

*Draft Order laid before Parliament under section 14(1) of the Legislative and Regulatory Reform Act 2006, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**REGULATORY REFORM**

INSOLVENCY

THE LEGISLATIVE REFORM (INSOLVENCY)  
(MISCELLANEOUS PROVISIONS) ORDER 2009

*Made* - - - - *\*\*\**  
*Coming into force* - - *6th April 2010*

The Secretary of State for Business, Enterprise and Regulatory Reform makes the following Order, in exercise of the powers conferred by section 1 of the Legislative and Regulatory Reform Act 2006<sup>(1)</sup>.

For the purposes of section 3(1) of that Act, he considers that the conditions in section 3(2) are satisfied, where relevant.

He has consulted in accordance with section 13(1) and (2) of that Act.

He laid a draft Order and an explanatory document before Parliament in accordance with section 14(1) of that Act.

Pursuant to section 15 of that Act, the super-affirmative resolution procedure (within the meaning of Part 1 of that Act) applies in relation to the making of the Order.

The period of 60 days referred to in section 18(2) of that Act has expired.

In accordance with section 18(4) of that Act, the draft Order has been approved by resolution of each House of Parliament.

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009 and comes into force on 6th April 2010.

(2) Subject to paragraph (3), this Order extends to England and Wales and to Scotland.

(3) Articles 3(2), 5(7), 7, 8, 9, 10(2) and 11 do not extend to Scotland.

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(1) 2006 c.51; section 13(1) has been amended by the Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1338), Schedule 1, paragraph 147; see section 32 for the definition of “Minister of the Crown”.

## Amendments to the Insolvency Act 1986

2. The Insolvency Act 1986(2) is amended as specified in articles 3 to 11 of this Order.

### *Provisions relating to communication*

#### Attendance at meetings and use of websites

- 3.—(1) After section 246 insert—

#### *“Remote attendance at meetings*

#### **Remote attendance at meetings**

- 246A.**—(1) Subject to subsection (2), this section applies to—

- (a) any meeting of the creditors of a company summoned under this Act or the rules, or
- (b) any meeting of the members or contributories of a company summoned by the office-holder under this Act or the rules, other than a meeting of the members of a company in a members’ voluntary winding up.

- (2) This section does not apply where—

- (a) a company is being wound up in Scotland, or
- (b) a receiver is appointed under section 51 in Chapter 2 of Part 3.

(3) Where the person summoning a meeting (“the convener”) considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(4) Where a meeting is conducted and held in the manner referred to in subsection (3), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

- (5) For the purposes of this section—

- (a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

- (b) a person is able to exercise the right to vote at a meeting when—

- (i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
- (ii) that person’s vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(6) The convener of a meeting which is to be conducted and held in the manner referred to in subsection (3) shall make whatever arrangements the convener considers appropriate to—

- (a) enable those attending the meeting to exercise their rights to speak or vote, and
- (b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

- (7) Where in the reasonable opinion of the convener—

- (a) a meeting will be attended by persons who will not be present together at the same place, and

(b) it is unnecessary or inexpedient to specify a place for the meeting,  
any requirement under this Act or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(8) In making the arrangements referred to in subsection (6) and in forming the opinion referred to in subsection (7)(b), the convener must have regard to the legitimate interests of the creditors, members or contributories and others attending the meeting in the efficient despatch of the business of the meeting.

(9) If—

- (a) the notice of a meeting does not specify a place for the meeting,
- (b) the convener is requested in accordance with the rules to specify a place for the meeting, and
- (c) that request is made—
  - (i) in the case of a meeting of creditors or contributories, by not less than ten percent in value of the creditors or contributories, or
  - (ii) in the case of a meeting of members, by members representing not less than ten percent of the total voting rights of all the members having at the date of the request a right to vote at the meeting,

it shall be the duty of the convener to specify a place for the meeting.

(10) In this section, “the office-holder”, in relation to a company, means—

- (a) its liquidator, provisional liquidator, administrator, or administrative receiver, or
- (b) where a voluntary arrangement in relation to the company is proposed or has taken effect under Part 1, the nominee or the supervisor of the voluntary arrangement.

#### *Use of websites*

#### **Use of websites**

**246B.**—(1) Subject to subsection (2), where any provision of this Act or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—

- (a) in accordance with the rules, and
- (b) in such circumstances as may be prescribed.

(2) This section does not apply where—

- (a) a company is being wound up in Scotland, or
- (b) a receiver is appointed under section 51 in Chapter 2 of Part 3.

(3) In this section, “the office-holder” means—

- (a) the liquidator, provisional liquidator, administrator, or administrative receiver of a company, or
- (b) where a voluntary arrangement in relation to a company is proposed or has taken effect under Part 1, the nominee or the supervisor of the voluntary arrangement.”.

(2) After section 379 insert—

*“Remote attendance at meetings*

**Remote attendance at meetings**

**379A.**—(1) Where—

- (a) a bankruptcy order is made against an individual or an interim receiver of an individual’s property is appointed, or
- (b) a voluntary arrangement in relation to an individual is proposed or is approved under Part 8,

this section applies to any meeting of the individual’s creditors summoned under this Act or the rules.

(2) Where the person summoning a meeting (“the convener”) considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in subsection (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this section—

- (a) a person exercises the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and
- (b) a person exercises the right to vote at a meeting when—
  - (i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
  - (ii) that person’s vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(5) The convener of a meeting which is to be conducted and held in the manner referred to in subsection (2) may make whatever arrangements the convener considers appropriate to—

- (a) enable those attending the meeting to exercise their rights to speak or vote, and
- (b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the convener—

- (a) a meeting will be attended by persons who will not be present together at the same place, and
- (b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under this Act or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in subsection (5) and in forming the opinion referred to in subsection (6)(b), the convener must have regard to the legitimate interests of the creditors and others attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

- (a) the notice of a meeting does not specify a place for the meeting,

- (b) the convener is requested in accordance with the rules to specify a place for the meeting, and
  - (c) that request is made by not less than ten percent in value of the creditors,
- it shall be the duty of the convener to specify a place for the meeting.

#### *Use of websites*

#### **Use of websites**

**379B.**—(1) This section applies where—

- (a) a bankruptcy order is made against an individual or an interim receiver of an individual’s property is appointed, or
- (b) a voluntary arrangement in relation to an individual is proposed or is approved under Part 8,

and “the office-holder” means the official receiver, the trustee in bankruptcy, the interim receiver, the nominee or the supervisor of the voluntary arrangement, as the case may be.

(2) Where any provision of this Act or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—

- (a) in accordance with the rules, and
- (b) in such circumstances as may be prescribed.”.

#### **References to things in writing**

**4.**—(1) After section 436A (proceedings under EC Regulation: modified definition of property)(3) insert—

#### **“References to things in writing**

**436B.**—(1) A reference in this Act to a thing in writing includes that thing in electronic form.

(2) Subsection (1) does not apply to the following provisions—

- (a) section 53 (mode of appointment by holder of charge),
- (b) section 67(2) (report by receiver),
- (c) section 70(4) (reference to instrument creating a charge),
- (d) section 111(2) (dissent from arrangement under s. 110),
- (e) in the case of a winding up of a company registered in Scotland, section 111(4),
- (f) section 123(1) (definition of inability to pay debts),
- (g) section 198(3) (duties of sheriff principal as regards examination),
- (h) section 222(1) (inability to pay debts: unpaid creditor for £750 or more), and
- (i) section 223 (inability to pay debts: debt remaining unsatisfied after action brought).”.

(2) Paragraph 111(2) of Schedule B1(4) is repealed.

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(3) Section 436A was inserted by the Insolvency Act 1986 (Amendment)(No 2) Regulations 2002 (S.I. 2002/1240).

(4) Schedule B1 was inserted by the Enterprise Act 2002 (c. 40), section 248 and Schedule 16.

*Provision relating to verification of documents*

**Affidavits**

5.—(1) In section 47(2) (statement of affairs to be submitted) for “affidavit” substitute “a statement of truth”.

(2) In section 95 (effect of company’s insolvency)—

- (a) in subsection (4) omit “shall be verified by affidavit by the liquidator and”; and
- (b) after that subsection insert—

“(4A) The statement as to the affairs of the company shall be verified by the liquidator—

- (a) in the case of a winding up of a company registered in England and Wales, by a statement of truth; and
- (b) in the case of a winding up of a company registered in Scotland, by affidavit.”.

(3) In section 99 (directors to lay statement of affairs before creditors)—

- (a) in subsection (2) omit “shall be verified by affidavit by some or all of the directors and”; and
- (b) after that subsection insert—

“(2A) The statement as to the affairs of the company shall be verified by some or all of the directors—

- (a) in the case of a winding up of a company registered in England and Wales, by a statement of truth; and
- (b) in the case of a winding up of a company registered in Scotland, by affidavit.”; and

(c) in subsection (3)(a) for “or (2)” substitute “, (2) or (2A)”.

(4) In section 131 (company’s statement of affairs)—

- (a) in subsection (2) omit “shall be verified by affidavit by the persons required to submit it and”; and
- (b) after that subsection, insert—

“(2A) The statement shall be verified by the persons required to submit it—

- (a) in the case of an appointment of a provisional liquidator or a winding up by the court in England and Wales, by a statement of truth; and
- (b) in the case of an appointment of a provisional liquidator or a winding up by the court in Scotland, by affidavit.”.

(5) In section 166(5)(b) (application to court where default in complying with section 98 or 99) for “or (2)” substitute “, (2) or (2A)”.

(6) In section 236 (inquiry into company’s dealings, etc)—

- (a) in subsection (3), for “an affidavit to the court containing” substitute “to the court”; and
- (b) after that subsection insert—

“(3A) An account submitted to the court under subsection (3) must be contained in—

- (a) a witness statement verified by a statement of truth (in England and Wales), and
- (b) an affidavit (in Scotland).”.

(7) In section 366(1) (inquiry into bankrupt's dealings and property)(5) omit "an affidavit" and substitute "a witness statement verified by a statement of truth".

#### *Requirements relating to meetings*

#### **Removal of requirement for annual meetings in a members' voluntary and a creditors' voluntary winding up in England and Wales**

- 6.—(1) In section 93 (general company meeting at each year's end)—
- (a) in the heading, at the end, insert "(Scotland)"; and
  - (b) in subsection (1) after "winding up", where it first occurs, insert "of a company registered in Scotland".
- (2) In section 105 (meetings of company and creditors at each year's end)—
- (a) in the heading, at the end, insert "(Scotland)"; and
  - (b) in subsection (1) after "winding up", where it first occurs, insert "of a company registered in Scotland".

#### **Requirements in relation to meetings under sections 95 and 98 of the 1986 Act**

7. In section 95(2A)(b) (effect of company's insolvency) and in section 98(1A)(b) (meeting of creditors), omit "by post".

#### *Reports in individual voluntary arrangements*

#### **Individual voluntary arrangements – removal of requirement to report to court**

- 8.—(1) In section 256A (debtor's proposal and nominee's report)(6)—
- (a) in subsection (2), for "to the court" substitute "under subsection (3)";
  - (b) in subsection (3), for "report to the court" substitute "report to the debtor's creditors".
- (2) In section 257 (summoning of creditors' meeting)(7), for subsection (1) substitute—
- “(1) Where it has been reported to the court under section 256 or to the debtor's creditors under section 256A that a meeting of debtor's creditors should be summoned, the nominee (or the nominee's replacement under section 256(3) or 256A(4)) shall summon that meeting for the time, date and place proposed in the nominee's report unless, in the case of a report to which section 256 applies, the court otherwise directs.”
- (3) In section 259 (report of decisions to court)—
- (a) for subsection (1) substitute—
- “(1) After the conclusion in accordance with the rules of the meeting summoned under section 257, the chairman of the meeting shall—
- (a) give notice of the result of the meeting to such persons as may be prescribed, and
  - (b) where the meeting was summoned under section 257 pursuant to a report to the court under section 256(1)(aa)(8), report the result of it to the court.”;

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(5) Section 366(1) was amended by the Civil Partnerships Act 2004 (c. 33), Schedule 27, paragraph 120.

(6) Section 256A was inserted by the Insolvency Act 2000 (c.23), Schedule 3, paragraphs 1 and 7.

(7) Section 257(1) has been amended by the Insolvency Act 2000 (c.23), Schedule 3, paragraphs 1 and 8.

(8) Section 256(1)(a) was re-lettered paragraph (aa) by the Insolvency Act 2000 (c.23), Schedule 3, paragraphs 1 and 6(a).

- (b) in subsection (2), for “debtor’s proposal” substitute “voluntary arrangement proposed under section 256”.

### **Fast-track voluntary arrangements – notification of the Secretary of State**

**9.**—(1) In section 263C (result)(9) for “report to the court” substitute “notify the Secretary of State”.

(2) In section 263F (revocation)(10) in subsection (3) for “makes his report to the court” substitute “notifies the Secretary of State”.

### *Powers of liquidator and trustee*

#### **Powers of liquidator exercisable with or without sanction in a winding up**

**10.**—(1) In Part 1 of Schedule 4 (powers exercisable with sanction), in paragraph 3, at the beginning insert “In the case of a winding up in Scotland,”.

(2) In Part 3 of that Schedule (powers exercisable without sanction in any winding up), after paragraph 6, insert—

“**6A.** In the case of a winding up in England and Wales, power to compromise, on such terms as may be agreed—

- (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and
- (b) subject to paragraph 2 in Part 1 of this Schedule, all questions in any way relating to or affecting the assets or the winding up of the company,

and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.”.

#### **Powers of trustee exercisable with or without sanction in a bankruptcy**

**11.**—(1) In Part 1 of Schedule 5 (powers exercisable with sanction)—

- (a) omit paragraph 6; and
- (b) in paragraph 8 omit “or by the trustee on any person”.

(2) In Part 2 of that Schedule (general powers), after paragraph 9, insert—

“**9A.** Power to refer to arbitration, or compromise on such terms as may be agreed, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

**9B.** Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt’s estate made or capable of being made by the trustee on any person.”.

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(9) Section 263C was inserted by the Enterprise Act 2002 (c. 40), Schedule 22, paragraph 2.

(10) Section 263F was inserted by the Enterprise Act 2002 (c. 40), Schedule 22, paragraph 2.



### *Transitional provisions*

#### **Transitional provisions**

**12.**—(1) The amendments to sections 93 and 105 of the Insolvency Act 1986 (“the 1986 Act”) made by article 6 do not apply in respect of a company in voluntary winding up where the resolution to wind up was passed before 6th April 2010.

(2) The amendments to sections 95 and 98 of the 1986 Act made by article 7 do not apply in respect of a company in voluntary winding up where the resolution to wind up was passed before 6th April 2010.

(3) Where a proposal for a voluntary arrangement under Part 8 of the 1986 Act is made before 6th April 2010 by a debtor for a composition in satisfaction of his debts or for a scheme of arrangement of his affairs to a nominee under section 256A of the 1986 Act, the provisions of the 1986 Act relevant to a proposal under that section as they were prior to the amendments made by this Order shall continue to apply to it.

(4) The amendments made to Schedules 4 and 5 to the 1986 Act by articles 10 and 11 respectively do not apply in respect of any proceedings under the 1986 Act where—

- (a) in the case of a company in voluntary winding up, the resolution to wind up was passed before 6th April 2010;
- (b) in the case of a company in voluntary winding up pursuant to paragraph 83 of Schedule B1 to the 1986 Act, the preceding administration commenced before 6th April 2010;
- (c) in the case of a company in winding up following an order for the conversion of administration or a voluntary arrangement into winding up by virtue of article 37 of Council Regulation (EC) No 1346/2000 on insolvency proceedings<sup>(11)</sup>, the order for conversion was made before 6th April 2010;
- (d) in the case of a company being wound up by the court, the winding-up order was made before 6th April 2010;
- (e) in the case of a bankruptcy, the debtor was adjudged bankrupt before 6th April 2010; and
- (f) in the case of a bankruptcy following an order for the conversion of a voluntary arrangement into a bankruptcy by virtue of article 37 of Council Regulation (EC) No 1346/2000, the order for conversion was made before 6th April 2010.

*Pat McFadden*  
Minister of State for Employment Relations and  
Postal Affairs  
Department for Business, Enterprise and  
Regulatory Affairs

Date

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under section 1 of the Legislative and Regulatory Reform Act 2006 (c. 51) (the “2006 Act”). It amends the Insolvency Act 1986 (c.45) (the “1986 Act”).

Articles 3 and 4 make amendments to the 1986 Act relating to communications and meetings in insolvency proceedings.

Article 3(1) inserts a new section 246A into Part 6 of the 1986 Act (miscellaneous provisions applying to companies which are insolvent or in liquidation). The new section allows those attending meetings in corporate insolvency proceedings to do so other than by physical attendance or by proxy in that it allows a person to attend a meeting using any form of technology which permits them to be heard and to vote at the meeting. Article 3(1) also inserts a new section 246B into the 1986 Act which allows an office-holder to use a website as a means of sending documents and information to others in the course of insolvency proceedings. As a consequence of section 9 of the 2006 Act (which prevents an Order under that Act making provision in relation to matters within the competence of the Scottish Parliament), sections 246A and 246B will have only limited application in relation to corporate insolvency proceedings in Scotland.

Article 3(2) introduces the equivalent amendments for individual insolvency in England and Wales by inserting new sections 379A and 379B into Part 10 of the 1986 Act (individual insolvency: general provisions).

Article 4 inserts a new section 436B into the 1986 Act which clarifies that references in the 1986 Act to documents or information “in writing” include documents or information in electronic form. As a consequence, the equivalent provision in Schedule B1 to the 1986 Act, which relates solely to administration, is repealed.

Article 5 removes requirements (in six sections of the 1986 Act) for documents in insolvency proceedings in England and Wales to be sworn by affidavit and replaces them with a requirement for the relevant documents to be verified by a statement of truth.

Article 6 removes a requirement imposed upon liquidators in England and Wales to summon annual meetings of members and creditors for the purpose of laying an account of the liquidator’s acts and dealings and of the conduct of the winding up during the preceding year (sections 93 and 105 of the 1986 Act).

Article 7 amends sections 95 and 98 of the 1986 Act as they apply to England and Wales by removing the requirement for notice of the meeting to be sent to creditors “by post”.

Article 8(1) amends section 256A (debtor’s proposal and nominee’s report), so as to remove the requirement to submit a report to the court in those cases in which no application has been made to the court for an interim order. Paragraph (2) makes amendments to section 257 (summoning of creditors’ meeting) consequential upon the amendment made to section 256A and removes the reference to a report made to the court under section 256A, replacing it with a report to the debtor’s creditors. Paragraph (3) amends section 259 (report of decisions to court) as a consequence of the change made to section 256A. The amendment removes the reference to a report being made to the court under section 256A.

Article 9 amends provisions in respect of fast-track voluntary arrangements. Paragraph (1) amends section 263C (result) by substituting for a requirement that the official receiver report to the court whether the voluntary arrangement has been approved or rejected, a requirement to merely notify the Secretary of State of the same. Paragraph (2) amends section 263F (revocation) consequential upon

the amendment made to section 263C by substituting a reference to notification of the Secretary of State for the reference to the official receiver's report to the court.

Articles 10 and 11 remove the requirement on liquidators and trustees in bankruptcy in England and Wales to obtain the sanction of creditors, company members or the court, as the case may be, for certain actions they propose to take as part of their conduct of the insolvency.

Article 12 contains transitional provisions in relation to the introduction of certain of the amendments made by the Order.

A full Regulatory Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Insolvency Service website ([www.insolvency.gov.uk](http://www.insolvency.gov.uk)) and is annexed to the Explanatory Document which is available alongside the instrument on the OPSI website.