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INSOLVENCY AND THE ENTERPRISE ACT 2002

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Editor



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FOREWORD

Just over 20 years ago, the Report of the Review Committee on Insolvency Law and Practice was published. In Chapter Two of the Report, Sir Kenneth Cork's committee described the historical development of insolvency law (corporate and personal), highlighting the landmark statutes which changed the shape of the statutory schemes for administering insolvent estates. Through a series of recommendations, the Cork Committee concluded that wide-ranging reforms were necessary. The Government implemented many (but by no means all) of those recommendations in the Insolvency Act 1986. In particular, a new raft of insolvency procedures was introduced, including voluntary arrangements, administrations and administrative receiverships. Only 16 years later, we now have Part 10 of the Enterprise Act 2002 which has effected equally radical reforms. It abolishes Crown preferences in all insolvencies. In corporate insolvency, the Act abolishes, for the large part, administrative receiverships and fundamentally recasts administration into the rescue procedure of choice. The personal insolvency reforms introduced by the new Act are more far-reaching than any statute since the Bankruptcy Act 1883. It is a sign of the accelerating rate of change in the modern world that these sweeping reforms should come so soon after the reforms of 1986.

The Bar has been subject to the same rate of change. Twenty years ago there were few, if any, members of the Bar practising outside London who specialised in insolvency. It would have appeared inconceivable that a chambers practising in the regions would establish a presence and reputation in this field the equal to any in London, would make their mark as counsel regularly instructed in reported insolvency cases and would master the expertise and practical experience to produce a book such as this. Guildhall Chambers, under the leadership of Stephen Davies QC, within a period of a few years has achieved all this and more. The production of this book reflects their commitment and their contribution to the law and practice of insolvency.

I commend this book to all practitioners of insolvency, lawyers and accountants alike. The new law in its historical context is fully explained and expounded with clarity. Whether advising a corporate lender as to its appropriate remedy or a bankrupt as to the nature and effect of a bankruptcy restriction order, the practitioner will find that this book provides the insight into the law and guidance which he requires.

The Honourable Mr Justice Lightman
February 2003

PREFACE

There are four points which I would like to make in this Preface.

The first is that the appearance of my name on the front sheet signifies that I was the one who roped in our insolvency team to write this book. Theirs has been the hard work and to them is due the lion's share of the credit.

Secondly, as many before us have no doubt found to their cost, busy practices, growing young families and the demands of a modern set of chambers all conspire against book-writing. In our case, the conspiracy was further assisted by the fact that, instead of the safety and comfort of retrospection, we chose to write about the future – uncharted territory and sweeping reforms. Such an exercise is time-consuming for lawyers like us who are trained only to study and assess the impact of existing law on past acts and events. If there is to be a next time, we will take sabbaticals.

This leads to the third point. It is consoling to think that we have not yet had to consider, still less write about, the next chapter in the modernisation of our insolvency laws. There is a sense that it might be no less sweeping: e-filing, mandatory debt counselling, marshalling of enforcement procedures, super-priority funding, external regulation of the insolvency profession, consumer liens and cram-downs (to name but a few areas of prospective reform).

Lastly, we owe thanks: to our spouses, non-spouses, partners and significant others for tolerating further inroads on family and personal life; to Martin West at Jordans whose intelligent guidance, professionalism and unfaltering optimism kept us on track; and to Robbie Carnegie at Jordans for his bonhomie and attention to detail. Very special thanks are due both to the Insolvency Service and to PricewaterhouseCoopers. As for the Insolvency Service, Stephen Leinster and Mike Norris have been at the very heart of the corporate and personal insolvency reforms respectively and understand them better than anyone. They have answered our every query and even came to visit us in chambers. There is also the Official Receiver in Cardiff, Paul Cropper, who has unwittingly taught us a great deal over the years about the nuts and bolts of the practice of insolvency – thereby arming us with some of the tools with which to understand the new reforms. As for PwC, they kept us abreast of much of the lobbying in Parliament and Tim Hewson went out of his way to assist us. I could not sign off without mentioning Steve Hill of Moon Beever. A mild-mannered and self-effacing man, Steve's long experience of the law and practice of personal insolvency together with his raw intelligence mark him apart and it has been a

privilege to follow the passage of the Bill through Parliament and to discuss the reforms with him.

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TABLE OF CASES

References are to paragraph numbers

- Agnew v Commissioners of Inland Revenue [2001] UKPC 28, [2001] 2 AC 710,
[2001] 3 WLR 454, [2001] 2 BCLC 188, PC 2.19, 3.11, 3.23, 4.1, 5.22, 15.6
- Atlantic Computer Systems plc, Re (1) [1992] Ch 505, [1992] 2 WLR 367,
[1992] 1 All ER 476, CA 11.32, 11.39, 11.40, 11.41
- Axis Genetics plc (in administration)'s Patent, Re. *See* Biosource Technologies
Inc v Axis Genetics plc (in administration)
- Banque Financière de la Cité v Parc (Battersea) Ltd [1999] AC 221, [1998] 2
WLR 475, [1998] 1 All ER 737, HL 5.46
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Axis Genetics plc (in administration)'s Patent, Re [2000] 1 BCLC 286,
[2000] BCC 943, [2000] FSR 448, ChD 11.17
- Boscawen v Bajwa; Abbey National plc v Boscawen [1996] 1 WLR 328, [1995]
4 All ER 769, (1995) 70 P&CR 391, CA 5.46
- Brumark. *See* Agnew v Commissioners of Inland Revenue
- CL Nye Ltd, Re [1971] Ch 442, [1970] 3 WLR 158, [1970] 3 All ER 1061, CA 4.23
- Carter Commercial Developments Ltd, Re [2002] BPIR 1053, ChD 13.30
- Cartwright v Cartwright [2002] EWCA Civ 931, [2002] BPIR 895, [2002] 2
FLR 610, [2002] Fam Law 735, CA 16.28
- Centrebind Ltd, Re, Centrebind v IRC [1967] 1 WLR 377, 110 SJ 905; *sub*
nom Centrebind Ltd, Re [1966] 3 All ER 889, ChD 9.34
- Charnley Davies Ltd, Re [1990] BCLC 760, [1990] BCC 605, (1990) *Financial*
Times, June 15, ChD 4.7, 6.10, 12.19
- Charnley Davies Business Services Ltd, Re (1987) 3 BCC 408, (1988) PCC 1,
ChD 12.22, 13.8, 13.30
- City Logistics Ltd, Re [2002] EWHC 757 (Ch) [2002] 2 BCLC 103, ChD 11.41
- Clark (A Bankrupt), Re, ex parte The Trustee v Texaco [1975] 1 WLR 559; *sub*
nom Clark (A Bankrupt), Re, ex parte Trustee of the Property of The
Bankrupt v Texaco [1975] 1 All ER 453, (1974) 118 SJ 862, ChD 12.4
- Commissioners of Inland Revenue v Goldblatt [1972] Ch 498, [1972] 2 WLR
953, [1972] 2 All ER 202, ChD 3.30
- Colt Telecom Group plc, Re [2002] EWHC 2815 (Ch), [2002] All ER (D) 347
(Dec), ChD 8.13, 8.23, 10.31
- Condon, Re, ex parte James (1874) LR 9 Ch App 609, [1874–80] All ER Rep
388, 30 LT 733, CA 12.4, 17.5
- Consumer & Industrial Press Ltd (No 2), Re (1988) 4 BCC 72, ChD 12.19
- Copecrest Ltd, Re. *See* Secretary of State for Trade and Industry v McTighe,
Copecrest Ltd, Re

Coulson, Re [1934] Ch 45, 103 LJ Ch 31, [1933] B&CR 173, CA	16.27
Cuckmere Brick Co v Mutual Finance Ltd [1971] Ch 949, [1971] 2 WLR 1207, [1971] 2 All ER 633, CA	9.5
Debtor (No 1 of 1987), Re [1989] 1 WLR 271, [1989] 2 All ER 46, (1989) 133 SJ 290, CA	19.6
Demaglass Holdings Ltd, Re [2002] BPIR 1093, [2001] 2 BCLC 633, ChD	3.31,
	3.32–3.33, 3.36, 3.37
Demite Ltd v Protec Health Ltd [1998] BCC 638, (1998) <i>The Times</i> , July 25, ChD	12.118
Dianoor Jewels Ltd, Re [2001] 1 BCLC 450, [2001] BPIR 234, ChD	12.44
Eagle Star Insurance Company Ltd v Karasiewicz [2002] EWCA Civ 940, (unreported) 25 April 2002, CA	5.46
Engel v Peri [2002] EWHC 799 (Ch), [2002] BPIR 961, ChD	16.27, 16.36
Environment Agency v Clark (Administrator of Rhondda Waste Disposal Ltd); <i>sub nom</i> Rhondda Waste Disposal Ltd (in Administration), Re [2000] 3 WLR 1304, [2000] BCC 653, [2000] 1 EGLR 113, CA	11.18
Equiticorp International plc, Re [1989] 1 WLR 1010, [1989] BCLC 597, (1989) 5 BCC 599, ChD	10.10
Ernst Abraham Siewersz Van Reesema v Official Receiver (1983) 50 ALR 253	16.33
Esberger & Son v Capital and Counties Bank [1913] 2 Ch 366, 82 LJ Ch 576, 109 LT 140, ChD	4.23
Far East Abrasives, Re (unreported) 1 August 2002, ChD	8.27
Foskett v McKeown and Others [1997] 3 All ER 392, [1997] NPC 83, (1997) <i>The Times</i> , June 27, CA	17.5
Green v Satsangi [1998] 1 BCLC 458, [1998] BPIR 55, ChD	17.5
HS and AD v UK (Application No 39031/97) [2000] BCC 710	19.71
Halifax plc v Omar [2002] EWCA Civ 121, (unreported) 20 February 2002, CA	5.46
Hardy v Focus Insurance Co Ltd [1997] BPIR 77, (1996) <i>The Times</i> , July 19, ChD	16.21, 16.33
Harris Bus Co Ltd, Re [2000] BCC 1151, ChD	12.19
Harris Simons Construction Ltd, Re [1989] 1 WLR 368, (1989) 5 BCC 11, [1989] BCLC 202, ChD	7.6, 7.7, 8.16, 8.19, 8.21
Hicks v Gulliver and Another [2002] BPIR 518, ChD	12.44
Home Treats Ltd, Re [1991] BCC 165, [1991] BCLC 705, ChD	12.112
Huxford v Stoy Hayward & Co (1989) 5 BCC 421, QBD	2.11
Jacobs v The Official Receiver; <i>sub nom</i> Jacobs (A Bankrupt), Re [1998] 3 All ER 250, [1998] BPIR 711, (1998) <i>The Times</i> , June 16, ChD	16.35
Japan Leasing (Europe) plc, Re [1999] BPIR 911, ChD	12.4
James, ex parte. <i>See</i> Condon, Re, ex parte James	
Johnson (B) & Co (Builders) Ltd, Re [1955] Ch 634, [1955] 3 WLR 269, [1955] 2 All ER 775, CA	9.5

Kilvert v Flackett (A Bankrupt) [1998] BPIR 721, [1998] 2 FLR 806, [1998] Fam Law 582, ChD	18.23, 18.25
Kleinwort Benson Ltd v Lincoln City Council; Kleinwort Benson Ltd v Birmingham City Council; Kleinwort Benson Ltd v Southwark London Borough Council; Kleinwort Benson Ltd v Kensington and Chelsea Royal London Borough Council [1999] 2 AC 349, [1998] 3 WLR 1095, [1998] 4 All ER 513, HL	16.31
Lewis v Commissioners of Inland Revenue; Re Floor Fourteen Ltd [2001] 3 All ER 499, [2001] 2 BCLC 392, [2000] TLR 800, CA	3.35, 22.15
Leyland DAF Ltd, Re; Buchler v Talbot [2002] EWCA Civ 228, [2002] 1 BCLC 571, CA	3.31, 4.51
Liverpool Roman Catholic Archdiocesan Trustees Inc v Goldberg (No 3) (Practice Note) [2001] 1 WLR 2337, ChD	8.23
Lomax Leisure Ltd, Re [2000] Ch 502, [1999] 3 WLR 652, [1999] 3 All ER 22, [2000] BCC 352, ChD	7.6, 8.16
London Pressed Hinge Co Ltd, Re, Campbell v London Pressed Hinge Co Ltd [1905] 1 Ch 576, 74 LJ Ch 321, 92 LT 409, ChD	3.14
MC Bacon Ltd, Re [1991] Ch 127, [1990] BCC 78, [1990] BCLC 324, ChD	8.14
Mahomed v Morris [2001] BCC 233, [2000] 2 BCLC 536, CA	7.26
Malcolm v Official Receiver [1999] BPIR 97, ChD	18.23
Mander v Evans [2001] 1 WLR 2378, [2001] 3 All ER 811, [2001] BPIR 902, ChD	16.28
Mark One (Oxford Street) plc, Re [1999] 1 WLR 1445, [1999] 1 All ER 608, [1998] BCC 984, ChD	13.50
Masters v Leaver [2000] BPIR 284, [2000] IL Pr 387, (1999) 96(33) LSG 29, CA	16.28
Meadrealm Ltd v Transcontinental Golf Construction Ltd (unreported) 29 November, 1991, ChD	9.16
Medforth v Blake [2000] Ch 86, [1999] 3 WLR 922, [1999] 3 All ER 97, CA	4.50, 9.5
Mitchell v Buckingham International plc (In Liquidation) [1998] 2 BCLC 369, [1998] BCC 943, CA	7.26
Mond v Hyde [1999] QB 1097, [1999] 2 WLR 499, [1998] 3 All ER 833, CA	21.19
NS Distribution Ltd, Re [1990] BCLC 169, ChD	12.19
Newport County Association Football Club Ltd, Re (1987) 3 BCC 635, [1987] BCLC 582, ChD	6.13
Norditrak (UK) Ltd, Re [2000] 1 WLR 343, [2000] 1 All ER 369, [2000] BCC 441, ChD	13.50
Oakes v Simms [1997] BPIR 499, CA	16.27
Official Receiver v Doshi [2001] 2 BCLC 235, ChD	19.20
Panama, New Zealand and Australian Royal Mail Co, Re (1870) LR 5 Ch App 318, 39 LJ Ch 482, 22 LT 424, CA	4.1
Paramount Airways Ltd, Re [1990] BCC 130, ChD	11.17, 11.18
Pavlou (A Bankrupt), Re [1993] 1 WLR 1046, [1993] 3 All ER 955, [1993] Fam Law 629, ChD	17.5

Pearl Maintenance Services Ltd, Re [1995] BCC 657, [1995] 1 BCLC 449, ChD	3.30
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Powdrill v Watson; Re Paramount Airways Ltd (No 3) [1994] 2 All ER 513, [1994] BCC 172, [1994] 2 BCLC 118, CA	12.164
Powerstore (Trading) Ltd, Re; Homepower Stores Ltd, Re [1997] 1 WLR 1280, [1998] 1 All ER 121, [1998] BCC 305, ChD	13.50
Practice Direction: Directors Disqualification Proceedings [1999] BCC 717	19.13
paras 29–34	19.48
Practice Direction: Insolvency Proceedings (No 2) [2000] BPIR 647, [2000] BCC 927	
para 5.1(7)	13.10
para 17	21.39, 21.54
para. 17.1	19.18
Practice Note (Administration Order Applications: Content of Independent Reports) [1994] 1 WLR 160, [1994] 1 All ER 324, [1994] BCC 35	6.12
Primlaks (UK) Ltd, Re (1989) 5 BCC 710, [1989] BCLC 734, ChD	7.7
Probe Data Systems Ltd (No 3), Re; Secretary of State for Trade and Industry v Desai [1992] BCC 110, [1992] BCLC 405, CA	19.17
R v Ghosh [1982] QB 1053, [1982] 3 WLR 110, [1982] 2 All ER 689, CA	10.21
R v Kearns [2002] EWCA Crim 748, [2002] 1 WLR 2815, [2002] BPIR 1213, [2002] TLR 150, CA	19.70
R v Secretary of State for Trade and Industry ex parte McCormick [1998] BCC 379, [1998] COD 160, (1998) 95(10) LSG 27, DC	19.71
Rayatt (A Bankrupt), Re [1998] BPIR 495, [1998] 2 FLR 264, [1998] Fam Law 458, ChD	18.23
Rhondda Waste Disposal Ltd (in Administration), Re. <i>See</i> Environment Agency v Clark (Administrator of Rhondda Waste Disposal Ltd)	
Ross (A Bankrupt) (No 2), Re; <i>sub nom</i> Ross v Stonewood Securities Ltd [2000] BPIR 636, (2000) 97(21) LSG 40, (2000) <i>The Times</i> , May 10, CA	12.44
Royal Bank of Scotland v Etridge (No 2) [2001] UKHL 44, [2001] 3 WLR 1021, [2001] 4 All ER 449, [2001] 2 FLR 1364, HL	16.9
SCL Building Services Ltd, Re (1989) 5 BCC 746, [1990] BCLC 98, ChD	7.6
Salmet International Ltd, Re; <i>sub nom</i> Spring Valley Properties v Harris [2001] BCC 796, [2001] BPIR 709, ChD	12.162
Salomon (Aron) (Pauper) v A Salomon & Co Ltd; A Salomon & Co Ltd v Aron Salomon [1897] AC 22, 66 LJ Ch 35, [1895–9] All ER Rep 33, HL	5.2
Saunders v United Kingdom (1997) 23 EHRR 313, (1997) 2 BHRC 358, [1997] BCC 872, ECHR	19.71
Secretary of State for Trade and Industry v McTighe, Copecrest Ltd, Re [1993] BCC 844, [1994] 2 BCLC 284, CA	19.17
Sevenoaks Stationers (Retail) Ltd, Re [1991] Ch 164, [1990] 3 WLR 1165, [1991] 3 All ER 578, CA	19.32
Sheppard & Cooper Ltd v TSB Bank plc [1996] 2 All ER 948, [1996] BCC 653, [1997] 2 BCLC 222, CA	2.11
Smith (SJ) (A Bankrupt), Re, ex parte Braintree District Council [1990] 2 AC 215, [1989] 3 WLR 1317, [1989] 3 All ER 897, HL	19.6
Solomons v Williams [2001] BPIR 1123, ChD	21.38
Spring Valley Properties v Harris. <i>See</i> Salmet International Ltd, Re	

Straume (A) (UK) Ltd v Bradlor Developments Ltd [2000] BCC 333, (2000) 2 TCLR 409, (1999) <i>The Times</i> , June 29, ChD	11.18
Supperstone v Lloyds Names Association Working Party [1999] BPIR 832, ChD	18.25
T & D Industries plc, Re [2000] 1 WLR 646, [2000] 1 All ER 333, [2000] 1 BCLC 471, [2000] BCC 956, ChD	12.19
Tager v Westpac Banking Corporation [1997] BPIR 543, [1997] 1 BCLC 313, (1996) <i>The Times</i> , December 24, ChD	21.38
Toshoku Finance (UK) Ltd, Re [2002] UKHL 6, [2002] 1 WLR 671, [2002] 3 All ER 961, [2002] STC 368, HL	3.31
Trustee of the Estate of Eric Bowe v Bowe [1997] BPIR 747, [1998] 2 FLR 439, [1998] Fam Law 515, ChD	17.27
Twinsectra Ltd v Yardley [2002] UKHL 12, [2002] 2 AC 164, [2002] 2 WLR 802, [2002] 2 All ER 377, HL	10.21
UCT (UK) Ltd, Re [2001] Ch 436, [2001] 1 WLR 436, [2001] 2 All ER 186, ChD	13.50
WGS and MGSL v UK (Application No 38172/97) [2000] BCC 719, ECHR	19.71
Wehmeyer v Wehmeyer [2001] BPIR 548, [2001] 2 FLR 84, [2001] Fam Law 493, ChD	16.28
Westminster Property Ltd, Re, Official Receiver v Stern [2000] 1 WLR 2230, [2001] 1 All ER 633, [2001] BCC 121, ChD	19.71
Westpac Banking Corp v Totterdell (1998) 17 ACLC 317	7.26
Wolsey Theatre Co Ltd, Re [2001] BCC 486, ChD	13.50
Woodland-Ferrari v UCL Group Retirement Benefits Scheme [2002] EWHC 1354 (Ch), [2002] 3 WLR 1154, [2002] 3 All ER 670, [2002] BPIR 1270, ChD	16.28
Woodley v Woodley (No 2) [1994] 1 WLR 1167, [1993] 4 All ER 1010, [1993] 2 FLR 477, CA	16.28
Wright v Official Receiver [2001] BPIR 196, Medway Cty Ct	19.49, 21.68

TABLE OF STATUTES

References are to paragraph numbers

Agricultural Charges Act 1928	15.6	s 425	1.5, 7.1, 7.21, 12.34, 12.72, 12.74, 13.6, 13.10, 13.25, 13.34
Bankruptcy Act 1914	16.27, 19.6, 19.27(k)	s 459	12.35
s 26	16.35, 19.25	Companies Act 1989	
(3)	19.6	s 173	4.37
(b)	19.27(a)	Company Directors'	
(c)	19.27(g)	Disqualification Act 1986	19.3, 19.6, 19.13, 19.17, 20.16
(d)	19.27(h)	s 1(2)	19.31
(e)	19.27(i)	s 6	16.7
(f)	19.27(j), 19.27(k)	s 7(2)	19.17
(j)	19.28	s 8A	19.48
(k)	19.27(l)	s 9	19.25, 19.27(c), 19.27(d), 19.27(f), 19.27(m)
Building Societies Act 1986	6.2	s 10	19.20
		s 11	1.6, 19.61, 21.1
Channel Tunnel Rail Link Act 1996	6.2	(1)	20.16, 20.17
Charging Orders Act 1979		s 13	20.16
s 3(1), (2)	17.34	Sch 1	19.25
s 3(4)–(6)	17.34	Pt II, para 3	19.27(c), 19.27(d)
Charities Act 1993		para 7	19.27(f)
s 72(1)(b), (c)	20.21	para 8(a)	19.27(c), 19.27(d)
City of London Municipal Elections Act 1849		para 10(g)	19.27(m)
s 8B	20.23	Consumer Credit Act 1974	14.5, 17.13
Companies Act 1900		s 16	17.13
s 14	4.22	Consumer Protection Act 1987	
Companies Act 1948		Pt 1	16.28
s 95	4.22, 4.23, 4.24	County Courts Act 1984	
Companies Act 1985		Pt IV	21.12
s 196	5.48	Courts and Legal Services Act 1990	
(2)	5.48	s 13	21.12
s 221	19.27(a)	Criminal Justice Act 1988	16.28
s 320	12.118		
s 321(2)(b)	12.118		
s 395	4.22		
s 396	4.22	Deeds of Arrangement Act 1914	21.43
s 401(2)	4.23	Drug Trafficking Offences Act 1986	16.28
(b)	4.23		

Education (Student Loans) Act		s 258	1.6, 19.10
1990	16.29	s 259	1.6, 19.27(g)
Employment Rights Act 1996	3.17, 15.3	(1)–(3)	18.6
s 189(4)	3.18, 15.4	(4)	18.7
Enduring Powers of Attorney Act		s 260	1.6, 18.10, 19.27(g)
1985		(2)(a), (b)	17.32
s 2(7)	20.23	(4)	17.8
(10)	20.23	(5), (6)	17.24
Enterprise Act 2002	1.2, 1.3, 1.4, 2.29,	(8), (9)	17.22
	3.2, 3.4, 3.7, 3.15, 3.21,	(10)	17.23
	3.22, 4.6, 4.13, 4.28, 4.41,	(a)–(c)	17.23
	4.42, 4.42, 4.45, 5.1, 5.17,	s 261	1.6
	5.28, 6.12, 6.15, 6.23, 6.26,	(1)	17.7, 17.22, 17.23
	7.18, 7.21, 8.6, 8.14, 8.32,	(2)	17.7
	9.1, 9.2, 9.4, 9.5, 9.6, 9.10,	(3)	17.7
	9.12, 9.17, 9.24, 9.45, 9.47,	s 262	1.6, 22.14
	10.1, 10.20, 10.31, 10.35,	s 263	1.6, 20.40
	11.1, 11.4, 11.22, 11.23,	(a)	19.27
	12.62, 12.80, 12.113,	(b)	19.27
	12.114, 12.160, 13.2, 13.4,	s 264	1.6
	13.5, 13.6, 13.63, 13.65,	s 265	1.6, 20.14
	13.67, 14.1, 14.7, 14.10,	s 266	1.6, 19.62
	14.13, 14.15, 16.24, 16.28,	s 267	1.6, 20.15
	16.29, 16.32, 16.37, 16.38,	(1)	19.64
	17.1, 17.26, 17.32, 18.5,	s 268	1.6, 19.65
	19.1, 19.18, 19.27(a), 19.29,	s 269	1.6
	19.33, 19.36, 19.56, 19.59,	s 270	1.7, 23.7, 23.10, 23.17
	19.73, 19.76, 19.77, 20.3,	s 271	1.7, 23.7, 23.16
	20.6, 20.7, 20.8, 20.16,	s 272	1.7, 23.7
	20.21, 20.46, 21.3, 21.5,	(1)	23.13
	21.15, 21.33, 21.51, 21.68,	(2)	23.14
	22.10, 22.11, 22.13, 22.22,	s 277	1.13, 1.14
	23.1Pt 10 1.3, 1.5, 1.13, 6.42	Schs 16–23	1.3
Pt 11	1.13	Sch 16	1.5, 6.1, 12.3
s 245	8.36	Sch 17	1.5, 6.1
s 246(1)	19.9	para 14	9.30
s 248	1.5, 6.1, 12.3	para 15	11.22
(2)	7.1	para 16	11.15
(3)	3.18, 15.4	para 49(4)	3.18, 15.4
s 249	1.5	Sch 18	1.5, 4.14
(2), (3)	6.3	Sch 19	1.6, 19.74, 19.75
s 250	1.5, 4.11, 4.14	paras 1, 2	18.31, 19.74
(1)	16.12	para 3	16.38
s 251	1.5	para 4	18.31
(1)	3.16, 5.28, 15.2	(1)	19.74
(a)	19.27(a)	(a), (b)	16.38
(b)	19.27(j)	(2)(a), (b)	16.38
s 252	1.5, 5.8, 21.16	para 5(3)	16.39
s 253	1.5, 22.13	(4)(a), (b)	16.39
s 254	1.5, 18.31, 18.32	para 6	16.40
s 255	1.5, 18.31	para 7	18.30
s 256	1.6, 19.74, 19.80	(2), (3)	18.33
s 257	1.6	para 8(a), (b)	19.75

Enterprise Act 2002 – <i>cont</i>		Pt VI, Ch VI	20.35
Sch 20	1.6, 19.9	s 4(3)	12.74
Sch 21	1.6, 19.9, 19.56	s 6(1)	5.9
para 1	19.57, 20.19	s 8	6.1, 7.1, 8.16, 8.20, 8.27, 12.22
para 2	19.58, 20.46	(1)(a)	8.13
para 3	19.57, 20.47	(b)	7.6
para 4	19.57, 20.27	(2)	6.13
para 5	19.57, 20.17	(3)	7.1, 7.27
Sch 22	1.6, 21.16	(a)	7.16, 7.19, 7.20
para 1	21.52	(d)	12.23
para 3	21.47	ss 8–27	6.1
Sch 23	1.6	s 9	6.12
para 12	20.42	(2)(a)	6.10
para 13	20.44	(3)	4.44, 6.10
para 15	20.45	(4), (5)	8.28
Environmental Protection Act		s 10	10.25, 11.9, 11.18
1990	11.18	(2)	11.13, 11.15
		(3)	11.12
		s 11	4.45, 10.25, 11.9, 11.18, 11.40,
			11.41
Financial Services and Markets		(3)(a)	13.49
Act 2000		(c), (d)	11.40
s 367	10.25, 11.16, 11.17, 13.45	s 12	12.39
		s 14	11.19, 12.19, 12.111
		(1)	12.115
		(b)	12.116
Greater London Authority Act		(2)(a)	12.117
1999	6.2	(b)	12.118
		(3)	11.40, 12.80, 12.19, 13.50
		(5)	12.5
Housing Act 1996	4.40	s 15	12.123, 12.139
Housing Grants Construction		(1)	12.132, 12.134
and Regeneration Act 1986	11.18	(2)	12.134
Housing (Scotland) Act 2001	4.40	(3), (4)	12.132, 12.133, 12.134
Human Rights Act 1998	16.21, 17.5,	(5)	12.134
	20.25	(6)	12.123, 12.134
		(7), (8)	12.134
		(9)	12.139
		s 17	11.40
Insolvency Act 1976	16.2, 16.3	(2)(a)	12.19
Insolvency Act 1985	4.2, 4.3	s 18	6.14, 13.10
Insolvency Act 1986	1.2, 1.3, 1.5, 2.12,	(1)	13.8
	2.16, 4.2, 4.3, 4.42, 6.5, 6.9,	(2)	13.8
	6.14, 8.14, 9.50, 11.5,	(a)	13.30
	11.20, 12.18, 13.48, 14.5,	(3)	13.50
	19.6, 19.19, 19.56	s 19(4)	12.159
Pt I	7.1, 12.34, 12.74	(5)	12.162
Pt II	1.5, 6.3, 6.4	(6)–(10)	12.165
Pt III	4.2	s 20(2), (3)	12.155
Pt III, Ch IV (ss 72A–72H)	4.14, 4.41	s 21	12.44
Pt IV	13.61	s 22	12.49
Pt VI	19.58	s 23	12.83

Insolvency Act 1986 – *cont*

s 23(2)	12.78	s 124A	10.25, 11.16, 11.17, 13.45
s 24	12.19	s 125	8.29
(5)	13.9	s 127	11.22, 11.23s 12913.61
s 26	12.109	s 129(1A)	11.15
s 27	6.37, 12.35	(2)	11.15
(4)	13.9	s 141(5)	22.3
s 29(2)	4.2, 4.20, 9.9, 9.14, 9.15, 9.16	s 143(1)	12.128
(a)	4.21, 9.14	s 165	22.7
(b)	9.14	(2)	22.3
s 31	20.19	s 166(2)	9.34
(b)	19.57, 20.19	s 167(1)(a)	22.3
(2)	19.57	s 168(3)	12.119
(3)	20.19	s 175	3.29, 3.30, 3.31, 12.122, 13.52
s 34	9.54, 9.57	s 176(2)(a), (b)	3.29
s 39	12.39	s 176A	1.5, 1.12, 5.8, 5.28, 5.29, 5.43, 5.44, 6.32
s 40	3.20, 3.29, 11.25	(1)	5.8
(2)	3.29	(a)–(d)	5.8
s 44(1)(a), (b)	12.6	(2)	5.21
s 59	11.25	(a)	5.9, 12.77, 12.84, 12.110
s 64	12.39	(b)	5.9, 5.24, 5.26
s 67	22.7	(3)(a)	5.11
ss 72A–72F	4.30	(4)(a)	5.9
ss 72A–72H	4.14	(5)	5.18
s 72A	1.12, 4.32, 4.41, 8.36, 9.4	(a), (b)	5.17
(1)	4.15, 4.16	(6)(a)	5.20
(3)	4.27	(7)(a)	5.19
(4)	4.16, 4.18, 9.4	(b)	5.19, 5.21
(a)	4.11, 4.18, 4.23, 4.24, 4.25, 4.26	(8)	5.8, 5.19
(b)	4.19	(9)	5.27, 5.28
(5)	4.18, 4.25	(10)	5.27
ss 72B–72G	4.17, 4.41, 5.8, 9.4, 10.13	s 188	12.39
s 72B	4.31, 4.41	s 213	22.1
(1)(a), (b)	4.31	s 214	19.20, 19.27(g), 22.1
ss 72C–72E	4.32, 4.33	(3)	19.27(g)
s 72C	4.32	s 216	12.127
(2)	4.32	s 232	9.54
s 72D	4.34	ss 238, 239	22.1
s 72E	4.35	s 253	21.16, 21.26
s 72F	4.37	(3)(a)	21.47
s 72H	5.8	s 255(1)(d)	21.46
s 84	13.55	s 257	21.53
ss 85, 86	13.61	s 258	21.33
s 89	13.61	s 259	21.54
s 98	9.34, 12.80, 12.127, 13.61	s 260(3)	21.43
s 99	13.61	s 261	19.53, 21.23, 21.52
s 100	9.30, 9.34, 13.61	(3)(a)–(c)	21.54
(3), (4)	9.30	s 262	21.54
s 101	13.61	(1)	21.36
s 123	8.11	(a), (b)	21.53
s 124	11.14, 13.10	(2)	21.37