



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IX

#### BANKRUPTCY

#### CHAPTER I

[<sup>F1</sup>THE COURT: BANKRUPTCY PETITIONS AND BANKRUPTCY ORDERS]

#### *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.
- [<sup>F1</sup>(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.]

*Status: Point in time view as at 24/03/2022.*

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- (4) “The bankruptcy level” is [<sup>F2</sup>£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

- F1** S. 267(3) repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**
- F2** 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)

- C1** 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))
- C2** S. 267 modified by S.I. 1989/1058, **reg. 18(1)**
- C3** S. 267 modified by S.I. 1989/438, **reg. 43(1)**
- C4** S. 267 power to amend conferred by Local Government Finance Act 1988 (c. 41, SIF 81:1), s. 22, **Sch. 4 para. 9(1)**
- C5** S. 267 modified (6.4.2010) by The Community Infrastructure Levy Regulations 2010 (S.I. 2010/948), **reg. 105(1)**
- C6** 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
  - (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,

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- (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)**

- C7** S. 268 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 7(b)**
- C8** S. 268 excluded in part (24.3.2022 to be regarded as having come into force on 10.11.2021) by **Commercial Rent (Coronavirus) Act 2022 (c. 12), s. 31(4), Sch. 3 para. 2** (with s. 30)

**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)**

- C9** 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.

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- (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)**

- C10** 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](#))
- C11** 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\(2\)\(3\)\(d\)](#))

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