



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IX

#### BANKRUPTCY

#### [<sup>F1</sup>][<sup>F2</sup>][<sup>F3</sup>][<sup>F4</sup>][<sup>F5</sup>CHAPTER V

#### EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS TRANSACTIONS, ETC.

#### [<sup>F1</sup>][<sup>F2</sup>][<sup>F3</sup>][<sup>F4</sup>][<sup>F5</sup> *Rights of occupation*

#### Textual Amendments

- F1** 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)
- F2** 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
- F3** 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
- F4** 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**
- F5** 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.

#### 336 **Rights of occupation etc. of bankrupt's spouse [<sup>F6</sup>or civil partner].**

- (1) Nothing occurring in the initial period of the bankruptcy (that is to say, the period beginning with the day of the [<sup>F7</sup>making 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 [<sup>F8</sup>][<sup>F9</sup>home

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rights] under Part IV of the Family Law Act 1996] in relation to a dwelling house comprised in the bankrupt's estate.

- (2) Where [<sup>F10</sup>a spouse's or civil partner's home rights][<sup>F11</sup>under the Act of 1996] are a charge on the estate or interest of the other spouse [<sup>F12</sup>or civil partner], or of trustees for the other spouse [<sup>F12</sup>or civil partner], and the other spouse [<sup>F12</sup>or civil partner] is [<sup>F13</sup>made] bankrupt—
- (a) the charge continues to subsist notwithstanding the bankruptcy and, subject to the provisions of that Act, binds the trustee of the bankrupt's estate and persons deriving title under the trustee, and
  - (b) any application for an order [<sup>F14</sup>under section 33 of that Act] shall be made to the court having jurisdiction in relation to the bankruptcy.
- <sup>F15</sup>(3) . . . . .
- (4) On such an application as is mentioned in subsection (2) <sup>F16</sup>. . . the court shall make such order under [<sup>F17</sup>section 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 [<sup>F18</sup>or 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 [<sup>F18</sup>or civil partner or former civil partner],
  - (d) the needs of any children, and
  - (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

- F6** 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
- F7** 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)
- F8** 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)**
- F9** 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
- F10** 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
- F11** 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)**
- F12** 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
- F13** 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)
- F14** 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)**
- F15** 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**

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- F16** 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**
- F17** 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)**
- F18** 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 <sup>F19</sup>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 <sup>F20</sup>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 <sup>F21</sup>spouse or civil partner (if any) has home rights]<sup>F22</sup>under Part IV of the Family Law Act 1996]—
- (a) the bankrupt has the following 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.
- <sup>F23</sup>(3) The Act of 1996 has effect, with the necessary modifications, as if—
- (a) the rights conferred by paragraph (a) of subsection (2) were <sup>F24</sup>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 <sup>F25</sup>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 <sup>F26</sup>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 <sup>F26</sup>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.

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#### Textual Amendments

- F19** 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)
- F20** 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)
- F21** 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
- F22** 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\(1\)\(b\)](#)
- F23** 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\(1\)\(b\)](#)
- F24** 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
- F25** 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
- F26** 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 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.]]]]]

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