



# **BANKRUPTCY AND DISQUALIFICATION**

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Members who become bankrupt are, under certain circumstances, unable to sit and vote in Parliament. Bankrupts may not be elected to Parliament. The law on these points has been recently changed, as a result of the *Enterprise Act 2002*, which is not yet in force. This Note explains current and future provisions.

## **Contents**

|    |   |   |
|----|---|---|
| A. | Disqualification as a result of insolvency – present provisions | 2 |
| 1. | England and Wales.....  | 2 |
| 2. | Scotland and Northern Ireland .....                             | 2 |
| B. | Disqualification from Office – future provisions                | 3 |
| C. | Members’ salaries   | 5 |

## **A. Disqualification as a result of insolvency – present provisions**

Erskine May's *Parliamentary Practice* and Parker's *Law and Conduct of Elections* both set out the rules concerning MPs and disqualification resulting from bankruptcy.

Under section 427 of the *Insolvency Act 1986* a bankrupt is disqualified for election as a Member of Parliament, or, if already a Member, from sitting and voting. Previously enactments applying to Scotland and Northern Ireland varied slightly, particularly in the latter case, where a bankrupt was *not* disqualified for election; though he became disqualified if adjudicated bankrupt while a Member.

### **1. England and Wales**

By section 427 of the *Insolvency Act 1986* a debtor who is adjudged bankrupt is incapable of being elected to or of sitting or voting in the House of Commons, or on any committee thereof, until the adjudication is annulled, or until he obtains his discharge from the court.

A court which adjudges a Member bankrupt forthwith certifies the fact to the Speaker. "The disqualification of a Member adjudged bankrupt ceases on his discharge (except where the adjudication is annulled or the award is recalled or reduced without the individual having been first discharged) or in the excepted case on the annulment recall or reduction. Where a Member's disqualification continues for a period of six months, the Speaker is informed and his seat is thereupon vacated. A new writ may be then moved.<sup>1</sup>

The disqualification ceases:

1. except where the adjudication is annulled without the individual having been first discharged, on the discharge of the individual; and
2. in the excepted case, on the annulments.<sup>2</sup>

### **2. Scotland and Northern Ireland**

When a court imposes sequestration of estate in Scotland on a person, or a person who is adjudged bankrupt in Northern Ireland is, under the same section of the 1986 Act, ineligible as a Member. The individual is disqualified from for being elected to, or sitting, or voting in, the House of Commons. The prohibition applies to any constituency – a Scottish bankrupt

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<sup>1</sup> The procedure for the issue of writ under s 1 of the *Recess Election Act 1975*, applies to vacancies arising by reason of bankruptcy.

<sup>2</sup> Halsbury's Laws of England Vol 34, para 606.

would (for instance) be debarred from election to English as well as to Scottish constituencies.

There was a report from the Standards and Privileges Committee on the case of Roy Thomason in 1996,<sup>3</sup> which concluded that Mr Thomason should have entered in the Register of Members' Interests the benefit in kind he had received by creditor banks agreeing not to press for repayment or interest.

The Standards Commissioner noted:

'It is true that the scale of the benefit was uncertain and that guidance on registration did not specifically cover the possibility of loan concessions. On the other hand I believe that the benefit was substantial; that it would not have been generally available to members of the public and that it might reasonably be thought by others to have placed Mr Thomason under an obligation.'<sup>4</sup>

*House of Lords*: similar provisions apply to the House of Lords.<sup>5</sup>

## **B. Disqualification from Office – future provisions**

The law on bankruptcy generally was changed considerably by the *Enterprise Act 2002*<sup>6</sup>, the relevant parts of which are understood to be coming into force during 2004-05. The following will apply from the date specified in a Commencement Order, yet to be issued.

Basically, the law will provide that only persons against whom a Bankruptcy Restrictions Order (BRO) is imposed will be disqualified from election to and sitting in Parliament, with immediate effect, rather than waiting for six months for clearance of the debt. A BRO will be imposed only when some form of malfeasance or culpability is recognised. An ordinary Bankruptcy Order will not in future disqualify. However, the practice in Scotland and Northern Ireland bankruptcy cases will remain as at A above.

The Act also makes specific provision for peers and members of the devolved assemblies. The following are extracts from the Explanatory Notes<sup>7</sup> to the Act, which give details of the forthcoming system:

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<sup>3</sup> HC 635 1995-96

<sup>4</sup> Appendix, para 16

<sup>5</sup> See May, *Parliamentary Practice*, 22<sup>nd</sup> ed., p. 38-9 for further details

<sup>6</sup> Cap 40, 2002; <http://www.hmsso.gov.uk/acts/0240.htm>

<sup>7</sup> 2002 cap 40-EN; <http://www.hmsso.gov.uk/acts/en/02en40-m.htm>

## **Section 266: Disqualification from office: Parliament**

769. Section 427 of the Insolvency Act 1986 imposes a number of restrictions on a member of either House at Westminster if he or she is adjudged bankrupt (or sequestrated in Scotland). In the House of Lords, a member is not allowed to sit or vote in either the House or Committee. In the Commons, a member cannot be elected to, sit or vote in the House (or the devolved equivalent) or on Committee. The restrictions on being elected to and sitting and voting in the devolved assemblies on the ground of bankruptcy feed through from section 427 by virtue of the Government of Wales Act 1998, the Scotland Act 1998 and the Northern Ireland Act 1998.

770 With the exception of a peer in Westminster, in all legislatures a bankrupt is given six months in order to have their bankruptcy order annulled or their bankruptcy discharged. If this has not happened by the end of that period, then their seat is vacated.

771. Section 266 inserts new sections into the Insolvency Act 1986 to deal with disqualification from Parliament, the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales where a BRO is made against a member of any of those Assemblies. It also amends section 427 Insolvency Act 1986 to remove references to England and Wales from that section and to change its title.

### *England and Wales*

772 The new section 426A disqualifies an MP against whom a BRO is made from membership of the House of Commons. On disqualification under this section, an MP must immediately vacate his or her seat. This differs from the current position under section 427 Insolvency Act 1986, which disqualifies a person on the making of a bankruptcy order but then gives a period of six months for an MP to have the bankruptcy order annulled. Under the new section, an MP is no longer automatically disqualified on the making of a bankruptcy order. Those MPs where some form of culpability can be shown through the making of a BRO will be disqualified automatically and there will be no six months grace period.

773. A member of the House of Lords subject to a BRO will be disqualified from sitting or voting in the House of Lords or from sitting or voting in a committee of the House of Lords or a joint committee of both Houses. No writ of summons can be issued to a lord of Parliament who is subject to a BRO. These are the same restrictions as are currently in place for a bankruptcy order but, again, by replacing bankruptcy with BRO as the trigger to disqualification, only culpable peers will be disqualified.

### *The Devolved Assemblies*

774. The new section 426A will feed through to the devolved Assemblies by virtue of the devolution legislation. A member of the Scottish Parliament against whom a BRO is made will be disqualified from the Scottish Parliament by virtue of section 15(1)(b) Scotland Act 1998 and will have to vacate his or her seat under sections 17(1) and (2) of that Act.

775. The position is the same for a member of the National Assembly for Wales by virtue of sections 12(2) and 14(1) and (2) Government of Wales Act 1998 and for a member of the Northern Ireland Assembly by virtue of sections 36(4) and 37(1) Northern Ireland Act 1998 and Article 370 of the Insolvency (Northern Ireland) Order 1989.

*MPs, Peers and Members of the Devolved Assemblies made bankrupt in Northern Ireland or sequestrated in Scotland*

776 There is no equivalent regime to BROs in either Scotland or Northern Ireland. Insolvency law in Wales is the same as in England and will be modified by this Act.

777. Therefore, the existing regime for disqualification where an MP, peer or a member of a devolved Assembly is made bankrupt in Northern Ireland or sequestrated in Scotland is being retained. However, section 427 is being amended by section 266(1) and (2) so that it will then only cover those made bankrupt in Northern Ireland or sequestrated in Scotland.

778. For example, an MSP who is sequestrated in Scotland will be disqualified and will have six months to have that order annulled before having to vacate his or her seat.

*Two regimes*

779. Therefore, two different regimes will be in operation at the same time in Parliament and all the devolved Assemblies, depending on the jurisdiction in which the bankruptcy occurs:

- Where a Member of Parliament or a member of the devolved Assemblies is made bankrupt in England and Wales, these persons will not be automatically disqualified. Disqualification will be triggered if a BRO is made against him or her and he or she will have to vacate their seat immediately. A peer will be disqualified on the making of a BRO order from sitting and voting in the House of Lords or in Committee;
- where a member of Parliament or a member of the devolved Assemblies is made bankrupt in Northern Ireland or sequestrated in Scotland, they will be automatically disqualified on being made bankrupt or sequestrated and will have six months to have the order annulled. A peer who is a member of a devolved Assembly would be disqualified from the devolved Assembly and have six months to have the order annulled or his or her bankruptcy discharged and would be disqualified in Westminster from sitting and voting in the House of Lords or in Committee.

## **C. Members' salaries**

A Member's parliamentary pay has been adjudged<sup>11</sup> to be salary for the purposes of insolvency legislation. It may, therefore, be subject to an income payments order under s.310 of the 1986 Act, and paid to the trustees of the bankrupt's estate. There has been no case in the last 20-30 years in which the status of allowances paid by the House, such as that for additional accommodation costs, has been challenged in relation to bankruptcy law.

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<sup>11</sup> Hollinshead v Hazleton, [1916] 1 AC, 428