These notes refer to the Deregulation Act 2015 (c.20)
which received Royal Assent on 26 March 2015

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 6: Insolvency and company law

Part 5: Bankruptcy

Appointment of insolvency practitioner as interim receiver

580. *Paragraphs 13 and 14* form part of the law of England and Wales only. They will come into force on a day to be appointed by the Secretary of State in a commencement order. Their effect is deregulatory because they will allow a wider choice of individuals to act as an interim receiver. Importantly, that individual could subsequently be appointed as trustee in bankruptcy. An interim receiver is someone appointed to preserve a debtor's assets in the period between the dates that a bankruptcy petition is presented and heard by the court.

581. Both official receivers (who are civil servants) and insolvency practitioners (who operate in the private sector) can act as trustees of bankruptcy estates. Creditors often wish to appoint an insolvency practitioner to act as both interim receiver (where one is appointed) and the subsequent trustee. Except in limited circumstances however, the court may now only appoint the official receiver as interim receiver. The exception is where, a debtor petitions for their own bankruptcy under section 272 of the Insolvency Act 1986, and the court appoints an insolvency practitioner to prepare a report under section 273 of that Act stating whether the debtor is able to make a proposal for a voluntary arrangement. In such a case, the court may appoint the insolvency practitioner who prepared the report as interim receiver.

582. Paragraph 13 amends section 286 of the Insolvency Act 1986 to permit the court to appoint the official receiver or any insolvency practitioner as interim receiver in all circumstances. Paragraph 14 makes consequential amendments to section 370 of that Act to provide that any interim receiver may make an application to the court for the appointment of a "special manager" (someone, usually with specific sector expertise, to assist the interim receiver).

Statement of affairs

583. *Paragraph 15* amends section 288 of the Insolvency Act 1986 and like that section of that Act forms part of the law of England and Wales only. The amendments replace the requirement on every person subject to a bankruptcy order on a creditor's petition to deliver a statement of affairs to the official receiver, with a discretionary power for the official receiver to require a statement of affairs from that person.

584. At present there is a requirement for a statement of affairs to be submitted in every bankruptcy. A debtor who petitions for their own bankruptcy is required to submit a statement of affairs with their petition. Where a creditor petitions the bankrupt person is required to submit a statement of affairs within 21 days of the bankruptcy order, unless either the official receiver or the court releases him from doing so or extend the 21 day

period. Failure to comply with this requirement without reasonable excuse constitutes contempt of court under section 288(4) of the Insolvency Act 1986.

585. In the latter case, the bankrupt person will not usually provide a statement of affairs due to lack of awareness of the requirement. Currently a person made bankrupt on a creditor's petition is only likely to submit a statement of affairs when the official receiver requests it, for example if further investigations are being undertaken. The official receiver often obtains the required information by other means but may not formally release the bankrupt from the requirement.

586. The amendments to section 288 seek to reduce the burden on bankrupt individuals by providing that a statement of affairs is not required in a case where a creditor presented the petition unless requested by the official receiver. This mirrors the position where a company has been wound up by the court (see section 131 of the Insolvency Act 1986).

587. The statement of affairs may be requested by the official receiver at any time until the bankrupt person's discharge from bankruptcy. It must be submitted in a prescribed form and, unless the official receiver or the court extends the period, within 21 days of the official receiver requiring it.

588. Paragraph 15 will come into force on a day to be appointed by the Secretary of State in a commencement order.

After-acquired property of bankrupt

589. *Paragraph 16* amends section 307 of the Insolvency Act 1986 to facilitate banks offering accounts to undischarged bankrupts. There is some uncertainty at present about the way in which section 307 operates in relation to bank accounts and the amendments seek to reduce a burden by removing that uncertainty. Paragraph 16, like section 307, forms part of the law of England and Wales only. It will come into force on a day to be appointed by the Secretary of State in a commencement order.

590. Section 307 allows a trustee in bankruptcy to claim by notice after-acquired property which becomes the property of the bankrupt before they are discharged (usually 12 months after the bankruptcy order was made). Where that property is or becomes money that passes through a bank account, and the trustee is unable to recover it from the bankrupt or ultimate recipient, the trustee may claim against the bank for its loss to the bankruptcy estate. Currently the trustee can consider such a claim as the bank would have been aware of the bankruptcy order.

591. Section 307(4) of the Insolvency Act 1986 prevents the trustee from taking action against certain persons who have dealt with after-acquired property in good faith and without notice of the bankruptcy – namely persons acquiring property for value and bankers entering into transactions. The amendment takes bankers outside the scope of section 307(4) and instead provides protection for them by means of a new subsection (4A) inserted into section 307. The new subsection (4A) prevents a trustee making a claim against a bank in circumstances where the bank has not been served with notice by the trustee specifically regarding the after-acquired property he or she wishes to claim, regardless of whether the bank has notice of the bankruptcy.