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47. Discharge

Discharge from bankruptcy, including suspending a bankrupt's period of discharge in cases of non-cooperation

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General (including automatic discharge)

47.1 Duration of bankruptcy

A bankrupt is automatically discharged from bankruptcy one year from the date of the bankruptcy order except where¹;

a) the official receiver or the trustee applies to the court to suspend the discharge and the court orders that discharge shall be suspended

b) the bankrupt was subject to a criminal bankruptcy order and therefore an application for discharge is required (see Annex A and B); A bankrupt subject to the automatic discharge provisions cannot apply to the court for discharge

1. Section 279

47.2 Second time bankrupts

Where a bankruptcy order is made against an individual on or after 1 April 2004, they are discharged, and a subsequent bankruptcy order is made against them, they will be automatically discharged from the second/subsequent bankruptcy one year from the date of the bankruptcy order.

47.3 Bankruptcy restrictions orders before second time bankrupt is discharged

If the official receiver makes application for a bankruptcy restrictions order (BRO) or accepts a bankruptcy restrictions undertaking (BRU) then the second time bankrupt; will still be discharged one year after the bankruptcy order; however, they will be subject to the restrictions imposed under the terms of the BRO/BRU.

In determining whether an application for a BRO is appropriate, the court will consider whether the bankrupt was an undischarged bankrupt at some time during the period of 6 years prior to the current bankruptcy order. Similarly, in determining whether to accept a BRU the official receiver should have regard to whether the individual was an undischarged bankrupt in the previous 6 years.

A previous failure is not listed in the grounds for a BRO application¹ but is a matter for consideration when making an application. The official receiver cannot therefore make application for a BRO solely as a result of the bankrupt having a previous failure. There needs to have been unfit conduct in respect of the current bankruptcy before an application is made. If, however, it can be shown that a bankrupt has failed to learn from previous mistakes, the court may take this into account when making a BRO and make it for a higher period.

For further information on second or subsequent bankruptcies see chapter 55. For further information on BROs see the Enforcement Investigation Guide

1. Schedule 4A para 2(3)

47.4 Investigation not compulsory

The official receiver is not under a duty to investigate the conduct and affairs of a bankrupt in a case where they consider it unnecessary¹.

47.5 BROs/BRUs and discharge

If the official receiver makes application for a bankruptcy restrictions order (BRO) or accepts a bankruptcy restrictions undertaking (BRU) then the bankrupt will still be discharged one year from the date of the bankruptcy order but will be subject to the restrictions imposed under the terms of the BRO/BRU.

47.6 No application for discharge where bankrupt subject to automatic discharge provisions

A bankrupt subject to the automatic discharge provisions cannot apply to the court for discharge. If they wish to have an earlier release from the disabilities of bankruptcy, their only course of action is to apply to have the bankruptcy order annulled¹.

1. Sections 261, 282(1)(a) & (b) and 263D(3)

47.7 Request by former bankrupt for a certificate of discharge

Where a bankrupt obtains an automatic discharge by expiration of time, no order of discharge is made by the court.

If evidence of discharge is requested by a former bankrupt, whether the request is for a certificate or letter, the debtor should be provided with the telephone number (0300 6780015) or email address for the Insolvency Enquiry Line (IEL) (discharge.queries@insolvency.gov.uk). If the local office receives a written request, it should be forwarded to the IEL inbox as detailed previously.

The IEL will deal with the request with an electronic response where possible. If no email address is provided, the letter will be posted 2nd class. The discharge letter emailed out is a Pdf copy, as this format prevents electronic amendments being made. A copy of the letter will be filed in the case file in Wisdom.

There is no fee payable for a letter or certificate. The IEL will require the following information from the debtor when making their request:

- their full name
- their date of birth
- their National Insurance number

- their postal address at the time of the bankruptcy
- their current postal address
- their current email address

However, the IEL are unable to deal with the following requests:

- where the bankrupt is deceased
- there is no information on ISCIS
- gazetting of a discharge certificate
- where the discharge is still suspended

In the above scenarios, the caller will be referred back to the local office. If the bankruptcy order was made on a creditor's petition, the IEL is unable to issue a certificate of discharge (these should be obtained from the court in which the order was made, for which a fee of £70 is payable). A letter of discharge can still be issued by the IEL.

47.8 Certificate of discharge required from the court

In cases where the bankruptcy order was made on or after 1 April 2004 the official receiver will not usually be required to provide confirmation of the date of discharge to the court. The court file will usually contain sufficient information to enable the court to issue certificates of discharge where appropriate without recourse to the official receiver. Where the bankrupt is subject to a bankruptcy restrictions order/undertaking and the official receiver receives a request from the court, for confirmation of the date of discharge in relation to the issue of a certificate of discharge, the OR should write to the bankrupt using form DISBR. This form reminds the bankrupt that discharge from bankruptcy does not release them from the conduct restrictions imposed by the bankruptcy restrictions order/undertaking, for the period specified within the order/undertaking. The official receiver should also inform the court that such a reminder has been given.

47.9 Individual Insolvency Register

Individual Insolvency Register picks up information from ISCIS and may be accessed on the internet.

An individual will remain on the Individual Insolvency Register for 3 months after the date of discharge. The entry will then be removed¹.

1. Rule 11.17

47.10 Repeal of early discharge

This was introduced with the bankruptcy provisions of the Enterprise Act 2002 which came into force on 1 April 2004.

The Enterprise and Regulatory Reform Act 2013 (specifically s73 Schedule 21 part 3) came into effect on 1 October 2013 and repealed the early discharge provisions introduced by the Enterprise Act 2002; consequently, there is no statute which permits early discharge.

Suspension of discharge

47.11 Suspension of discharge

Where a bankrupt has failed or is failing to comply with the obligations imposed on them by the Act or Rules, particularly where there are any circumstances of non-attendance, obstruction, misinformation, failure to provide required information, delay or other serious misbehaviour on the part of the bankrupt, the official receiver or trustee should consider applying to the court for the running of the automatic discharge period to be suspended¹, thus extending the date of discharge beyond the normal period, pending the bankrupt's full co-operation.

An application for suspension of discharge may be made by the official receiver or the insolvency practitioner trustee. The court shall fix a date and venue for the hearing and give notice to the official receiver, the trustee (other than the official receiver) and the bankrupt².

1. Section 279(3)

2. Rule 10.142(3).

47.12 Effect of suspension of discharge on the limitation period

When considering whether or not to apply for a suspension of discharge, the position of creditors with claims in bankruptcy which are provable, but which are not released upon discharge, may need to be considered by the official receiver.

Discharge does not release the bankrupt from their liability to repay certain creditors, such as those with personal injury claims against the bankrupt, or the appropriate benefits provider, where benefit overpayments were made as a result of benefit fraud on the part of the bankrupt (see chapter 43).

Upon the making of a bankruptcy order section 285 of the Insolvency Act 1986 imposes restrictions on creditors with provable claims, from taking recovery action against the bankrupt without the permission of the court. These creditors are therefore usually restricted from continuing any action to recover sums due until after discharge from bankruptcy has taken place.

However, in the case of *Anglo Manx Group Ltd v Aitken* [2002] BPIR 215, it was held that the limitation period on an action for a debt which is not discharged under section 281, continues to run throughout the bankruptcy period. The overall effect of this judgment being that the actions of the official receiver in obtaining a suspension of discharge may ultimately prevent creditors with claims in bankruptcy which are provable, but which are not released upon discharge, from being able to recover sums due to them (see chapter 43).

47.13 Report to court by official receiver

If the official receiver makes an application for suspension of discharge, it should be accompanied by evidence in support setting out the reasons why it appears that such an order should be made¹. Where there is an insolvency practitioner acting as trustee the official receiver should seek additional information and evidence from the trustee in support of the application.

Copies of the official receiver's report must be sent to any insolvency practitioner trustee appointed and to the bankrupt to reach them at least 21 days before the hearing². A template letter is available on ISCIS 'Docs' tab for serving the report on the bankrupt [LCRTB], and any trustee in office [LCRTR]. A Certificate of Service will need to be completed for each of the parties who have been sent a copy of the official receiver's report. The insolvency practitioner trustee may attend the hearing and make representations in person.

1. Rule 10.142(2)

2. Rule 10.142(4)

47.14 Where an Insolvency Practitioner trustee is in office

It has been agreed with the Association of Business Recovery Professionals (R3) that from 1 January 2012 the official receiver will, in certain circumstances, apply to the court for the suspension of the bankrupt's automatic discharge at the request of an insolvency practitioner (IP) trustee.

Provided that the official receiver is in agreement that an application suspending the bankrupt's automatic discharge ought to be made the official receiver will make the

application where there are no available funds in the insolvent estate and the IP trustee has taken all other appropriate steps to seek the bankrupt's compliance. For the official receiver to make the application to court the IP trustee will need to:

- prepare a witness statement that complies with the requirements of the Insolvency (England and Wales) Rules 2016 setting out the evidence in support of an application to suspend the automatic discharge of the bankrupt¹
- submit the signed and dated witness statement to the official receiver (OR) relevant to the case at least one calendar month before the date of the bankrupt's automatic discharge

Within three business days of the witness statement being received the official receiver will respond to the IP trustee and confirm whether or not they agree that there are sufficient grounds to make the application. If the official receiver does not agree that there are sufficient grounds then the response should summarise why they are not in agreement.

Where the official receiver is in agreement that an order suspending the bankrupt's automatic discharge should be sought the official receiver will make application to court, attend court and present the application. The IP (or an appropriate member of the IP's staff) will attend court to give evidence if so required by the official receiver.

1. Rule 10.142

47.15 Report to court by IP trustee

Where the insolvency practitioner trustee is making the application they may seek supporting information and evidence from the official receiver.

The IP trustee will send a copy of their report to the official receiver to be received at least 21 days before the hearing¹. The official receiver will consider whether there are any additional matters that should be reported to the court. Where there are such matters the official receiver should attend the hearing.

1. Rule 10.142(2) & (5)

47.16 Bankrupt's notice denying or disputing official receiver's/trustee's evidence

The bankrupt may file a notice in court specifying any statements in the official receiver or insolvency practitioner trustee's evidence which they intend to deny or dispute at the hearing¹.

The bankrupt must file such notice no later than 5 days before the hearing¹ and must send copies of it to the official receiver and any insolvency practitioner trustee no later than 3 days before the hearing².

1. Rule 10.142(6)

2. Rule 10.142(7)

47.17 Only conduct in the proceedings relevant

Consideration of an application for suspension¹ should only be influenced by the bankrupt's adverse conduct in the proceedings or with regard to their statutory duty to co-operate with the official receiver² or trustee³ e.g. to deliver up property, notify after-acquired property^{3,4} answer questions, particularly at a public examination etc. or to provide information or to supply co-operation. Certain such matters may also represent an offence for which a prosecution report may be considered (e.g. section 358). However, matters of misconduct which do not directly involve failure to co-operate with the office-holder, such as credit offences under section 360, should not form the basis of an application for the suspension of the running of the discharge period. Such matters, together with adverse matters arising before the bankruptcy, should only be considered with a view to the possible institution of criminal proceedings.

1. Section 279(3),

2. Section 291,

3. Section 333

4. Section 307

47.18 Application is made on adjournment of public examination

The official receiver is not required to submit a report to court¹ when an application to suspend discharge is made orally on a public examination being adjourned², either because of the bankrupt's non-attendance or on other grounds, such as blatant non co-operation, either at the hearing or in the proceedings generally.

In cases where the bankruptcy petition was presented before 6 April 2010 such an application can only be made where a public examination is adjourned generally. For cases where the bankruptcy petition was presented on or after 6 April 2010, an application to suspend the bankrupt's discharge can be made following any adjournment of a public examination and not just when it is adjourned generally.

The bankrupt should be warned in the letter sent reminding them about the public examination (see chapter 20) that an application for the suspension of their discharge may be made if they fails to attend the examination.

1. Rule 10.142(1)

2. Rule 10.104(5)

47.19 Period of suspension

Section 279(3) of the Insolvency Act 1986 provides: On the application of the official receiver or IP trustee of a bankrupt's estate, the court may order that the period specified in section 279(1) shall cease to run until:

- (a) the end of a specified period; or
- (b) the fulfilment of a specified condition

Usually when the official receiver is making the application they would wish to seek suspension of the running of the discharge period for an indeterminate period; however, in *Weir (as trustee in bankruptcy of Claire Elizabeth Hilsdon) v Hilsdon* [2017] EWHV 983 (Ch) the court held that *Mawer v Bland* type orders, where it was held that the suspension period would last until the trustee confirmed that the bankrupt had properly co-operated, are likely to be reserved for only those cases where:

- a) the relevant bankrupts are guilty of significant non co-operation, obstruction or dishonesty; and
- b) the OR or IP trustee is unable, because of the bankrupt's conduct, to state with any confidence at the hearing of the application what specific information is required to constitute full compliance

The Judge went on to state that it was not only in the interests of bankrupts but also in accordance with the Enterprise Act 2002 that a bankrupt should be able to tell with some precision when their discharge will take place, so that they can move on with their financial lives. He went on:

"If the case merits a suspension under section 279(3), a suspension for a fixed period, or until some specifically identified condition has been fulfilled, satisfies that desirable aim."

Neither the act, nor the rules specifies a minimum or maximum period of suspension for the purposes of section 279(3)(a).

Where a bankrupt's conduct has been unsatisfactory but the official receiver forms the opinion that they are genuinely not, and is never likely to be, in a position to provide proper explanations, accounts, etc. the court may feel that a fixed term of suspension is more appropriate. A fixed term may also be appropriate where the bankrupt's non co-operation has caused a considerable amount of extra work for the official receiver (e.g. deliberately misleading information or non-disclosure of assets),

even though subsequent inquiries may have led to the discovery of all relevant facts, so that suspension until proper disclosure by the bankrupt is not a viable proposition.

47.20 Wording of order

The suspension order should either specify a period of time for which the running of the discharge period will be suspended or one or more conditions to be fulfilled before the running of the discharge period can be resumed¹. The undischarged bankrupt should not be put into the position of not knowing what they have to do to reinstate the running of their discharge period, if the suspension is not for a determined period of time.

In cases of complete non co-operation the official receiver should ask for the suspension to apply until such time as the official receiver is of the opinion that the bankrupt has complied with their obligations under section(s) 291 and/or 333, (as evidenced by a report filed by the official receiver). (Mawer v Bland²)

Following judgment in the Weir v Hilsdon³ case the court should always consider whether an order in Mawer v Bland form is really justified on the facts of the case, rather than treating it as the default option. Accordingly, in cases where there has been some cooperation the official receiver must consider tailoring the wording of the suspension order to the particular circumstances of the case. So rather than simply referring to compliance with sections 291 and/or 333, the order would specify what the bankrupt is required to do, or provide, in order for the suspension to be lifted.

1. Section 279(3)

2. Mawer v Bland [2015] BPIR 66

3. Weir v Hilsdon [2017] EWHC 983 (Ch)

47.21 Hearing

The Insolvency (England & Wales) Rules 2016 state that all applications to court must be heard in open court unless the court directs otherwise¹. This brings insolvency proceedings in line with the Civil Procedure Rules (CPR) which also state that the requirement for a hearing to be in public does not require the court to make special arrangements for accommodating members of the public². CPR Part 39 provides guidance as to the circumstances when a court may consider that a hearing should be held in private. See also chapter 10.

1. Rule 12.2(3),

2. Civil Procedure Rules 39.2

47.22 Copies of order

If the court makes an order suspending discharge it must send copies to the official receiver, any trustee who is not the official receiver and the bankrupt.

There have been some cases where the Individual Insolvency Register (see chapter 5) has not been updated following the suspension of discharge where an insolvency practitioner has made the application but the official receiver has not been notified of either the hearing or the order being made. Although the trustee has made the application, rule 10.142(8) provides that it is for the court, not the trustee, to give notice of the hearing to the official receiver. Where the official receiver has not received notification of the hearing and/or order the matter should be taken up with the relevant court manager.

Compliance

47.23 Report to court of bankrupt's compliance

As soon as the official receiver has formed the opinion that the bankrupt has complied with their obligations, they should report that opinion and the date the official receiver formed it to the court. The official receiver may also wish to provide to the court a draft order lifting the suspension of discharge. The official receiver should evidence the sending of the report to the court by completing a Certificate of Service. If the court discharges the order it will issue to the bankrupt a certificate to that effect (see paragraph 47.27).

The submission of a report by the official receiver in cases where the discharge has been suspended under Rule 10.104(5) (upon the adjournment of a public examination) will avoid the need for further attendance at court to conclude the public examination. In cases where the bankruptcy order was made prior to 1 April 2004 and the suspension order was obtained before, or after, 1 April 2004 see Annex A.

Application by bankrupt for lifting of suspension order

47.24 Application by bankrupt

Where an order suspending a discharge period is made and the official receiver has not asked for the suspension of discharge to be lifted, the bankrupt can apply to the court to discharge the order¹. When the court fixes a hearing date for such an application the bankrupt must give at least 28 days notice of it to the official receiver and any trustee appointed, accompanied by a copy of the application².

1. Rule 10.143(1)

2. Rule 10.143(3)

47.25 Official receiver or trustee's evidence

The official receiver and any insolvency practitioner trustee may appear on the bankrupt's application¹. If they wish to they may, either in addition to or instead of appearing, file in court evidence in support of any matters which they consider ought to be drawn to the court's attention². Where there is any continuing lack of co-operation or misconduct on the part of the bankrupt, the official receiver or trustee should file a report and attend the hearing. If the discharge was suspended pending the fulfilment of certain conditions, the court will expect the official receiver or trustee to report as to whether those conditions have been fulfilled.

1. Rule 10.143(4)

2. Rule 10.143(5)

47.26 Copies of report

If a report is filed, copies must be sent by the official receiver to the bankrupt and to any insolvency practitioner trustee not later than 14 days before the hearing¹. The official receiver should evidence the sending of the report to the bankrupt and any Insolvency Practitioner trustee by completing a Certificate of Service, once completed a copy of the Certificate of Service should be filed at court. If the bankrupt intends to dispute any statements in the report they must, not later than 5 business days (in cases where the bankruptcy petition was presented on or after 6 April 2010) or 7 days (in cases where the petition was presented before 6 April 2010) before the hearing, file in court a notice specifying any statements in the official receiver or trustee's report which they intend to deny or dispute².

The bankrupt must send copies of the notice not less than 3 business days³ where the petition was presented on or after 6 April 2010 (4 days where the petition was presented before 6 April 2010) before the date of the hearing to the official receiver and to any insolvency practitioner trustee.

1. Rule 10.143(6)

2. Rule 10.143(8)

3. Rule 10.143(9)

47.27 Certificate of order

If the court discharges the order it will issue a certificate to that effect, indicating the date when the discharge period begins to run again. The court will send a copy of the discharge certificate to the bankrupt, official receiver and to any insolvency practitioner trustee¹.

1. Rule 10.143(10)

Fees

47.28 Fees on applications relating to discharge

The Insolvency Proceedings (Fees) Order 2004 came into force on 1 April 2004 and provides that The Insolvency Fees Order 1986 (as amended) shall be revoked, except in relation to cases where the bankruptcy order was made before 1 April 2004. Consequently in cases where the bankruptcy order was made on or after 1 April 2004, no court fee is payable to the official receiver following any application to court relating to the discharge of a bankrupt where the official receiver attends or makes a report to court. The costs of the official receiver attending court are covered by the new case administration fee.

The Insolvency Proceedings (Fees) Order 2016 revoked The Insolvency Proceedings (Fees) Order 2004, however there is still no court fee payable and costs as detailed above continue to be covered in the new case administration fee for all orders made on or after 1 April 2004.

If there is an application to court in a case where the bankruptcy order was made before 1 April 2004 (see Annex A), the hearing is held on or after 1 April 2004 and the official receiver attends or makes a report to court, there will be no fee payable by the bankrupt as the previous court fee has been abolished following the introduction of the Insolvency Proceeding (Fees) Order 2004.

47.29 No deposit for fees on discharge application

When a bankrupt wishes to apply for their discharge he must give notice of the application to the official receiver. The bankrupt is not required to deposit funds with the official receiver to cover the costs of the application¹. In no case do any costs or expenses relating to a discharge application fall on the Official Receiver personally.

1. Rule 10.160 and 10.164

Post discharge

47.30 Debts not released on discharge

With limited exceptions, on discharge a bankrupt is released from all their bankruptcy debts¹ and those creditors will no longer be their creditors. With regard to the debts from which the bankrupt is or is not released on obtaining their discharge², reference should be made to chapter 43.

1. Section 281

2. Rule 10.146

47.31 Post discharge Individual Voluntary Arrangement

Following their discharge¹ a bankrupt cannot propose an Individual Voluntary Arrangement² in respect of the bankruptcy debts as an application can only be made where the debtor is an undischarged bankrupt or had debts which would enable them to petition for their own bankruptcy³.

1. Section 281(1)

2. Section 253(1)

3. Ravichandran [2004] B.P.I.R. 814

47.32 Gazetting and advertising discharge

A discharged bankrupt is entitled, upon receiving a certificate of discharge, to request that the Secretary of State give notice of the discharge in the Gazette and in the same manner as the bankruptcy order was originally advertised¹ (assuming it

was, in fact, advertised originally). In practice this is dealt with by the official receiver on behalf of the Secretary of State. The request should be in writing addressed to the Secretary of State. The costs of such publication are met from the administration fee. The notice must contain:

- a) the name of the bankrupt
- b) the date of the bankruptcy order
- c) the statement that a certificate of discharge has been delivered to the former bankrupt
- d) the date of the certificate
- e) the date from which the discharge is effective

For cases with petitions presented on or after 6 April 2010, the request should be made by the former bankrupt within 28 days from the date of their certificate of discharge. Requests for gazetting will be referred by the Insolvency Enquiry Line to the local office to deal with.

1. Rule 10.144(5)

47.33 Income payments orders/agreements post discharge

An IPO or IPA may remain in force and be varied after discharge¹. (Further guidance is given in chapter 35)

1. Sections 310 & 310A

47.34 Private examination post discharge

The power of the court to summon the bankrupt to attend for private examination¹ can apply post discharge. (Oakes v Simms [1997] BPIR 499)

1. Section 366

47.35 Court's power to cause warrant of arrest to be issued post discharge

The power of the court to cause an arrest warrant to be issued can extend beyond discharge. (Oakes v Simms [1997] BPIR 499)

47.36 General control of the trustee by the court post discharge

If the bankrupt, any creditor or any other person is dissatisfied by any act, omission or decision of the official receiver they may make application to court. The court may confirm, reverse or modify any act or decision of the trustee or may give them directions or may make such other order as it thinks just¹. The power to make such application extends beyond discharge (*Osborn v Cole* [1999] BPIR 251). In practice such applications rarely succeed (Cork Committee Report, paragraph 779)

1. Section 303

47.37 General control of court post discharge

In *Engel v Peri* [2002] BPIR 961, it was held that an application made under section 363 was valid subsequent to a bankrupt's annulment. It is likely that the power to make such application also extends beyond discharge.

47.38 Duties of bankrupt in relation to trustee post discharge

The bankrupt's duties in relation to the trustee under section 333 to:

- a) give to the trustee such information as to their affairs
- b) attend on the trustee at such times; and
- c) do all such other things

as the trustee may reasonably require for the purposes of carrying out their functions continue to apply after discharge.

Annex A

Transitional provisions on discharge from bankruptcy (under the Enterprise Act 2002 which applies to all cases where the

bankruptcy order was made before 1 April 2004

47.39 When transitional provisions are applicable

The provisions in this Annex should be applied to those cases where the individual had a bankruptcy order made against them before 1 April 2004 and they remained undischarged from the bankruptcy at that date.

If the bankruptcy order was made on or after 1 April 2004 the provisions of section 279 of the Insolvency Act 1986 (as amended by section 256 of the Enterprise Act 2002) should be applied.

Commencement – this term refers to the commencement of the new discharge provisions introduced under section 256 of the Enterprise Act 2002 and the transitional provisions under schedule 19 to that Act on 1 April 2004.

Pre-commencement bankrupt – this term applies where an individual had a bankruptcy order made against them before 1 April 2004 and they remained undischarged from the bankruptcy at that date.

47.40 Duration of bankruptcy - transitional provisions

Prior to the commencement of the new provisions, section 279 of the Insolvency Act 1986 stated that, except where an individual was subject to a criminal bankruptcy order or was a second time bankrupt, a bankrupt would be discharged after the relevant period, as follows:

- 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 2 years beginning with the commencement of the bankruptcy, and
- b) in any other case, the period of 3 years beginning with the commencement of the bankruptcy

Following the commencement of the new provisions on 1 April 2004, the relevant periods above disappeared, except insofar as the period was required for calculating the correct date of discharge under the transitional provisions in paragraph 4 of schedule 19 of the Enterprise Act 2002.

The transitional provisions provide that, subject to the exclusions detailed in the paragraph below, a pre-commencement bankrupt was discharged from bankruptcy at the

a) the end of one year beginning with the commencement (i.e. discharge occurred on 1 April 2005)

b) the end of the relevant period applicable to the bankrupt under section 279(1)(b) of the Insolvency Act 1986 as it had effect immediately before commencement. If the individual's automatic discharge would have occurred before 1 April 2005, discharge would occur on that earlier date

47.41 Exceptions to transitional provisions applying

The provisions detailed in paragraph 47.39 do not apply where the individual is not entitled to an automatic discharge because;

- the court ordered a suspension of discharge prior to 1 April 2004 (see paragraph 47.41)
- an order for suspension of discharge was obtained on application made on or after 1 April 2004 (by either the official receiver or an insolvency practitioner if he is trustee) (see paragraph 47.43)
- a criminal bankruptcy order was made against the individual on a petition presented under section 264 (1)(d) (see paragraph 47.48)

Historically, the provisions did not apply where

- the individual was a second-time bankrupt (see paragraphs 47.46 to 47.47)

47.42 Order suspending discharge obtained prior to 1 April 2004

When a pre-commencement bankrupt is subject to an order suspending their discharge from bankruptcy and the order was obtained prior to 1 April 2004 the order continues to have effect after commencement. The order may be varied or revoked after 1 April 2004 under section 279(3) of the Insolvency Act 1986, as amended¹.

Where the suspension of discharge was lifted before 1 April 2005, the bankrupt would have obtained their discharge on 1 April 2005 at the latest. An earlier discharge date may be applicable to bankrupts who, at the date the order of suspension was imposed, had less than 12 months remaining of their original pre-commencement discharge period. If the balance of time remaining was less than the period from the lifting of the suspension to 1 April 2005, discharge would take effect

at an earlier date when the balance of the original period expired after the suspension was lifted.

Where a pre-commencement bankrupt subsequently cooperates and obtains a lifting of the suspension of discharge at any time after 1 April 2005, the bankrupt will be discharged a maximum of one year after the suspension is lifted. An earlier discharge date is applicable to bankrupts who, at the date the order of suspension was imposed, had less than 12 months remaining of their original discharge period. In those cases, the shorter (remaining) period to discharge is preserved. When the suspension order is lifted, discharge will take effect after the balance of the original period has expired². (See examples 1 and 2 below).

1. Enterprise Act 2002 schedule 19, paragraph 4(2)

2. Enterprise Act 2002 schedule 19, paragraph 4(3)

47.43 Examples - suspension of discharge obtained prior to 1 April 2004

Example 1:

Where suspension of discharge was obtained after 34 months, the relevant period, under section 279(1)(b) of the Insolvency Act 1986 as it had effect immediately prior to commencement, is 2 months. The period to discharge is preserved.

Bankruptcy order: 1 February 2000

Suspension of discharge: 1 December 2002

Lifting of the suspension: 1 June 2008

Discharge date: 1 August 2008

Example 2:

Where suspension of discharge was obtained after 10 months, the relevant period, under section 279(1)(b) of the Insolvency Act 1986 as it had effect immediately prior to commencement, is 26 months and the shorter 12 month period to discharge is therefore applicable.

Bankruptcy order: 1 February 2000

Suspension of discharge: 1 December 2000

Lifting of the suspension: 1 May 2008

Discharge date: 1 May 2009

47.44 Suspension of discharge obtained after 1 April 2004

When a pre-commencement bankrupt is subject to an order suspending their discharge from bankruptcy and that order was obtained on or after 1 April 2004, as at paragraph 47.39 the transitional provisions for discharge do not apply. The appropriate transitional period as set out below should thereafter be used in calculating the date of discharge¹.

Where at 1 April 2004 a pre-commencement bankrupt had less than one year remaining under their original discharge period, a suspension of discharge obtained after 1 April 2004 will suspend the running of this period. When the suspension order is lifted, discharge will take effect after the balance of the original period has expired. (See example 1 below).

Where at 1 April 2004 a pre-commencement bankrupt had more than one year remaining under their original discharge period, the transitional provisions provide that the bankrupt is discharged from bankruptcy after one year. When the suspension order is lifted, discharge will take effect after the balance of the one year period since 1 April 2004 expires. (See example 2 below).

1. Enterprise Act 2002, schedule 19, paragraph 4

47.45 Examples - suspension of discharge obtained after 1 April 2004

Example 1:

Where the relevant period applicable to the bankrupt, under section 279(1)(b) of the Insolvency Act 1986 as it had effect immediately before commencement, is less than one year.

Bankruptcy order: 1 June 2001

Suspension of discharge: 1 May 2004

Lifting of the suspension: 1 January 2008

Discharge date: 1 February 2008

Explanation: at 1 April 2004 there were only two months remaining until discharge, under section 279(1)(b) of the Insolvency Act 1986 as it had effect immediately before commencement, which is less than the alternative transitional provision of one year and it is therefore the appropriate period until discharge.

When the order suspending discharge was obtained on 1 May 2004 one month had already expired since commencement on 1 April 2004, therefore upon lifting of the suspension, only one month remains until discharge.

Example 2:

Where the relevant period applicable to the bankrupt, under section 279(1)(b) of the Insolvency Act 1986 as it had effect immediately before commencement, is more than one year.

Bankruptcy order: 1 December 2003

Suspension of discharge: 1 November 2004

Lifting of the suspension: 1 January 2008

Discharge date: 1 June 2008

Explanation: at 1 April 2004 there were twenty two months remaining until discharge, under section 279(1)(b) of the Insolvency Act 1986 as it had effect immediately before commencement, which is more than the transitional provision of one year. It is therefore appropriate to use the shorter transitional period of one year until discharge.

When the order suspending discharge was obtained on 1 November 2004, seven months had already expired since commencement on 1 April 2004 therefore, upon lifting of the suspension only five months remain until discharge.

47.46 Application to lift suspension of discharge

Where the bankrupt is subject to an order suspending their discharge from bankruptcy, they may apply at any time for the order to be lifted¹.

1. Rule 10.143

47.47 Second time bankrupts - general

Where an individual (who was adjudged bankrupt before 1 April 2004 and remained undischarged on that date) was also an undischarged bankrupt at any time during the 15 years before the second or subsequent bankruptcy order was made, the transitional provisions did not apply. A pre-commencement second time bankrupt who had not been discharged (either absolutely or conditionally) from the second bankruptcy before 1 April 2004 was discharged under the transitional provisions¹;

a) at the end of the period of five years from 1 April 2004, or

b) earlier if the court made an order under section 280 of the Insolvency Act 1986 after 1 April 2004

1. Enterprise Act 2002 schedule 19, paragraph 5

47.48 Second time bankrupts – suspension of discharge period

Under section 279 of the Insolvency Act 1986, as it had effect immediately before commencement, the official receiver was unable to obtain a suspension of discharge against a pre-commencement second time bankrupt. The reason for this was that before commencement, a second time bankrupt was not entitled to an automatic discharge and only received discharge from the second bankruptcy order following an application made under section 280 of the Insolvency Act 1986. In such cases, the official receiver was required to file a report and discharge could be denied where conduct warranted it.

As the transitional provisions introduced automatic discharge for pre-commencement second time bankruptcies¹, the provisions also enabled the official receiver or trustee, in the period between commencement on 1 April 2004 and automatic discharge on 1 April 2009, to apply to the court for an order under section 279(3) to suspend discharge.

1. Enterprise Act 2002 schedule 19, paragraph 5(5)

47.49 Criminal bankruptcy orders

A pre-commencement bankrupt, who was adjudged bankrupt on a petition under section 264(1) (d) of the Act, was not discharged under the transitional provisions. Instead the bankrupt would have to apply to the court for their discharge¹.

The power to make criminal bankruptcy orders was abolished on 3 April 1989, however there are still a few such cases where discharge has not yet been obtained.

1. Enterprise Act 2002 schedule 19 and Section 280

Annex B

Criminal Bankruptcy order: Application for discharge

47.50 Application by bankrupt and official receiver's report

Where a bankrupt is subject to a criminal bankruptcy order, they can apply for discharge under Section 280. Where such an application is made, the official receiver is required to file and serve a report in Court¹ and on the trustee and creditors in compliance with the Rules². Where the bankrupt wishes to dispute the statements in the report, then they must file a notice in Court in accordance with the Rules³.

1. Section 289(3)

2. Rule 10.160

3. Rule 10.161

47.51 Terms of discharge order

The court has discretion to grant an absolute order of discharge or to refuse an order, or to grant an order of discharge subject to certain conditions. While the official receiver's report itself should not suggest in any way the terms on which the discharge should be granted, the official receiver may, if invited by the court to do so, be able to indicate a form of conditional order (beneficial to the creditors)¹. The date of effect, content and delivery of the order are provided for in the Rules². The official receiver or trustee should ensure the bankrupt complies with the order³.

1. Section 280(2)

2. Rule 10.162

3. Section 291(5)