

3 Stone Buildings Insolvency Seminar:
Tuesday 21st October 2003

The Enterprise Act 2000
by Kerry Bornman

1. The Enterprise Act received Royal Assent on 7 November 2002. It follows the government's White Paper, *Productivity and Enterprise, Insolvency – A Second Chance* (published on 31 July 2001), which proposed major changes.
2. There are 11 parts, 281 sections and 26 schedules. Naturally, I do not propose to cover all of these today. What I will be looking at will be Part 10 – the insolvency provisions. Just to summarise the other parts:

Part 1 establishes the Office of Fair Trading (OFT), sets out its general functions, and provides for arrangements for making supercomplaints.

Part 2 establishes and makes provisions for proceedings before the Competition Appeal Tribunal (CAT).

Part 3 provides for a new merger regime: covering the definition of a qualifying merger; the duty of the OFT to make references to the Competition Commission (CC); how references are determined; the procedures that relate to certain public interest cases and other special cases; powers of enforcement; undertakings and orders; and various supplementary matters, such as information and publicity requirements and powers to require information.

Part 4 makes provision for new market investigations arrangements: sets out the powers of the OFT and the Secretary of State to make references to the CC; how the CC should report on the references; particular arrangements for public interest cases; powers of enforcement and supplementary matters.

Part 5 deals with the CC and its procedural rules.

Part 6 deals with the creation of a cartel offence.

Part 7 deals with a number of miscellaneous competition provisions.

Part 8 deals with new procedures for enforcing certain consumer legislation.

Part 9 provides for rules to govern the disclosure of specified information held by a public authority.

Part 11 contains supplementary provisions.

3. Part 10 changes the law of insolvency and aims to promote a "rescue culture" by providing a new regime for company administration and restricting the future use of administrative receivership; abolishing Crown preference; establishing a new regime for individual insolvency; and making changes to the operation of the Insolvency Services Account.

PART 10 – INSOLVENCY

4. Part 10 is broken down into three sections: (1) companies, (2) individuals and (3) money. Just to get (3) out of the way, this enables reform of the Insolvency Service financial regime, in particular, facilitating the return to creditors of more of the income from monies held in the Insolvency Services Investment Account by, for example, changing the rate of interest and the manner of investment of monies paid in.
5. The Act's provisions on corporate insolvency, the abolition of Crown preference and the powers of a trustee in bankruptcy came into force on 15 September 2003. The individual insolvency provisions and secondary legislation and those reforming the Insolvency Service's financial regime will come into force on or about 1 April 2004.

Companies

6. The objectives of the Act were to
 - Streamline the procedure of administration to make it more efficient and accessible in order to facilitate the rescue of viable companies, and, if this is not reasonably practicable, one of the other two objectives provided for.
 - Restrict the ability of lenders to appoint an administrative receiver to the holders of pre-existing floating charges and financiers involved in certain capital market and other transactions where the ability to appoint an administrative receiver is fundamental to the effective operation of the market.
 - Introduce powers to extend certain insolvency proceedings, with modifications, to foreign companies, Industrial and Provident Societies and Friendly Societies
7. The new administration procedure began on 15 September 2003, but any administration where the petition was filed (or lodged) or the administration order was made prior to that date will continue under the existing legislation.
8. The previous provisions in Part II of the IA 1986 allow the court to make an AO in respect of a company that is in financial difficulties. Broadly speaking, the effect is to afford the company protection from its creditors whilst attempts are made to save it or achieve a better result for its creditors than would be achieved in a winding-up. However, in practice, an AR is usually appointed by those providing the financial backing (such as the bank). The holder of a floating charge has an effective veto over the appointment of an administrator. Such a person must be given notice of any application for an AO and, if he appoints an AR, the court must dismiss the application unless the appointor consents to the making of an AO (ss.9(2)(a) and 9(3) IA 1986).
9. An AR primarily owes his duties to his appointor rather than the creditors as a whole (see *Medforth v Blake* [1999] 2 BCLC 221). He is under a duty to seek repayment of the debt owed to the appointor and has no powers or duty to seek to put together a company rescue in the same way that an administrator has (both under the old procedure and the new regime, an administrator may put proposals to creditors for a CVA pursuant to Part I IA 1986 or a scheme of arrangement pursuant to s.425 CA 1985 (see ss.8(3) and 23 IA 1986)).

10. Previously, under s.8 of the IA 1986, there were 4 purposes for administration: the survival of the company and/or its businesses; approval of a voluntary arrangement; entering into a s.425 compromise or scheme of arrangement with the company's creditors; or the more advantageous realisation of assets on a winding up.
11. The previous 4 purposes have become 1 single clearly defined purpose broken down into 3 hierarchical objectives: (1) company rescue; (2) alternatively, trading for a while and selling as a 'going concern'; (3) finally, only if the previous 2 are not possible, realising the property to make a distribution.
12. Previously, the administrator had to nominate which of the 4 purposes he was going to pursue before the company entered into administration, but now he is required to explain why he cannot do the 2nd and/or 1st objective, if that is the case, once he is acting as the administrator.

Entry routes into administration

Appointment of administrator by court (paragraphs 10-13 of Sch.16 EA 2002)

13. The only way in which a creditor, acting alone or on behalf of a number of creditors, or the supervisor of a CVA will be able to initiate the appointment of an administrator will remain by court order. This will also be necessary for all administrator appointments if the company is in liquidation (whereby the court can end the liquidation and make an AO instead), or if there is an administrative receiver in office or if a provisional liquidator has been appointed or if there is an outstanding winding up petition against the company (in the case of the company or its directors).
14. It is anticipated that the 'court order' route will also be used in larger or more complicated cases where a number of applications are to be made at the outset. It is also likely to be preferred where the recognition of the administration as the 'Main Proceeding' for the purposes of the EC Regulation on Insolvency Proceedings is required.

Changes to the court order route

15. None of the new routes will require the preparation and filing of a "2.2. Report". Instead, there are simpler ways to supply this information. There is a prescribed form which requires an affidavit to be attached containing details of the company's financial position, any security held by its directors and any outstanding insolvency proceedings, as well as any other relevant matters. This is not supposed to replace the "2.2. Report" but is fit for the purpose of satisfying the court that the company is, or is likely to become, insolvent. The written consent of the proposed administrator(s) must also be attached which must confirm his acceptance of the appointment and his belief that the purpose of the administration is reasonably likely to be achieved but does not have to, at this stage, specify which of the 3 objectives will be pursued.
16. The applicant is required to serve a copy of the application on anyone who could appoint an administrative receiver and, where one has been appointed, the AR himself, the petitioner of any outstanding winding-up petition and any provisional liquidator in office, any person who is or may be entitled to appoint an administrator through the 'without court order' route, any member State liquidator appointed in main proceedings in relation to the company, any supervisor of a CVA, the company (unless the application is by the company itself) and the person proposed to be the administrator. An affidavit of service is prepared and filed with the court at least one day before the date set for the hearing of the application. Notice of the application must also be given to any sheriff or other officer charged with an execution or other legal process against the company or its property as well as any person who has distrained against the company's property.
17. The holder of a qualifying floating charge may apply to court to replace the proposed administrator with an appropriate person of their own choice. Holders that have priority must give their written consent and that 'appropriate person' must give his written consent. The holder of the qualifying floating charge will be required to demonstrate to the court that the charge is proper and enforceable.
18. Anyone with an interest in the application can attend the hearing and the court may make the AO and/or any order that it thinks fit.

If the AO is made, 2 sealed copies are sent to the applicant who is then required to send one to the administrator.

19. When the court makes an AO in respect of a company that is in liquidation, it will also deal with the ending of that liquidation and the liquidator will be removed from office. When the administration application is in respect of a company where there is an AR in office, the court will only make the AO if the AR consents to this. The AR must vacate office and any receiver of part of the company's property shall vacate office if the AR requires him to do so. Any outstanding winding-up petition against the company will be dismissed.
20. In addition to the court order entry into administration, the Act introduces "without court order" appointment routes for holders of qualifying floating charges, companies and directors of those companies.

"Without court order" entry routes into administration

*Appointment of administrator by holder of a floating charge
(paragraphs 14-21 of Sch.16 EA 2002)*

21. In addition to fixed security over property and other specific assets of a borrowing company, English law enables a lender to take a floating charge over a company's assets and undertaking. Unlike fixed security, a floating charge hovers over what is typically a fluctuating body of assets until a crystallising event occurs when it turns into a fixed charge. Crystallising events can be those limited ones implied by law, such as liquidation of a company, but are usually specific events of default set out in the loan agreement. Crystallisation can be automatic or on notice by the lender following the relevant event.
22. Dealings with assets subject to a fixed charge require the lender's consent. One of the attractions of the floating charge is that prior to crystallisation, the company can dispose of the assets subject to the floating charge in the ordinary course of its business and without the need to obtain the lender's consent. This is preferable for covering stock, book debts and other assets which are fluctuating by reason of the company's necessary dealings with them in the course of its business. In principle, unless the

company is prevented from collecting book debts and using the proceeds for its cashflow, the current approach of the courts is that it is unlikely that a fixed charge can be created over uncollected book debts (see Lord Millett's analysis in *Agnew v. Commissioner of Inland Revenue* [2001] 2 AC 710).

23. A floating charge gives the holder a lesser security than a fixed charge, but priority over unsecured creditors. Upon the security becoming enforceable, the holder of a floating charge can appoint an administrative receiver (AR) over all the company's assets and undertakings at the time. It could do this without notice to other creditors and without a court order. If the holder acted quickly enough, it could ensure that the appointment of the AR prevailed over any attempt by the company or other creditors to appoint an administrator. The AR's obligation (subject to prior ranking charges) was to realise the charged assets and account only to the floating charge holder. He would not be concerned with unsecured creditors except preferential ones. He could even carry on the business (in practice, only for a short time) if this was likely to achieve more than simple sale of the relevant assets.
24. The position for holders of qualifying floating charges (QFCs) will now change significantly because of the Act.

The rights of holders of QFCs to appoint an administrator

25. The holder of a QFC (paragraph 14 of Schedule B1) can, in certain circumstances, appoint an administrator simply by filing a Notice of Appointment with the relevant court. This route is not available if the floating charge on which the appointment relies is not enforceable, nor if a provisional liquidator has been appointed or if there is an AR in office.
26. Entry is intended to be quicker, cheaper and less bureaucratic although security documents may need to be amended to show this. The courts will still provide guidance where necessary and will sort out any disputes that arise by virtue of its supervisory jurisdiction over administrators, which is a significant distinction from ARs.
27. Where there is one or more prior QFCs, the holders of those charges are required to give their written consent to the proposed

appointment. This can be sought and arranged in an informal manner although written consent must be attached to the Notice of Appointment when it is filed with the court. Alternatively, the holder of the QFC proposing to make the appointment ("the appointor") can file a formal notice of intention which will bring into effect an interim moratorium on insolvency proceedings and other legal processes being taken against the company. At the same time, a copy must be sent to each of the holders of any prior QFCs, who can provide their written consent or, if they do not respond and 2 business days elapse, the appointment can be made. During this interim period, the holders of the prior QFCs could exercise their option to make a 'without court order' appointment themselves, albeit with the consent of the holders of any QFCs having priority over them.

28. The notice of appointment is then filed with the court with the written consent(s) of the holders of any prior QFCs and the written consent of the proposed administrator. This must be filed within 5 business days of the notice of appointment being filed, if any, after which time the interim moratorium ceases to have effect. The appointment of the administrator is effective from the date and time that the notice of appointment is filed with the court. The appointor is responsible for sending a copy of the notice to the administrator, and commits an offence if he fails to do so.
29. In cases where speed is essential, the rules include a provision that will allow for filing a notice of appointment during times when the court is not open for business.
30. If the appointment is subsequently found to be invalid, the court may order the appointor to indemnify the administrator against liability that arises as a result of the invalidity and the court may end the administration on the application of a creditor if that application alleges an improper motive on the part of the appointor; this applies irrespective of the route by which the administrator was appointed.

Appointment of an administrator by the company or the directors

31. The company or its directors can, in certain circumstances, appoint an administrator in the same way as the holder of a QFC. Companies and directors will only be able to appoint an

administrator through the relevant 'without court order' route (see paragraphs 22-34 of Sch.16) if, within the preceding 12 months, a moratorium under Schedule 1A of the IA 1986 ends with no voluntary arrangement being in force, or a voluntary arrangement ends prematurely, or if there is no outstanding winding up petition or administration application or if no AR is in office. This will prevent administration being used as a quick and easy way of holding off creditors whenever things get difficult. Again, the holders of all QFCs must be given notice of the company's or directors' intention to appoint an administrator and they will still retain the ability to step in and appoint their own choice.

32. Again, the changes are intended to make administration quicker, cheaper, and less bureaucratic. They are intended to encourage companies that get into financial difficulties to make use of administration at an earlier stage, when there is more chance of effecting a rescue.

Distributions

33. The Act provides administrators with the power to make distributions. It is expected that administration will become the rescue vehicle of choice but, with the restrictions on the appointment of administrative receivers that the Act introduces, it will also be the only option for secured creditors wishing to enforce their security and could, therefore, be used where rescue is not likely (or even possible). In these cases, the administrator will have the power to realise assets and make distributions to secured and/or preferential creditors, but will need the court's permission to distribute to unsecured creditors. This will work in the same way as a liquidator in a winding up. The Schedule distinguishes between payments and distributions because the administrator will be able to pay ongoing costs of the administration (including running costs, trading expenses, and one-off payments to creditors where he thinks it will assist the administration).

'Prescribed part'

34. The Act contains provisions which require the administrator to pay to unsecured creditors a part of the company's property that would otherwise have been used to repay the debt to the floating charge holder (the prescribed part). This may be a percentage above a specified minimum amount. There may be no such payment if the administrator considers the cost of distributing the sum to unsecured creditors would be disproportionate to the benefits. This change will apply to floating charges created after the commencement date but is not limited to those occasions when the administrator is appointed by a floating charge holder. It will apply to liquidations and receiverships too, but the payment only comes from the property that is covered by the floating charge. There will be no payment to unsecured creditors from sums payable to holders of fixed security.

Time limits

35. Previously, administration was open-ended whereas the Act introduced an overall time limit of 12 months, although this can be extended by the consent of the creditors and/or by the court. The time limit was introduced to make administration more accessible and attractive, particularly to smaller firms and to give greater certainty to creditors and those dealing with the companies.
36. The administrator is under a duty to do everything as soon as "reasonably practicable" and the time limits for getting his proposals out to creditors, and holding the initial creditors' meeting, have been shortened to 8 and 10 weeks respectively, although these can, of course, be extended by the creditors' consent and/or the court.
37. Simple cases could be completed much sooner.
38. Time-scales could also be amended by the Secretary of State in the future.

The administrator's duty

39. An administrator must be an authorised insolvency practitioner who is appointed to manage the affairs, business and property of a company. He is an officer of the court. The revised administration procedures puts rescue at the heart of the changes. The first objective of the administrator must be to consider rescuing the company. This means rescue as a going concern with all or most of its businesses intact – not ending up with the legal shell. The intention is to preserve viable companies and safeguard jobs.
40. Where company rescue is not a reasonably practicable option, either because it would not be the best way of realising the economic value in the company, or because the timescales involved would make it impracticable, the administrator will move onto the second objective. This is to seek a better result than would be achieved if the company went straight into liquidation, e.g. selling of individual businesses as going concerns, fulfilling orders that have already been placed.
41. An administrator will have a duty to the whole of the company's creditors, not just the floating charge holder(s), irrespective of who appointed him (therein lies the difference from admin receivership). He will have to explain to creditors in his statement of proposals why it was not reasonably practicable to pursue the first objective.
42. Where it is not reasonably practicable to achieve either of the first two objectives, he must realise property in order to make a distribution to one or more secured or preferential creditors. Again, he will still have to act in a way that does not unnecessarily harm the interests of unsecured creditors.
43. The creditors can ensure this by having the opportunity to challenge the administrator's actions through the courts.
44. It is likely that the courts will continue their established approach of only getting involved in a challenge to an administrator's decision as to which is the "reasonably practicable" route to follow if bad faith is shown or the decision is one which no reasonable administrator would have taken.

Completion

45. Previously, administrations usually ended with the company being moved into another form of proceedings (usually a CVA or a compulsory liquidation). The Act introduces specific, finite endings which enable the administrator to move the company from administration straight into a CVL (where there are assets to be distributed to unsecured creditors) or to dissolve the company (where it has no property left to distribute to creditors), on the registration of the relevant notice at Companies House.

The effect on ARs

46. Administrative receivership is not going to be abolished completely. Exceptions where floating charge holders will still be able to appoint an AR even if the floating charge is created after the relevant date include (i) where the company is a project company and either is financed to the extent of at least £50 million, or the project is a public private partnership or utility project conferring "step-in" rights or (ii) where the company is involved in capital market arrangements and the debt is at least £50 million or (iii) where the company is a registered social landlord.
47. Existing floating charge holders (created before the Act came into force) will be able to choose to appoint either an administrative receiver or an administrator.
48. Finally, from 1 Jan 2003, many insolvent "small" companies seeking a voluntary arrangement with their creditors, will be entitled to a moratorium on action by creditors. This includes but is not limited to preventing the appointment of an AR or administrator by a floating charge holder. "Small" companies are those which satisfy at least two of the following current requirements: turnover max £2.8 million; balance sheet max £1.4 million; employees max 50. Existing floating charges as well as those created in future are affected. The moratorium period is initially up to 28 days but can be extended for another 2 months.
49. In summary, floating charges will still be a useful security but for many created in future the lender will not have the advantages it previously had when seeking to enforce that security and the

sums it recovers are likely to be subject to a prior deduction in favour of unsecured creditors. Enforcement may also be prevented for up to 3 months if an insolvent 'small' company is seeking a voluntary arrangement with its creditors.

Individuals

50. The objectives here were –

- Reduce the number of restrictions that are automatically imposed on undischarged bankrupts and provide for the automatic discharge of nearly all bankrupts after a maximum of 12 months
- Introduce Bankruptcy Restrictions Orders (BROs) to protect the public and the commercial community from bankrupts whose conduct before and during bankruptcy has been found to be culpable
- Introduce Income Payment Agreements (IPAs) as an administrative alternative to court-based Income Payments Orders (IPOs). IPAs will carry the same conditions as IPOs and both will be able to run for a period of up to 3 years
- Enable the Official Receiver (OR) to act as nominee and supervisor of new fast-track IVAs commenced after the making of a bankruptcy order
- Require the OR to investigate the cause of failure of a bankrupt only where he thinks that this is necessary
- Limit to 3 years the period in which a trustee may deal with a bankrupt's interest in the sole or principal dwelling house of the bankrupt, the bankrupt's spouse or a former spouse prior to that interest reverting to the bankrupt

51. The insolvency provisions are not yet in force as secondary legislation is required to implement them.

52. One of the objectives is to distinguish between 'innocent' and 'culpable' bankrupts and to reduce the stigma of bankruptcy in the first category.

Discharge period

53. The changes provide that those who are made bankrupt after 1 April 2004 will generally receive their discharge one year after the date of the bankruptcy order. A bankrupt will not be discharged if there is a court order suspending his or her discharge, those orders are generally made where the bankrupt has not co-operated with the OR or trustee in bankruptcy.
54. There is the possibility that in some cases the bankruptcy discharge period will be less than 1 year. This will only occur where a bankrupt has fully co-operated with the OR and/or trustee, where creditors have not raised any matters relating to the bankrupt's conduct and affairs which require further investigation and where the OR has filed a notice at court stating that the investigation of the bankrupt's affairs has been concluded or s/he thinks it unnecessary.
55. The Act does not affect what happens to the bankrupt's assets. They will still form part of the bankruptcy estate, subject to certain exceptions already in place, and the trustee may act in relation to them as is necessary. The Act does, however, make a slight change in relation to a dwelling house (come to this later).

Automatic restrictions

56. The Act provides for restrictions, in the form of BROs, to be imposed on culpable bankrupts after discharge. BROs are a new civil regime to protect the public from those bankrupts whose conduct has been **irresponsible** or **reckless**. Those restrictions may apply for a period between 2 and 15 years.
57. The grounds on which a court will consider making a BRO include, but are not limited to:
 - failure to co-operate with the OR or trustee
 - failure to be able to account for prior transactions causing loss
 - entering into a transaction at an undervalue
 - trading at a time when the bankrupt knew he was unable to pay his debts and
 - incurring a debt with no reasonable expectation of being able to repay it

58. Alternatively, a bankrupt can agree to give a bankruptcy restriction undertaking (BRU). It has the same effect as a BRO, being legally binding, but does not require the court's involvement. BRUs can be imposed for between 2 and 15 years.
59. If the OR thinks a BRO is appropriate and in the public interest, he will apply to court for an interim BRO pending the full hearing of an application for a BRO.
60. How does this affect those who are already bankrupt? If the bankrupt is due to be discharged less than 1 year after the provisions come into force, there will be no change to the date of discharge (unless the court has made an order to suspend the discharge period).
61. If the discharge date is more than 1 year after the provisions come into force, then that period will be reduced and the bankrupt will be discharged 1 year after the provisions come into force (unless the court has made an order to suspend the discharge period). Other rules apply to second-time bankrupts.

Second-time bankrupts

62. The position is different for those individuals who have been an undischarged bankrupt more than once in the previous 15 years and who are still undischarged at the time the insolvency provisions come into force. In this case, if the Court has previously granted a discharge, that will continue to determine the date of discharge. If no such order has been made, the bankrupt will be discharged 5 years from the date of commencement. Those persons made bankrupt through a criminal bankruptcy can only be discharged by order of the court.

The bankrupt's home

63. The Act provides a limit of 3 years on the period during which the trustee in bankruptcy can deal with a bankrupt's interest in a dwelling house which is the sole or principal dwelling house of the bankrupt, the bankrupt's spouse or a former spouse, following which period it will revert back to the bankrupt (i.e. it will no longer form part of the bankruptcy estate) unless the trustee:

- realises the interest;
- applies for an order for sale or possession in respect of the premises in which the interest subsists;
- applies for a charging order over the premises in respect of the value of the interest; or
- enters into an agreement with the bankrupt regarding the interest.

'fast track' IVAs

64. The Act seeks to encourage the use of IVAs by allowing the OR to put a bankrupt's IVA proposals to creditors and to act as a supervisor. This introduces a new **fast track** regime for post-bankruptcy IVAs where the OR is the proposed nominee. Under this regime, the proposal will be agreed with the OR and filed with the Court. No meeting of creditors will be called and it will not be possible to modify the proposal. The OR will send out the proposal to the creditors on a 'take it or leave it' basis and the creditors will either agree to or disagree with the proposal by correspondence. If the IVA is approved, the OR becomes supervisor and will notify the court which can then annul the bankruptcy order.
65. Pre-Act IVAs will remain available to debtors in the normal way.

IPOs and IPAs

66. The current IPO (income payments orders) regime is designed to ensure bankrupts make an affordable contribution towards their debt, generally they last for just under 3 years, and in most cases they cease on discharge from bankruptcy. In light of the reduced discharge period, the Act sets out that generally IPOs will in future last for 3 years from the date of the IPO, regardless of the date of discharge. In addition, the Act makes changes to the IPO mechanism to ensure that bankrupts will pay – if they are able to.
67. IPOs are made by the courts on the application of the trustee in bankruptcy and generally they are not contested. IPOs can be varied on the application to the court by the trustee or the bankrupt.

68. Just as the Act provides for BRUs to be an alternative to BROs, it also enables the bankrupt to enter into an income payment agreement (IPA) rather than be subject to an IPO. While it does not involve the court, IPAs still provide a legally binding agreement between the bankrupt and the OR/trustee that requires the bankrupt (or a third party) to make specified payments to his trustee for a specified period. This will be enforceable as if it were an IPO made by the court. An IPA must specify the period in which it is to have effect and that period can apply after a bankrupt is discharged but cannot extend to a date more than 3 years after the date of the IPA. An IPA may be varied in writing.

Abolition of Crown preference

69. The objectives here were to remove the Crown's preferential rights in all insolvencies and make provision to ensure unsecured creditors are major beneficiaries.

70. The categories of preferential debts are set out in Schedule 6 of the Insolvency Act 1986. When an insolvency office holder comes to make a distribution in an estate, amounts due in respect of preferential debts are paid after amounts secured by a fixed charge but *before* all other liabilities.

71. It includes the following categories: (A) amounts due to the Inland Revenue in respect of income tax and National Insurance Contributions in the 12 months prior to the insolvency and (B) amounts due to HM Customs and Excise including VAT in the 6 months prior to the insolvency.

72. Other categories of preferential debt will remain preferential.

73. As a result, all amounts no longer categorised as preferential debts will flow to the unsecured creditors. In corporate insolvencies the next category of creditor to be paid after preferential creditors are holders of floating charges, under the provisions of the Enterprise Act, a part of the net property (which expression refers to funds that would otherwise be available to satisfy the claims of the floating charge-holder) will be set aside for the benefit of unsecured creditors – the prescribed part. The

method by which the prescribed part is calculated is set out in the 'Prescribed Part Order'.

74. It has been estimated that the Crown will be 'giving up' £70million per year.
75. The proposed changes in priorities will only apply to new charges created on or after 15 September 2003.

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