



Secretary: Cdr T H Traylor MBE

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INSOLVENCY LAW REVIEW COMMITTEE
DEPARTMENT OF TRADE
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Our Ref: R4

7 July 1980

Dear Muir

Herewith a copy of the CA 1980.

I have looked at the Banking Act, 1979 but there does not seem to be anything in it with which we should become involved. It is primarily concerned with the control of deposit-taking and in particular, the setting up of a deposit protection scheme. It does include some definitions (director, controller, subsidiary, etc) but for use only within the ambit of that specific Act. But I may have overlooked something so perhaps you would let me know if there is any specific provision which you feel we should consider.

Yours sincerely


T H TRAYLOR

Mr T Traylor

PROPOSED NEW BANKRUPTCY PROCEDURE

As you are aware the Government has issued a Green Paper setting out its proposals for withdrawing the Official Receiver from bankruptcy and replacing him with private receivers.

Work is now proceeding at Official level to consider the minimum legislative changes which will be needed to implement the proposals and at the same time consideration is being given to changes which might be considered desirable.

In considering their recommendations the working party will have regard to the Report of the Blagden Committee and the views expressed by those who respond to the Green Paper by the end of October. It would however assist in this work if I could at this stage have the benefit of the advice and comments of your Committee on certain areas of the legislation where they have perhaps already reached some firm conclusions as a result of submissions made to them.

I attach details of the various sections of the Bankruptcy Act on which I would welcome your views. The list is not exhaustive and I will, if you agree, let you have further proposals as they become available.

*working party whom we
we wanted to join.*

J R Donnison

J R DONNISON
Rm 121 Ext 38 B/R

7 August 1980

996

AREAS OF LAW IN WHICH CHANGES MIGHT BE CONSIDERED DESIRABLE

Bankruptcy Act
1914
Section 1

ACTS OF BANKRUPTCY

Are the present available acts of bankruptcy adequate?

Int. Rep., para. 27, p. 13.

Section 15 and
S6
Insolvency Act
1976

PUBLIC EXAMINATION

Would a public examination serve any useful purpose in "serious cases" and if so what should be the criteria for deciding what constitutes a "serious case"?

Section 35

LANDLORDS' POWER OF DISTRESS

*Who is to conduct it
whose expense?*

Should a landlord's rights be different to those of an execution creditor? Blagden recommended that because of the apparent conflict between section 35 and section 33(4) a landlord should not have the right to distrain after a receiving order and should account to the trustee if he received notice of a petition within 21 days of distraining.

Section 36

POSTPONEMENT OF HUSBANDS AND WIVES CLAIMS

This section can be retained without being in breach of the Sex Discrimination Act 1975 but it is for consideration whether there should be different provisions dependent upon which spouse is bankrupt.

Sections 37
and 40-47

ANTECEDENT TRANSACTIONS

- a) would it be preferable to have a fixed relation back period of say 3 months from the date of the petition instead of the variable period under section 37?
- b) are the present provisions (Ss 42 and 43) for the avoidance of settlements and assignments adequate?
para 30.
- c) to upset preferences under S44 the trustee is required to show an intent to prefer the creditor and if the person preferred is a guarantor the trustee can only claim against the principal creditor. Would it be desirable to show only that a payment, not in the ordinary course of business, had given a preference over other creditors and if the preferred person was a guarantor to allow the receiver (trustee) to proceed against him direct?

- d) are the present provisions for the protection of bona fide transactions adequate (S45 and section 4 1926 Act)?

Section 39

SECOND BANKRUPTCIES

Should creditors for the unsatisfied balance of debts provable in a first bankruptcy be entitled to rank for dividend pari passu in a second bankruptcy or should they be deferred until after the creditors in the second bankruptcy have been paid in full.

4(3.7)



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Secretary: Cdr T H Traylor MBE

Mr J R Donnison
Room 121

11 August 1980

Dear Donnison

Thank you for your minute dated 7 August and enclosure. I am arranging for copies to be circulated to members of the Committee and I shall raise the matter at their next meeting on 20 August.

With regard to your question about "acts of bankruptcy", you may like to note paragraph 27 on page 13 of the Committee's interim report which was published at the same time as the Department's consultative document.

Yours sincerely

A handwritten signature in black ink, appearing to read 'T H Traylor'.

T H TRAYLOR
Secretary to the Review Committee