***The Suspension of Debt Obligations and Bankruptcy Laws during World War I and World War II: Lessons for Private Law during the Corona Pandemic from previous national crises***

By

Stephen Baister[[1]](#footnote-1)♦

&

John Tribe[[2]](#footnote-2)♣

**Abstract**

*On 28 March 2020, the Insolvency Service announced the government was placing before Parliament what are presumed to be temporary reforms to the insolvency law to help companies through the current economic crisis caused by the corona pandemic. The reforms that have so far been highlighted are a moratorium on the ability to present or pursue winding-up petitions and the suspension of the law on wrongful trading.*

*These emergency moves are not without precedent. This article examines a range of measures that were introduced during the First and Second World Wars that were designed to respond to the unusual circumstances caused by a global crisis. The effect of these measures, e.g. the Liabilities (War-Time Adjustment) Act 1941, was to postpone debtors’ liabilities but not to eliminate them.*

*This article demonstrates that these measures went some way towards meeting their objective of saving small businesses from bankruptcy.*

**Introduction**

On the 28th March 2020, the Insolvency Service announced the government’s intention to lay before Parliament legislation to introduce what are presumed to be temporary reforms to the insolvency law to help companies through the current economic crisis caused by the corona pandemic.[[3]](#footnote-3) The reforms that have so far been highlighted are a moratorium on the ability to present or pursue winding-up petitions and the suspension of the law on wrongful trading.[[4]](#footnote-4) Similar provisions have been introduced into Scotland.[[5]](#footnote-5)

These moves are not without precedent.[[6]](#footnote-6) The wartime emergency legislation[[7]](#footnote-7) examined in this article demonstrates previous uses of moratoria and debt postponement in periods of economic upheaval.[[8]](#footnote-8) The statutes rushed through the legislature included one which was passed in a single day to help shore up the credit system. These urgent legislative steps were taken to prevent a breakdown in the financial system. The mutual credit system, upon which finances are based,[[9]](#footnote-9) required lifesaving support. The legislation was designed to mitigate, as far as possible, the damage that global events were causing to individuals and companies and the credit system.

This article is divided into two parts. Part one examines World War I debt postponement measures. There were previous examples of suspension legislation in the 17th and 18th century in England,[[10]](#footnote-10) as well as in 19th century France.[[11]](#footnote-11) However, it was the Great War that witnessed the first introduction of debt moratorium statutes into English and Welsh law. These provisions were far reaching in ensuring that debtors were not unduly burdened by debt obligations in time of war; and to that end the bankruptcy courts were given a wide discretion in the exercise of their jurisdiction. Part two examines Word War II debt postponement measures which in part continued the legislative approach adopted during the Great War. The article concludes by examining the consequences of the war and emergency debt legislation for future insolvency developments, noting that the wartime reforms barely survived the aftermath of the wars, even where they in fact prefigured future developments.

1. **World War One – Debt Suspension Measures in England and Wales**

The Great War broke out on the 26th July 1914 when Austria and Serbia declared war.[[12]](#footnote-12) Great Britain joined the war on the 4th August 1914 as a response to Germany’s invasion of Belgium. Any hope of engaging in the war in a limited fashion through financial and naval aid was short-lived. The Commander in Chief of the British Forces, Field Marshall Sir John French, predicted that the war would be over by Christmas 1914. This did not come to pass. The war would stretch on for another four years (even beyond 1917)[[13]](#footnote-13) eventually finishing on 11th November 1918 when Germany signed an armistice with the allied forces.

When the war commenced in July 1914 there was to be no “business as usual.”[[14]](#footnote-14) The war severely affected a range of cross border and domestic economic activity.[[15]](#footnote-15) The London Stock Exchange was closed on the 31st July, and regional exchanges followed suit.[[16]](#footnote-16) Soon, further economic responses would follow.

The United Kingdom and other nations,[[17]](#footnote-17) introduced a raft of emergency legislation to deal with the economic effects of the war.[[18]](#footnote-18) Early legislation focused on measures designed to address threats of sabotage and spying, the requisitioning of food and measures to allow intervention in debt contracts.

The Debt Suspension Measures

In a 1930 book dedication the author dedicates his work, “To My Creditors – They also serve who only stand and wait.”[[19]](#footnote-19) That summarises the sentiment that lay behind the first debt suspension measures which were introduced in August 1914.[[20]](#footnote-20) These came in the form of the Postponement of Payments Act 1914 and the Courts (Emergency Powers) Act 1914.[[21]](#footnote-21) (Other statutes, such as the Military Service Act 1916, touched on financial issues as well.) Other areas of activity were also subject to suspension. For example no grand juries were summoned as citizens’ time and effort were instead directed towards the war.[[22]](#footnote-22) Specific legislation was also forthcoming in relation to soldiers’ indebtedness[[23]](#footnote-23) and testamentary formalities.[[24]](#footnote-24)

The Postponement of Payments Act 1914 – “The Moratorium Acts(s)”

The Postponement of Payments Act 1914, passed through both Houses of Parliament on 3rd August 1914.[[25]](#footnote-25) The effect of the statute was to give power to the king by proclamation to declare a moratorium. (In practice this meant the government, as opposed to the king.[[26]](#footnote-26)) Whilst the statute conferred general powers, the minutiae were dealt with by proclamations or orders in council.

The debt moratorium, whilst familiar to modern ears, was without an English and Welsh precedent. As one contemporary commentator noted, “…the general suspension of obligations known as a moratorium is a novelty in Great Britain.”[[27]](#footnote-27) The effect of the moratorium was to provide the debtor with a breathing space. But there was meant to be “no injustice done to the creditor, who knows that his debtor will eventually prove to be financially sound; and the creditor will suffer no loss, as the debtor, as the price of the relief afforded to him will have to pay a sum by way of interest in addition to the amount of his liabilities.”[[28]](#footnote-28) The moratorium was one of a number of measures that were introduced to maintain the credit system. As one commentator noted, the effect of the moratorium from the creditors’ perspective was, “to adopt a well-known metaphor, [the creditor] spares the [debtor] goose that it may later lay the golden egg.”[[29]](#footnote-29)

The major draw-back of the statute was the payment of interest. Charging of interest was permitted in all cases of postponement. This may have been what lay behind the remark of one contemporary commentator that, “the policy of the moratorium was much criticised, especially as unduly favourable to metropolitan banks.”[[30]](#footnote-30)

The statute initially covered payment postponement for bills of exchange and negotiable instruments, but a proclamation of 6th August 1914 expanded the postponement provisions to all other contracts. The Court of Appeal (Swinfen Eady, LJ, Bankes, LJ, Eve, J) considered the extent of s.1(1) Courts (Emergency Powers) Act 1914 in *Dobb v. Henry Dobb, Limited,*[[31]](#footnote-31) holding that the section had to be read as extending to any judgment or order for the payment of any sum whatsoever.

There were exceptions to this breadth: claims of £5 and under, maritime freight and wages and salaries. There was at least one reported decision relating to the “Moratorium Act” on just such an exception. In *Jupp v. Whittaker*,[[32]](#footnote-32) a case heard in the Romford County Court, His Honour Judge Tindal-Atkinson had to consider whether the moratorium applied to a tradesmen’s current account where the aggregate amount exceeded £5. The point arose because of the proclamation that had been issued on the 6th August 1914 pursuant to the Moratorium Act. In total some £20 6s 2d was owed by the defendant to the plaintiff, a meat supplier, made up of a number of smaller sums each of which did not exceed £5. So the question before the court was whether the moratorium was in place or whether an exception permitted non-payment. The exception was, “The Proclamation shall not apply to any payment in respect of a liability which, when incurred, did not exceed £5 in amount.” Judge Tindal-Atkinson held that the case did not fall within the exception: “In my opinion when a debt is contracted being made up of a series of items in one running account each item as it is incurred becomes so connected with the previous item as to constitute one debt…”[[33]](#footnote-33)

The Courts (Emergency Powers) Act 1914[[34]](#footnote-34)

Royal Assent was given on the 31st of August 2014 for the enactment of the Courts (Emergency Powers) Act 1914.[[35]](#footnote-35) The effect of the statute was dramatic, particularly in relation to the earlier postponement statutes. It superseded them. On the passage of the legislation through Parliament Hill observed, writing in 1927:

*“It would be foolish, as well as ungenerous, to apply to our legislation of August 1914 the same critical standards as would be appropriate in time of peace. The conflict abroad had already…developed such proportions as made its unprecedented seriousness apparent. Probably what was done in the House of Commons was largely due to two prevalent and not unnatural impressions: that the war would be of comparatively short duration, and that during its continuance there would be severe industrial distress at home.”*[[36]](#footnote-36)

This echoes a 19th century observation of Cockburn, CJ. He said: “The power of a legislature to interfere with and modify vested and existing rights cannot be questioned, although no doubt such interference, except under most exceptional circumstances, would be contrary to the principles of sound and just legislation.”[[37]](#footnote-37) Schwabe made a similar point when he noted, “It is, of course, natural that emergency legislation and emergency resolutions and rules should not provide for every case that may arise, and it is only to be expected that various points will require further elucidation by the Courts…”[[38]](#footnote-38) As we have already seen the courts were alive to the new provisions and were hearing cases on them.

The main effect of this statute was to insert judicial oversight into the postponement process. Judges were empowered to assess each case to determine what was reasonable in terms of enforcement against the back drop of the war. The most important provision in the statute related to levying execution. The first section stated that no person should be able to proceed to execution or otherwise to enforce a judgment or order of the court for the payment or recovery of a sum of money except with leave of the court.[[39]](#footnote-39) So, a power that could previously be exercised as a right was thenceforth exercisable only by permission.[[40]](#footnote-40)

The statute also removed other common law right and self-help remedies. By way of example landlords could no longer exercise their rights of distress or re-entry to recover possession,[[41]](#footnote-41) and mortgagees were precluded from realising their security.[[42]](#footnote-42)

The Act also contained a specific power to stay bankruptcy proceedings.[[43]](#footnote-43) It gave the bankruptcy court the power to stay proceedings in any existing bankruptcy. The power operated at any time after the presentation of a bankruptcy petition against a debtor but could only be deployed if the court was satisfied that the debtor’s inability to pay their debts was “due to circumstances attributable, directly or indirectly, to the present war.”[[44]](#footnote-44) The bankruptcy court had an absolute discretion in exercising this power but had to consider “all the circumstances of the case and the position of the parties.”[[45]](#footnote-45) Some commentators were of the view that these provisions could “give rise to a great deal of difficulty”[[46]](#footnote-46) because of the difficulty in establishing in practice what was meant by “circumstances attributable directly or indirectly to the war.” It was predicted that the “use of their discretion by judges or registrars will be very various.”[[47]](#footnote-47)

There were a number of cases that dealt with the relief statutes.[[48]](#footnote-48) *In* *re Silber*[[49]](#footnote-49) concerned an early application under the Courts (Emergency Powers) Act 1914[[50]](#footnote-50) Creditors were owed £61,320 pursuant to a judgment of Scrutton, J dated 6th July 1914. On the 8th July a bankruptcy notice was issued. It was served on the debtor on the 16th July. The defendant did not satisfy the judgment and accordingly an act of bankruptcy was complete. A bankruptcy petition was presented against the defendant on the 22nd October 1914.

On the 7th January 1915 the debtor gave notice to dispute the petition and the making of the receiving order on the ground that the petitioning creditors had not complied with the requirements of the Courts (Emergency Powers) Act 1914 as a result of which they were not entitled to present a petition.

Lord Cozens-Hardy M.R, with whom Swinfen Eady, LJ and Phillimore, LJ agreed, upheld the first instance decision of the bankruptcy registrar who had held on the 14th January that s.1(3) of the Act was exhaustive as to bankruptcy petitions and had accordingly made a receiving order. Subsection 3 provided that where a bankruptcy petition had been presented and the debtor had to prove to the satisfaction of the court that his inability to pay was due to the war. Lord Cozens-Hardy held that this applied to bankruptcy petitions presented before and after the Act came into force.[[51]](#footnote-51) He went on to state that the court sitting in bankruptcy had absolute jurisdiction to do what it thought right under subsection 3.

In a contemporary *Solicitors’ Journal* editorial the timings of the new statute were discussed. Writing before September 12th 1914 it was noted that, “…we doubt whether any previous statute has ever adopted a temporary period of precisely this nature.” [[52]](#footnote-52) The Act was to have effect “during the continuance of the present war, and for a period of six months thereafter.”[[53]](#footnote-53) The war of 1914-1918 technically terminated on the 21st August 1921[[54]](#footnote-54) so in theory the statute would have lasted until six months after that date. Normally temporary statutes were renewed annually[[55]](#footnote-55) or for a fixed period, e.g. a year, or longer. Power was also given in the Act for it to be determined by the King by Order in Council.

The Courts (Emergency Powers) (Amendment) Act 1916

The Courts (Emergency Powers) (Amendment) Act 1916 was enacted on the 17th May 1916. As Ehrlich has opined the statute, “was meant to protect the financial affairs of officers and men of the British forces on the basis that that while they were fighting it was not fair to let their debts be enforced without regard to the fact that doing so might result in the ruin of officers, men and their families.”[[56]](#footnote-56) Debtor officers included the highest echelons of the British Army. Sir John French, later the 1st Earl Ypres, borrowed £2000 from Douglas Haig, later Earl Haig,[[57]](#footnote-57) with which to pay off his debts.[[58]](#footnote-58)

The statute also effected on bankruptcy. No bankruptcy petition could be proceeded upon without the court exercising its discretion to permit the continuance of the bankruptcy process. This provision differed from what the 1914 Act provided in that the 1916 amendments required no evidence that the financial embarrassment had been caused by the war.

The related subjects, “alteration of trade conditions occasioned by the war” provided for by s.1 Courts (Emergency Powers) Act 1917 (discussed below) and severe financial hardship, were considered by Lawrence, J in *North Metropolitan Electric Power Supply Company v. Stoke Newington Corporation.*[[59]](#footnote-59) Rising labour and coal costs from 1914 had caused the electrical supply company to trade at a loss. The company issued an application under the emergency legislation to annul or suspend its electrical supply contracts. As Lawrence, J noted, “The company maintain that the trade conditions since the war are entirely different from the trade conditions which prevailed before the outbreak of the war.”[[60]](#footnote-60) The council as customer argued that the changes in labour and coal prices did not constitute an alteration in trading conditions within the meaning of the legislation. Lawrence, J held that the rising cost of coal and labour amounted to an alteration in the trade conditions under which the company supplied electrical energy which was occasioned by the war within the meaning of the section.

The Military Service Act 1916

The Military Service Act 1916 received Royal Assent on January 27th 1916. Its primary aim was to ensure that eligible males were enlisted in the British Army. There were exemptions that local tribunals could apply. One basis on which the tribunals could grant a certificate of exemption was the man’s exceptional financial or business obligations.[[61]](#footnote-61) There was some confusion and inconsistency in the application of the exemption criteria as a result of which the government issued guidance on a number of occasions.[[62]](#footnote-62)

Separation allowances were also paid to wives and children of enlisted men. The liberality of these payments in turn gave rise to social problems, such as increased alcohol consumption.[[63]](#footnote-63)

The Courts (Emergency Powers) Act 1917

The Courts (Emergency Powers) Act 1917 amended the provisions of the 1914 Act by staying execution in certain circumstances. The 1914 statute applied only to pre-war contracts; the Courts (Emergency Powers) (Amendment) Act 1916 included “officers and men of His Majesty’s Forces” in respect of money owed before the commencement of that statute.

In *In re A Debtor (No.391 of 1918)*[[64]](#footnote-64)the Court of Appeal (Swinfen Eady M.R., Duke, LJ & Eve, J)considered section 8 of the Courts (Emergency Powers) Act 1917[[65]](#footnote-65) under which section 1(1) of the 1914 Act was to apply to money due and payable in respect of a contract made before the officer or man had joined His Majesty’s Forces. The Court of Appeal held that the effect of the section was that without the leave of the Court no person could execute or otherwise enforce a judgment for the recovery of a sum of money due and payable by a soldier under a contract made before he had joined the forces. The debtor in the case had received a call up notice on the 1st May 1918 pursuant to the Military Services Act 1916. This had directed him to join the colours on a specified day. Before that date the debtor had contracted with a creditor for two debts, one of £220 and one of £175. The creditor obtained judgment against the debtor for £406 9s 4d. Without leave of the court the creditor served the debtor with a bankruptcy notice on the 15th August 1918. The debtor did not comply. The creditor then presented a bankruptcy petition against the debtor on the 2nd September 1918. The alleged act of bankruptcy was non-compliance with the bankruptcy notice.

The defendant opposed the petition on the basis that the bankruptcy notice had been issued without the leave of the court, as was required by the provisions of the Courts (Emergency Powers) Act 1917, so that non-compliance did not constitute an act of bankruptcy.

At first instance the bankruptcy registrar held that execution had been stayed by section 8 and therefore no act of bankruptcy had been committed by the debtor. The Court of Appeal agreed with this analysis and with the outcome, namely, that the bankruptcy petition was rightly dismissed.[[66]](#footnote-66)

The extent and availability of the relief provisions were considered by the Court of Appeal in *re A Debtor (No.206 of 1920).*[[67]](#footnote-67) The case was an appeal from a receiving order made by a registrar in bankruptcy. On the 12th April 1918 the debtor had borrowed £100 from the petitioning creditor. The debtor obtained a temporary commission as a lieutenant in the Royal Navy Volunteer Reserve on July 4th 1918. He was served with a writ for the recovery of the debt as he was boarding his ship in October 1918. The creditor obtained judgment on November 20th 1918. On July 3rd 1919 the debtor was demobilised but not discharged from service or gazetted out of the service. On March 5th 1920 a bankruptcy notice was served on him. He did not comply, and on the 16th March a bankruptcy petition was presented against him, resulting in a receiving order against which the debtor appealed. The Court of Appeal dismissed the appeal[[68]](#footnote-68), holding that at the material times the debtor had ceased to be an “officer of His Majesty’s Forces” within the meaning of s.1(1) of the Courts (Emergency Powers) Act 1914 as amended by s.8 of the Courts (Emergency Powers) Act 1917 so was no longer entitled to the protection which the provisions of those Acts afforded.

The Effectiveness of the Debt Suspension Measures

In a broad sense the emergency legislation was well received by the populace at large. As Williams has noted, “When war broke out in 1914 there was wide recognition of the national emergency”, and Parliament and the public, “unhesitatingly committed to the Government legislative and executive powers which would never have been contemplated in time of peace.”[[69]](#footnote-69)

Treasury records seem to bear out the effectiveness of the legislation[[70]](#footnote-70) and Lobban’s assessment that the measures met with some success and were well used.[[71]](#footnote-71) In 1918 there were 97,303 orders under the Courts (Emergency Powers) Act 1914 in the county courts. as against 101,957 cases determined on a hearing.[[72]](#footnote-72) Surprisingly, however, contemporary legal commentators said little about the postponement measures when discussing the Deeds of Arrangement Act 1914[[73]](#footnote-73) and the Bankruptcy Act 1914,[[74]](#footnote-74) regarding, in one case, the latter as no more than, “…largely a tidying up operation [which] did not alter in any material respect the system devised in 1883.”[[75]](#footnote-75)

1. **Insolvency in the Second World War**

Changes to the insolvency law of England and Wales during the Second World War came in the form of a new procedure introduced by the Liabilities (War-Time) Adjustment Acts 1939, 1941 and 1944 and restrictions on the commencement and prosecution of bankruptcy proceedings effected by the Courts (Emergency Powers) Acts 1941 and 1943.[[76]](#footnote-76)

**Courts (Emergency Powers) Acts 1939**

The Courts (Emergency Powers) Act 1939 was a short and straightforward legislative effort. The purpose of the Bill was described to the House of Commons, at its second reading[[77]](#footnote-77) on 1 September 1939,[[78]](#footnote-78) as:

*“To confer on courts certain powers in relation to remedies in respect of the non-payment of money and the non-performance of obligations (including powers in relation to bankruptcy and winding-up proceedings), and to make provision for purposes connected with the matters aforesaid.”*

It appears to have followed legislation passed during the First World War, the solicitor-general confirming, in answer to a question at the second reading about the exceptions to the restrictions imposed, that

*“T]hey are a curious looking assortment, but these, too, survived the last War and they were operated without any great difficulty and they raised no objection. We have simply endeavoured, as far as we could, to codify the law.”*

The 1939 Act, containing just seven sections, imposed restrictions on execution and other remedies (subject to certain exceptions.[[79]](#footnote-79) However, its the scope was limited: there was no general power to release a debtor’s indebtedness; jurisdiction was limited to cases where a judgment had been taken and to contracts entered into before the Act came into force. The 1939 provisions were largely replicated but with more sophistication and flexibility when a second Act came into force 1943.

There appears to have been little case law. However, *A v. B*[[80]](#footnote-80)held that *w*here an application was made by a plaintiff under s. 1 of the Courts (Emergency Pouters) Act, 1939 for leave to proceed to execution or otherwise to enforce a judgment, the burden of proving that the defendant was unable immediately to satisfy the judgment, and that that inability arose by reason of circumstances directly or indirectly attributable to the war, lay on the defendant.

**Courts (Emergency Powers) Act 1943**

Section 1(1) Courts (Emergency Powers) Act 1943 imposed a restriction on execution and other remedies:

*“Subject to the provisions of this Act, a person shall not be entitled, except with the leave of the appropriate court, to proceed to execution on, or otherwise to the enforcement of, any judgment or order of any court (whether given or made before or after the commencement of this Act) for the payment or recovery of a sum of money…”*[[81]](#footnote-81)

Section 1(5) made specific provision for bankruptcy and winding up petitions based on inability to pay:

*“Where a bankruptcy petition has been presented against any debtor, or a winding-up petition has been presented against any company on the ground that it is unable to pay its debts, and the debtor or company proves to the satisfaction of the court having jurisdiction in the bankruptcy or winding-up that his or its inability to pay his or its debts is due to circumstances directly or indirectly attributable to any war in which His Majesty is engaged, the court may at any time stay the proceedings under the petition for such time and subject to such conditions as the court thinks fit.”*

The Act introduced a requirement to obtain leave from the appropriate court[[82]](#footnote-82) before issuing a bankruptcy notice[[83]](#footnote-83) by means of a deeming provision[[84]](#footnote-84) whereby a person entitled to the benefit of a judgment or order who issued a bankruptcy notice or presented a bankruptcy petition or a winding up petition founded on the non-payment of money due under that judgment or order was deemed to be proceeding to the enforcement of that judgment or order.[[85]](#footnote-85) The court could refuse or give leave, which could be subject to conditions if the court was of the view that the debtor’s inability to pay the debt in question was the result of circumstances attributable directly or indirectly to any war in which the country was engaged.[[86]](#footnote-86) That applied also where the debt arose out of a contract made before or after the war[[87]](#footnote-87) and to a judgment for costs only.

There were exceptions to the general restriction set out in s. 1(1): it did not apply to a judgment for damages for tort, a judgment or order under which no money sum was recoverable (otherwise than in respect of costs), an order made in a matter of bastardy or affiliation, or an order made in criminal proceedings for the recovery of a penalty arising out of an Act;[[88]](#footnote-88) nor did it apply where a debt was due under a post-war contract[[89]](#footnote-89) unless the court was satisfied that the circumstances giving rise to inability to pay under the terms of the contract were attributable to the war and arose after the contract was entered into.[[90]](#footnote-90) In exercising its discretion the court could take into account other liabilities of the debtor, including future liabilities.[[91]](#footnote-91)

In *Re Debtors (Nos 2 and 3 of 1944), ex parte The Petitioning Creditors v. The Debtor*[[92]](#footnote-92) is an example of the Act in operation. On 21 April 1944 the county court registrar made an order, under the Courts (Emergency Powers) Act 1943 s. 1(5) staying proceedings on terms that the debtors paid the petitioning creditors the amount of their debts by four equal monthly instalments. The petitioning creditors contended that the order was wrong as the material transactions were entered into after the outbreak of war and the debtors had not demonstrated that their inability to pay was due to circumstances attributable to the war; further, the condition that the debts be paid by four instalments amounted to a preference of the petitioning creditors and therefore, could not stand. On appeal, Cohen and Evershed JJ upheld the first decision of the registrar but held, as to his second decision, that a preference could arise, so the petitioners should retain any moneys paid under the instalment arrangement into a special account.

The Act did not apply to Scotland, applied in Northern Ireland with modifications and to the Isle of Man but subject to exceptions[[93]](#footnote-93).

**Liabilities (War-Time Adjustment) Acts 1941 and 1944**

The Liabilities (War-Time Adjustment) Acts were broader in scope than the emergency powers legislation. Their aim was to address “[t]he dislocation of trade caused by the outbreak of war, and the changes of employment and the assistance of a court officer; place of residence of many people [which] created widespread financial difficulties.”[[94]](#footnote-94)

There was little difference in the principles and procedures as between the 1941 and 1944 Acts. Introducing the Bill for the latter to Parliament, the Lord Chancellor offered the following brief description of the 1941 Act scheme:[[95]](#footnote-95)

*“Under the principal Act, adjustment officers were appointed in various parts of the country to advise and assist persons who were in serious financial difficulties owing to war circumstances. There is no doubt that the service of these adjustment officers has proved very useful, and in quite a large number of cases has led to agreement between landlord and tenant or the like, which is all to the good. The adjustment officers also have power to draw up schemes of arrangement for the affairs of an individual who is in difficulty owing to war circumstances. The matter may he carried even further, and recourse may be had to the courts; and the courts will if necessary grant to an embarrassed debtor what is called a Protection Order, which will protect him from legal proceedings in respect of his debt.”*

He explained that the new Bill consisted mainly of minor amendments to the 1941 Act, but that it made changes in one crucial respect, the need for which had arisen as a result of evacuation:

*“The position at present is that where there is an evacuation area…certain obligations cannot be enforced. You cannot force the tenant to pay his rent or the mortgagee to pay off his mortgagee, and so forth, and naturally so, because these people have left the place in which they were living and are often without resources, so that in many cases they cannot meet these obligations. That is all very well, but it has the serious disadvantage that as time goes on and the months and the years go by there is piling up an immense debt owed by each of these people under a sort of moratorium, because although they are protected against demands for payment they are not in any way being relieved of their obligations. […] [W]hen they return to their homes, [they] should be able to get rid of their past liabilities on reasonable terms, and be able to start life anew in a reasonable way”.*

The 1941 Act consisted of 29 sections. Sections 1 and 2 introduced liabilities adjustment officers; ss. 3-13 dealt with liabilities adjustment proceedings; ss. 14 and 15 provided for the application of the Act to partnerships and companies; ss. 16-25 dealt with the ability to make rules, provable debts, offences and other miscellaneous matters; ss. 26 and 27 contained provisions as to post-war contracts; and ss. 28-29 dealt with interpretation and the short title.

The 1941 Act created two rescue regimes: the first was the scheme of arrangement[[96]](#footnote-96) which was an out-of-court procedure, although it did involve the assistance of a court officer; the second was liabilities adjustment proceedings leading to a liabilities adjustment order which did involve the court.[[97]](#footnote-97)

The scheme of arrangement allowed a person who was in financial difficulty as a result of war circumstances to apply to an adjustment officer, a court official, for assistance in putting a proposal to his creditors[[98]](#footnote-98) which would “enable him to preserve his business or recover it when circumstances permit.”

The process began with a meeting at which the debtor had to supply the adjustment officer with full details of his financial circumstances and his proposals for dealing with them. A scheme was then drafted, notice was given to the creditors requiring them to prove, if necessary a meeting would be convened, and finally, if the debtor and creditors reached agreement, the scheme would be approved by the adjustment officer. Alternatively, if this method did not succeed, the adjustment officer could approve a scheme that appeared to him to be just and reasonable provided that the debtor and a majority in number and value of creditors who had proved assented.[[99]](#footnote-99) The scheme bound all creditors with provable debts.[[100]](#footnote-100)

The scheme itself could take the form of a composition, postponement of payment, assignment or charging of property in favour of creditors, the management or disposal of the debtor’s business or property in whole or in part, and, subject to creditor consent, could vary the terms of a lease, mortgage or contract.[[101]](#footnote-101)

A creditor who dissented from a scheme of arrangement could appeal to the court,[[102]](#footnote-102) but the court could, if necessary, enforce a scheme using its powers of contempt.[[103]](#footnote-103)

The court had power to revoke an arrangement[[104]](#footnote-104) on a number of grounds:

1. if the debtor failed to comply with the terms of the scheme;
2. if the scheme could not be implemented without undue delay;
3. if it gave rise to injustice to the debtor or the creditors;
4. if the debtor committed an offence under the Act;[[105]](#footnote-105)
5. if the debtor failed to act in good faith towards his creditors[[106]](#footnote-106).

The Deeds of Arrangement Act 1914 did not apply to a scheme approved under the Act.

The 1941 Act preserved the priorities set out in s. 33 Bankruptcy Act 1914 (save where the creditors agreed otherwise). That provision was revised on the passage of the 1944 Act with the effect that almost all debts ranked equally[[107]](#footnote-107).

Liability adjustment proceedings were brought in the county court[[108]](#footnote-108) where the debtor resided or carried on business. Application for a liability adjustment order[[109]](#footnote-109) could be made by a debtor who, owing to war circumstances, was unable to pay existing debts, or would be unable, after such payment, to meet, as they fell due, any future liabilities in respect of obligations already incurred; or, if required to pay such debts and meet such liabilities, would have no reasonable prospect of preserving or recovering his business, or would otherwise lose his means of livelihood.[[110]](#footnote-110) Relief was thus available to both insolvent debtors and debtors who, whilst at present solvent, could remain so only at the expense of losing their means of support. (Application could also be made by a creditor in a case where the debtor had been granted and remained subject to relief under s. 1 Courts (Emergency Powers) Act 1943.)

There was an initial preliminary hearing at which the judge could either dismiss the application or make a “protection order.”[[111]](#footnote-111)

The effect of a protection order was to prevent further proceedings being taken against the debtor. As part of such an order the court could also[[112]](#footnote-112):

1. give directions as to the management or disposal of the debtor’s property;
2. appoint a receiver or manager;
3. charge the whole or part of the debtor’s property in favour of his creditors;
4. vest the debtor’s property in a trustee on trust for the creditors;
5. require payment of money into court, the delivery up of deed or other property.

Whether or not a protection was made,[[113]](#footnote-113) the judge could refer the debtor to the adjustment officer or registrar of the court for a report[[114]](#footnote-114). Such report would usually result in the fixing by the registrar of a further hearing on not less than seven days’ notice to the adjustment officer, the debtor, the creditors and “any other person whose attendance at the hearing appear[ed] desirable”.

If at the adjourned hearing (at which all to whom notice had been given were entitled to be heard) the court was satisfied that it was right to make an adjustment order it was obliged to:

1. make a protection order if it had not already done so;
2. make an order for the comprehensive adjustment and settlement of the debtor’s affairs; or
3. make an interim order, if the former order could not be made forthwith, with a view to comprehensive adjustment and settlement at a later date.

A comprehensive adjustment meant making an order providing for the payment of the debts of creditors as practicable or “to such an extent as the court considers fair and reasonable”[[115]](#footnote-115) Thus, the order could allow the debtor:

1. maintenance for himself and his family;
2. retention by the debtor of his home, furniture, and bedding and clothing for himself and his family;
3. postponement of the realisation of any property which was the subject of temporary depreciation in value or property that could not be realised forthwith;
4. payment of any outgoings in respect of any property retained;
5. application of payments for costs of work or temporary work under Part 2 War Damage Act 1943 in satisfaction of debts due in respect of such work;
6. postponement of payment of dets or any of them for such period as the court thought fit;
7. relief from rates[[116]](#footnote-116).

Section 6 of the 1941 Act gave the court novel and wide ranging powers in making a liabilities adjustment order. The rent under a lease could be reduced, but not to less than the lettable value of **t**hepremises at the date of the order.[[117]](#footnote-117) Where the debtor was in possession of goods under a hire-purchase agreement, the court could vest the goods in the debtor provided that he had paid an amount at least equal to the value of the goods at the date of the order. The hirer thereupon lost his right to retake possession but could prove for any outstandingbalance.[[118]](#footnote-118) The sectionalso gave power to the court, where it was in the interests of all parties under a contract, other than a lease or hire-purchase agreement which could be disclaimed, to vary a contract, but not so as to render it inconsistent with any statutory rule or regulation.

The court could not extend the debtor’s right of occupation of leasehold property beyond the term of the lease, and if any tenancy had been determined before the making of the protection order, any pending proceedings to recover the property were allowed to continue.[[119]](#footnote-119) It was, however, possible to disclaim property and rescind contracts.[[120]](#footnote-120)

Whilst not all secured debt was sacrosanct, mortgages were left untouched by the legalisation; and the courts were generally reluctant to interfere with (or adjust) secured rights[[121]](#footnote-121).

The order could be appealed in the same way as any other order[[122]](#footnote-122).

The Act applied to partnerships and companies as well as to individuals[[123]](#footnote-123). Thus, once a protection order was made, the court had no jurisdiction to continue with proceedings for a compulsory winding up.[[124]](#footnote-124)

The terms of the order were administered by the adjustments officer[[125]](#footnote-125). When the debtor had paid his debts in accordance with the order the court was obliged to make an order discharging him, whereupon he was released from all his provable debts save for those not released on discharge in bankruptcy.

As early as 1941 19 officers for different districts had been appointed by the Lord Chancellor under s. 2 of the Act. At least eight of the nineteen were official receivers.[[126]](#footnote-126)The Solicitor-General said in the debate, indicating the emphasis on rescue:[[127]](#footnote-127)

*“Obviously we want someone who can divest himself of what I may term the old bankruptcy atmosphere’-we want a man who will adopt a new attitude towards a new problem.”*

Responsibility for the administration of the legislation generally lay with the central price regulation committee of the Board of Trade.

The aims of the legislation were admirable; it is doubtful, however, whether it enjoyed the success that was hoped for. A contemporary study said:

*“Traders have found the act, in practice, too narrow to fill their needs. The crux of the problem of insolvency is the small retailers, some 90 percent of the whole, who are without the financial resources of the multiple shops, chain stores, department stores, and cooperatives [coupled with] the persons charged with operating the act [taking] too limited a view of their powers and responsibilities under the act”.*[[128]](#footnote-128)

In a wider context, on the other hand, it was thought that,

*[T]there is jurisprudential ore of high value to be extracted from the mass of war-time law. The emergency statute offers excellent opportunities for the study of the techniques of law in action”*[[129]](#footnote-129).

An important feature of the legislation was the distance it put between indebtedness and bankruptcy and its emphasis on preservation and rehabilitation. A contemporary report of a Court of Appeal case, *Pritchard-Jones v Le Vaye*,*[[130]](#footnote-130)* noted, “The provisions of the Courts (Emergency Powers) Act 1939 are directed primarily to the relief of the debtor, and are not intended to benefit the general body of creditors.” Section 20 of that Act provided that “nothing done or suffered by any person under, or for the purpose of taking advantage of, any provisions… of this Act shall be deemed to be an act of bankruptcy, and nothing so done or suffered shall disqualify any person from any office…”

Having begun his review of the 1941 Act with an accusation of “a certain nebulosity as to its precise intended objects,” Finer later noted:

*“It seems unimaginable that the insolvency legislation should not take the experiences gained under the Act into account when the time for repeal of emergency laws comes. Should the practice of the scheme of arrangement, effected by the services of a liabilities adjustment officer, prove satisfactory, it would be inconceivable that the lawgiver should not accede to the wishes of commercial circles which will no* *doubt ask for the institution to be adapted to normal conditions and continued.”*[[131]](#footnote-131)

In spite of the fact that the regimes contained in the Acts prefigured aspects of the interim order procedure and voluntary arrangements introduced by the Insolvency Act 1986, there is no evidence that they were ever considered as models by the Cork Committee.

**Conclusion**

The legislation described in this article was a necessary response to extreme circumstances. It was also, in many respects, innovative, certainly as regards the introduction of the debt moratorium and the concept of debt adjustment. These were undoubtedly creative and positive elements in the emergency legislation that emerged and developed, even if the working out of individual problems was not always easy (especially where property relationships were concerned). Yet on one view, even the matters of detail involved in balancing the rights of landlords and tenants, debtors and creditors and so on, was as just as it could be in leaving much to the pragmatic common sense of adjustment officers on the one hand and the wide discretions afforded to the judiciary on the other.

As has been demonstrated, the measures introduced in the First World War enjoyed some success, which is no doubt why they were largely revived in the Second World War but gradually developed to become more sophisticated.

But whilst the aims of the legislation were admirable; it is doubtful, however, whether it enjoyed the success that was hoped for. A contemporary study said (of the World War II statutes):

*“Traders have found the act, in practice, too narrow to fill their needs. The crux of the problem of insolvency is the small retailers, some 90 percent of the whole, who are without the financial resources of the multiple shops, chain stores, department stores, and cooperatives [coupled with] the persons charged with operating the act [taking] too limited a view of their powers and responsibilities under the act”.*[[132]](#footnote-132)

In a wider, academic, context, on the other hand, it was thought that,

*[T]there is jurisprudential ore of high value to be extracted from the mass of war-time law. The emergency statute offers excellent opportunities for the study of the techniques of law in action”*[[133]](#footnote-133).

An important feature of the legislation was the distance it put between indebtedness and bankruptcy and its emphasis on preservation and rehabilitation. A contemporary report of a Court of Appeal case, *Pritchard-Jones v Le Vaye*,*[[134]](#footnote-134)* noted, “The provisions of the Courts (Emergency Powers) Act 1939 are directed primarily to the relief of the debtor, and are not intended to benefit the general body of creditors.” Section 20 of that Act provided that “nothing done or suffered by any person under, or for the purpose of taking advantage of, any provisions… of this Act shall be deemed to be an act of bankruptcy, and nothing so done or suffered shall disqualify any person from any office…”

Having begun his review of the 1941 Act with an accusation of “a certain nebulosity as to its precise intended objects,” Finer later noted:

*“It seems unimaginable that the insolvency legislation should not take the experiences gained under the Act into account when the time for repeal of emergency laws comes. Should the practice of the scheme of arrangement, effected by the services of a liabilities adjustment officer, prove satisfactory, it would be inconceivable that the lawgiver should not accede to the wishes of commercial circles which will no* *doubt ask for the institution to be adapted to normal conditions and continued.”*[[135]](#footnote-135)

In spite of the fact that the regimes contained in the Acts prefigured aspects of the interim order procedure and voluntary arrangements introduced by the Insolvency Act 1986, the ore in them appears not to have been mined: there is no evidence that they were ever considered as models by the Cork Committee.

1. ♦ Non-Executive Director Manolete Partners plc; Consultant, Moon Beever; Mediator, Three Stone Buildings; President of the Chartered Institute of Credit Management; formerly chief bankruptcy registrar (2004-2017), bankruptcy registrar (1996-2004), High Court of Justice. [↑](#footnote-ref-1)
2. ♣ Senior Lecturer in Law, School of Law and Social Justice, University of Liverpool and Academic Associate, Exchange Chambers. Email: [j.tribe@liverpool.ac.uk](mailto:j.tribe@liverpool.ac.uk). [↑](#footnote-ref-2)
3. For a discussion of previous legal responses to public health emergencies see: Matthews, GW & Sbbott, EB & Hoffman, RE & Cetron, MS. *Legal authorities for Interventions in Public Health Emergencies*, in: *Law in Public Health Practice*. Oxford University Press, Oxford, 2007. [↑](#footnote-ref-3)
4. A useful summary of the changes can be read here: Conway, L. *Coronavirus: changes to insolvency rules to help businesses*. Briefing Paper. Number 8877, 31 March 2020 (available here: https://commonslibrary.parliament.uk/research-briefings/cbp-8877/). [↑](#footnote-ref-4)
5. See the Coronavirus (Scotland) Act 2020. There the period of moratorium relief is six months. [↑](#footnote-ref-5)
6. Nor is the pandemic or political reaction to it novel. On political reaction to the Spanish Flu pandemic of 1916-1918 see further: Webber, E. *How politicians handled the last great pandemic*. The Times, Friday March 27 2020. [↑](#footnote-ref-6)
7. For a general discussion of emergency legislation see: Wagstaff, R. *A Short History of Panic Responses*, in: *Terror Detentions and the Rule of Law*. Oxford University Press, Oxford, 2013, p.30. See also: McCoy, DC. *Emergencies – The Most Fundamental Right*. Oxford University Press, Oxford, p.83. [↑](#footnote-ref-7)
8. On House of Lords’ decisions which discuss emergency powers and the impact of war see: Blom-Cooper, L & Dickson, B & Drewry, G (Eds). *The Judicial House of Lords 1876-2009*. Oxford University Press, Oxford, 2009, p.202-208. Hereafter *Judicial Lords.* [↑](#footnote-ref-8)
9. The importance of this credit system was recognised by the Cork Committee who observed in their aims of a good modern insolvency law we, “…recognise the world in which we live and the creation of wealth depend upon a system founded on credit…” (see: *Insolvency Law and Practice: Report of the Review Committee*. HMSO, London, 1982, Cmnd 8558. (Hereafter *Cork Report*), para.198. [↑](#footnote-ref-9)
10. For a discussion of 17th and 18th century examples of the Crown’s powers over its subjects in time of war see: Holdsworth, W. *A History of English Law*. Methuen & Co, Ltd, London, 1938, Vol.X, p.400. Hereafter *Holdsworth History.* [↑](#footnote-ref-10)
11. As Lobban has noted, “The effectiveness of moratoria in sustaining the system of credit in emergencies had been established in the Franco-Prussian war of 1870-1, when the French legislature had periodically postponed the date of payment of bills of exchange, to ensure that they did not become payable until the end of the war.” (see: Lobban, M. *Special Issue: The Great War and Private Law - Introduction* (2014) 2 Comp. Legal Hist. 163. Hereafter *Lobban War*, p.173.) A later revolution also produced moratorium provisions. In *Rouquette v. Overmann and Schou* (1875) 33 LT Rep.333; LR 10 QB 525 an authority dating from 1875, the way in which the French moratorium system works is fully examined. On the 28th March 1871 a revolution broke out in Paris and commercial business was suspended. The revolution came to an end on the 21st May 1871. On the 21st April 1871 the National Assembly and the President of the council enacted a law which prolonged for a month rights of action on negotiable instruments. [↑](#footnote-ref-11)
12. For a general discussion of the First World War see: Edmonds, JE (Ed). *Military operations, France and Belgium, 14 vols, History of the Great War* (1922–48). See also: French, D. *British strategy and war aims*. Routledge, London, 1986. See also: Beckett, IFW & Simpson, K (Eds). *A nation in arms: a social study of the British army in the First World War.* Spellmount Publishers Ltd, 1990; Bond, B ed., *The First World War and British military history*. Oxford University Press, Oxford, 1991. [↑](#footnote-ref-12)
13. To the chagrin of messrs Darling, Blackadder, George and Baldrick. In one of the greatest pieces of television ever committed to film the following fictional conversation ensures whilst the company are waiting to go over the top. The Allied bombardment stops and quiet descends on the Western Front:

    Captain Darling: “Listen - our guns have stopped.”

    Lieutenant George: “You don't think...”

    Private Baldrick: “Maybe the war's over. Maybe it's peace.”

    Lieutenant George: “Oh hurrah the big knobs have got round the table and yanked the iron out of the fire.”

    Captain Darling: “Thank God. We lived through it. *The Great War, 1914 to 1917.”*

    Captain Darling , Private Baldrick , Lieutenant George : “Hip hip hooray!

    Captain Blackadder : I'm afraid not. The guns have stopped because we are about to attack. Not even our generals are mad enough to shell their own men. They think it's far more sporting to let the Germans do it.” (see: <https://youtu.be/NgyB6lwE8E0>). [↑](#footnote-ref-13)
14. See further: Neilson, K. *Kitchener, Horatio Herbert, Earl Kitchener of Khartoum (1850–1916), army officer.* Oxford Dictionary of National Biography. 2011, at “Secretary of state for war, 1914–1916.” [↑](#footnote-ref-14)
15. See further: Broadberry, S & Harrison, M (Eds). *The Economics of World War I.* Cambridge University Press, Cambridge, 2005. See also: French, D. *British economic and strategic planning, 1905–1915*. Routledge, London, 1982. [↑](#footnote-ref-15)
16. See further: Schwabe, WS. *Effect of War on Stock Transactions.* Effingham Wilson, London. 1915, pp.1-2. Hereafter *Schwabe Stock*. [↑](#footnote-ref-16)
17. See further: Lobban, M. *Special Issue: The Great War and Private Law - Introduction* (2014) 2 Comp. Legal Hist. 163. Hereafter *Lobban War.* [↑](#footnote-ref-17)
18. For a discussion of earlier measures focused on commercial activity during war see: *Holdsworth History*, p.401. [↑](#footnote-ref-18)
19. Thomas, I. *Our Lord Birkenhead – An Oxford Appreciation.* Putman, London, 1930, dedication. [↑](#footnote-ref-19)
20. On these “moratorium” measures see further: Morgan, T & Baty, JH. *War: Its Conduct & Leg Results*. Dutton & Co, New York, 1915. Herafter *Morgan Baty War*. See also: Anonymous. *“The Moratorium”* (1914) 137 Law Times 376. See also: Schuster, EJ. *The Effect of War and Moratorium on Commercial Transactions*. 2nd ed., rev. and enl. Stephens & Sons Ltd, London, 1914. See also: Bolton, AD. *The Postponement of Payments Act, 1914, and the Courts (Emergency Powers) Act, 1914.* Third Edition, revised and enlarged. London: Stevens & Haynes. 1914. See also: Bradley, FE. *Debtors and the War: their Rights and Privileges under the Postponement of Payments Act, 1914 and the Courts (Emergency Powers) Act, 1914*, National Archive, BD TB 25/6/11. [↑](#footnote-ref-20)
21. These are collected together in: *Manual of Emergency Legislation*, September 1914. [↑](#footnote-ref-21)
22. See further: Grand Juries (Suspension) Act 1917. [↑](#footnote-ref-22)
23. See: Courts (Emergency Powers) (Amendment) Act 1916. See further: *The Courts (Emergency Powers) Act* (1913-1914) 58 Solic.J.& Wkly Rep.815, p.816 (Hereafter *Solicitors Powers)* where the Act is reproduced. [↑](#footnote-ref-23)
24. See further: *In the Estate of Anderson* [1916] P. 49. [↑](#footnote-ref-24)
25. 4&5 Geo. V.c.11. See: Hansard, vo.65 (5th ser) col.1805. [↑](#footnote-ref-25)
26. Ehrlich, L. *British Emergency Legislation During the Present War* (1916-1917) 5 Calif. L. Rev. 433, p.433. Hereafter *Ehrlich Emergency.* [↑](#footnote-ref-26)
27. *Morgan Baty War*, p.401. [↑](#footnote-ref-27)
28. AWG. *The Moratorium*. Law Times (Eng), in: 34 Can. L. Times 800 (1914). Hereafter *AWG Moratorium.* [↑](#footnote-ref-28)
29. *AWG Moratorium,* p.803. [↑](#footnote-ref-29)
30. *Morgan Baty War*, p.404. [↑](#footnote-ref-30)
31. [1918] 1 Ch.443. The entire statute is helpfully appended to the case report. [↑](#footnote-ref-31)
32. (1913-1914) 58 Solic.J.& Wkly Rep.818. [↑](#footnote-ref-32)
33. *ibid.* [↑](#footnote-ref-33)
34. See further: Hill, N. *War and Insurance*. Oxford University Press, Oxford, Yale University Press, New Haven, 1927, p.111 “The Courts (Emergency Powers) Act 1914, (4&5 George 5, C.78.” Hereafter *Hill Insurance.*  [↑](#footnote-ref-34)
35. 4&5 Geo.V.c.78. See further: *Courts (Emergency Powers) Act, 1914: Circulars concerning the restriction of the legal powers of creditors, National Archive. CC/C-A/2/10/49.* [↑](#footnote-ref-35)
36. *Hill Insurance*, p.112. [↑](#footnote-ref-36)
37. *ibid*, p.536. [↑](#footnote-ref-37)
38. *Schwabe Stock*, p.2. [↑](#footnote-ref-38)
39. s.1(1)(a) Courts (Emergency Powers) Act 1914. [↑](#footnote-ref-39)
40. See further: *Re Company, sub nom Re Two Companies* (0022 and 0023 of 1915) [1915] 1 Ch 520, 84 LJ Ch 382, [1915] HBR 65, 59 Sol Jo 302, 112 LT 1100, 31 TLR 241 where it was held that a petition by a judgment creditor to wind up a company was not a proceeding ‘to execution on, or otherwise to the enforcement of’ the judgment within Courts (Emergency Powers) Act 1914 s 1(1). [↑](#footnote-ref-40)
41. See for example: *Ness v. O’Neil* [1916] 1 KB 706 here the Court of Appeal (Swinfen Eady, LJ with whom Pickford and Bankes, LJJ agreed) held that leave of the court is only necessary for the issue of a writ of possession, as opposed to leave for the landlord to bring an action under a clause of re-entry. See also *Tozer v. Viola* [1918] 1 Ch.75 in relation to landlords and leave to determine a tenancy under the emergency legislation. See also: *Revill v. Bethell* [1918] 638 on the emergency legislation and determining tenancies. [↑](#footnote-ref-41)
42. s.1(1)(b) Courts (Emergency Powers) Act 1914. See further: *In re Farnol Eades Irvine & Co Limited, Carpenter v. The Company* [1914 F. 1128.] [1915] 1 Ch. 22. [↑](#footnote-ref-42)
43. s.1(3) Courts (Emergency Powers) Act 1914. See also: *Morgan Baty War*, p.410. [↑](#footnote-ref-43)
44. s.1(3) Courts (Emergency Powers) Act 1914. [↑](#footnote-ref-44)
45. *ibid.* [↑](#footnote-ref-45)
46. *Solicitors Power*, p.816. [↑](#footnote-ref-46)
47. *Solicitors Power*, p.817. [↑](#footnote-ref-47)
48. See also: *Re Radeke, ex p Jacobs* (1915) 84 LJKB 2111, [1915] HBR 185, 113 LT 1115, 31 TLR 584, where it was held a bankruptcy petition was one of the ‘remedies of a creditor’ within Courts (Emergency Powers) Act 1914 s 1 (7). [↑](#footnote-ref-48)
49. [1915] 2 K.B. 317. [↑](#footnote-ref-49)
50. 4&5 Geo.5, c.78. [↑](#footnote-ref-50)
51. [1915] 2 K.B. 317, p.319. [↑](#footnote-ref-51)
52. *Solicitors Power,* p.816. [↑](#footnote-ref-52)
53. Courts (Emergency Powers) Act 1914, s.2(4). [↑](#footnote-ref-53)
54. Present War (Definition) Act 1918. See further: Walsh, C. *Jowitt’s Dictionary of English Law.* Sweet & Maxwell, London, 1959, vo.2, p.1851. [↑](#footnote-ref-54)
55. Pursuant to the Expiring Laws Continuance Act 1921. [↑](#footnote-ref-55)
56. *Ehrlich Emergency*, p.438. [↑](#footnote-ref-56)
57. On Haig see further: Prior, R., & Wilson, T. *Haig, Douglas, first Earl Haig (1861–1928), army officer.* Oxford Dictionary of National Biography. 2011, where it is noted, “It is not clear that the loan was ever repaid.” (Hereafter *Prior Wilson Haig*). Later whilst commander-in-chief Haig would draw on biblical and financial references when discussing the war. After the first fortnight of the bloody Somme campaign in 1916 Haig noted: “16 July. Mr Duncan took as his text: ‘The Kingdom of Heaven is likened unto treasure hid in a field’, which in order to buy ‘a man sells all he possesses with joy’. Anything worth having has always to be paid for fully. In this war our object was something very great. The future of the world depends on our success. So we must willingly spend all we have, energy, life, money, everything in fact, without counting the cost.” (Haig MSS, Diary, NL Scot, cited in *Prior Wilson Haig*.) [↑](#footnote-ref-57)
58. See further: Beckett, IFW. *French, John Denton Pinkstone, first earl of Ypres (1852–1925), army officer.* Oxford Dictionary of National Biography. 2015. See also: Holmes, R. *The little field-marshal: Sir John French*. 1981. [↑](#footnote-ref-58)
59. [1921] 1 Ch.455. [↑](#footnote-ref-59)
60. [1921] 1 Ch.455, 462. [↑](#footnote-ref-60)
61. Military Service Act 1916. [↑](#footnote-ref-61)
62. *Ehrlich Emergency,* p.436. There are echoes of this national inconsistency and confusion with the 2020 corona pandemic and the application by various police forces of the provisions of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, particularly reg.6 on restrictions of movement. [↑](#footnote-ref-62)
63. *ibid.* [↑](#footnote-ref-63)
64. [1919] 1 KB 169. [↑](#footnote-ref-64)
65. 7&8 Geo.5, c.25. [↑](#footnote-ref-65)
66. Duke, LJ made a number of interesting points in his judgment regarding policy and substance of the provisions and how they were meant to offer relief to officers and soldiers during the “tremendous war” in which they were engaged. He noted, “The learned Registrar took the view that the *protective provision* of the section was intended to have the effect of *relieving* a man who had been called to actual military service from the obligations which he would have had to meet if he had not been so called.” (authors’ italicised emphasis). [↑](#footnote-ref-66)
67. [1921] 2 K.B. 167. [↑](#footnote-ref-67)
68. The respondent’s counsel, Hansell made powerful submissions about the purpose of the statutes: “The object of the Emergency Acts with relation to officers and men in His Majesty’s Forces was to protect them while on service from being harassed by money troubles while they were so serving.” He went on to say that the protection afforded by the statutes was intended to extend to persons who had returned to civilian life. [↑](#footnote-ref-68)
69. *Judicial Lords*, citing: Allen, CK. *Law and Order: An Inquiry into the Nature and Scope of Delegated Legislation and Executive Powers in England*. 1st Ed. Stevens & Sons, London, 1945, p.35. [↑](#footnote-ref-69)
70. National Archive. T 1/11659/16671- *Treasury. Effect of the Moratorium (suspension of payments under the Postponement of Payments Act 1914 and Proclamations of 2, 6, and 10 August for two months from 4 August) on banking, trade, rents, etc*. Attached file(s): 16608/14; 16607/14; 16606/14; 16605/14; 16604/14; 16603/14; 16564/14; 16563/14; 16486/14; 16400/14. Category B, 1914. [↑](#footnote-ref-70)
71. *Lobban War*, p.175. [↑](#footnote-ref-71)
72. Judicial Statistics, PP 1920 (Cmd 831) I 515, 29. [↑](#footnote-ref-72)
73. 4&5 Geo.5, c.47. See for example: Kuhn, O. *Handbook on the Bankruptcy and Deeds of Arrangement Act, 1914.* Jordan & Sons Limited, London, 1914, where there is no discussion. See also: Williams, SE. *Lawrence’s Deeds of Arrangement and statutory compositions and schemes with precedents.* 9th edition. Stevens & Sons, Limited, London, 1922 where there is also no discussion. [↑](#footnote-ref-73)
74. 4&5 Geo.5, c.59. See for example: Aronson, VR & Campling, SJ. *The Bankruptcy Acts 1914 & 1926 and the Deeds of Arrangement Act 1914*. 9th Ed. Waterlow & Sons Limited, London, 1938, and: Weldon, A & Hobson, FWE. *Gibson’s Bankruptcy: Intended as an Explanatory Treatise on the Law and Practice of Bankruptcy*.10th Ed. Law Notes Publishing Offices, London, 1933. There is no discussion in either book. This sparsity of treatment includes later books that dealt primarily with the Bankruptcy Act 1914 and its predecessors statutes. See for example: Wilson, HARJ & Penfold, RD. *Ranking, Spicer & Pegler’s The Rights and Duties of Liquidators, Trustees and Receivers*. 22nd Ed. HFL (Publishers) Ltd, London, 1964, which contains no discussion of the moratorium acts. [↑](#footnote-ref-74)
75. *Cork Report*, para.54. [↑](#footnote-ref-75)
76. A summary of the effects of some of the emergency powers and war-time adjustments statutes can be found in an appendix to  O. Griffiths, *The Law Relating to Bankruptcy, Deeds of Arrangement, Receiverships and Trusteeships* 4th edn (London, 1949) 223-229. For a contemporary commentary on the Liabilities (War-Adjustments) Act 1941 see Morris Finer and Manuel Harnik, *Statutes*, (1941) 5(2) MLR 120-128. [↑](#footnote-ref-76)
77. It was moved by [the solicitor-general, Sir Terence O'Connor](https://api.parliament.uk/historic-hansard/people/mr-terence-oconnor). [↑](#footnote-ref-77)
78. *Hansard*, HC Deb 01 September 1939 vol 351 cc155-9. [↑](#footnote-ref-78)
79. Section 1. [↑](#footnote-ref-79)
80. [1940] 1 KB 217. [↑](#footnote-ref-80)
81. Section 1(2)  imposed the same restriction on levying distress, taking possession of property, appointing a receiver of property, re-entry on land, realising security, forfeiting a deposit, serving a demand under s. 165 para (1) Companies Act 1929 or instituting proceedings for foreclosure or sale or for the recovery of possession of mortgaged property. The restriction applied also to any such proceedings instituted before the commencement of the Act. [↑](#footnote-ref-81)
82. As to which see s. 7(1) and the rule-making powers of the Lord Chancellor. The appropriate court was generally the court in which the underlying judgment had been obtained, to which enforcement had been transferred or, the court where the judgment was registered if it was a foreign judgment (r. 2 Courts (Emergency Powers) Rules 1943). [↑](#footnote-ref-82)
83. . A bankruptcy notice was an approximate but more limited equivalent of the modern statutory demand. Non-compliance or failure to satisfy the court of the existence of a counterclaim, set-off or cross demand equal to or exceeding the debt claimed in the notice was one of the acts of bankruptcy prescribed by s. 1(1) Bankruptcy Act 1914. [↑](#footnote-ref-83)
84. Section 9(2)(b) Courts (Emergency Powers) Act 1943. [↑](#footnote-ref-84)
85. This provision was no doubt necessary because under the general law the presentation of a petition did not constitute enforcement. [↑](#footnote-ref-85)
86. Section 1(4). [↑](#footnote-ref-86)
87. *In re Middlesex Brick Co Ltd* [1942] Ch 65 ChD. [↑](#footnote-ref-87)
88. Section 1(1). [↑](#footnote-ref-88)
89. I.e. a contract made on or after 2 September 1939. See the definition in s. 9(2). [↑](#footnote-ref-89)
90. Section 2(1). [↑](#footnote-ref-90)
91. Section 6. [↑](#footnote-ref-91)
92. [1944] 2 All ER 525. [↑](#footnote-ref-92)
93. Sections 10, 11 and 12. [↑](#footnote-ref-93)
94. O. Griffiths, *The Law Relating to Bankruptcy, Deeds of Arrangement, Receiverships and Trusteeships* 4th edn (London, 1949) 224. [↑](#footnote-ref-94)
95. HL Deb 01 August 1944 vol 133 cc15-23[15](https://api.parliament.uk/historic-hansard/lords/1944/aug/01/liabilities-war-time-adjustment-bill-hl" \l "column_15" \o "Col. 15 — HL Deb 01 August 1944 vol 133 c15). [↑](#footnote-ref-95)
96. Section 1 Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-96)
97. Section 3 Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-97)
98. Section 1(1) Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-98)
99. Section 1(2) Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-99)
100. Ibid. [↑](#footnote-ref-100)
101. Section 1(3) Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-101)
102. Section 1(3) Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-102)
103. Section 1(6) Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-103)
104. Section 1(7) Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-104)
105. Section 19 of the Act made it a criminal offence to make a false statement or material omission for the purpose of securing consent to a scheme, and fraudulently to convey or conceal property in relation to a scheme or a protection order. [↑](#footnote-ref-105)
106. Section 1(7) Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-106)
107. Section 9 dealt with proprieties; see as to debts ranking equally between themselves s. 9(2). [↑](#footnote-ref-107)
108. But subject to power of transfer to the High Court. [↑](#footnote-ref-108)
109. F for adjustment and settlement of his affairs. [↑](#footnote-ref-109)
110. Section 3(1) Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-110)
111. Section 3(2) Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-111)
112. Section 3(3) Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-112)
113. As to the court’s discretion see *Re F W Marten* [1943] 2 All ER 196: the court would not make an order where it was not practicable or proper to do so. [↑](#footnote-ref-113)
114. Section 3(5) Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-114)
115. Section 4 Liabilities (War-Time Adjustments) Act 1941 as amended by the 1944 Act; and see s. 5 Liabilities (War-Time Adjustment) Act 1944. [↑](#footnote-ref-115)
116. Section 8 Liabilities (War-Time Adjustments) Act 1944. [↑](#footnote-ref-116)
117. “ Lettable value’’ meant the rent at which the premises might reasonably be expected to let from year to year upon the other terms and conditions of the lease (s. 28(1) Liabilities (War-Time Adjustment) Act 1941). [↑](#footnote-ref-117)
118. For a case on hire-purchase in this context see *Smart Brothers Ltd v Ross* [1942] 1 All ER 1. [↑](#footnote-ref-118)
119. *Re Liabilities (War-time adjustment) Act 1941; Re Affairs of Kirby* [1944] 1 All ER *166; Re Liabilities (War-Time Adjustment) Acts, 1941 and 1944*; *Re Affairs of Alsop* [1945] 2 All ER 4. [↑](#footnote-ref-119)
120. Section 5 Liabilities (War-Time Adjustment) Act 1941. [↑](#footnote-ref-120)
121. See, for example, *Pritchard-Jones v Le Vaye* [1941] 3 All ER 455 where the Court of Appeal declined to equalise the position of secured creditors. [↑](#footnote-ref-121)
122. An appeal from the county court to the High Court (s. 111 County Courts Act, 1934). See *Re D S Smith* [1943] 2 All ER 740 which held that appeal was the proper route by which to challenge an adjustment order. [↑](#footnote-ref-122)
123. Sections 14 and 15 Liabilities (War-Time Adjustment) Act 1941.Section 15(3) blurred the interests of the company and its members in a curious bur arguably humane fashion: “The court shall, in considering whether it **is** practicable and proper to deal with the affairs of a company-haveregard to the constitution and history of the company and the means ofthe members and officers thereof.” [↑](#footnote-ref-123)
124. *Re R W Johnson Ltd* [1942] 1 All ER 175. [↑](#footnote-ref-124)
125. The Liabilities (War-Time Adjustments) Act 1941 provided by s. 16 for rules to be made; see r. 24 Liabilities (War-Time Adjustments) Rules 1942 as to administration under the order. [↑](#footnote-ref-125)
126. Morris Finer and Manuel Harnik, *Statutes*, (1941) 5(2) MLR 121. [↑](#footnote-ref-126)
127. Hansard, Vol. 371. col. 315. [↑](#footnote-ref-127)
128. United States Congress Senate Special Committee to Study Problems of American Small Business, *Small Business Problems: Effect of the War on British Retail Trade* (Washington, 1943) p 41. [↑](#footnote-ref-128)
129. Morris Finer and Manuel Harnik, *Statutes*, (1941) 5(2) MLR 120. [↑](#footnote-ref-129)
130. [1941] 3 All ER 455. [↑](#footnote-ref-130)
131. Morris Finer and Manuel Harnik, *Statutes*, (1941) 5(2) MLR 127. [↑](#footnote-ref-131)
132. United States Congress Senate Special Committee to Study Problems of American Small Business, *Small Business Problems: Effect of the War on British Retail Trade* (Washington, 1943) p 41. [↑](#footnote-ref-132)
133. Morris Finer and Manuel Harnik, *Statutes*, (1941) 5(2) MLR 120. [↑](#footnote-ref-133)
134. [1941] 3 All ER 455. [↑](#footnote-ref-134)
135. Morris Finer and Manuel Harnik, *Statutes*, (1941) 5(2) MLR 127. [↑](#footnote-ref-135)