



Insolvency Act 1985

1985 CHAPTER 65

PART III

INDIVIDUAL INSOLVENCY

CHAPTER II

BANKRUPTCY ORDERS

Preliminary

119 Preliminary

- (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 ;
 - (b) by the individual himself ;
 - (c) by the supervisor of, or any person (other than the individual) who is for the time being bound by, a composition or scheme proposed by the individual and approved under Chapter I of this Part; 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 Powers of Criminal Courts Act 1973 ;
- and, subject to those provisions, the court may make a bankruptcy order on any such petition.
- (2) A bankruptcy petition shall not be presented to the court under subsection (1)(a) or (b) above unless the debtor—
- (a) is domiciled in England and Wales ;
 - (b) is personally present in England and Wales on the day on which the petition is presented ; or

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- (c) at any time in the period of three years ending with that day—
 - (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)(c) above to an individual's carrying on business includes a reference to the carrying on of business by a firm or partnership of which the individual is a member and a reference to the carrying on of business by an agent or manager for the individual or for such a firm or partnership.
- (4) 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 subsection (1) above, the petition shall be treated for the purposes of this Part as a petition under such one of those paragraphs as may be specified in the petition.
- (5) A bankruptcy petition shall not be withdrawn without the leave of the court.
- (6) The court shall have 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 bankruptcy petition, it may do so on such terms and conditions as it thinks fit.
- (7) Without prejudice to subsection (6) above, where a petition under paragraph (a), (b) or (c) of subsection (1) above 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.

Creditor's petition

120 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 subsections (3) to (6) below, 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 demand served for the purposes of subsection (3)(a) or (4) below in respect of the debt or any of the debts.
- (3) For the purposes of subsection (2)(c) above the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—

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- (a) the petitioning creditor to whom the debt is owed has served on the debtor a 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 three 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.
- (4) For the purposes of subsection (2)(c) above 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 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 three 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.
- (5) 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;
- and in a case falling within paragraph (b) above the secured and unsecured parts of the debt shall be treated for the purposes of this section as separate debts.
- (6) In the case of a creditor's petition presented wholly or partly in respect of a debt which is the subject of such a demand as is mentioned in subsection (3) (a) or (4) above, the petition may be presented before the end of the three week period so 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,
- (7) A debt shall not be regarded for the purposes of this section as a debt for a liquidated sum by reason only that the amount of the debt is specified in a criminal bankruptcy order.
- (8) In this section " the bankruptcy level" means £750; but the Secretary of State may by order made by 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.
- (9) An order shall not be made under subsection (8) above unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

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121 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 a creditor's petition contains such a statement as is required by section 120(6) above, the court shall not make a bankruptcy order until at least three weeks have elapsed since the service of any demand required by virtue of section 120(3)(a) or (4) above.
- (3) The court may dismiss a creditor's 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 shall 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 this section or section 120 above shall prejudice 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 this section or that section had been done only by or in relation to the remaining creditors or debts.

Debtor's petition

122 Debtor's petition

- (1) A debtor's petition may be presented to the court only on the grounds that the debtor is unable to pay his debts.
- (2) A debtor's petition shall be accompanied by a statement of the debtor's affairs containing—
 - (a) such particulars of the debtor'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.

123 Proceedings on debtor's petition

- (1) Subject to subsection (5) below, on the hearing of a debtor's petition the court shall not make a bankruptcy order if it appears to the court—

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- (a) that if a bankruptcy order were made the aggregate amount of the bankruptcy debts so far as unsecured would be less than the small bankruptcies level;
 - (b) that if a bankruptcy order were made the value of the bankrupt's estate would be equal to or more than the minimum amount;
 - (c) that within the period of five years ending with the presentation of the petition the debtor has neither been adjudged bankrupt nor made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs; and
 - (d) that it would be appropriate to appoint a person to prepare a report under subsection (3) below.
- (2) Where, on the hearing of a debtor's petition, it appears to the court as mentioned in subsection (1)(a) to (d) above, the court shall appoint a person who is qualified to act as an insolvency practitioner in relation to the debtor to prepare a report under subsection (3) below and, subject to section 115(3) above, to act in relation to any composition or scheme to which the report relates either as trustee or otherwise for the purpose of supervising its implementation.
- (3) A person appointed under subsection (2) above shall inquire into the debtor's affairs and, within such period as the court may direct, shall submit a report to the court stating whether the debtor is willing, for the purposes of Chapter I of this Part, to make a proposal for a composition in satisfaction of his debts or for a scheme of arrangement of his affairs.
- (4) A report under subsection (3) above which states that the debtor is willing to make a proposal for the purposes of Chapter I of this Part shall also state—
 - (a) whether, in the opinion of the person making the report, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal; and
 - (b) if in that person's opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.
- (5) On considering a report under subsection (3) above the court may—
 - (a) make an order under section 112 above ; or
 - (b) if it thinks it would be inappropriate to make an order under that section, make a bankruptcy order.
- (6) Where—
 - (a) the court makes a bankruptcy order in a case in which it appears to the court as mentioned in paragraphs (a) and (c) of subsection (1) above (whether it makes the order because it does not appear to the court as mentioned in paragraph (b) or
 - (a) of that subsection or it makes it under subsection (5) (b) above); and
 - (b) it appears to the court appropriate to do so,the court shall issue a certificate for the summary administration of the bankrupt's estate.
- (7) The court may at any time revoke a certificate issued under subsection (6) above if it appears to the court that, on any grounds existing at the time the certificate was issued, the certificate ought not to have been issued.
- (8) In this section " the minimum amount" and " the small bankruptcies level" mean such amounts as may for the time being be prescribed for the purposes of this section.

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Petition for default in connection with voluntary arrangement

124 Petition for default in connection with voluntary arrangement

- (1) The court shall not make a bankruptcy order on a petition under section 119(1)(c) above unless it is satisfied—
 - (a) that the debtor has failed to comply with his obligations under the composition or scheme in question ;
 - (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 Chapter I of this Part to any person ; or
 - (ii) was otherwise made available by the debtor to his creditors at or in connection with a meeting summoned under that Chapter ; or
 - (c) that the debtor has failed to do all such things as may for the purposes of the composition or scheme have been reasonably required of him by the supervisor of the composition or scheme.
- (2) Where a bankruptcy order is made on a petition under section 119(1)(c) above, any expenses properly incurred as expenses of the administration of the composition or scheme in question shall be a first charge on the bankrupt's estate.

Petition based on criminal bankruptcy order

125 Petition based on criminal bankruptcy order

- (1) Subject to subsection (6) of section 119 above, the court shall make a bankruptcy order on a petition under subsection (1)(d) of that section on production of a copy of the criminal bankruptcy order on which the petition is based, unless it appears to the court that the criminal bankruptcy order has been rescinded in consequence of an 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 shall not affect any proceedings on a petition under section 119(1)(d) above 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 twenty eight 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 thereof, until the determination of the appeal and thereafter for so long as an appeal to the House of Lords is pending within the meaning of section 40(5) of the Powers of Criminal Courts Act 1973.

Duration of bankruptcy

126 Period of bankruptcy

- (1) The bankruptcy of an individual against whom a bankruptcy order has been made—
 - (a) shall commence with the day on which that order is made; and

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- (b) shall continue until that individual is discharged from bankruptcy under this Chapter.
- (2) Subject to subsection (4) below, a bankrupt is discharged from bankruptcy—
 - (a) in the case of an individual who was adjudged bankrupt on a petition under section 119(1)(d) above or who had been an undischarged bankrupt at any time in the period of fifteen years ending with the commencement of the bankruptcy, by an order of the court under section 127 below ; and
 - (b) in any other case, by the expiration of the relevant period.
- (3) Subject to subsection (4) below, the relevant period for the purposes of subsection (2) (b) above is—
 - (a) where a certificate for the summary administration of the bankrupt's estate has been issued and is not revoked before the bankrupt's discharge, the period of two years beginning with the commencement of the bankruptcy; and
 - (b) in any other case, the period of three years beginning with the commencement of the bankruptcy.
- (4) Where the court is satisfied on the application of the official receiver that an undischarged bankrupt in relation to whom subsection (2)(b) above applies has failed or is failing to comply with any of his obligations under this Part, the court may order that the relevant period shall cease to run 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.
- (5) This section is without prejudice to any power of the court to annul a bankruptcy order.

127 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 section 126(2)(a) above may be made by the bankrupt at any time after the end of the period of five years beginning with the commencement of the bankruptcy.
- (2) On an application under this section the court may—
 - (a) refuse to discharge the bankrupt from bankruptcy;
 - (b) make an order discharging him from bankruptcy absolutely ; or
 - (c) make an order discharging him from bankruptcy 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;

and the court may provide for an order falling within paragraph (b) or (c) above 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.

128 Effect of discharge

- (1) Subject to subsections (2) to (6) below, where a bankrupt is discharged from his bankruptcy, the discharge shall release him from all the bankruptcy debts but shall have no effect on the functions (so far as they remain to be carried out) of the trustee of his estate or on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part and, in particular, shall not affect the right of any creditor

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of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released.

- (2) Discharge from bankruptcy shall 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 from bankruptcy shall not release a 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 from bankruptcy shall not release a 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 any enactment relating to the public revenue or of a recognisance, with the consent of the Treasury.
- (5) Discharge from bankruptcy shall not, except to such extent and on such conditions as the court may direct, release a 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, being damages in respect of personal injuries to any person; or
 - (b) arises under any order made in family proceedings or in domestic proceedings.
- (6) Discharge from bankruptcy shall not release a bankrupt from such other bankruptcy debts, not being debts provable in his bankruptcy, as are prescribed.
- (7) Discharge from bankruptcy shall 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—
 - " domestic proceedings " means domestic proceedings within the meaning of the Magistrates' Courts Act 1980 and any proceedings which would be such proceedings but for section 65(1)(ii) of that Act (proceedings for variation of order for periodical payments);
 - " family proceedings " has the same meaning as in Part V of the Matrimonial and Family Proceedings Act 1984 ;
 - " fine " has the same meaning as in the said Act of 1980 ;
 - " personal injuries " includes death and any disease or other impairment of a person's physical or mental condition.

129 Power to annul bankruptcy order in certain cases

- (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), (b) or (c) of subsection (1) of section 119 above if it at any time appears to the court, on an application by the Official Petitioner—

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- (a) that the petition was pending 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 125 above) 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 paragraph (d) of that subsection 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 section 116 above)—
 - (a) any sale or other disposition of property, payment made or other thing duly done under this Part by or under the authority of the official receiver or a trustee of the bankrupt's estate or by the court shall be valid ; but
 - (b) if any of the bankrupt's estate is then vested under this Part, 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) In determining for the purposes of section 126 above whether a person was an undischarged bankrupt at any time, any time when he was a bankrupt by virtue of an order that was subsequently annulled shall be disregarded.