

SCHEDULES

SCHEDULE 9

Section 235.

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

INSOLVENCY PRACTITIONERS

- 1 Where an individual began to act as insolvency practitioner in relation to any person before the coming into force of section 2 of this Act, nothing in subsection (2) or (3) of that section shall prevent that individual from being qualified to act as an insolvency practitioner in relation to that person.

PART II

COMPANY INSOLVENCY ETC

Disqualification etc.

- 2 Where—
- (a) an application is made under section 12 of this Act by virtue of paragraph (a) of subsection (7) of that section ; and
 - (b) the company in question went into liquidation before the coming into force of that section,
- the court shall not make an order under that section unless it could have made a disqualification order under section 300 of the 1985 Act as it had effect immediately before the coming into force of the said section 12.
- 3 An application shall not be made under section 13 of this Act in relation to a report made or information or documents obtained before the coming into force of that section.
- 4 The court shall not make a declaration under section 15 of this Act in any case where the time mentioned in subsection (2) of that section was before the coming into force of that section.
- 5 Section 17 of this Act shall not apply where the relevant company (within the meaning of that section) went into liquidation before the coming into force of that section.

Administration orders

- 6 (1) Where any right to appoint an administrative receiver of a company is conferred by any debentures or floating charge created before the coming into force of Chapter III of Part II of this Act, the conditions precedent to the exercise of that right shall be

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deemed to include the presentation of a petition applying for an administration order to be made in relation to the company.

- (2) In this paragraph " administrative receiver " has the same meaning as in Part II of this Act.

Receivers and managers (England and Wales)

- 7 (1) Subject to sub-paragraph (2) below, where any provision of Chapter IV or VII of Part II of this Act or an amendment specified in paragraphs 15 to 17 of Schedule 6 to this Act comes into force, that provision or amendment shall not apply in relation to any receiver or manager of a company's property who was appointed before the coming into force of that provision or amendment and, in relation to any such receiver or manager who was so appointed, the 1985 Act shall have effect without such of the repeals made by this Act as come into force at the same time as that provision or amendment.
- (2) Sub-paragraph (1) above shall be without prejudice to the power conferred by this Act under which rules under section 106 of this Act may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to the receiver or manager of a company's property notwithstanding that the receiver or manager was appointed before the coming into force of the rules or of the said section 106.

Receivers (Scotland)

- 8 (1) Subject to sub-paragraph (2) below, where any provision of Chapter V or VII of Part II of this Act or any amendment made by paragraphs 18 to 22 of Schedule 6 to this Act comes into force, that provision or amendment shall not apply in relation to any receiver appointed under section 467 of the 1985 Act before the coming into force of that provision or amendment.
- (2) Sub-paragraph (2) above shall be without prejudice to the power conferred by this Act under which rules under section 106 of this Act may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to a receiver appointed under section 467 of the 1985 Act notwithstanding that the receiver was appointed before the coming into force of the rules or of the said section 106.

Winding up etc.

- 9 (1) Subject to sub-paragraphs (2) to (8) and paragraph 10 below, where any provision of Chapter VI or VII of Part II of this Act (except section 88) or any amendment specified in any of paragraphs 23 to 52 of Schedule 6 to this Act comes into force, that provision or amendment shall not apply in relation to any winding up which has commenced or is treated as having commenced before the coming into force of that provision or amendment; and, in relation to any such winding up, the 1985 Act shall have effect without such of the repeals made by this Act as come into force at the same time as that provision or amendment.
- (2) Where a Winding up by the court in England and Wales has commenced or is treated as having commenced before the coming into force of section 66 of this Act, the official receiver or (on appeal from a refusal by the official receiver) the court may, at any time after the coming into force of that section—

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- (a) release any person from an obligation imposed on him by or under section 528 of the 1985 Act (statements of affairs); or
 - (b) extend the period specified in subsection (6) of the said section 528 ;
- and, accordingly, after the coming into force of the said section 66, subsection (6) of the said section 528 shall have effect in relation to a winding up to which this sub-paragraph applies with the omission of the words from " or within " onwards.
- (3) Where a winding up by the court in England and Wales has commenced or is treated as having commenced before the coming into force of section 70 of this Act, the official receiver may at any time when he is liquidator of the company apply to the Secretary of State for the appointment of a person as liquidator in place of the official receiver; and on any such application the Secretary of State shall either make an appointment or decline to make one.
 - (4) Where a winding up by the court in England and Wales has commenced or is treated as having commenced before the coming into force of section 80 of this Act and, at the time of the coming into force of that section, the liquidator of that company has not made an application under section 545 of the 1985 Act (release of liquidators), then—
 - (a) except where the Secretary of State otherwise directs, section 78(1) and (2) and 79(8) of this Act shall apply, and the said section 545 shall not apply, in relation to any liquidator of that company who holds office on or at any time after the day on which the said section 80 comes into force and is not the official receiver ;
 - (b) section 78(3) of this Act shall apply in relation to the carrying out at any time after the coming into force of the said section 80 by any liquidator of the company of any of his functions ; and
 - (c) a liquidator in relation to whom section 79(8) of this Act has effect by virtue of this paragraph shall have his release with effect from the time specified in section 80(4)(d) of this Act.
 - (5) Subsection (6) of section 80 of this Act shall have effect for the purposes of sub-paragraph (4)(c) above as it has effect for the purposes of that section but as if the reference to section 19 of this Act were a reference to section 631 of the 1985 Act.
 - (6) The repeals in Part II of Schedule 10 to this Act of references to a winding up under the supervision of the court shall not affect the operation of the enactments in which the references are contained in relation to any case in which an order under section 606 of that Act was made before the coming into force of section 88 of this Act
 - (7) The preceding provisions of this paragraph shall be without prejudice to the power conferred by this Act under which rules under section 106 of this Act may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to a winding up notwithstanding that the winding up commenced or is treated as having commenced before the coming into force of the rules or of the said section 106.
 - (8) Where a winding up has commenced or is treated as having commenced before the coming into force of sub-paragraph (3) of paragraph 31 of Schedule 6 to this Act, the liquidator may nevertheless employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection; but if he does so employ a solicitor he shall inform the committee of inspection that he has done so.

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Setting aside preferences and other transactions

- 10 (1) Where a provision of Chapter VII of Part II of this Act applies in relation to a winding up or in relation to a case in which an administration order has been made, a preference given, floating charge created or other transaction entered into before the coming into force of that provision shall not be set aside under that provision except to the extent that it could have been set aside under the law in force immediately before the coming into force of that provision, assuming for this purpose that any relevant administration order had been a winding-up order.
- (2) The references in sub-paragraph (1) above to setting aside a preference, floating charge or other transaction include references to the making of any order which varies or reverses any effect of a preference, floating charge or other transaction.

PART III

INDIVIDUAL INSOLVENCY

Bankruptcy: general

- 11 (1) Subject to the following provisions of this Part of this Schedule, the provisions of Part III of this Act shall not apply in relation to any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before the bankruptcy commencement date.
- (2) In relation to any such case as is mentioned in sub-paragraph (1) above, the enactments mentioned in Schedule 8 to this Act (so far as they relate to bankruptcy) and the enactments mentioned in Parts III and IV of Schedule 10 to this Act (so far as they so relate) shall have effect without the amendments and repeals specified in those Schedules.
- (3) Where any subordinate legislation made under any enactment referred to in sub-paragraph (2) above is in force immediately before the bankruptcy commencement date, that subordinate legislation shall continue to have effect on and after that date in relation to any such case as is mentioned in sub-paragraph (1) above.
- 12 (1) In relation to any such case as is mentioned in paragraph 11(1) above the references in any enactment or subordinate legislation to a petition, order or other matter which is provided for under the Bankruptcy Act 1914 and corresponds to a petition, order or other matter provided for under Part III of this Act shall continue on and after the bankruptcy commencement date to have effect as references to the petition, order or matter provided for by the said Act of 1914; but, save as aforesaid, those references shall have effect on and after that date as references to the petition, order or matter provided for by Part III of this Act
- (2) Without prejudice to sub-paragraph (1) above, in determining for the purposes of section 126 of this Act or paragraph 14 below whether any person was an undischarged bankrupt at a time before the bankruptcy commencement date, an adjudication in bankruptcy and an annulment of a bankruptcy under the Bankruptcy Act 1914 shall be taken into account in the same way, respectively, as a bankruptcy order under Part III of this Act and the annulment under section 129 of this Act of such an order.
- 13 Transactions entered into before the bankruptcy commencement date shall have effect on and after that date as if references to acts of bankruptcy in the provisions

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for giving effect to those transactions continued to be references to acts of bankruptcy within the meaning of the Bankruptcy Act 1914, but as if such acts included failure to comply with a demand served under section 120(3) of this Act.

Discharge from old bankruptcy

- 14 (1) Where a person—
- (a) was adjudged bankrupt before the bankruptcy commencement date or is adjudged bankrupt on or after that date on a petition presented before that date ; and
 - (b) that person was not an undischarged bankrupt at any time in the period of fifteen years ending with the adjudication,
- that person shall be deemed (if not previously discharged) to be discharged from his bankruptcy for the purposes of the Bankruptcy Act 1914 at the end of the discharge period.
- (2) Subject to sub-paragraph (3) below, the discharge period for the purposes of this paragraph is—
- (a) in the case of a person adjudged bankrupt before the bankruptcy commencement date, the period of three years beginning with that date ; and
 - (b) in the case of a person who is adjudged bankrupt after that date on a petition presented before that date, the period of three years beginning with the date of the adjudication.
- (3) Where the court exercising jurisdiction in relation to a bankruptcy to which this paragraph applies is satisfied, on the application of the official receiver, that the bankrupt has failed, or is failing, to comply with any of his obligations under the Bankruptcy Act 1914, any rates made under that Act or any such rules as are mentioned in paragraph 22(1) below, the court may order that the discharge 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.

Appointment of trustee by Secretary of State

- 15 Where a person was adjudged bankrupt before the bankruptcy commencement date or is adjudged bankrupt on or after that date on a petition presented before mat date, the official receiver may at any time when he is the trustee of the bankrupt's estate apply to the Secretary of State for the appointment of a person as trustee instead of the official receiver; and on any such application the Secretary of State shall either make an appointment or decline to make one.

Release of trustee in old bankruptcy

- 16 (1) Where a person was adjudged bankrupt before the bankruptcy commencement date or is adjudged bankrupt on or after that date on a petition presented before that date, and (in the former case) at that date the trustee of the bankrupt's estate has not made an application under section 93 of the Bankruptcy Act 1914 (release of trustee), then—
- (a) except where the Secretary of State otherwise directs, sections 145(8), 151 and 168(1) and (2) of this Act shall apply, and the said section 93 shall not apply, in relation to any trustee of the bankrupt's estate who holds office

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on or at any time after the bankruptcy commencement date and is not the official receiver;

- (b) section 168(4) of this Act shall apply in relation to the carrying out at any time after the bankruptcy commencement date by the trustee of the bankrupt's estate of any of his functions ; and
- (c) a trustee in relation to whom section 145(8) of this Act has effect by virtue of this paragraph shall have his release with effect from the time specified in section 146(3)(d) of this Act.

- (2) Subsection (5) of section 146 of this Act shall have effect for the purposes of subparagraph (1)(c) above as it has effect for the purposes of that section.
- (3) In me application of subsection (2) of section 168 of this Act in relation to a case by virtue of this paragraph, the reference in that subsection to section 167(1) of this Act shall have effect as a reference to section 67 of the Bankruptcy Act 1914.

Power to employ solicitor

- 17 Where a person was adjudged bankrupt before the bankruptcy commencement date or is adjudged bankrupt on or after that date on a petition presented before that date, the trustee of that person's estate may employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection; but, if he does so employ a solicitor, he shall inform the committee of inspection that he has done so.

Copyright

- 18 Where a person who is adjudged bankrupt on a petition presented after the bankruptcy commencement date is liable, by virtue of a transaction entered into before that date, to pay royalties or a share of the profits to any person in respect of any copyright or interest in copyright comprised in the bankrupt's estate, section 60 of the Bankruptcy Act 1914 (limitation on trustee's powers in relation to copyright) shall apply in relation to the trustee of that estate as it applies in relation to a trustee in bankruptcy under the said Act of 1914.

Second bankruptcy

- 19 (1) Section 170 of this Act shall apply with the following modifications where the earlier bankruptcy (within the meaning of that section) is a bankruptcy in relation to which the Bankruptcy Act 1914 applies instead of Part III of this Act, that is to say—
 - (a) references to property vested in the existing trustee under section 154(3) of this Act shall have effect as references to such property vested in that trustee as was acquired by or devolved on the bankrupt after the commencement (within the meaning of the said Act of 1914) of the earlier bankruptcy; and
 - (b) references to an order under section 156 of this Act shall have effect as references to an order under section 51 of the said Act of 1914.
- (2) Section 39 of the said Act of 1914 (second bankruptcy) shall not apply where a person who is an undischarged bankrupt under that Act is adjudged bankrupt under this Act.

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Setting aside preferences and other transactions

- 20 (1) A preference given, assignment made or other transaction entered into before the bankruptcy commencement date shall not be set aside under any of sections 174 to 177 of this Act except to the extent that it could have been set aside under the law in force immediately before that date.
- (2) References in sub-paragraph (1) above to setting aside a preference, assignment or other transaction include references to the making of any order which varies or reverses any effect of a preference, assignment or other transaction.

Bankruptcy offences

- 21 (1) Where a bankruptcy order is made under Part III of this Act on or after the bankruptcy commencement date, a person shall not be guilty of an offence under Chapter VII of Part III of this Act in respect of anything done before that date but, notwithstanding the repeal by this Act of the Bankruptcy Act 1914, shall be guilty of an offence under that Act in respect of anything done before that date which would have been an offence under that Act if the making of the bankruptcy order had been the making of a receiving order under that Act.
- (2) Subsection (6) of section 183 of this Act shall apply (instead of sections 157(2), 158(2), 161 and 165 of the Bankruptcy Act 1914) in relation to proceedings for an offence under that Act which are instituted (whether by virtue of sub-paragraph (1) above or otherwise) after the bankruptcy commencement date.

Power to make rules

- 22 (1) The preceding provisions of this Part of this Schedule shall be without prejudice to the power conferred by this Act under which rules under section 207 of this Act may make transitional provision in connection with the coming into force of those rules ; and such provision may apply those rules in relation to a bankruptcy notwithstanding that it arose from a petition presented before either the coming into force of the rules or the bankruptcy commencement date.
- (2) Rules under the said section 207 may provide for such notices served before the bankruptcy commencement date as may be prescribed to be treated for the purposes of Part III of this Act as demands served under section 120(3) of this Act.

The bankruptcy commencement date

- 23 In this Part of this Schedule " the bankruptcy commencement date " means the date appointed under section 236 of this Act for the coming into force of Part III of this Act.

PART IV

MISCELLANEOUS

- 24 (1) A transaction entered into before the coming into force of section 212 of this Act, shall not be set aside under that section except to the extent that it could have been set aside under the law in force immediately before that date.

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- (2) References in sub-paragraph (1) above to setting aside a transaction include references to the making of any order which varies or reverses any effect of a transaction.