These notes refer to the Small Business, Enterprise and Employment Act 2015 (c.26) which received Royal Assent on 26 March 2015

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: INSOLVENCY

Administration

Section 128: Administration: payments to unsecured creditors

737. This section amends Part II and Schedule B1 of the Insolvency Act 1986 to provide that the court's permission is not required where the administrator makes the prescribed part payment to unsecured creditors. This will apply to England and Wales and Scotland.

738. In administration and insolvent liquidations (creditors' voluntary and court winding up) proceedings, part of a company's net property must be set aside for a payment to unsecured creditors, and this is known as the prescribed part.

739. In an administration, the office holder must seek the court's permission before making payments to unsecured creditors. The reason for this is that where there are funds left over after secured creditors have been paid, the office holder should consider whether the administration should be converted into a creditors' voluntary liquidation, a process which provides for increased engagement of unsecured creditors. The requirement to seek the court's permission has been widely interpreted as applying to payments made to unsecured creditors from the prescribed part.

740. A similar amendment is made to the process whereby the administration may be converted to a creditors' voluntary liquidation to reflect that a prescribed part payment should not trigger this change.

741. This section will come into force at the end of the period of two months beginning with the day on which the Bill becomes an Act.