for the payment of any amount which is payable otherwise than to the bankrupt out of the estate and of interest on that amount at the prescribed rate.

[[F159](2A) In subsection (2) the charged value means—

(a) the amount specified in the charging order as the value of the bankrupt's interest in the property at the date of the order, plus

(b) interest on that amount from the date of the charging order at the prescribed rate.

(2B) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the rules.**]**

(3) An order under this section made in respect of property vested in the trustee shall provide, in accordance with the rules, for the property to cease to be comprised in the bankrupt's estate and, subject to the charge (and any prior charge), to vest in the bankrupt.

(4) **[**[F160]Subsection (1), (2), (4), (5) and (6) of**]** section 3 of the Charging Orders Act 1979 (supplemental provisions with respect to charging orders) have effect in relation to orders under this section as in relation to charging orders under that Act.

[[F161](5) But an order under section 3(5) of that Act may not vary a charged value.**]**

Textual Amendments

F157 Words in s. 313(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 114**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

F158 Words in s. 313(2) substituted (1.4.2004) by 2002 c. 40, ss. 261(2)(a), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F159 S. 313(2A)(2B) inserted (1.4.2004) by 2002 c. 40, ss. 261(2)(b), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F160 Words in s. 313(4) substituted (1.10.2012) by Tribunals, Courts and Enforcement Act 2007 (c. 15), **s. 93(5)**(6)148; S.I. 2012/1312, art. 3

F161 S. 313(5) inserted (1.4.2004) by 2002 c. 40, ss. 261(2)(c), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C103 S. 313 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

[[F162]313A Low value home: application for sale, possession or charge

(1) This section applies where—

(a) property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(i) the bankrupt,

(ii) the bankrupt's spouse **[**[F163]or civil partner**]**, or

(iii) a former spouse **[**[F164]or former civil partner**]** of the bankrupt, and

(b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under section 313 in respect of the property.

(2) The court shall dismiss the application if the value of the interest is below the amount prescribed for the purposes of this subsection.

(3) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the order which prescribes the amount for the purposes of subsection (2).**]**

Textual Amendments

F162 S. 313A inserted (1.4.2004) by 2002 c. 40, ss. 261(3), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F163 Words in s. 313A(1)(a)(ii) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 115(a)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

F164 Words in s. 313A(1)(a)(iii) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 115(b)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

Modifications etc. (not altering text)

C104 S. 313A modified (1.7.2005) by S.I. 1994/2421, Sch. 4 Pt. II para. 29A (as inserted (1.7.2005) by S.I. 2005/1516, **art. 9(5)**)

S. 313A modified (1.7.2005) by S.I. 1994/2421, Sch. 7 para. 20A (as inserted (1.7.2005) by S.I. 2005/1516, **art. 10(5)**)

Status: *Point in time view as at 01/12/2020.*
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314 Powers of trustee.

[[F165](1) The trustee may exercise any of the powers specified in Parts 1 and 2 of Schedule 5.**]**

(2) [F166]... the trustee may appoint the bankrupt—

(a) to superintend the management of his estate or any part of it,

(b) to carry on his business (if any) for the benefit of his creditors, or

(c) in any other respect to assist in administering the estate in such manner and on such terms as the trustee may direct.

[F167](3) . . . . . .

[F167](4) . . . . . .

(5) Part III of Schedule 5 to this Act has effect with respect to the things which the trustee is able to do for the purposes of, or in connection with, the exercise of any of his powers under any of his Group of Parts.

(6) Where the trustee (not being the official receiver) in exercise of the powers conferred on him by any provision in this Group of Parts—

(a) disposes of any property comprised in the bankrupt's estate to an associate of the bankrupt, or

(b) employs a solicitor,

he shall, if there is for the time being a creditor's committee, give notice to the committee of that exercise of his powers.

(7) Without prejudice to the generality of subsection (5) and Part III of Schedule 5, the trustee may, if he thinks fit, at any time **[**[F168]seek a decision on a matter from**]** the bankrupt's creditors.

Subject to the preceding provisions in this Group of Parts, he shall **[**[F169]seek a decision on a matter**]** if he is requested to do so by a creditor of the bankrupt and the request is made with the concurrence of not less than one-tenth, in value, of the bankrupt's creditors (including the creditor making the request).

(8) Nothing in this Act is to be construed as restricting the capacity of the trustee to exercise any of his powers outside England and Wales.

Textual Amendments

F165 S. 314(1) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 121(2)(a)**, 164(3)(i)(i)

F166 Words in s. 314(2) omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 121(2)(b)**, 164(3)(i)(i)

F167 S. 314(3)(4) omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 121(2)(c)**, 164(3)(i)(i)

F168 Words in s. 314(7) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 81(a)**; S.I. 2015/1329, reg. 3(d)

F169 Words in s. 314(7) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 81(b)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

Modifications etc. (not altering text)

C105 S. 314 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C106 S. 314(7) applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 20**

Disclaimer of onerous property

315 Disclaimer (general power).

(1) Subject as follows, the trustee may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this section, that is to say—

(a) any unprofitable contract, and

(b) any other property comprised in the bankrupt's estate which is unsaleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this section—

(a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed, and

(b) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship,

but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this section in respect of any property that has been claimed for the estate under section 307 (after-acquired property) or 308 (personal property of bankrupt exceeding reasonable replacement value) **[**[F170]or 308A**]**, except with the leave of the court.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed to be a creditor of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

Textual Amendments

F170 Words inserted by Housing Act 1988 (c. 50, SIF 75:1), **s. 117(4)**

Modifications etc. (not altering text)

C107 S.315, applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C108 S. 315 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 164(1), 182(4), **Sch. 22 para. 7(1)**; S.I. 1991/878, art. 2, **Sch.** .

C109 S. 315 restricted (1.1.1996) by 1995 c. 30, **s. 21(2)(b)** (with ss. 1(1), 2(2), 26(1)); S.I. 1995/2963, **art. 2**

S. 315 excluded (11.12.1999) by S.I. 1999/2979, **reg. 16(1)**

316 Notice requiring trustee's decision.

(1) Notice of disclaimer shall not be given under section 315 in respect of any property if—

(a) a person interested in the property has applied in writing to the trustee or one of his predecessors as trustee requiring the trustee or that predecessor to decide whether he will disclaim or not, and

(b) the period of 28 days beginning with the day on which that application was made has expired without a notice of disclaimer having been given under section 315 in respect of that property.

(2) The trustee is deemed to have adopted any contract which by virtue of this section he is not entitled to disclaim.

Modifications etc. (not altering text)

C110 S. 316 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

317 Disclaimer of leaseholds.

(1) The disclaimer of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person claiming under the bankrupt as underlessee or mortgagee and either—

(a) no application under section 320 below is made with respect to the property before the end of the period of 14 days beginning with the day on which the last notice served under this subsection was served, or

(b) where such an application has been made, the court directs that the disclaimer is to take effect.

(2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 320, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

Modifications etc. (not altering text)

C111 S.317 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C112 S. 317 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), art. 13, **Sch. 1 para. 1(c)**

318 Disclaimer of dwelling house.

Without prejudice to section 317, the disclaimer of any property in a dwelling house does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person in occupation of or claiming a right to occupy the dwelling house and either—

(a) no application under section 320 is made with respect to the property before the end of the period of 14 days beginning with the day on which the last notice served under this section was served, or

(b) where such an application has been made, the court directs that the disclaimer is to take effect.

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Modifications etc. (not altering text)
C113 S.318 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

319 Disclaimer of land subject to rentcharge.

(1) The following applies where, in consequence of the disclaimer under section 315 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in the next subsection as "the proprietor").

(2) The proprietor, and the successors in title of the proprietor, are not subject to any personal liability in respect of any sums becoming due under the rentcharge, except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

Modifications etc. (not altering text)
C114 s. 319 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

320 Court order vesting disclaimed property.

(1) This section and the next apply where the trustee has disclaimed property under section 315.

(2) An application may be made to the court under this section by—
- (a) any person who claims an interest in the disclaimed property,
- (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer, or
- (c) where the disclaimed property is property in a dwelling house, any person who at the time when the **[**[F171]bankruptcy application was made or (as the case may be) the**]** bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(3) Subject as follows in this section and the next, the court may, on an application under this section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—
- (a) a person entitled to it or a trustee for such a person,
- (b) a person subject to such a liability as is mentioned in subsection (2)(b) or a trustee for such a person, or
- (c) where the disclaimed property is property in a dwelling house, any person who at the time when the **[**[F172]bankruptcy application was made or (as the case may be) the**]** bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(4) The court shall not make an order by virtue of subsection (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of any order under this section shall be taken into account in assessing for the purposes of section 315(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(6) An order under this section vesting property in any person need not be completed by any conveyance, assignment or transfer.

Textual Amendments

F171 Words in s. 320(2)(c) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 25(2)**; S.I. 2016/191, art. 2 (with art. 3)

F172 Words in s. 320(3)(c) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 25(3)**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C115 S. 320 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

321 Order under s. 320 in respect of leaseholds.

(1) The court shall not make an order under section 320 vesting property of a leasehold nature in any person, except on terms making that person—

(a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease on the day the **[**[F173]bankruptcy application was made or (as the case may be) the**]** bankruptcy petition was presented, or

(b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him on that day.

(2) For the purposes of an order under section 320 relating to only part of any property comprised in a lease, the requirements of subsection (1) apply as if the lease comprised only the property to which the order relates.

(3) Where subsection (1) applies and no person is willing to accept an order under section 320 on the terms required by that subsection, the court may (by order under section 320) vest the estate or interest in the bankrupt in the property in any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the bankrupt) to perform the lessee's covenants in the lease.

The court may by virtue of this subsection vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the bankrupt.

(4) Where subsection (1) applies and a person declines to accept any order under section 320, that person shall be excluded from all interest in the property.

Textual Amendments

F173 Words in s. 321(1)(a) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 26**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C116 S. 321 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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Distribution of bankrupt's estate

322 Proof of debts.

(1) Subject to this section and the next, the proof of any bankruptcy debt by a secured or unsecured creditor of the bankrupt and the admission or rejection of any proof shall take place in accordance with the rules.

(2) Where a bankruptcy debt bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the commencement of the bankruptcy.

(3) The trustee shall estimate the value of any bankruptcy debt which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value.

(4) Where the value of a bankruptcy debt is estimated by the trustee under subsection (3) or, by virtue of section 303 in Chapter III, by the court, the amount provable in the bankruptcy in respect of the debt is the amount of the estimate.

Modifications etc. (not altering text)

C117 S.322 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

323 Mutual credit and set-off.

(1) This section applies where before the commencement of the bankruptcy there have been mutual credits, mutual debts or other mutual dealings between the bankruptcy and any creditor of the bankrupt proving or claiming to prove for a bankruptcy debt.

(2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(3) Sums due from the bankrupt to another party shall not be included in the account taken under subsection (2) if that other party had notice at the time they became due that **[**[F174]proceedings on a bankruptcy application relating to the bankrupt were ongoing or that **]** a bankruptcy petition relating to the bankrupt was pending.

(4) Only the balance (if any) of the account taken under subsection (2) is provable as a bankruptcy debt or, as the case may be, to be paid to the trustee as part of the bankrupt's estate.

Textual Amendments

F174 Words in s. 323(3) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 27**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C118 S.323 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C119 S. 323 modified (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 163(2)(b), 182(4),Sch. 22 para. 6(2)(b); S.I. 1991/878, art. 2, **Sch.**.

Status: *Point in time view as at 01/12/2020.*
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324 Distribution by means of dividend.

(1) Whenever the trustee has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy, declare and distribute dividends among the creditors in respect of the bankruptcy debts which they have respectively proved.

(2) The trustee shall give notice of his intention to declare and distribute a dividend.

(3) Where the trustee has declared a dividend, he shall give notice of the dividend and of how it is proposed to distribute it; and a notice given under this subsection shall contain the prescribed particulars of the bankrupt's estate.

(4) In the calculation and distribution of a dividend the trustee shall make provision—

(a) for any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs,

(b) for any bankruptcy debts which are the subject of claims which have not yet been determined, and

(c) for disputed proofs and claims.

Modifications etc. (not altering text)

C120 S. 324 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

325 Claims by unsatisfied creditors.

(1) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—

(a) when he has proved that debt he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive; and

(b) any dividend or dividends payable under paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.

(2) No action lies against the trustee for a dividend,but if the trustee refuses to pay a dividend the court may, if it thinks fit, order him to pay it and also to pay, out of his own money—

(a) interest on the dividend, at the rate for the time being specified in section 17 of the [M6]JudgmentsAct 1838, from the time it was withheld, and

(b) the costs of the proceedings in which the order to pay is made.

Modifications etc. (not altering text)

C121 s. 325 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Marginal Citations

M6 1838 c. 110.

326 Distribution of property in specie.

(1) Without prejudice to sections 315 to 319 (disclaimer), the trustee may, with the permission of the creditors' committee, divide in its existing form amongst the bankrupt's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) A permission given for the purposes of subsection (1) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required by subsection (1) has been given.

(3) Where the trustee has done anything without the permission required by subsection (1), the court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

But the committee shall not do so unless it is satisfied that the trustee acted in a case of urgency and has sought its ratification without undue delay.

Modifications etc. (not altering text)

C122 S. 326 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

[F175 327 Distribution in criminal bankruptcy.

Where the bankruptcy order was made on a petition under section 264(1)(d) (criminal bankruptcy), no distribution shall be made under sections 324 to 326 so long as an appeal is pending (within the meaning of section 277) against the bankrupt's conviction of any offence by virtue of which the criminal bankruptcy order on which the petition was based was made.**]**

Textual Amendments

F175 S. 327 repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**

Modifications etc. (not altering text)

C123 S.327 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

328 Priority of debts.

(1) In the distribution of the bankrupt's estate, his preferential debts [F176]... shall be paid in priority to other debts.

[F177(1A) Ordinary preferential debts rank equally among themselves after the expenses of the bankruptcy and shall be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions between themselves.

(1B) Secondary preferential debts rank equally among themselves after the ordinary preferential debts and shall be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions between themselves.**]**

[F178](2) . . . . . .

(3) Debts which are neither preferential debts nor debts to which the next section applies also rank equally between themselves and, after the preferential debts, shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.

[[F179](3A) If the bankrupt is a relevant financial institution, subsection (3) does not apply but—

(a) the bankrupt's ordinary non-preferential debts shall be paid in priority to the bankrupt's secondary non-preferential debts,

(b) the bankrupt's ordinary non-preferential debts rank equally among themselves after the secondary preferential debts and shall be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions,

(c) the bankrupt's secondary non-preferential debts shall be paid in priority to the bankrupt's tertiary non-preferential debts, and

(d) the bankrupt's secondary non-preferential debts rank equally among themselves after the ordinary non-preferential debts and shall be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions.

See section 387A for definitions relevant to this subsection.**]**

(4) Any surplus remaining after the payment of the debts **[**[F180]—

(a) where subsection (3) applies, that are preferential or rank equally under that subsection, or

(b) where subsection (3A) applies, that are preferential or are referred to in that subsection,**]**

shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the commencement of the bankruptcy; and interest on preferential debts ranks equally with interest on debts other than preferential debts.

(5) The rate of interest payable under subsection (4) in respect of any debt is whichever is the greater of the following—

(a) the rate specified in section 17 of the [M7]Judgments Act 1838 at the commencement of the bankruptcy, and

(b) the rate applicable to that debt apart from the bankruptcy.

(6) This section and the next are without prejudice to any provision of this Act or any other Act under which the payment of any debt or the making of any other payment is, in the event of bankruptcy, to have a particular priority or to be postponed.

[[F181](7) In this section "preferential debts", "ordinary preferential debts" and "secondary preferential debts" each has the meaning given in section 386 in Part 12.**]**

Textual Amendments

F176 Words in s. 328(1) omitted (1.1.2015) by virtue of The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **7(2)** (with art. 3)

F177 S. 328(1A)(1B) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **7(3)** (with art. 3)

F178 S. 328(2) omitted (1.1.2015) by virtue of The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **7(4)** (with art. 3)

F179 S. 328(3A) inserted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **8(2)** (with art. 3)

F180 S. 328(4)(a)(b) substituted for words (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **8(3)** (with art. 3)

F181 S. 328(7) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **7(5)** (with art. 3)

Modifications etc. (not altering text)

C124 S. 328 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C125 S. 328 excluded (10.8.2005) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), reg. 20 (as amended (10.8.2005) by S.I. 2005/1998, regs. 2(3), **40(1)-(5)**)

C126 S. 328 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 21** (as amended (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 2 para. 7(4)**; and (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **21** (with art. 3); and (28.12.2020) (temp.) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(4), **121(5)**)

C127 S. 328(1)-(3)(6) modified (1.12.1994) by S.I. 1994/2421, art. 8, **Sch. 4 Pt. II para. 23**

C128 S. 328(1)(2) applied (11.12.1999) by S.I. 1999/2979, **reg. 14(5)**

C129 S. 328(4)(5) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 24**

Marginal Citations

M7 1838 c. 110.

329 Debts to spouse.

(1) This section applies to bankruptcy debts owed in respect of credit provided by a person who (whether or not the bankrupt's spouse **[**[F182]or civil partner**]** at the time the credit was provided) was the bankrupt's spouse **[**[F182]or civil partner**]** at the commencement of the bankruptcy.

(2) Such debts—

(a) rank in priority after the [F183]... interest required to be paid in pursuance of section **[**[F184]328(4)**]**, and

(b) are payable with interest at the rate specified in section 328(5) in respect of the period during which they have been outstanding since the commencement of the bankruptcy;

and the interest payable under paragraph (b) has the same priority as the debts on which it is payable.

Textual Amendments

F182 Words in s. 329(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 116**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

F183 Words in s. 329(2)(a) omitted (19.12.2018) by virtue of The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **9(a)** (with art. 3)

F184 Word in s. 329(2)(a) substituted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **9(b)** (with art. 3)

Modifications etc. (not altering text)

C130 S. 329 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

330 Final distribution.

(1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the trustee's opinion, be realised without needlessly protracting the trusteeship, he shall give notice in the prescribed manner either—

(a) of his intention to declare a final dividend, or

(b) that no dividend, or further dividend, will be declared.

[[F185](1A) A notice under subsection (1)(b) need not be given to opted-out creditors.**]**

(2) The notice under subsection (1) shall contain the prescribed particulars and shall require claims against the bankrupt's estate to be established by a date ("the final date") specified in the notice.

(3) The court may, on the application of any person, postpone the final date.

(4) After the final date, the trustee shall—

(a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate, and

(b) if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.

(5) If a surplus remains after payment in full and with interest of all the bankrupt's creditors and the payment of the expenses of the bankruptcy, the bankrupt is entitled to the surplus.

[[F186](6) Subsection (5) is subject to **[**[F187]Article 49 of the EU Regulation (assets remaining in the secondary compulsory proceedings)**].]**

Textual Amendments

F185 S. 330(1A) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 82**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

F186 S. 330(6) inserted (31.5.2002) by S.I. 2002/1240, **reg. 15**

F187 Words in s. 330(6) substituted (26.6.2017) by virtue of The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 21** (with regs. 3, 4)

Modifications etc. (not altering text)

C131 S. 330 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (31.5.2002) by S.I. 2002/1309, **art. 3(3)(4)**)

C132 S. 330(4)(b) modified by S.I. 1986/1999 art. 5, Sch. 2 (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 2 para. 2(8)(c)**)

331 Final [[F188]report].

(1) Subject as follows in this section and the next, this section applies where—

(a) it appears to the trustee that the administration of the bankrupt's estate in accordance with this Chapter is for practical purposes complete, and

(b) the trustee is not the official receiver.

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Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[[F189](2) The trustee must give the bankrupt's creditors (other than opted-out creditors) notice that it appears to the trustee that the administration of the bankrupt's estate is for practical purposes complete.

(2A) The notice must—

(a) be accompanied by a report of the trustee's administration of the bankrupt's estate;

(b) explain the effect of section 299(3)(d) and how the creditors may object to the trustee's release.**]**

[F190](3) . . . . . .

[F190](4) . . . . . .

Textual Amendments

F188 Word in s. 331 heading substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 83(4)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

F189 S. 331(2)(2A) substituted for s. 331(2) (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 83(2)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

F190 S. 331(3)(4) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 83(3)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

Modifications etc. (not altering text)

C133 S. 331 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 331 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 10(6), **Sch. 4 Pt. II para. 18**

C134 S. 331 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 22**

332 Saving for bankrupt's home.

(1) This section applies where—

(a) there is comprised in the bankrupt's estate property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse **[**[F191]or by his civil partner or former civil partner**]**, and

(b) the trustee has been unable for any reason to realise that property.

(2) The trustee shall not **[**[F192]give notice under section 331(2)**]** unless either—

(a) the court has made an order under section 313 imposing a charge on that property for the benefit of the bankrupt's estate, or

(b) the court has declined, on an application under that section, to make such an order, or

(c) the Secretary of State has issued a certificate to the trustee stating that it would be inappropriate or inexpedient for such an application to be made in the case in question.

Textual Amendments

F191 Words in s. 332(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 117**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

F192 Word in s. 332(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 84**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

Modifications etc. (not altering text)

C135 S. 332 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Supplemental

333 Duties of bankrupt in relation to trustee.

(1) The bankrupt shall—

(a) give to the trustee such information as to his affairs,

(b) attend on the trustee at such times, and

(c) do all such other things,

as the trustee may for the purposes of carrying out his functions under any of this Group of Parts reasonably require.

(2) Where at any time after the commencement of the bankruptcy any property is acquired by, or devolves upon, the bankrupt or there is an increase of the bankrupt's income, the bankrupt shall, within the prescribed period, give the trustee notice of the property or, as the case may be, of the increase.

(3) Subsection (1) applies to a bankrupt after his discharge.

(4) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this section, he is guitly of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Modifications etc. (not altering text)

C136 S. 333 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

334 Stay of distribution in case of second bankruptcy.

(1) This section and the next apply where a bankruptcy order is made against an undischarged bankrupt; and in both sections—

(a) "the later bankruptcy" means the bankruptcy arising from that order,

(b) "the earlier bankruptcy" means the bankruptcy (or, as the case may be, most recent bankruptcy) from which the bankrupt has not been discharged at the commencement of the later bankruptcy, and

(c) "the existing trustee" means the trustee (if any) of the bankrupt's estate for the purposes of the earlier bankruptcy.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Where the existing trustee has been given the prescribed notice of the **[**[F193]making of the application or (as the case may be) the**]** presentation of the petition of the later bankruptcy, any distribution or other disposition by him of anything to which the next subsection applies, if made after the giving of the notice, is void except to the extent that it was made with the consent of the court or is or was subsequently ratified by the court.

This is without prejudice to section 284 (restrictions on dispositions of property following bankruptcy order).

(3) This subsection applies to—

(a) any property which is vested in the existing trustee under section 307(3) (after-acquired property);

(b) any money paid to the existing trustee in pursuance of an income payments order under section 310; and

(c) any property or money, which is, or in the hands of the existing trustee represents, the proceeds of sale or application of property or money falling within paragraph (a) or (b) of this subsection.

Textual Amendments

F193 Words in s. 334(2) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 28**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C137 S. 334 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

335 Adjustment between earlier and later bankruptcy estates.

(1) With effect from the commencement of the later bankruptcy anthing to which section 334(3) applies which, immediately before the commencement of that bankruptcy, is comprised in the bankrupt's estate for the purposes of the earlier bankruptcy is to be treated as comprised in the bankrupt's estate for the purposes of the later bankruptcy and, until there is a trustee of that estate, is to be dealt with by the existing trustee in accordance with the rules.

(2) Any sums which in pursuance of an income payments order under section 310 are payable after the commencement of the later bankruptcy to the existing trustee shall form part of the bankrupt's estate for the purposes of the later bankruptcy; and the court may give such consequential directions for the modification of the order as it thinks fit.

(3) Anything comprised in a bankrupt's estate by virtue of subsection (1) or (2) is so comprised subject to a first charge in favour of the existing trustee for any bankruptcy expenses incurred by him in relation thereto.

(4) Except as provided above and in section 334, property which is, or by virtue of section 308 (personal property of bankrupt exceeding reasonable replacement value) **[**[F194]or section 308A (vesting in trustee of certain tenancies)**]** is capable of being, comprised in the bankrupt's estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to it, shall not be comprised in his estate for the purposes of the later bankruptcy.

Status: *Point in time view as at 01/12/2020.*
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(5) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier one, are not to be creditors of his in the later bankruptcy in respect of the same debts; but the existing trustee may prove in the later bankruptcy for—
  (a) the unsatisfied balance of the debts (including any debt under this subsection) provable against the bankrupt's estate in the earlier bankruptcy;
  (b) any interest payable on that balance; and
  (c) any unpaid expenses of the earlier bankruptcy.

(6) Any amount provable under subsection (5) ranks in priority after all the other debts provable in the later bankruptcy and after interest on those debts and, accordingly, shall not be paid unless those debts and that interest have first been paid in full.

Textual Amendments
F194 Words inserted by Housing Act 1988 (c. 50, SIF 61, 75:1), s. 140(1), **Sch. 17 Pt. I para. 74**

Modifications etc. (not altering text)
C138 S. 335 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

CHAPTER V

EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS TRANSACTTIONS, ETC.

[F195 Rights under trusts of land

Textual Amendments
F195 S. 335A and preceding cross-heading inserted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 23** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**

F196 335A Rights under trusts of land.

(1) Any application by a trustee of a bankrupt's estate under section 14 of the Trusts of Land and Appointment of Trustees Act 1996 (powers of court in relation to trusts of land) for an order under that section for the sale of land shall be made to the court having jurisdiction in relation to the bankruptcy.

(2) On such an application the court shall make such order as it thinks just and reasonable having regard to—
  (a) the interests of the bankrupt's creditors;
  (b) where the application is made in respect of land which includes a dwelling house which is or has been the home of the bankrupt or the **[**F197bankrupt's spouse or civil partner or former spouse or former civil partner**]**—
    (i) the conduct of the **[**F198spouse, civil partner, former spouse or former civil partner**]**, so far as contributing to the bankruptcy,
    (ii) the needs and financial resources of the **[**F198spouse, civil partner, former spouse or former civil partner**]**, and

(iii) the needs of any children; and

(c) all the circumstances of the case other than the needs of the bankrupt.

(3) Where such an application is made after the end of the period of one year beginning with the first vesting under Chapter IV of this Part of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

(4) The powers conferred on the court by this section are exercisable on an application whether it is made before or after the commencement of this section.**]**

Textual Amendments

F196 S. 335A and preceding cross-heading inserted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 23** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**

F197 Words in s. 335A(2)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 118(a)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

F198 Words in s. 335A(2)(b)(i)(ii) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 118(b)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

Rights of occupation

336 Rights of occupation etc. of bankrupt's spouse [F199or civil partner].

(1) Nothing occurring in the initial period of the bankruptcy (that is to say, the period beginning with the day of the **[**F200making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition**]** and ending with the vesting of the bankrupt's estate in a trustee) is to be taken as having given rise to any **[**F201**[**F202home rights**]** under Part IV of the Family Law Act 1996**]** in relation to a dwelling house comprised in the bankrupt's estate.

(2) Where **[**F203a spouse's or civil partner's home rights**][**F204under the Act of 1996**]** are a charge on the estate or interest of the other spouse **[**F205or civil partner**]**, or of trustees for the other spouse **[**F205or civil partner**]**, and the other spouse **[**F205or civil partner**]** is **[**F206made**]** bankrupt—

(a) the charge continues to subsist notwithstanding the bankruptcy and, subject to the provisions of that Act, binds the trustee of the bankrupts's estate and persons deriving title under the trustee, and

(b) any application for an order **[**F207under section 33 of that Act**]** shall be made to the court having jurisdiction in relation to the bankruptcy.

F208(3) . . . . . .

(4) On such an application as is mentioned in subsection (2) F209. . . the court shall make such order under **[**F210section 33 of the Act of 1996**]**. . . as it thinks just and reasonable having regard to—

(a) the interests of the bankrupt's creditors,

(b) the conduct of the spouse or former spouse **[**F211or civil partner or former civil partner**]**, so far as contributing to the bankruptcy,

(c) the needs and financial resources of the spouse or former spouse **[**F211or civil partner or former civil partner**]**,

(d) the needs of any children, and

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(e) all the circumstances of the case other than the needs of the bankrupt.

(5) Where such an application is made after the end of the period of one year beginning with the first vesting under Chapter IV of this Part of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

Textual Amendments

F199 Words in heading to s. 336 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 21(5)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F200 Words in s. 336(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 29(2)**; S.I. 2016/191, art. 2 (with art. 3)

F201 Words in s. 336(1) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 57(2)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

F202 Words in s. 336(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 21(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F203 Words in s. 336(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 21(3)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F204 Words in s. 336(2) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 57(3)(a)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

F205 Words in s. 336(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 21(3)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F206 Word in s. 336(2) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 29(3)**; S.I. 2016/191, art. 2 (with art. 3)

F207 Words in s. 336(2)(b) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 57(3)(b)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

F208 S. 336(3) repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch. 4** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**

F209 Words in s. 336(4) repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch. 4** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**

F210 Words in s. 336(4) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 57(4)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

F211 Words in s. 336(4)(b)(c) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 21(4)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

337 Rights of occupation of bankrupt.

(1) This section applies where—

(a) a person who is entitled to occupy a dwelling house by virtue of a beneficial estate or interest is **[**[F212]made**]** bankrupt, and

(b) any persons under the age of 18 with whom that person had at some time occupied that dwelling house had their home with that person at the time when the **[**[F213]bankruptcy application was made or (as the case may be) the**]** bankruptcy petition was presented and at the commencement of the bankruptcy.

(2) Whether or not the bankrupt's **[**[F214]spouse or civil partner (if any) has home rights**][**[F215]under Part IV of the Family Law Act 1996**]**—

(a) the bankrupt has the followng rights as against the trustee of his estate—

(i) if in occupation, a right not to be evicted or excluded from the dwelling house or any part of it, except with the leave of the court,

(ii) if not in occupation, a right with the leave of the court to enter into and occupy the dwelling house, and

(b) the bankrupt's rights are a charge, having the like priority as an equitable interest created immediately before the commencement of the bankruptcy, on so much of his estate or interest in the dwelling house as vests in the trustee.

[[F216](3) The Act of 1996 has effect, with the necessary modifications, as if—

(a) the rights conferred by paragraph (a) of subsection (2) were **[**[F217]home rights**]** under that Act,

(b) any application for such leave as is mentioned in that paragraph were an application for an order under section 33 of that Act, and

(c) any charge under paragraph (b) of that subsection on the estate or interest of the trustee were a charge under that Act on the estate or interest of a spouse **[**[F218]or civil partner**].]**

(4) Any application for leave such as is mentioned in subsection (2)(a) or otherwise by virtue of this section for an order under **[**[F219]section 33 of the Act of 1996**]** shall be made to the court having jurisdiction in relation to the bankruptcy.

(5) On such an application the court shall make such order under **[**[F219]section 33 of the Act of 1996**]** as it thinks just and reasonable having regard to the interests of the creditors, to the bankrupt's financial resources, to the needs of the children and to all the circumstances of the case other than the needs of the bankrupt.

(6) Where such an application is made after the end of the period of one year beginning with the first vesting (under Chapter IV of this Part) of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

Textual Amendments

F212 Word in s. 337(1)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 30(a)**; S.I. 2016/191, art. 2 (with art. 3)

F213 Words in s. 337(1)(b) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 30(b)**; S.I. 2016/191, art. 2 (with art. 3)

F214 Words in s. 337(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 22(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F215 Words in s. 337(2) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 58(2)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

F216 S. 337(3) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 58(3)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

F217 Words in s. 337(3)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 22(3)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F218 Words in s. 337(3)(c) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 22(3)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F219 Words in s. 337(4)(5) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 58(4)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

338 Payments in respect of premises occupied by bankrupt.

Where any premises comprised in a bankrupt's estate are occupied by him (whether by virtue of the preceding section or otherwise) on condition that he makes payments

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towards satisfying any liability arising under a mortgage of the premises or otherwise towards the outgoings of the premises, the bankrupt does not, by virtue of those payments, acquire any interest in the premises.

Adjustment of prior transactions, etc.

339 Transactions at an undervalue.

(1) Subject as follows in this section and sections 341 and 342, where an individual is **[**[F220]made**]** bankrupt and he has at a relevant time (defined in section 341) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.

(3) For the purposes of this section and sections 341 and 342, an individual enters into a transaction with a person at an undervalue if—

(a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration,

(b) he enters into a transaction with that person in consideration of marriage **[**[F221]or the formation of a civil partnership**]**, or

(c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

Textual Amendments

F220 Word in s. 339(1) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 31**; S.I. 2016/191, art. 2 (with art. 3)

F221 Words in s. 339(3)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 119**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

Modifications etc. (not altering text)

C139 S.339 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 339 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

C140 S. 339 restricted by Drug Trafficking Offences Act 1986 (c.32, SIF 39:1), **s. 15(6)(a)(7)**
S. 339 restricted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 30(6)**, 34(5)(a), 47(4)(a)
S. 339 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 8(1)(a)**; S.I. 1991/878, art. 2, **Sch.**
S. 339 restricted by 1986 c. 32, **s. 15(6)(a)(b)** (as substituted (prosp.) by 1993 c. 36, **ss. 13(9)**, 78(3) (with s. 78(6)) (which amending provision was repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), **Sch. 3**))
S. 339 restricted (3.2.1995) by 1994 c. 37, ss. 32(5)(a), 69(2), **Sch. 2 para. 5** (with s. 66(2))
S. 339 restricted (1.11.1995) by 1988 c. 33, **s. 84(6)(a)** (as substituted by 1995 c. 11, **s. 8(7)** (with s. 16(5)(6)); S.I. 1995/2650, **art. 2**)
S. 339 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 2(5)**
S. 339 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(1)**
S. 339 restricted (24.3.2003) by 2002 c. 29, ss. 419(1)-(4), 458(1)(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4))

C141 S. 339 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 165(1)(a); S.I. 1991/878, art. 2, **Sch.**

C142 S. 339 modified (3.2.1995) by 1994 c. 37, ss. 32(5)(b), 69(2), **Sch. 2 para. 5** (with s. 66(2))

340 Preferences.

(1) Subject as follows in this and the next two sections, where an individual is **[**[F222]made**]** bankrupt and he has at a relevant time (defined in section 341) given a preference to any person, the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not given that preference.

(3) For the purposes of this and the next two sections, an individual gives a preference to a person if—

(a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities, and

(b) the individual does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.

(4) The court shall not make an order under this section in respect of a preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (3)(b) above.

(5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of his (otherwise than by reason only of being his employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (4).

(6) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

Textual Amendments

F222 Word in s. 340(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 32**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C143 S. 340 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 340 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

C144 S. 340 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 165(1)(b); S.I. 1991/878, art. 2, **Sch.**.

C145 S. 340 restricted (25.4.1991) by Companies Act 1989 (c.40), ss. 182(4), **Sch. 22 para. 8(1)(b)**; S.I. 1991/878, art. 2, **Sch.**
S. 340 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(1)**
S. 340 restricted (24.3.2003) by 2002 c. 29, ss. 419(1)-(4), 458(1)(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4))

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

341 "Relevant time" under ss. 339, 340.

(1) Subject as follows, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given—

(a) in the case of a transaction at an undervalue, at a time in the period of 5 years ending with the day of the **[**[F223]making of the bankruptcy application as a result of which, or (as the case may be) the presentation of the bankruptcy petition on which, the individual is made**]** bankrupt,

(b) in the case of a preference which is not a transaction at an undervalue and is given to a person who is an associate of the individual (otherwise than by reason only of being his employee), at a time in the period of 2 years ending with that day, and

(c) in any other case of a preference which is not a transaction at an undervalue, at a time in the period of 6 months ending with that day.

(2) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (a), (b) or (c) of subsection (1) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the end of the period mentioned in paragraph (a)), that time is not a relevant time for the purposes of sections 339 and 340 unless the individual—

(a) is insolvent at that time, or

(b) becomes insolvent in consequence of the transaction or preference;

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by an individual with a person who is an associate of his (otherwise than by reason only of being his employee).

(3) For the purposes of subsection (2), an individual is insolvent if—

(a) he is unable to pay his debts as they fall due, or

(b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.

(4) A transaction entered into or preference given by a person who is subsequently adjudged bankrupt on a petition under section 264(1)(d) (criminal bankruptcy) is to be treated as having been entered into or given at a relevant time for the purposes of sections 339 and 340 if it was entered into or given at any time on or after the date specified for the purposes of this subsection in the criminal bankruptcy order on which the petition was based.

(5) No order shall be made under section 339 or 340 by virtue of subsection (4) of this section where an appeal is pending (within the meaning of section 277) against the individual's conviction of any offence by virtue of which the criminal bankruptcy order was made.

Textual Amendments

F223 Words in s. 341(1)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 33**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C146 S. 341 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

C147 S. 341 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 2 para. 2(7)(d)**)

342 Orders under ss. 339, 340.

(1) Without prejudice to the generality of section 339(2) or 340(2), an order under either of those sections with respect to a transaction or preference entered into or given by an individual who is subsequently **[**[F224]made**]** bankrupt may (subject as follows)—

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate;

(b) require any property to be so vested it if represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) any security given by the individual;

(d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate as the court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the court thinks appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and

(g) provide for the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under section 339 or 340 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual in question entered into the transaction or, as the case may be the person to whom the preference was given; but such an order—

(a) shall not prejudice any interest in property which was acquired from a person other than that individual and was acquired **[**[F225]in good faith and for value**]**, or prejudice any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction or preference **[**[F225]in good faith and for value**]** to pay a sum to the trustee of the bankrupt's estate except where he was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of that individual.

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[[F226](2A) Where a person has acquired an interest in property from a person other than the individual in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

(a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or

(b) he was an associate of, or was connected with, either the individual in question or the person with whom that individual entered into the transaction or to whom that individual gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of paragraph (a) or (as the case may be) paragraph (b) of subsection (2) that the interest was acquired or the benefit was received otherwise than in good faith.**]**

(3) Any sums required to be paid to the trustee in accordance with an order under section 339 or 340 shall be comprised in the bankrupt's estate.

[[F227](4) For the purposes of subsection (2A)(a), the relevant surrounding circumstances are (as the case may require)—

(a) the fact that the individual in question entered into the transaction at an undervalue; or

(b) the circumstances which amounted to the giving of the preference by the individual in question.

(5) For the purposes of subsection (2A)(a), a person has notice of the relevant proceedings if he has notice—

[[F228](a) of the fact that the bankruptcy application as a result of which, or (as the case may be) the bankruptcy petition on which, the individual in question is made bankrupt has been made or presented; or**]**

(b) of the fact that the individual in question has been **[**[F229]made**]** bankrupt.

(6) Section 249 in Part VII of this Act shall apply for the purposes of subsection (2A)(b) as it applies for the purposes of the first Group of Parts.**]**

Textual Amendments

F224 Word in s. 342(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 34(2)**; S.I. 2016/191, art. 2 (with art. 3)

F225 Words in s. 342(2)(a)(b) substituted (26.7.1994) by 1994 c. 12, **ss. 2(1)**, 5, 6(2) (with ss. 5, 6(3)

F226 S. 342(2A) inserted (26.7.1994) by 1994 c. 12, **ss. 2(2)**, 5, 6(2) (with ss. 5, 6(3))

F227 S. 342(4)-(6) substituted for s. 342(4) (26.7.1994) by 1994 c. 12, **ss. 2(3)**, 5, 6(2) (with ss. 5, 6(3))

F228 S. 342(5)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 34(3)(a)**; S.I. 2016/191, art. 2 (with art. 3)

F229 Word in s. 342(5)(b) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 34(3)(b)**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C148 Ss. 342-345 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 342 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

Status: *Point in time view as at 01/12/2020.*
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[F230[F231342A Recovery of excessive pension contributions.

(1) Where an individual who is [F232made] bankrupt—

(a) has rights under an approved pension arrangement, or

(b) has excluded rights under an unapproved pension arrangement,

the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) If the court is satisfied—

(a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and

(b) that the making of any of the relevant contributions ("the excessive contributions") has unfairly prejudiced the individual's creditors,

the court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.

(3) Subsection (4) applies where the court is satisfied that the value of the rights under the arrangement is, as a result of rights of the individual under the arrangement or any other pension arrangement having at any time become subject to a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999 (debits giving effect to pension-sharing), less than it would otherwise have been.

(4) Where this subsection applies—

(a) any relevant contributions which were represented by the rights which became subject to the debit shall, for the purposes of subsection (2), be taken to be contributions of which the rights under the arrangement are the fruits, and

(b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of paragraph (a) shall be treated as excessive contributions before any which are so represented by virtue of that paragraph.

(5) In subsections (2) to (4) "relevant contributions" means contributions to the arrangement or any other pension arrangement—

(a) which the individual has at any time made on his own behalf, or

(b) which have at any time been made on his behalf.

(6) The court shall, in determining whether it is satisfied under subsection (2)(b), consider in particular—

(a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the individual's creditors or any of them, and

(b) whether the total amount of any contributions—

(i) made by or on behalf of the individual to pension arrangements, and

(ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pension arrangements,

is an amount which is excessive in view of the individual's circumstances when those contributions were made.

(7) For the purposes of this section and sections 342B and 342C ("the recovery provisions"), rights of an individual under an unapproved pension arrangement are

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excluded rights if they are rights which are excluded from his estate by virtue of regulations under section 12 of the Welfare Reform and Pensions Act 1999.

(8) In the recovery provisions—

"approved pension arrangement" has the same meaning as in section 11 of the Welfare Reform and Pensions Act 1999;

"unapproved pension arrangement" has the same meaning as in section 12 of that Act.**]]**

Textual Amendments

F230 Ss. 342A-342C inserted (6.4.1996 for the purpose only of authorising the making of regulations) by 1995 c. 26, **s. 95(1)** (with s. 121(5)); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

F231 Ss. 342A-342C substituted (11.11.1999 for certain purposes and otherwise 6.4.2002) by 1999 c. 30, **ss. 15**, 89(5)(a); S.I. 2002/153, **art. 2(e)**

F232 Word in s. 342A(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 35**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C149 S. 342A applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

[[F233][F234]342B Orders under section 342A.

(1) Without prejudice to the generality of section 342A(2), an order under section 342A may include provision—

(a) requiring the person responsible for the arrangement to pay an amount to the individual's trustee in bankruptcy,

(b) adjusting the liabilities of the arrangement in respect of the individual,

(c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the individual under the arrangement,

(d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the bankrupt's case with any requirement under section 342C(1) or in giving effect to the order.

(2) In subsection (1), references to adjusting the liabilities of the arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(3) In subsection (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (pension sharing orders and agreements).

(4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under section 342A is the lesser of—

(a) the amount of the excessive contributions, and

(b) the value of the individual's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) An order under section 342A which requires the person responsible for an arrangement to pay an amount ("the restoration amount") to the individual's trustee in bankruptcy must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of subsection (5), liabilities are correspondingly reduced if the difference between—

(a) the amount of the liabilities immediately before the reduction, and

(b) the amount of the liabilities immediately after the reduction,

is equal to the restoration amount.

(7) An order under section 342A in respect of an arrangement—

(a) shall be binding on the person responsible for the arrangement, and

(b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.**]]**

Textual Amendments

F233 Ss. 342A-342C inserted (6.4.1996 for the purpose of authorising the making of regulations) by 1995 c. 26, **s. 95(1)** (with s. 121(5)); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

F234 Ss. 342A-342C substituted (11.11.1999 for certain purposes and otherwise 6.4.2002) by 1999 c. 30, **ss. 15**, 89(5)(a); S.I. 2002/153, **art. 2(e)**

[F235[F236342C Orders under section 342A: supplementary.

(1) The person responsible for—

(a) an approved pension arrangement under which a bankrupt has rights,

(b) an unapproved pension arrangement under which a bankrupt has excluded rights, or

(c) a pension arrangement under which a bankrupt has at any time had rights,

shall, on the bankrupt's trustee in bankruptcy making a written request, provide the trustee with such information about the arrangement and rights as the trustee may reasonably require for, or in connection with, the making of applications under section 342A.

(2) Nothing in—

(a) any provision of section 159 of the Pension Schemes Act 1993 or section 91 of the Pensions Act 1995 (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),

(b) any provision of any enactment (whether passed or made before or after the passing of the Welfare Reform and Pensions Act 1999) corresponding to any of the provisions mentioned in paragraph (a), or

(c) any provision of the arrangement in question corresponding to any of those provisions,

applies to a court exercising its powers under section 342A.

(3) Where any sum is required by an order under section 342A to be paid to the trustee in bankruptcy, that sum shall be comprised in the bankrupt's estate.

(4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—
  (a) any such value as is mentioned in section 342B(4)(b);
  (b) any such amounts as are mentioned in section 342B(6)(a) and (b).

(5) The power conferred by subsection (4) includes power to provide for calculation or verification—
  (a) in such manner as may, in the particular case, be approved by a prescribed person; or
  [[F237](b) in accordance with guidance from time to time prepared by a prescribed person.**]**

(6) References in the recovery provisions to the person responsible for a pension arrangement are to—
  (a) the trustees, managers or provider of the arrangement, or
  (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.

(7) In this section and sections 342A and 342B—
  "prescribed" means prescribed by regulations;
  "the recovery provisions" means this section and sections 342A and 342B;
  "regulations" means regulations made by the Secretary of State.

(8) Regulations under the recovery provisions may—
  (a) make different provision for different cases;
  (b) contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient.

(9) Regulations under the recovery provisions shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.**]]**

Textual Amendments

F235 Ss. 342A-342C inserted (6.4.1996 for the purpose only of authorising the making of regulations) by 1995 c. 26, **s. 95(1)** (with s. 121(5)); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

F236 Ss. 342A-342C substituted (11.11.1999 for certain purposes and otherwise 6.4.2002) by 1999 c. 30, **ss. 15**, 89(5)(a); S.I. 2002/153, **art. 2(e)**

F237 S. 342C(5)(b) substituted (1.11.2007) by Pensions Act 2007 (c. 22), ss. 17, 30(2)(c), **Sch. 5 para. 3**; S.I. 2007/3063, {art. 2 (b)}

[[F238]**342D Recovery of excessive contributions in pension-sharing cases.**

(1) For the purposes of sections 339, 341 and 342, a pension-sharing transaction shall be taken—
  (a) to be a transaction, entered into by the transferor with the transferee, by which the appropriate amount is transferred by the transferor to the transferee; and
  (b) to be capable of being a transaction entered into at an undervalue only so far as it is a transfer of so much of the appropriate amount as is recoverable.

(2) For the purposes of sections 340 to 342, a pension-sharing transaction shall be taken—

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) to be something (namely a transfer of the appropriate amount to the transferee) done by the transferor; and

(b) to be capable of being a preference given to the transferee only so far as it is a transfer of so much of the appropriate amount as is recoverable.

(3) If on an application under section 339 or 340 any question arises as to whether, or the extent to which, the appropriate amount in the case of a pension-sharing transaction is recoverable, the question shall be determined in accordance with subsections (4) to (8).

(4) The court shall first determine the extent (if any) to which the transferor's rights under the shared arrangement at the time of the transaction appear to have been (whether directly or indirectly) the fruits of contributions ("personal contributions")—

(a) which the transferor has at any time made on his own behalf, or

(b) which have at any time been made on the transferor's behalf,

to the shared arrangement or any other pension arrangement.

(5) Where it appears that those rights were to any extent the fruits of personal contributions, the court shall then determine the extent (if any) to which those rights appear to have been the fruits of personal contributions whose making has unfairly prejudiced the transferor's creditors ("the unfair contributions").

(6) If it appears to the court that the extent to which those rights were the fruits of the unfair contributions is such that the transfer of the appropriate amount could have been made out of rights under the shared arrangement which were not the fruits of the unfair contributions, then the appropriate amount is not recoverable.

(7) If it appears to the court that the transfer could not have been wholly so made, then the appropriate amount is recoverable to the extent to which it appears to the court that the transfer could not have been so made.

(8) In making the determination mentioned in subsection (5) the court shall consider in particular—

(a) whether any of the personal contributions were made for the purpose of putting assets beyond the reach of the transferor's creditors or any of them, and

(b) whether the total amount of any personal contributions represented, at the time the pension-sharing transaction was made, by rights under pension arrangements is an amount which is excessive in view of the transferor's circumstances when those contributions were made.

(9) In this section and sections 342E and 342F—

"appropriate amount", in relation to a pension-sharing transaction, means the appropriate amount in relation to that transaction for the purposes of section 29(1) of the Welfare Reform and Pensions Act 1999 (creation of pension credits and debits);

"pension-sharing transaction" means an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (orders and agreements which activate pension-sharing);

"shared arrangement", in relation to a pension-sharing transaction, means the pension arrangement to which the transaction relates;

"transferee", in relation to a pension-sharing transaction, means the person for whose benefit the transaction is made;

"transferor", in relation to a pension-sharing transaction, means the person to whose rights the transaction relates.**]**

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F238 S. 342D inserted (26.3.2002 for specified purposes otherwise 6.4.2002) by 1999 c. 30, s. 85, **Sch. 12 Pt II para. 71**; S.I. 2002/818, **art. 3**

Modifications etc. (not altering text)

C150 S. 342B-342F applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

[F239]342E Orders under section 339 or 340 in respect of pension-sharing transactions.

(1) This section and section 342F apply if the court is making an order under section 339 or 340 in a case where—

(a) the transaction or preference is, or is any part of, a pension-sharing transaction, and

(b) the transferee has rights under a pension arrangement ("the destination arrangement", which may be the shared arrangement or any other pension arrangement) that are derived, directly or indirectly, from the pension-sharing transaction.

(2) Without prejudice to the generality of section 339(2) or 340(2), or of section 342, the order may include provision—

(a) requiring the person responsible for the destination arrangement to pay an amount to the transferor's trustee in bankruptcy,

(b) adjusting the liabilities of the destination arrangement in respect of the transferee,

(c) adjusting any liabilities of the destination arrangement in respect of any other person that derive, directly or indirectly, from rights of the transferee under the destination arrangement,

(d) for the recovery by the person responsible for the destination arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the transferor's case with any requirement under section 342F(1) or in giving effect to the order,

(e) for the recovery, from the transferor's trustee in bankruptcy, by the person responsible for a pension arrangement, of costs incurred by that person in complying in the transferor's case with any requirement under section 342F(2) or (3).

(3) In subsection (2), references to adjusting the liabilities of the destination arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(4) The maximum amount which the person responsible for the destination arrangement may be required to pay by the order is the smallest of—

(a) so much of the appropriate amount as, in accordance with section 342D, is recoverable,

(b) so much (if any) of the amount of the unfair contributions (within the meaning given by section 342D(5)) as is not recoverable by way of an order under section 342A containing provision such as is mentioned in section 342B(1)(a), and

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(c) the value of the transferee's rights under the destination arrangement so far as they are derived, directly or indirectly, from the pension-sharing transaction.

(5) If the order requires the person responsible for the destination arrangement to pay an amount ("the restoration amount") to the transferor's trustee in bankruptcy it must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of subsection (5), liabilities are correspondingly reduced if the difference between—

(a) the amount of the liabilities immediately before the reduction, and

(b) the amount of the liabilities immediately after the reduction,

is equal to the restoration amount.

(7) The order—

(a) shall be binding on the person responsible for the destination arrangement, and

(b) overrides provisions of the destination arrangement to the extent that they conflict with the provisions of the order.

Textual Amendments

F239 S. 342E inserted (26.3.2002 for specified purposes otherwise 6.4.2002) by 1999 c. 30, s. 85, **Sch. 12 Pt. II para. 71**; S.I. 2002/818, **art. 3**

Modifications etc. (not altering text)

C151 S. 342B-342F applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

[F240]342F Orders under section 339 or 340 in pension-sharing cases: supplementary.

(1) On the transferor's trustee in bankruptcy making a written request to the person responsible for the destination arrangement, that person shall provide the trustee with such information about—

(a) the arrangement,

(b) the transferee's rights under it, and

(c) where the destination arrangement is the shared arrangement, the transferor's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.

(2) Where the shared arrangement is not the destination arrangement, the person responsible for the shared arrangement shall, on the transferor's trustee in bankruptcy making a written request to that person, provide the trustee with such information about—

(a) the arrangement, and

(b) the transferor's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.

(3) On the transferor's trustee in bankruptcy making a written request to the person responsible for any intermediate arrangement, that person shall provide the trustee with such information about—

(a) the arrangement, and
(b) the transferee's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.

(4) In subsection (3) "intermediate arrangement" means a pension arrangement, other than the shared arrangement or the destination arrangement, in relation to which the following conditions are fulfilled—
(a) there was a time when the transferee had rights under the arrangement that were derived (directly or indirectly) from the pension-sharing transaction, and
(b) the transferee's rights under the destination arrangement (so far as derived from the pension-sharing transaction) are to any extent derived (directly or indirectly) from the rights mentioned in paragraph (a).

(5) Nothing in—
(a) any provision of section 159 of the [M8]Pension Schemes Act 1993 or section 91 of the [M9]Pensions Act 1995 (which prevent assignment and the making of orders which restrain a person from receiving anything which he is prevented from assigning),
(b) any provision of any enactment (whether passed or made before or after the passing of the Welfare Reform and Pensions Act 1999) corresponding to any of the provisions mentioned in paragraph (a), or
(c) any provision of the destination arrangement corresponding to any of those provisions,

applies to a court exercising its powers under section 339 or 340.

(6) Regulations may, for the purposes of sections 339 to 342, sections 342D and 342E and this section, make provision about the calculation and verification of—
(a) any such value as is mentioned in section 342E(4)(c);
(b) any such amounts as are mentioned in section 342E(6)(a) and (b).

(7) The power conferred by subsection (6) includes power to provide for calculation or verification—
(a) in such manner as may, in the particular case, be approved by a prescribed person; or
[[F241](b) in accordance with guidance from time to time prepared by a prescribed person.**]**

(8) In section 342E and this section, references to the person responsible for a pension arrangement are to—
(a) the trustees, managers or provider of the arrangement, or
(b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.

(9) In this section—
"prescribed" means prescribed by regulations;
"regulations" means regulations made by the Secretary of State.

(10) Regulations under this section may—
(a) make different provision for different cases;
(b) contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(11) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F240 S. 342F inserted (26.3.2002 for specified purposes otherwise 6.4.2002) by 1999 c. 30, s. 15, **Sch. 12 Pt. II para. 71**; S.I. 2002/818, **art. 3**

F241 S. 342F(7)(b) substituted (1.11.2007) by Pensions Act 2007 (c. 22), ss. 17, 30(2), **Sch. 5 para. 4**; S.I. 2007/3063, {art. 2 (b)}

Modifications etc. (not altering text)

C152 S. 342B-342F applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

Marginal Citations

M8 1993 c. 48.

M9 1995 c. 26.

343 Extortionate credit transactions.

(1) This section applies where a person is **[**[F242]made**]** bankrupt who is or has been a party to a transaction for, or involving, the provision to him of credit.

(2) The court may, on the application of the trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than 3 years before the commencement of the bankruptcy.

(3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

(a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or

(b) it otherwise grossly contravened ordinary principles of fair dealing;

and it shall be presumed, unless the contrary is proved, that a transaction, with respect to which an application is made under this section is or, as the case may be, was extortionate.

(4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit, that is to say—

(a) provision setting aside the whole or part of any obligation created by the transaction;

(b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;

(c) provision requiring any person who is or was party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the bankrupt;

(d) provision requiring any person to surrender to the trustee any property held by him as security for the purposes of the transaction;

(e) provision directing accounts to be taken between any persons.

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(5) Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this section shall be comprised in the bankrupt's estate.

(6) [F243]. . .

[F243]. . . the powers conferred by this section are exercisable in relation to any transaction concurrently with any powers exerciseable under this Act in relation to that transaction as a transaction at an undervalue.

Textual Amendments

F242 Word in s. 343(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 36**; S.I. 2016/191, art. 2 (with art. 3)

F243 Words in s. 343(6) repealed (6.4.2007) by Consumer Credit Act 2006 (c. 14), ss. 69(1), 70, 71, **Sch. 4** (with Sch. 3 para. 15(5)); S.I. 2007/123, **art. 3(2)**, Sch. 2 (as amended by S.I. 2007/387, **art. 2(3)(e)(iii)**)

Modifications etc. (not altering text)

C153 Ss. 342-345 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 343 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

344 Avoidance of general assignment of book debts.

(1) The following applies where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently **[**[F244]made**]** bankrupt.

(2) The assignment is void against the trustee of the bankrupt's estate as regards book debts which were not paid before the **[**[F245]making of the bankruptcy application or (as the case may be) the**]** presentation of the bankruptcy petition, unless the assignment has been registered under the [M10]Bills of Sale Act 1878.

(3) For the purposes of subsections (1) and (2)—

(a) "assignment" includes an assignment by way of security or charge on book debts, and

(b) "general assignment" does not include—

(i) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts, or

(ii) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

(4) For the purposes of registration under the Act of 1878 an assignment of book debts is to be treated as if it were a bill of sale given otherwise than by way of security for the payment of a sum of money; and the provisions of that Act with respect to the registration of bills of sale apply accordingly with such necessary modifications as may be made by rules under that Act.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F244 Word in s. 344(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 37(2)**; S.I. 2016/191, art. 2 (with art. 3)

F245 Words in s. 344(2) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 37(3)**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C154 Ss. 342–345 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Marginal Citations

M10 1878 c. 31.

345 Contracts to which bankrupt is a party.

(1) The following applies where a contract has been made with a person who is subsequently **[**[F246]made**]** bankrupt.

(2) The court may, on the application of any other paty to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the court to be equitable.

(3) Any damages payable by the bankrupt by virtue of an order of the court under this section are provable as a bankruptcy debt.

(4) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

Textual Amendments

F246 Word in s. 345(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 38**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C155 Ss. 342–345 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C156 S. 345 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 164(1), 182(4), **Sch. 22 para. 7(1)**; S.I. 1991/878, art. 2, **Sch.** .
S. 345 excluded (11.12.1999) by S.I. 1999/2979, **reg. 16(1)**

346 Enforcement procedures.

(1) Subject to section 285 in Chapter II (restriction on proceedings and remedies) and to the following provisions of this section, where the creditor of any person who is **[**[F247]made**]** bankrupt has, before the commencement of the bankruptcy—

(a) issued execution against the goods or land of that person, or

(b) attached a debt due to that person from another person,

that creditor is not entitled, as against the official reciever or trustee of the bankrupt's estate, to retain the benefit of the execution or attachment, or any sums paid to avoid

it, unless the execution or attachment was completed, or the sums were paid, before the commencement of the bankruptcy.

[[F248](1A) For the purposes of this section, Her Majesty's Revenue and Customs is to be regarded as having attached a debt due to a person if it has taken action under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts) as a result of which an amount standing to the credit of an account held by that person is—

(a) subject to arrangements made under paragraph 6(3) of that Schedule, or

(b) the subject of a deduction notice under paragraph 13 of that Schedule.**]**

(2) Subject as follows, where any goods of a person have been taken in execution, then, if before the completion of the execution notice is given to the **[**[F249]enforcement officer**]** or other officer charged with the execution that that person has been **[**[F247]made**]** bankrupt—

(a) the **[**[F249]enforcement officer**]** or other officer shall on request deliver to the official receiver or trustee of the bankrupt's estate the goods and any money seized or recovered in part satisfaction of the execution, but

(b) the costs of the execution are a first charge on the goods or money so delivered and the official receiver or trustee may sell the goods or a sufficient part of them for the purpose of satisfying the charge.

(3) Subject to subsection (6) below, where—

(a) under an execution in respect of a judgment for a sum exceeding such sum as may be prescribed for the purposes of this subsection, the goods of any person are sold or money is paid in order to avoid a sale, and

(b) before the end of the period of 14 days beginning with the day of the sale or payment the **[**[F249]enforcement officer**]** or other officer charged with the execution is given notice that a **[**[F250]bankruptcy application has been made or a**]** bankruptcy petition has been presented in relation to that person, and

(c) a bankruptcy order is or has been made **[**[F251]as a result of that application or**]** on that petition,

the balance of the proceeds of sale or money paid, after deducting the costs of execution, shall (in priority to the claim of the execution creditor) be comprised in the bankrupt's estate.

(4) Accordingly, in the case of an execution in respect of a judgment for a sum exceeding the sum prescribed for the purposes of subsection (3), the **[**[F249]enforcement officer**]** or other officer charged with the execution—

(a) shall not dispose of the balance mentioned in subsection (3) at any time within the period of 14 days so mentioned or while **[**[F252]proceedings on a bankruptcy application are ongoing or (as the case may be)**]** there is pending a bankruptcy petition of which he has been given notice under that subsection, and

(b) shall pay that balance, where by virtue of that subsection it is comprised, in the bankrupt's estate, to the official receiver or (if there is one) to the trustee or that estate.

(5) For the purposes of this section—

(a) an execution against goods is completed by seizure and sale or by the making of a charging order under section 1 of the [M11]Charging Orders Act 1979;

(b) an execution against land is completed by seizure, by the appointment of a receiver or by the making of a charging order under that section;

(c) an attachment of a debt is completed by the receipt of the debt.

(6) The rights conferred by subsections (1) to (3) on the official receiver or the trustee may, to such extent and on such terms as it thinks fit, be set aside by the court in favour of the creditor who has issued the execution or attached the debt.

(7) Nothing in this section entitles the trustee of a bankrupt's estate to claim goods from a person who has acquired them in good faith under a sale by **[**[F253]an enforcement officer**]** or other officer charged with an execution.

(8) Neither subsection (2) nor subsection (3) applies in relation to any execution against property which has been acquired by or has devolved upon the bankrupt since the commencement of the bankruptcy, unless, at the time the execution is issued or before it is completed—

(a) the property has been or is claimed for the bankrupt's estate under section 307 (after-acquired property), and

(b) a copy of the notice given under that section has been or is served on the **[**[F249]enforcement officer**]** or other officer charged with the execution.

[[F254](9) In this section "enforcement officer" means an individual who is authorised to act as an enforcement officer under the Courts Act 2003.**]**

Textual Amendments

F247 Word in s. 346(1)(2) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 39(2)**; S.I. 2016/191, art. 2 (with art. 3)

F248 S. 346(1A) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), **Sch. 8 para. 32**

F249 Words in s. 346(2)(3)(b)(4)(8)(b) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 297(2)**; S.I. 2004/401, **art. 2** (with art. 3)

F250 Words in s. 346(3)(b) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 39(3)(a)**; S.I. 2016/191, art. 2 (with art. 3)

F251 Words in s. 346(3)(c) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 39(3)(b)**; S.I. 2016/191, art. 2 (with art. 3)

F252 Words in s. 346(4)(a) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 39(4)**; S.I. 2016/191, art. 2 (with art. 3)

F253 Words in s. 346(7) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 297(3)**; S.I. 2004/401, **art. 2** (with art. 3)

F254 S. 346(9) inserted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 297(4)**; S.I. 2004/401, **art. 2** (with art. 3)

Marginal Citations

M11 1979 c. 53.

347 Distress, etc.

(1) **[**[F255]CRAR (the power of commercial rent arrears recovery under section 72(1) of the Tribunals, Courts and Enforcement Act 2007) is exercisable where the tenant is an undischarged bankrupt**]** (subject to **[**[F256]sections 252(2)(b) and 254(1) above and**]** subsection (5) below) against goods and effects comprised in the bankrupt's estate, but only for 6 months' rent accrued due before the commencement of the bankruptcy.

(2) **[**[F257]Where CRAR has been exercised to recover rent from**]** an individual to whom **[**[F258]a bankruptcy application or**]** a bankruptcy petition relates and a bankruptcy order

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is subsequently made **[**[F259]as a result of that application or**]** on that petition, any amount recovered by way of **[**[F260]CRAR**]** which—

(a) is in excess of the amount which by virtue of subsection (1) would have been recoverable after the commencement of the bankruptcy, or

(b) is in respect of rent for a period or part of a period after **[**[F261]goods were taken control of under CRAR**]** ,

shall be held for the bankrupt as apart of his estate.

[[F262](3) Subsection (3A) applies where—

(a) any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual who is **[**[F263]made**]** bankrupt before the end of the period of 3 months beginning with the distraint, or

(b) Her Majesty's Revenue and Customs has been paid any amount from an account of an individual under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts) and the individual is adjudged bankrupt before the end of the period of 3 months beginning with the payment.

(3A) Where this subsection applies—

(a) in a case within subsection (3)(a), the goods or effects, or the proceeds of their sale, and

(b) in a case within subsection (3)(b), the amount in question,

is charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting them.**]**

(4) Where by virtue of any charge under subsection **[**[F264](3A)**]** any person surrenders any goods or effects to the trustee of a bankrupt’s estate or makes a payment to such a trustee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or, as the case may be, the amount of the payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt’s estate as is available for the payment of preferential creditors by virtue of the surrender or payment.

(5) **[**[F265]CRAR is not exercisable at any time after the discharge of a bankrupt against**]** any goods or effects comprised in the bankrupt’s estate.

[F266](6) . . . . . .

[F267](7) . . . . . .

(8) **[**[F268]Subject to sections 252(2)(b) and 254(1) above**]** nothing in this Group of Parts affects any right to distrain otherwise than for rent; and any such right is at any time exerciseable without restriction against property comprised in a bankrupt’s estate, even if that right is expressed by any enactment to be exerciseable in like manner as a right to distrain for rent.

(9) Any right to distrain against property comprised in a bankrupt’s estate is exerciseable notwithstanding that the propety has vested in the trustee.

(10) The provisions of this section are without prejudice to a landlord’s right in a bankruptcy to prove for any bankruptcy debt in respect of rent.

[F269](11) . . . . . .

Textual Amendments

F255 Words in s. 347(1) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 14 para. 44(2)** (with s. 89); S.I. 2014/768, art. 2(1)(b)

F256 Words in s. 347(1) inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 14(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F257 Words in s. 347(2) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 14 para. 44(3)(a)** (with s. 89); S.I. 2014/768, art. 2(1)(b)

F258 Words in s. 347(2) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 40(2)(a)**; S.I. 2016/191, art. 2 (with art. 3)

F259 Words in s. 347(2) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 40(2)(b)**; S.I. 2016/191, art. 2 (with art. 3)

F260 Word in s. 347(2) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 14 para. 44(3)(b)** (with s. 89); S.I. 2014/768, art. 2(1)(b)

F261 Words in s. 347(2)(c) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 14 para. 44(3)(c)** (with s. 89); S.I. 2014/768, art. 2(1)(b)

F262 S. 347(3)(3A) substituted for s. 347(3) (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), **Sch. 8 para. 33(1)(a)**

F263 Word in s. 347(3) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 40(3)**; S.I. 2016/191, art. 2 (with art. 3)

F264 Word in s. 347(4) substituted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), **Sch. 8 para. 33(1)(b)**

F265 Words in s. 347(5) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 14 para. 44(4)** (with s. 89); S.I. 2014/768, art. 2(1)(b)

F266 S. 347(6) repealed (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 14 para. 44(5), **Sch. 23 Pt. 4** (with s. 89); S.I. 2014/768, art. 2(1)(b)

F267 S. 347(7) repealed (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 14 para. 44(5), **Sch. 23 Pt. 4** (with s. 89); S.I. 2014/768, art. 2(1)(b)

F268 Words in s. 347(8) inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 14(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F269 S. 347(11) repealed (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 14 para. 44(6), **Sch. 23 Pt. 4** (with s. 89); S.I. 2014/768, art. 2(1)(b)

348 Apprenticeships, etc.

(1) This section applies where—

(a) a bankruptcy order is made in respect of an individual to whom another individual was an apprentice or articled clerk at the time when the **[**[F270]application for the order was made or (as the case may be) the petition for the order**]** was presented, and

(b) the bankrupt or the apprentice or clerk gives notice to the trustee terminating the apprenticeship or articles.

(2) Subject to subsection (6) below, the indenture of apprenticeship or, as the case may be, the articles of agreement shall be discharged with effect from the commencement of the bankruptcy.

(3) If any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on an application made by or on behalf of the apprentice or clerk, pay such sum to the apprentice or clerk as to the trustee thinks reasonable, having regard to—

(a) the amount of the fee,

(b) the proportion of the period in respect of which the fee was paid that has been served by the apprentice or clerk before the commencement of the bankruptcy, and

(c) the other circumstances of the case.

(4) The power of the trustee to make a payment under subsection (3) has priority over his obligation to distribute the bankrupt's estate.

(5) Instead of making a payment under subsection (3), the trustee may, if it appears to him expedient to do so on an application made by or on behalf of the apprentice or clerk, transfer the indenture or articles to a person other than the bankrupt.

(6) Where a transfer is made under subsection (5), subsection (2) has effect only as between the apprentice or clerk and the bankrupt.

Textual Amendments

F270 Words in s. 348(1)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 41**; S.I. 2016/191, art. 2 (with art. 3)

349 Unenforceability of liens on books, etc.

(1) Subject as follows, a lien or other right to retain possession of any of the books, papers or other records of a bankrupt is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the official receiver or the trustee of the bankrupt's estate.

(2) Subsection (1) does not apply to a lien on documents which give a title to property and are held as such.

Modifications etc. (not altering text)

C157 Ss. 349, 350(1)(2)(4)–(6) applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

[F271 349A Arbitration agreements to which bankrupt is party.

(1) This section applies where a bankrupt had become party to a contract containing an arbitration agreement before the commencement of his bankruptcy.

(2) If the trustee in bankruptcy adopts the contract, the arbitration agreement is enforceable by or against the trustee in relation to matters arising from or connected with the contract.

(3) If the trustee in bankruptcy does not adopt the contract and a matter to which the arbitration agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings—

(a) the trustee with the consent of the creditors' committee, or

(b) any other party to the agreement,

may apply to the court which may, if it thinks fit in all the circumstances of the case, order that the matter be referred to arbitration in accordance with the arbitration agreement.

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) In this section—

"arbitration agreement" has the same meaning as in Part I of the Arbitration Act 1996; and

"the court" means the court which has jurisdiction in the bankruptcy proceedings.**]**

Textual Amendments

F271 S. 349A inserted (31.1.1997) by 1996 c. 23, s. 107(1), **Sch. 3 para. 46** (with s. 81(2)); S.I. 1996/3146, art. 2, **Sch. 1** (with transitional provisions in Sch. 2)

CHAPTER VI

BANKRUPTCY OFFENCES

Preliminary

350 Scheme of this Chapter.

(1) Subject to section 360(3) below, this Chapter applies **[**[F272]—

(a) where an adjudicator has made a bankruptcy order as a result of a bankruptcy application, or

(b)**]** where the court has made a bankruptcy order on a bankruptcy petition.

(2) This Chapter applies whether or not the bankruptcy order is annulled, but proceedings for an offence under this Chapter shall not be instituted after the annulment.

(3) Without prejudice to his liability in respect of a subsequent bankruptcy, the bankrupt is not guilty of an offence under this Chapter in respect of anything done after his discharge; but nothing in this Group of Parts prevents the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.

[[F273](3A) Subsection (3) is without prejudice to any provision of this Chapter which applies to a person in respect of whom a bankruptcy restrictions order is in force.**]**

(4) It is not a defence in proceedings for an offence under this Chapter that anything relied on, in whole or in part, as constituting that offence was done outside England and Wales.

(5) Proceedings for an offence under this Chapter or under the rules shall not be instituted except by the Secretary of State or by or with the consent of the Director of Public Prosecutions.

(6) A person guilty of any offence under this Chapter is liable to imprisonment or a fine, or both.

Textual Amendments

F272 Words in s. 350(1) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 42**; S.I. 2016/191, art. 2 (with art. 3)

F273 S. 350(3A) inserted (1.4.2004) by 2002 c. 40, ss. 257(3), 279, Sch. 21 para. 2 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C158 Ss. 349, 350(1)(2)(4)-(6) applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

351 Definitions.

In the following provisions of this Chapter—

(a) references to property comprised in the bankrupt's estate or to property possession of which is required to be delivered up to the official receiver or the trustee of the bankrupt's estate include any property which would be such property if a notice in respect of it were given under section 307 (after-acquired property) **[**[F274], section 308**]** (personal property and effects of bankrupt having more than replacement value) **[**[F275]or section 308A (vesting in trustee of certain tenancies)**]**;

(b) "the initial period" means the period between the **[**[F276]making of the bankruptcy application or (as the case may be) the**]** presentation of the bankruptcy petition and the commencement of the bankruptcy; [F277]...

[F277](c) . . . . . .

Textual Amendments

F274 Words substituted by Housing Act 1988 (c. 50, SIF 61, 75:1), s. 140(1), **Sch. 17 Pt. I para. 75**

F275 Words inserted by Housing Act 1988 (c. 50, SIF 61, 75:1), s. 140(1), **Sch. 17 Pt. I para. 75**

F276 Words in s. 351(b) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 43(2)**; S.I. 2016/191, art. 2 (with art. 3)

F277 S. 351(c) and word omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 43(3)**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C159 S. 351 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

352 Defence of innocent intention.

Where in the case of an offence under any provision of this Chapter it is stated that this section applies, a person is not guilty of the offence if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

Wrongdoing by the bankrupt before and after bankruptcy

353 Non-disclosure.

(1) The bankrupt is guilty of an offence if—

(a) he does not to the best of his knowledge and belief disclose all the property comprised in his estate to the official receiver or the trustee, or

(b) he does not inform the official receiver or the trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of.

(2) Subsection (1)(b) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.

(3) Section 352 applies to this offence.

354 Concealment of property.

(1) The bankrupt is guilty of an offence if—

(a) he does not deliver up possession to the official receiver or trustee, or as the official receiver or trustee may direct, of such part of the property comprised in his estate as is in his possession or under his control and possession of which he is required by law so to deliver up,

(b) he conceals any debt due to or from him or conceals any property the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the official receiver or trustee, or

(c) in the 12 months before **[**[F278]the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy**]** petition, or in the initial period, he did anything which would have been an offence under paragraph (b) above if the bankruptcy order had been made immediately before he did it.

Section 352 applies to this offence.

(2) The bankrupt is guilty of an offence if he removes, or in the initial period removed, any property the value of which was not less than the prescribed amount and possession of which he has or would have been required to deliver up to the official receiver or the trustee.

Section 352 applies to this offence.

(3) The bankrupt is guilty of an offence if he without reasonable excuse fails, on being required to do so by the official receiver **[**[F279], the trustee**]** or the court—

(a) to account for the loss of any substantial part of his property incurred in the 12 months before **[**[F280]the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy**]** petition or in the initial period, or

(b) to give a satisfactory explanation of the manner in which such a loss was incurred.

Textual Amendments

F278 Words in s. 354(1)(c) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 44(2)**; S.I. 2016/191, art. 2 (with art. 3)

F279 Words in s. 354(3) inserted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 12 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F280 Words in s. 354(3)(a) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 44(3)**; S.I. 2016/191, art. 2 (with art. 3)

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

355 Concealment of books and papers; falsification.

(1) The bankrupt is guilty of an offence if he does not deliver up possession to the official receiver or the trustee, or as the official receiver or trustee may direct, of all books, papers and other records of which he has possession or control and which relate to his estate or his affairs.

Section 352 applies to this offence.

(2) The bankrupt is guilty of an offence if—

(a) he prevents, or in the initial period prevented, the production of any books, papers or records relating to his estate or affairs;

(b) he conceals destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his estate or affairs;

(c) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his estate or affairs; or

(d) in the 12 months before **[**[F281]the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy**]** petition, or in the initial period, he did anything which would have been an offence under paragraph (b) or (c) above if the bankruptcy order had been made before he did it.

Section 352 applies to this offence.

(3) The bankrupt is guilty of an offence if—

(a) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his estate or affairs, or

(b) in the 12 months before **[**[F282]the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy**]** petition, or in the initial period, he did anything which would have been an offence under paragraph (a) if the bankruptcy order had been made before he did it.

Section 352 applies to this offence.

[[F283](4) In their application to a trading record subsections (2)(d) and (3)(b) shall have effect as if the reference to 12 months were a reference to two years.

(5) In subsection (4) "trading record" means a book, document or record which shows or explains the transactions or financial position of a person's business, including—

(a) a periodic record of cash paid and received,

(b) a statement of periodic stock-taking, and

(c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.**]**

Textual Amendments

F281 Words in s. 355(2)(d) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 45(2)**; S.I. 2016/191, art. 2 (with art. 3)

F282 Words in s. 355(3)(b) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 45(3)**; S.I. 2016/191, art. 2 (with art. 3)

F283 S. 355(4)(5) added (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 13 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

356 False statements.

(1) The bankrupt is guilty of an offence if he makes or has made any material omission in any statement made under any provision in this Group of Parts and relating to his affairs.

Section 352 applies to this offence.

(2) The bankrupt is guilty of an offence if—

(a) knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails to inform the trustee as soon as practicable; or

(b) he attempts to account for any part of his property by fictitious losses or expenses; or

(c) **[**[F284]in connection with any creditors' decision procedure or deemed consent procedure**]** in the 12 months before **[**[F285]the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy**]** petition or (whether or not **[**[F286]in connection with such a procedure**]**) at any time in the intial period, he did anything which would have been an offence under paragraph (b) if the bankruptcy order had been made before he did it; or

(d) he is, or at any time has been, guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

Textual Amendments

F284 Words in s. 356(2)(c) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 85(a)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

F285 Words in s. 356(2)(c) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 46**; S.I. 2016/191, art. 2 (with art. 3)

F286 Words in s. 356(2)(c) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 85(b)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

Modifications etc. (not altering text)

C160 S. 356(2)(d) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 25**

357 Fraudulent disposal of property.

(1) The bankrupt is guilty of an offence if he makes or causes to be made, or has in the period of 5 years ending with the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on,his property.

Section 352 applies to this offence.

(2) The reference to making a transfer of or charge on any property includes causing or conniving at the levying of any execution against that property.

(3) The bankrupt is guilty of an offence if he conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his

property after, or within 2 months before, the date on which a judgment or order for the payment of money has been obtained against him, being a judgment or order which was not satisfied before the commencement of the bankruptcy.

Section 352 applies to this offence.

358 Absconding.

The bankrupt is guilty of an offence if—

(a) he leaves, or attempts or makes preparations to leave, England and Wales with any property the value of whichis not less than the prescribed amount and possession of which he is required to deliver up to the official receiver or the trustee, or

(b) in the 6 months before **[**[F287]the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy**]** petition, or in the initial period, he did anything which would have been an offence under paragraph (a) if the bankruptcy order had been made immediately before he did it.

Section 352 applies to this offence.

Textual Amendments

F287 Words in s. 358(b) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 47**; S.I. 2016/191, art. 2 (with art. 3)

359 Fraudulent dealing with property obtained on credit.

(1) The bankrupt is guilty of an offence if, in the 12 months before **[**[F288]the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy**]** petition, or in the initial period, he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for.

Section 352 applies to this offence.

(2) A person is guilty of an offence if, in the 12 months before **[**[F289]the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy**]** petition or in the initial period, he acquired or received property from the bankrupt knowing or believing—

(a) that the bankrupt owed money in respect of the property, and

(b) that the bankrupt did not intend, or was unlikely to be able, to pay the money he so owed.

(3) A person is not guilty of an offence under subsection (1) or (2) if the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.

(4) In determining for the purposes of this section whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the property.

(5) In this section references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

Textual Amendments

F288 Words in s. 359(1) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 48(2)**; S.I. 2016/191, art. 2 (with art. 3)

F289 Words in s. 359(2) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 48(3)**; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C161 S. 359(1)(2) applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 2 para. 2(7)(e)**)

360 Obtaining credit; engaging in business.

(1) The bankrupt is guilty of an offence if—

(a) either alone or jointly with any other person, he obtains credit to the extent of the prescribed amount or more without giving the person from whom he obtains it the relevant information about his status; or

(b) he engages (whether directly or indirectly) in any business under a name other than that in which he was **[**[F290]made**]** bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.

(2) The reference to the bankrupt obtaining credit includes the following cases—

(a) where goods are bailed to him under a hire-purchase agreement, or agreed to be sold to him under a conditional sale agreement, and

(b) where he is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) A person whose estate has been sequestrated in Scotland, or who has been adjudged bankrupt in Northern Ireland, is guilty of an offence if, before his discharge, he does anything in England and Wales which would be an offence under subsection (1) if he were an undischarged bankrupt and the sequestration of his estate or the adjudication in Northern Ireland were an adjudication under this Part.

(4) For the purposes of subsection (1)(a), the relevant information about the status of the person in question is the information that he is an undischarged bankrupt or, as the case may be, that his estate has been sequestrated in Scotland and that he has not been discharged.

[[F291](5) This section applies to the bankrupt after discharge while a bankruptcy restrictions order is in force in respect of him.

(6) For the purposes of subsection (1)(a) as it applies by virtue of subsection (5), the relevant information about the status of the person in question is the information that a bankruptcy restrictions order is in force in respect of him.**]**

Textual Amendments

F290 Word in s. 360(1)(b) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 49**; S.I. 2016/191, art. 2 (with art. 3)

F291 S. 360(5)(6) inserted (1.4.2004) by 2002 c. 40, ss. 257(3), 279, Sch. 21 para. 3 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

361 Failure to keep proper accounts of business.

F292 . . . . . .

Textual Amendments

F292 S. 361 repealed (1.4.2004) by 2002 c. 40, ss. 263(a), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

362 Gambling.

F293 . . . . . .

Textual Amendments

F293 S. 362 repealed (1.4.2004) by 2002 c. 40, ss. 263(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

CHAPTER VII

POWERS OF COURT IN BANKRUPTCY

363 General control of court.

(1) Every bankruptcy is under the general control of the court and, subject to the provisions in this Group of Parts, the court has full power to decide all questions of priorities and all other questions, whether of law or fact, arising in any bankruptcy.

(2) Without prejudice to any other provision in this Group of Parts, an undischarged bankrupt or a discharged bankrupt whose estate is still being administered under Chapter IV of this Part shall do all such things as he may be directed to do by the court for the purposes of his bankruptcy or, as the case may be, the administration of that estate.

(3) The official receiver or the trustee of a bankrupt's estate may at any time apply to the court for a direction under subsection (2).

(4) If any person without reasonable excuse fails to comply with any obligation imposed on him by subsection (2), he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which may be subject).

Modifications etc. (not altering text)

C162 Ss.363 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Status: *Point in time view as at 01/12/2020.*
Changes to legislation: *Insolvency Act 1986, Part IX is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

364 Power of arrest.

(1) In the cases specified in the next subsection the court may cause a warrant to be issued to a constable or prescribed officer of the court—

(a) for the arrest of a debtor to whom a **[**[F294]bankruptcy application or a**]** bankruptcy petition relates or of an undischarged bankrupt, or of a discharged bankrupt whose estate is still being administered under Chapter IV of this Part, and

(b) for the seizure of any books, papers, records, money or goods in the possession of a person arrested under the warrant,

and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.

(2) The powers conferred by subsection (1) are exercisable in relation to a debtor or undischarged or discharged bankrupt if, at any time after the **[**[F295]making of the bankruptcy application or the**]** presentation of the bankruptcy petition relating to him or the making of the bankruptcy order against him, it appears to the court—

(a) that there are reasonable grounds for believing that he has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his debts or his appearance to a bankruptcy petition or to avoiding, delaying or disrupting any proceedings in bankruptcy against him or any examination of his affairs, or

(b) that he is about to remove his goods with a view to preventing or delaying possession being taken of them by the official receiver or the trustee of his estate, or

(c) that there are reasonable grounds for believing that he has concealed or destroyed, or is about to conceal or destroy, any of his goods or any books, papers or records which might be of use to his creditors in the course of his bankruptcy or in connection with the administration of his estate, or

(d) that he has, without the leave of the official receiver or the trustee of his estate, removed any goods in his possession which exceed in value such sums as may be prescribed for the purposes of this paragraph or

(e) that he has failed, without reasonable excuse, to attend any examination ordered by the court.

Textual Amendments

F294 Words in s. 364(1)(a) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 50(2)**; S.I. 2016/191, art. 2 (with art. 3)

F295 Words in s. 364(2) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 19 para. 50(3)**; S.I. 2016/191, art. 2 (with art. 3)

365 Seizure of bankrupt's property.

(1) At any time after a bankruptcy order has been made, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, issue a warrant authorising the person to whom it is directed to seize any property comprised in the bankrupt's estate which is, or any books, papers or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of the bankrupt or

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any other person who is required to deliver the property, books, papers or records to the official receiver or trustee.

(2) Any person executing a warrant under this section may, for the purpose of seizing any property comprised in the bankrupt's estate or any books, papers or records relating to the bankrupt's estate or affairs, break open any premises where the bankrupt or anything that may be seized under the warrant is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.

(3) If, after a bankruptcy order has been made, the court is satisfied that any property comprised in the bankrupt's estate is, or any books, papers or records relating to the bankrupt's estate or affairs are, concealed in any premises not belonging to him, it may issue a warrant authorising any constable or prescribed officer of the court to search those premises for the property, books, papers or records.

(4) A warrant under subsection (3) shall not be executed except in the prescribed manner and in accordance with its terms.

Modifications etc. (not altering text)
C163 S. 365 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

366 Inquiry into bankrupt's dealings and property.

(1) At any time after a bankruptcy order has been made the court may, on the application of the official receiver or the trustee of the bankrupt's estate, summon to appear before it—

(a) the bankrupt or the bankrupt's spouse or former spouse **[**[F296]or civil partner or former civil partner**]**,

(b) any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt,

(c) any person appearing to the court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property.

The court may require any such person as is mentioned in paragraph (b) or (c) to submit **[**[F297]a witness statement verified by a statement of truth**]** to the court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.

(2) Without prejudice to section 364, the following applies in a case where—

(a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or

(b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.

(3) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—

(a) for the arrest of that person, and

(b) for the seizure of any books, papers, records, money or goods in that person's possession.

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(4) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other times as the court may order.

Textual Amendments

F296 Words in s. 366(1)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 120**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

F297 Words in s. 366(1) substituted (6.4.2010) by virtue of The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 5(7)**

Modifications etc. (not altering text)

C164 S. 366 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

367 Court's enforcement powers under s. 366.

(1) If it appears to the court, on consideration of any evidence obtained under section 366 or this section, that any person has in his possession any property comprised in the bankrupt's estate, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to deliver the whole or any part of the property to the official receiver or the trustee at such time, in such manner and on such terms as the court thinks fit.

(2) If it appears to the court, on consideration of any evidence obtained under section 366 or this section, that any person is indebted to the bankrupt, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to pay to the official receiver or trustee, at such time and in such manner as the court may direct, the whole or part of the amount due, whether in full discharge of the debt or otherwise as the court thinks fit.

(3) The court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under section 366 shall be examined in any part of the United Kingdom where he may be for the time being, or in any place outside the United Kingdom.

(4) Any person who appears or is brought before the court under section 366 or this section may be examined on oath, either orally or by interrogatories, concerning the bankrupt or the bankrupt's dealings, affairs and property.

Modifications etc. (not altering text)

C165 S. 367 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

368 Provision corresponding to s. 366, where interim receiver appointed.

Sections 366 and 367 apply where an interim receiver has been appointed under section 286 as they apply where a bankruptcy order has been made, as if—

(a) references to the official receiver or the trustee were to the interim receiver, and

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(b) references to the bankrupt and to his estate were (respectively) to the debtor and his property.

Modifications etc. (not altering text)
C166 S. 368, applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

369 Order for production of documents by inland revenue.

(1) For the purposes of an examination under section 290 (public examination of bankrupt) or proceedings under sections 366 to 368, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order an inland revenue official to produce to the court—

(a) any return, account or accounts submitted (whether before or after the commencement of the bankruptcy) by the bankrupt to any inland revenue official,

(b) any assessment or determination made (whether before or after the commencement of the bankruptcy) in relation to the bankrupt by any inland revenue official, or

(c) any correspondence (whether before or after the commencement of the bankruptcy) between the bankrupt and any inland revenue official.

(2) Where the court has made an order under subsection (1) for the purposes of any examination or proceedings, the court may, at any time after the document to which the order relates is produced to it, by order authorised the disclosure of the document, or of any part of its contents, to the official receiver, the trustee of the bankrupt's estate or the bankrupt's creditors.

(3) The court shall not address an order under subsection (1) to an inland revenue official unless it is satisfied that that official is dealing, or has dealt, with the affairs of the bankrupt.

(4) Where any document to which an order under subsection (1) relates is not in the possession of the official to whom the order is addressed, it is the duty of that official to take all reasonable steps to secure possession of it and, if he fails to do so, to report the reasons for his failure to the court.

(5) Where any document to which an order under subsection (1) relates is in the possession of an inland revenue official other than the one to whom the order is addressed, it is the duty of the official in possession of the document, at the request of the official to whom the order is addressed, to deliver it to the official making the request.

(6) In this section "inland revenue official" means any inspector or collector of taxes appointed by the Commissioners of Inland Revenue or any person appointed by the Commissioners to serve in any other capacity.

(7) This section does not apply for the purposes of an examination under sections 366 and 367 which takes places by virtue of section 368 (interim receiver).

Modifications etc. (not altering text)
C167 S. 369 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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370 Power to appoint special manager.

(1) The court may, on an application under this section, appoint any person to be the special manager—

(a) of a bankrupt's estate, or

(b) of the business of an undischarged bankrupt, or

(c) of the property or business of a debtor in whose case **[**[F298]an interim receiver has been appointed**]** under section 286.

(2) An application under this section may be made by the **[**[F299]interim receiver**]** or the trustee of the bankrupt's estate in any case where it appears to the **[**[F299]interim receiver**]** or trustee that the nature of the estate, property or business, or the interests of the creditors generally, require the appointment of another person to manage the estate, property or business.

(3) A special manager appointed under this section has such powers as may be entrusted to him by the court.

(4) The power of the court under subsection (3) to entrust powers to a special manager includes power to direct that any provision in ths Group of Parts that has effect in relation to the official receiver, interim receiver or trustee shall have the like effect in relation to the special manager for the purposes of the carrying out by the special manager of any of the functions of the official receiver, interim receiver or trustee.

(5) A special manager appointed under this section shall—

(a) give such security as may be prescribed,

(b) prepare and keep such accounts as may be prescribed, and

(c) produce those accounts in accordance with the rules to the Secretary of State or to such other persons as may be prescribed.

Textual Amendments

F298 Words in s. 370(1)(c) substituted (6.4.2017) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 14(2)**; S.I. 2016/1016, art. 2(b)

F299 Words in s. 370(2) substituted (6.4.2017) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 14(3)**; S.I. 2016/1016, art. 2(b)

Modifications etc. (not altering text)

C168 S. 370 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

371 Re-direction of bankrupt's letters, etc.

(1) Where a bankruptcy order has been made, the court may from time to time, on the application of the official receiver or the trustee of the bankrupt's estate, order **[**[F300]a postal operator (within the meaning of **[**[F301]Part 3 of the Postal Services Act 2011**])]** to re-direct and send or deliver to the official receiver or trustee or otherwise any postal packet (within the meaning of [M12]**[**[F300]that Act**]**) which would otherwise be sent or delivered by **[**[F300]the operator concerned**]** to the bankrupt at such place or places as may be specified in the order.

(2) An order under this section has effect for such period, not exceeding 3 months, as may be specified in the order.

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Textual Amendments

F300 Words in s. 371 substituted (26.3.2001) by 2000 c. 26, s. 127(4), **Sch. 8 Pt. II para. 20**; S.I. 2001/1148, art. 2, **Sch.** (subject to arts. 3-42)

F301 Words in s. 371(1) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 91, 93(2)(3), **Sch. 12 para. 125**; S.I. 2011/2329, **art. 3** (with arts. 4, 5)

Modifications etc. (not altering text)

C169 S. 371 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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