Insolvency Act 2000

2000 CHAPTER 39

An Act to amend the law about insolvency; to amend the Company Directors Disqualification Act 1986; and for connected purposes. [30th November 2000]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Voluntary arrangements

1 Moratorium where directors propose voluntary arrangement.

Schedule 1 (which—

(a) enables the directors of a company to obtain an initial moratorium for the company where they propose a voluntary arrangement under Part I of the [M1]Insolvency Act 1986,

(b) makes provision about the approval and implementation of such a voluntary arrangement where a moratorium is obtained, and

(c) makes consequential amendments),

is to have effect.

Commencement Information

I1 S. 1 wholly in force at 1.1.2003; s. 1 not in force at Royal Assent see s. 16(1); s. 1 in force for specified purposes at 11.5.2001 by S.I. 2001/1751, **art. 2**; S. 1 in force at 1.1.2003 insofar as not already in force by S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Marginal Citations

M1 1986 c. 45.

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

2 Company voluntary arrangements.

Schedule 2 (which—

(a) amends the provisions about company voluntary arrangements under Part I of the [M2]Insolvency Act 1986, and

(b) in consequence of Schedule 1 and those amendments, makes amendments of the [M3]Building Societies Act 1986),

is to have effect.

Marginal Citations

M2 1986 c. 45.

M3 1986 c. 53.

3 Individual voluntary arrangements.

Schedule 3 (which enables the procedure for the approval of individual voluntary arrangements under Part VIII of the [M4]Insolvency Act 1986 to be started without an initial moratorium for the insolvent debtor and makes other amendments of the provisions about individual voluntary arrangements) is to have effect.

Marginal Citations

M4 1986 c. 45.

4 Qualification or authorisation of nominees and supervisors.

(1) Part XIII of the [M5]Insolvency Act 1986 (insolvency practitioners and their qualification) is amended as follows.

(2) In section 388 (meaning of "act as insolvency practitioner")—

(a) for subsection (1)(b) there is substituted—

"(b) where a voluntary arrangement in relation to the company is proposed or approved under Part I, as nominee or supervisor",

(b) for subsection (2)(c) there is substituted—

"(c) where a voluntary arrangement in relation to the individual is proposed or approved under Part VIII, as nominee or supervisor",

and

(c) after subsection (2A) there is inserted—

"(2B) In relation to a voluntary arrangement proposed under Part I or VIII, a person acts as nominee if he performs any of the functions conferred on nominees under the Part in question."

(3) In section 389 (acting without qualification an offence), after subsection (1) there is inserted—

"(1A) This section is subject to section 389A."

Status: *Point in time view as at 01/01/2003.*
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(4) After that section there is inserted—

"**389A Authorisation of nominees and supervisors.**

(1) Section 389 does not apply to a person acting, in relation to a voluntary arrangement proposed or approved under Part I or Part VIII, as nominee or supervisor if he is authorised so to act.

(2) For the purposes of subsection (1) and those Parts, an individual to whom subsection (3) does not apply is authorised to act as nominee or supervisor in relation to such an arrangement if—

(a) he is a member of a body recognised for the purpose by the Secretary of State, and

(b) there is in force security (in Scotland, caution) for the proper performance of his functions and that security or caution meets the prescribed requirements with respect to his so acting in relation to the arrangement.

(3) This subsection applies to a person if—

(a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,

(b) he is subject to a disqualification order made or a disqualification undertaking accepted under the [M6]Company Directors Disqualification Act 1986 or to a disqualification order made under Part II of the [M7]Companies (Northern Ireland) Order 1989, or

(c) he is a patient within the meaning of Part VII of the [M8]Mental Health Act 1983 or section 125(1) of the [M9]Mental Health (Scotland) Act 1984.

(4) The Secretary of State may by order declare a body which appears to him to fall within subsection (5) to be a recognised body for the purposes of subsection (2)(a).

(5) A body may be recognised if it maintains and enforces rules for securing that its members—

(a) are fit and proper persons to act as nominees or supervisors, and

(b) meet acceptable requirements as to education and practical training and experience.

(6) For the purposes of this section, a person is a member of a body only if he is subject to its rules when acting as nominee or supervisor (whether or not he is in fact a member of the body).

(7) An order made under subsection (4) in relation to a body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within subsection (5).

(8) An order of the Secretary of State under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision for members of the body in question to continue to be treated as members of a recognised body for a specified period after the revocation takes effect."

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations

M5 1986 c. 45.
M6 1986 c. 46.
M7 S.I. 1989/2404 (N.I. 18).
M8 1983 c. 20.
M9 1984 c. 36.

Disqualification of company directors etc.

5 Disqualification orders.

(1) In section 1 of the [M10]Company Directors Disqualification Act 1986 (disqualification orders: general), in subsection (1), for the words following "an order that" there is substituted "for a period specified in the order—

(a) he shall not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the court, and

(b) he shall not act as an insolvency practitioner."

(2) At the end of subsection (2) of that section there is inserted " and, unless the court otherwise orders, the period of disqualification so imposed shall begin at the end of the period of 21 days beginning with the date of the order ".

(3) In section 22 of that Act (interpretation), at the end there is inserted—

"(10) Any reference to acting as receiver—

(a) includes acting as manager or as both receiver and manager, but

(b) does not include acting as administrative receiver;

and "receivership" is to be read accordingly."

Commencement Information

I2 S. 5 wholly in force at 2.4.2001, see s. 16(1) and S.I. 2001/766, **art. 2(1)(a)** (subject to art. 3)

Marginal Citations

M10 1986 c. 46.

6 Disqualification undertakings.

(1) The Company Directors Disqualification Act 1986 is amended in accordance with this section.

(2) After section 1 there is inserted—

Status: *Point in time view as at 01/01/2003.*
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"**1A Disqualification undertakings: general.**

(1) In the circumstances specified in sections 7 and 8 the Secretary of State may accept a disqualification undertaking, that is to say an undertaking by any person that, for a period specified in the undertaking, the person—

(a) will not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of a court, and

(b) will not act as an insolvency practitioner.

(2) The maximum period which may be specified in a disqualification undertaking is 15 years; and the minimum period which may be specified in a disqualification undertaking under section 7 is two years.

(3) Where a disqualification undertaking by a person who is already subject to such an undertaking or to a disqualification order is accepted, the periods specified in those undertakings or (as the case may be) the undertaking and the order shall run concurrently.

(4) In determining whether to accept a disqualification undertaking by any person, the Secretary of State may take account of matters other than criminal convictions, notwithstanding that the person may be criminally liable in respect of those matters."

(3) In section 7 (applications to court under section 6; reporting provisions), after subsection (2) there is inserted—

"(2A) If it appears to the Secretary of State that the conditions mentioned in section 6(1) are satisfied as respects any person who has offered to give him a disqualification undertaking, he may accept the undertaking if it appears to him that it is expedient in the public interest that he should do so (instead of applying, or proceeding with an application, for a disqualification order)."

(4) In section 8 (disqualification after investigation of company), after subsection (2) there is inserted—

"(2A) Where it appears to the Secretary of State from such report, information or documents that, in the case of a person who has offered to give him a disqualification undertaking—

(a) the conduct of the person in relation to a company of which the person is or has been a director or shadow director makes him unfit to be concerned in the management of a company, and

(b) it is expedient in the public interest that he should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order),

he may accept the undertaking."

(5) After that section there is inserted—

Status: *Point in time view as at 01/01/2003.*
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"**8A Variation etc. of disqualification undertaking.**

(1) The court may, on the application of a person who is subject to a disqualification undertaking—
  (a) reduce the period for which the undertaking is to be in force, or
  (b) provide for it to cease to be in force.

(2) On the hearing of an application under subsection (1), the Secretary of State shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses.

(3) In this section "the court" has the same meaning as in section 7(2) or (as the case may be) 8."

(6) In section 9 (matters for determining unfitness of directors), after subsection (1) there is inserted—

"(1A) In determining whether he may accept a disqualification undertaking from any person the Secretary of State shall, as respects the person's conduct as a director of any company concerned, have regard in particular—
  (a) to the matters mentioned in Part I of Schedule 1 to this Act, and
  (b) where the company has become insolvent, to the matters mentioned in Part II of that Schedule;

and references in that Schedule to the director and the company are to be read accordingly."

Commencement Information
I3 S. 6 wholly in force at 2.4.2001, see s. 16(1) and S.I. 2001/766, **art. 2(1)(a)** (subject to art. 3)

7 Effect of Northern Irish disqualifications.

(1) After section 12 of the [M11]Company Directors Disqualification Act 1986 there is inserted—

"**12A Northern Irish disqualification orders.**

A person subject to a disqualification order under Part II of the [M12]Companies (Northern Ireland) Order 1989—
  (a) shall not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the High Court of Northern Ireland, and
  (b) shall not act as an insolvency practitioner."

(2) If provision is made in relation to Northern Ireland for undertakings corresponding to the disqualification undertakings provided for by section 6, the Secretary of State may by order made by statutory instrument make any modifications of the [M13]Company Directors Disqualification Act 1986, or any enactment amended by Part

II of Schedule 4, which he considers necessary or expedient to give effect to those undertakings in relation to Great Britain.

(3) A statutory instrument containing an order under this section is to be subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement Information

I4 S. 7 wholly in force at 2.4.2001, see s. 16(1) and S.I. 2001/766, **art. 2(1)(a)** (subject to art. 3)

Marginal Citations

M11 1986 c. 46.

M12 S.I. 1989/2404 (N.I. 18).

M13 1986 c. 46.

8 Amendments.

Schedule 4 (which makes minor and consequential amendments about the disqualification of company directors, etc.) is to have effect.

Commencement Information

I5 S. 8 wholly in force at 2.4.2001, see s. 16(1) and S.I. 2001/766, **art. 2(1)(a)** (subject to art. 3)

Miscellaneous

9 Administration orders.

(1) Part II of the [M14]Insolvency Act 1986 (administration orders) is amended as follows.

(2) In section 10 (effect of application), after paragraph (a) of subsection (1) there is inserted—

"(aa) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose".

(3) In section 11 (effect of order), after paragraph (b) of subsection (3) there is inserted—

"(ba) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as the court may impose".

Commencement Information

I6 S. 9 wholly in force at 2.4.2001, see s. 16(1) and S.I. 2001/766, **art. 2(1)(b)** (subject to art. 3)

Status: *Point in time view as at 01/01/2003.*
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Marginal Citations
M14 1986 c. 45.

10 Investigation and prosecution of malpractice.

(1) Section 218 of the [M15]Insolvency Act 1986 (prosecution of delinquent officers and members of company) is amended as follows.

(2) In subsection (1), for "to the prosecuting authority" there is substituted—

"(a) in the case of a winding up in England and Wales, to the Secretary of State, and

(b) in the case of a winding up in Scotland, to the Lord Advocate".

(3) Subsection (2) is omitted.

(4) In subsection (4)—

(a) for the words from the beginning of paragraph (a) to "that authority" in paragraph (b) there is substituted "forthwith report the matter—

(a) in the case of a winding up in England and Wales, to the Secretary of State, and

(b) in the case of a winding up in Scotland, to the Lord Advocate,

and shall furnish to the Secretary of State or (as the case may be) the Lord Advocate ",

(b) for "the authority" there is substituted " the Secretary of State or (as the case may be) the Lord Advocate ".

(5) For subsection (5) there is substituted—

"(5) Where a report is made to the Secretary of State under subsection (4) he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act to investigate a company's affairs."

(6) In subsection (6)(b), "to the prosecuting authority" is omitted.

(7) In section 219 of that Act (obligations arising under section 218)—

(a) in subsection (1), for "under section 218(5)" there is substituted " in consequence of a report made to him under section 218(4) " and for "that subsection" there is substituted " section 218(5) ",

(b) in subsection (3), for "the prosecuting authority" and "that authority" there is substituted " the Director of Public Prosecutions, the Lord Advocate ",

(c) in subsection (4), for "prosecuting authority" there is substituted " Director of Public Prosecutions, the Lord Advocate ".

Commencement Information
I7 S. 10 wholly in force at 2.4.2001, see s. 16(1) and S.I. 2001/766, **art. 2(1)(b)** (subject to art. 3)

Status: *Point in time view as at 01/01/2003.*
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Marginal Citations

M15 1986 c. 45.

11 Restriction on use of answers obtained under compulsion.

In section 219 of the [M16]Insolvency Act 1986, after subsection (2) (answers given by a person pursuant to powers conferred by section 218 may be used in evidence against him) there is inserted—

"(2A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

(a) no evidence relating to the answer may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(2B) Subsection (2A) applies to any offence other than—

(a) an offence under section 2 or 5 of the [M17]Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or

(b) an offence under section 44(1) or (2) of the [M18]Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath)."

Commencement Information

I8 S. 11 wholly in force at 2.4.2001, see s. 16(1) and S.I. 2001/766, **art. 2(1)(b)** (subject to art. 3)

Marginal Citations

M16 1986 c. 45.
M17 1911 c. 6.
M18 1995 c. 39.

12 Insolvent estates of deceased persons.

(1) After section 421 of the [M19]Insolvency Act 1986 (power to apply provisions of Act to insolvent estates of deceased persons) there is inserted—

"421A Insolvent estates: joint tenancies.

(1) This section applies where—

(a) an insolvency administration order has been made in respect of the insolvent estate of a deceased person,

(b) the petition for the order was presented after the commencement of this section and within the period of five years beginning with the day on which he died, and

(c) immediately before his death he was beneficially entitled to an interest in any property as joint tenant.

Status: *Point in time view as at 01/01/2003.*
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(2) For the purpose of securing that debts and other liabilities to which the estate is subject are met, the court may, on an application by the trustee appointed pursuant to the insolvency administration order, make an order under this section requiring the survivor to pay to the trustee an amount not exceeding the value lost to the estate.

(3) In determining whether to make an order under this section, and the terms of such an order, the court must have regard to all the circumstances of the case, including the interests of the deceased's creditors and of the survivor; but, unless the circumstances are exceptional, the court must assume that the interests of the deceased's creditors outweigh all other considerations.

(4) The order may be made on such terms and conditions as the court thinks fit.

(5) Any sums required to be paid to the trustee in accordance with an order under this section shall be comprised in the estate.

(6) The modifications of this Act which may be made by an order under section 421 include any modifications which are necessary or expedient in consequence of this section.

(7) In this section, "survivor" means the person who, immediately before the death, was beneficially entitled as joint tenant with the deceased or, if the person who was so entitled dies after the making of the insolvency administration order, his personal representatives.

(8) If there is more than one survivor—

(a) an order under this section may be made against all or any of them, but

(b) no survivor shall be required to pay more than so much of the value lost to the estate as is properly attributable to him.

(9) In this section—

"insolvency administration order" has the same meaning as in any order under section 421 having effect for the time being,

"value lost to the estate" means the amount which, if paid to the trustee, would in the court's opinion restore the position to what it would have been if the deceased had been adjudged bankrupt immediately before his death."

(2) In subsection (1) of section 421, after "apply" there is inserted " in relation ".

Commencement Information

I9 S. 12 wholly in force at 2.4.2001, see s. 16(1) and S.I. 2001/766, **art. 2(1)(b)** (subject to art. 3)

Marginal Citations

M19 1986 c. 45.

13 Bankruptcy: interest on sums held in Insolvency Services Account.

(1) In Schedule 9 to the [M20]Insolvency Act 1986 (individual insolvency rules), in paragraph 21, for "handled" there is substituted " invested or otherwise handled and

with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Services Account ".

(2) In section 406 of that Act (interest on money received by liquidators and invested)—

(a) for "a company" there is substituted " or paragraph 21 of Schedule 9 to this Act (investment of money received by trustee in bankruptcy) a company or a bankrupt's estate ",

(b) for the sidenote there is substituted " Interest on money received by liquidators or trustees in bankruptcy and invested ".

Commencement Information

I10 S. 13 wholly in force at 2.4.2001, see s. 16(1) and S.I. 2001/766, **art. 2(1)(b)** (subject to art. 3)

Marginal Citations

M20 1986 c. 45.

14 Model law on cross-border insolvency.

(1) The Secretary of State may by regulations make any provision which he considers necessary or expedient for the purpose of giving effect, with or without modifications, to the model law on cross-border insolvency.

(2) In particular, the regulations may—

(a) apply any provision of insolvency law in relation to foreign proceedings (whether begun before or after the regulations come into force),

(b) modify the application of insolvency law (whether in relation to foreign proceedings or otherwise),

(c) amend any provision of section 426 of the [M21]Insolvency Act 1986 (co-operation between courts),

and may apply or, as the case may be, modify the application of insolvency law in relation to the Crown.

(3) The regulations may make different provision for different purposes and may make—

(a) any supplementary, incidental or consequential provision, or

(b) any transitory, transitional or saving provision,

which the Secretary of State considers necessary or expedient.

(4) In this section—

"foreign proceedings" has the same meaning as in the model law on cross-border insolvency,

"insolvency law" has the same meaning as in section 426(10)(a) and (b) of the [M22]Insolvency Act 1986,

"the model law on cross-border insolvency" means the model law contained in Annex I of the report of the 30th session of UNCITRAL.

(5) Regulations under this section are to be made by statutory instrument and may only be made if a draft has been laid before and approved by resolution of each House of Parliament.

(6) Making regulations under this section requires the agreement—

Status: *Point in time view as at 01/01/2003.*
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(a) if they extend to England and Wales, of the Lord Chancellor,
(b) if they extend to Scotland, of the Scottish Ministers.

Marginal Citations
M21 1986 c. 45.
M22 1986 c. 45.

General

15 Amendments of Financial Services and Markets Act 2000 and repeals.

(1) The enactments mentioned in Schedule 5 are repealed to the extent specified.

(2) For the purposes of the [M23]Financial Services and Markets Act 2000, the functions conferred on the Financial Services Authority by virtue of Schedules 1 and 2 are to be treated as conferred by that Act.

(3) Section 356 of that Act (Authority's powers to participate in proceedings: company voluntary arrangements) is amended as follows—

(a) for subsection (1), there is substituted—

"(1) Where a voluntary arrangement has effect under Part I of the 1986 Act in respect of a company or insolvent partnership which is an authorised person, the Authority may apply to the court under section 6 or 7 of that Act.",

(b) for subsection (2), there is substituted—

"(2) Where a voluntary arrangement has been approved under Part II of the 1989 Order in respect of a company or insolvent partnership which is an authorised person, the Authority may apply to the court under Article 19 or 20 of that Order.",

(c) in subsection (3), for "either" there is substituted " any ".

Commencement Information
I11 S. 15 wholly in force at 1.1.2003; s. 15 not in force at Royal Assent see s. 16(1); s. 15(1) in force for specified purposes at 2.4.2001 by S.I. 2001/766, **art. 2(1)(c)** (subject to art. 3); S. 15 in force at 1.1.2003 insofar as not already in force by S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Marginal Citations
M23 2000 c. 8.

16 Commencement.

(1) The preceding provisions of this Act (including the Schedules) are to come into force on such day as the Secretary of State may by order made by statutory instrument appoint.

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Subsection (1) does not apply to section 14 (which accordingly comes into force on the day on which this Act is passed).

(3) An order under this section may make different provision for different purposes and may make—

(a) any supplementary, incidental or consequential provision, and

(b) any transitory, transitional or saving provision,

which the Secretary of State considers necessary or expedient.

Subordinate Legislation Made

P1 S. 16(1)(3) power partly exercised: 2.4.2001 appointed for specified provisions by S.I. 2001/766, **art. 2** (subject to art. 3)

S. 16(1)(3) power partly exercised: 11.5.2001 appointed for specified provisions by S.I. 2001/766, **art. 2**

S. 16(1)(3) power wholly exercised: 1.1.2003 appointed by S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

17 Extent.

This Act, except section 15(3), Part II of Schedule 2 and paragraphs 16(3) and 22 of Schedule 4, does not extend to Northern Ireland.

18 Short title.

This Act may be cited as the Insolvency Act 2000.

Status: *Point in time view as at 01/01/2003.*
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SCHEDULES

SCHEDULE 1

Section 1.

MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT

AMENDMENTS OF THE INSOLVENCY ACT 1986

1 The [M24]Insolvency Act 1986 is amended as provided in this Schedule.

Marginal Citations
M24 1986 c. 45.

2 After section 1 there is inserted—

"**1A Moratorium.**

(1) Where the directors of an eligible company intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the company.

(2) The provisions of Schedule A1 to this Act have effect with respect to—
- (a) companies eligible for a moratorium under this section,
- (b) the procedure for obtaining such a moratorium,
- (c) the effects of such a moratorium, and
- (d) the procedure applicable (in place of sections 2 to 6 and 7) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force."

3 In section 2(1) (procedure where nominee is not the liquidator or administrator), at the end there is added " and the directors do not propose to take steps to obtain a moratorium under section 1A for the company ".

4 Before Schedule 1 there is inserted—

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"SCHEDULE
A1

MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT

PART I

INTRODUCTORY

Interpretation

1 In this Schedule—

"the beginning of the moratorium" has the meaning given by paragraph 8(1),

"the date of filing" means the date on which the documents for the time being referred to in paragraph 7(1) are filed or lodged with the court,

"hire-purchase agreement" includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

"market contract" and "market charge" have the meanings given by Part VII of the [M25]Companies Act 1989,

[F1]. . .

"moratorium" means a moratorium under section 1A,

"the nominee" includes any person for the time being carrying out the functions of a nominee under this Schedule,

[F2]. . .

"the settlement finality regulations" means the [M26]Financial Markets and Insolvency (Settlement Finality) Regulations 1999,

"system-charge" has the meaning given by the [M27]Financial Markets and Insolvency Regulations 1996.

Eligible companies

2 (1) A company is eligible for a moratorium if it meets the requirements of paragraph 3, unless—

(a) it is excluded from being eligible by virtue of paragraph 4, or

(b) it falls within sub-paragraph (2).

(2) A company falls within this sub-paragraph if—

[[F3](a) it effects or carries out contracts of insurance, but is not exempt from the general prohibition, within the meaning of section 19 of the Financial Services and Markets Act 2000, in relation to that activity,

(b) it has permission under Part IV of that Act to accept deposits,

(bb) it has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22),**]**

(c) it is a party to a market contract [F4]. . . or any of its property is subject to a market charge [F4]. . . or a system-charge, or

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(d) it is a participant (within the meaning of the settlement finality regulations) or any of its property is subject to a collateral security charge (within the meaning of those regulations).

[[F5](3) Paragraphs (a), (b) and (bb) of sub-paragraph (2) must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.**]**

3 (1) A company meets the requirements of this paragraph if the qualifying conditions are met—

(a) in the year ending with the date of filing, or

(b) in the financial year of the company which ended last before that date.

(2) For the purposes of sub-paragraph (1)—

(a) the qualifying conditions are met by a company in a period if, in that period, it satisfies two or more of the requirements for being a small company specified for the time being in section 247(3) of the [M28]Companies Act 1985, and

(b) a company's financial year is to be determined in accordance with that Act.

(3) Subsections (4), (5) and (6) of section 247 of that Act apply for the purposes of this paragraph as they apply for the purposes of that section.

4 (1) A company is excluded from being eligible for a moratorium if, on the date of filing—

(a) an administration order is in force in relation to the company,

(b) the company is being wound up,

(c) there is an administrative receiver of the company,

(d) a voluntary arrangement has effect in relation to the company,

(e) there is a provisional liquidator of the company,

(f) a moratorium has been in force for the company at any time during the period of 12 months ending with the date of filing and—

(i) no voluntary arrangement had effect at the time at which the moratorium came to an end, or

(ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely, or

(g) a voluntary arrangement in relation to the company which had effect in pursuance of a proposal under section 1(3) has come to an end prematurely and, during the period of 12 months ending with the date of filing, an order under section 5(3)(a) has been made.

(2) Sub-paragraph (1)(b) does not apply to a company which, by reason of a winding-up order made after the date of filing, is treated as being wound up on that date.

5 The Secretary of State may by regulations modify the qualifications for eligibility of a company for a moratorium.

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PART II

OBTAINING A MORATORIUM

Nominee's statement

6 (1) Where the directors of a company wish to obtain a moratorium, they shall submit to the nominee—

(a) a document setting out the terms of the proposed voluntary arrangement,

(b) a statement of the company's affairs containing—

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and

(ii) such other information as may be prescribed, and

(c) any other information necessary to enable the nominee to comply with sub-paragraph (2) which he requests from them.

(2) The nominee shall submit to the directors a statement in the prescribed form indicating whether or not, in his opinion—

(a) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,

(b) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and

(c) meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(3) In forming his opinion on the matters mentioned in sub-paragraph (2), the nominee is entitled to rely on the information submitted to him under sub-paragraph (1) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (2)(b) to the company's business is to that business as the company proposes to carry it on during the moratorium.

Documents to be submitted to court

7 (1) To obtain a moratorium the directors of a company must file (in Scotland, lodge) with the court—

(a) a document setting out the terms of the proposed voluntary arrangement,

(b) a statement of the company's affairs containing—

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and

(ii) such other information as may be prescribed,

(c) a statement that the company is eligible for a moratorium,

(d) a statement from the nominee that he has given his consent to act, and

(e) a statement from the nominee that, in his opinion—

(i) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,

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(ii) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and

(iii) meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(2) Each of the statements mentioned in sub-paragraph (1)(b) to (e), except so far as it contains the particulars referred to in paragraph (b)(i), must be in the prescribed form.

(3) The reference in sub-paragraph (1)(e)(ii) to the company's business is to that business as the company proposes to carry it on during the moratorium.

(4) The Secretary of State may by regulations modify the requirements of this paragraph as to the documents required to be filed (in Scotland, lodged) with the court in order to obtain a moratorium.

Duration of moratorium

8 (1) A moratorium comes into force when the documents for the time being referred to in paragraph 7(1) are filed or lodged with the court and references in this Schedule to "the beginning of the moratorium" shall be construed accordingly.

(2) A moratorium ends at the end of the day on which the meetings summoned under paragraph 29(1) are first held (or, if the meetings are held on different days, the later of those days), unless it is extended under paragraph 32.

(3) If either of those meetings has not first met before the end of the period of 28 days beginning with the day on which the moratorium comes into force, the moratorium ends at the end of the day on which those meetings were to be held (or, if those meetings were summoned to be held on different days, the later of those days), unless it is extended under paragraph 32.

(4) If the nominee fails to summon either meeting within the period required by paragraph 29(1), the moratorium ends at the end of the last day of that period.

(5) If the moratorium is extended (or further extended) under paragraph 32, it ends at the end of the day to which it is extended (or further extended).

(6) Sub-paragraphs (2) to (5) do not apply if the moratorium comes to an end before the time concerned by virtue of—

(a) paragraph 25(4) (effect of withdrawal by nominee of consent to act),

(b) an order under paragraph 26(3), 27(3) or 40 (challenge of actions of nominee or directors), or

(c) a decision of one or both of the meetings summoned under paragraph 29.

(7) If the moratorium has not previously come to an end in accordance with sub-paragraphs (2) to (6), it ends at the end of the day on which a decision under paragraph 31 to approve a voluntary arrangement takes effect under paragraph 36.

(8) The Secretary of State may by order increase or reduce the period for the time being specified in sub-paragraph (3).

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Notification of beginning of moratorium

9 (1) When a moratorium comes into force, the directors shall notify the nominee of that fact forthwith.

(2) If the directors without reasonable excuse fail to comply with sub-paragraph (1), each of them is liable to imprisonment or a fine, or both.

10 (1) When a moratorium comes into force, the nominee shall, in accordance with the rules—

(a) advertise that fact forthwith, and

(b) notify the registrar of companies, the company and any petitioning creditor of the company of whose claim he is aware of that fact.

(2) In sub-paragraph (1)(b), "petitioning creditor" means a creditor by whom a winding-up petition has been presented before the beginning of the moratorium, as long as the petition has not been dismissed or withdrawn.

(3) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he is liable to a fine.

Notification of end of moratorium

11 (1) When a moratorium comes to an end, the nominee shall, in accordance with the rules—

(a) advertise that fact forthwith, and

(b) notify the court, the registrar of companies, the company and any creditor of the company of whose claim he is aware of that fact.

(2) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he is liable to a fine.

PART III

EFFECTS OF MORATORIUM

Effect on creditors, etc.

12 (1) During the period for which a moratorium is in force for a company—

(a) no petition may be presented for the winding up of the company,

(b) no meeting of the company may be called or requisitioned except with the consent of the nominee or the leave of the court and subject (where the court gives leave) to such terms as the court may impose,

(c) no resolution may be passed or order made for the winding up of the company,

(d) no petition for an administration order in relation to the company may be presented,

(e) no administrative receiver of the company may be appointed,

(f) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply

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with any term or condition of its tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose,

(g) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the court and subject to such terms as the court may impose, and

(h) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the court and subject to such terms as the court may impose.

(2) Where a petition, other than an excepted petition, for the winding up of the company has been presented before the beginning of the moratorium, section 127 shall not apply in relation to any disposition of property, transfer of shares or alteration in status made during the moratorium or at a time mentioned in paragraph 37(5)(a).

(3) In the application of sub-paragraph (1)(h) to Scotland, the reference to execution being commenced or continued includes a reference to diligence being carried out or continued, and the reference to distress being levied is omitted.

(4) Paragraph (a) of sub-paragraph (1) does not apply to an excepted petition and, where such a petition has been presented before the beginning of the moratorium or is presented during the moratorium, paragraphs (b) and (c) of that sub-paragraph do not apply in relation to proceedings on the petition.

(5) For the purposes of this paragraph, "excepted petition" means a petition under—

(a) section 124A of this Act,

(b) section 72 of the [M29]Financial Services Act 1986 on the ground mentioned in subsection (1)(b) of that section, or

(c) section 92 of the [M30]Banking Act 1987 on the ground mentioned in subsection (1)(b) of that section.

[[F6](d) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.**]**

13 (1) This paragraph applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.

(2) If the conditions for the holder of the charge to give a notice having the effect mentioned in sub-paragraph (4) are met at any time, the notice may not be given at that time but may instead be given as soon as practicable after the moratorium has come to an end.

(3) If any other event occurs at any time which (apart from this sub-paragraph) would have the effect mentioned in sub-paragraph (4), then—

(a) the event shall not have the effect in question at that time, but

(b) if notice of the event is given to the company by the holder of the charge as soon as is practicable after the moratorium has come to an end, the event is to be treated as if it had occurred when the notice was given.

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(4) The effect referred to in sub-paragraphs (2) and (3) is—

(a) causing the crystallisation of the floating charge, or

(b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.

(5) Application may not be made for leave under paragraph 12(1)(g) or (h) with a view to obtaining—

(a) the crystallisation of the floating charge, or

(b) the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.

14 Security granted by a company at a time when a moratorium is in force in relation to the company may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the company.

Effect on company

15 (1) Paragraphs 16 to 23 apply in relation to a company for which a moratorium is in force.

(2) The fact that a company enters into a transaction in contravention of any of paragraphs 16 to 22 does not—

(a) make the transaction void, or

(b) make it to any extent unenforceable against the company.

Company invoices, etc.

16 (1) Every invoice, order for goods or business letter which—

(a) is issued by or on behalf of the company, and

(b) on or in which the company's name appears,

shall also contain the nominee's name and a statement that the moratorium is in force for the company.

(2) If default is made in complying with sub-paragraph (1), the company and (subject to sub-paragraph (3)) any officer of the company is liable to a fine.

(3) An officer of the company is only liable under sub-paragraph (2) if, without reasonable excuse, he authorises or permits the default.

Obtaining credit during moratorium

17 (1) The company may not obtain credit to the extent of £250 or more from a person who has not been informed that a moratorium is in force in relation to the company.

(2) The reference to the company obtaining credit includes the following cases—

(a) where goods are bailed (in Scotland, hired) to the company under a hire-purchase agreement, or agreed to be sold to the company under a conditional sale agreement, and

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(b) where the company is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) Where the company obtains credit in contravention of sub-paragraph (1)—

(a) the company is liable to a fine, and

(b) if any officer of the company knowingly and wilfully authorised or permitted the contravention, he is liable to imprisonment or a fine, or both.

(4) The money sum specified in sub-paragraph (1) is subject to increase or reduction by order under section 417A in Part XV.

Disposals and payments

18 (1) Subject to sub-paragraph (2), the company may only dispose of any of its property if—

(a) there are reasonable grounds for believing that the disposal will benefit the company, and

(b) the disposal is approved by the committee established under paragraph 35(1) or, where there is no such committee, by the nominee.

(2) Sub-paragraph (1) does not apply to a disposal made in the ordinary way of the company's business.

(3) If the company makes a disposal in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the court—

(a) the company is liable to a fine, and

(b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he is liable to imprisonment or a fine, or both.

19 (1) Subject to sub-paragraph (2), the company may only make any payment in respect of any debt or other liability of the company in existence before the beginning of the moratorium if—

(a) there are reasonable grounds for believing that the payment will benefit the company, and

(b) the payment is approved by the committee established under paragraph 35(1) or, where there is no such committee, by the nominee.

(2) Sub-paragraph (1) does not apply to a payment required by paragraph 20(6).

(3) If the company makes a payment in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the court—

(a) the company is liable to a fine, and

(b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he is liable to imprisonment or a fine, or both.

Disposal of charged property, etc.

20 (1) This paragraph applies where—

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(a) any property of the company is subject to a security, or

(b) any goods are in the possession of the company under a hire-purchase agreement.

(2) If the holder of the security consents, or the court gives leave, the company may dispose of the property as if it were not subject to the security.

(3) If the owner of the goods consents, or the court gives leave, the company may dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.

(4) Where property subject to a security which, as created, was a floating charge is disposed of under sub-paragraph (2), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) Sub-paragraph (6) applies to the disposal under sub-paragraph (2) or (as the case may be) sub-paragraph (3) of—

(a) any property subject to a security other than a security which, as created, was a floating charge, or

(b) any goods in the possession of the company under a hire-purchase agreement.

(6) It shall be a condition of any consent or leave under sub-paragraph (2) or (as the case may be) sub-paragraph (3) that—

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be agreed, or determined by the court, to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(7) Where a condition imposed in pursuance of sub-paragraph (6) relates to two or more securities, that condition requires—

(a) the net proceeds of the disposal, and

(b) where paragraph (b) of sub-paragraph (6) applies, the sums mentioned in that paragraph,

to be applied towards discharging the sums secured by those securities in the order of their priorities.

(8) Where the court gives leave for a disposal under sub-paragraph (2) or (3), the directors shall, within 14 days after leave is given, send an office copy of the order giving leave to the registrar of companies.

(9) If the directors without reasonable excuse fail to comply with sub-paragraph (8), they are liable to a fine.

21 (1) Where property is disposed of under paragraph 20 in its application to Scotland, the company shall grant to the disponee an appropriate document of transfer or conveyance of the property, and

(a) that document, or

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(b) where any recording, intimation or registration of the document is a legal requirement for completion of title to the property, that recording, intimation or registration,

has the effect of disencumbering the property of, or (as the case may be) freeing the property from, the security.

(2) Where goods in the possession of the company under a hire-purchase agreement are disposed of under paragraph 20 in its application to Scotland, the disposal has the effect of extinguishing, as against the disponee, all rights of the owner of the goods under the agreement.

22 (1) If the company—

(a) without any consent or leave under paragraph 20, disposes of any of its property which is subject to a security otherwise than in accordance with the terms of the security,

(b) without any consent or leave under paragraph 20, disposes of any goods in the possession of the company under a hire-purchase agreement otherwise than in accordance with the terms of the agreement, or

(c) fails to comply with any requirement imposed by paragraph 20 or 21,

it is liable to a fine.

(2) If any officer of the company, without reasonable excuse, authorises or permits any such disposal or failure to comply, he is liable to imprisonment or a fine, or both.

Market contracts, etc.

23 (1) If the company enters into any transaction to which this paragraph applies—

(a) the company is liable to a fine, and

(b) if any officer of the company, without reasonable excuse, authorised or permitted the company to enter into the transaction, he is liable to imprisonment or a fine, or both.

(2) A company enters into a transaction to which this paragraph applies if it—

(a) enters into a market contract, [F7]. . .

(b) gives a transfer order,

(c) grants a market charge [F7]. . . or a system-charge, or

(d) provides any collateral security.

(3) The fact that a company enters into a transaction in contravention of this paragraph does not—

(a) make the transaction void, or

(b) make it to any extent unenforceable by or against the company.

(4) Where during the moratorium a company enters into a transaction to which this paragraph applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of paragraphs 12(1)(g), 14 or 16 to 22.

(5) Paragraph 20 does not apply in relation to any property which is subject to a market charge, [F7]. . .a system-charge or a collateral security charge.

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(6) In this paragraph, "transfer order", "collateral security" and "collateral security charge" have the same meanings as in the settlement finality regulations.

PART IV

NOMINEES

Monitoring of company's activities

24 (1) During a moratorium, the nominee shall monitor the company's affairs for the purpose of forming an opinion as to whether—

(a) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 31(7), the proposed arrangement with those modifications has a reasonable prospect of being approved and implemented, and

(b) the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.

(2) The directors shall submit to the nominee any information necessary to enable him to comply with sub-paragraph (1) which he requests from them.

(3) In forming his opinion on the matters mentioned in sub-paragraph (1), the nominee is entitled to rely on the information submitted to him under sub-paragraph (2) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (1)(b) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

Withdrawal of consent to act

25 (1) The nominee may only withdraw his consent to act in the circumstances mentioned in this paragraph.

(2) The nominee must withdraw his consent to act if, at any time during a moratorium—

(a) he forms the opinion that—

(i) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 31(7), the proposed arrangement with those modifications no longer has a reasonable prospect of being approved or implemented, or

(ii) the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business,

(b) he becomes aware that, on the date of filing, the company was not eligible for a moratorium, or

(c) the directors fail to comply with their duty under paragraph 24(2).

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(3) The reference in sub-paragraph (2)(a)(ii) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

(4) If the nominee withdraws his consent to act, the moratorium comes to an end.

(5) If the nominee withdraws his consent to act he must, in accordance with the rules, notify the court, the registrar of companies, the company and any creditor of the company of whose claim he is aware of his withdrawal and the reason for it.

(6) If the nominee without reasonable excuse fails to comply with sub-paragraph (5), he is liable to a fine.

Challenge of nominee's actions, etc.

26 (1) If any creditor, director or member of the company, or any other person affected by a moratorium, is dissatisfied by any act, omission or decision of the nominee during the moratorium, he may apply to the court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1) the court may—
- (a) confirm, reverse or modify any act or decision of the nominee,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(4) An order under sub-paragraph (3) may (among other things) bring the moratorium to an end and make such consequential provision as the court thinks fit.

27 (1) Where there are reasonable grounds for believing that—
- (a) as a result of any act, omission or decision of the nominee during the moratorium, the company has suffered loss, but
- (b) the company does not intend to pursue any claim it may have against the nominee,

any creditor of the company may apply to the court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1) the court may—
- (a) order the company to pursue any claim against the nominee,
- (b) authorise any creditor to pursue such a claim in the name of the company, or
- (c) make such other order with respect to such a claim as it thinks fit,

unless the court is satisfied that the act, omission or decision of the nominee was in all the circumstances reasonable.

(4) An order under sub-paragraph (3) may (among other things)—
- (a) impose conditions on any authority given to pursue a claim,
- (b) direct the company to assist in the pursuit of a claim,

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(c) make directions with respect to the distribution of anything received as a result of the pursuit of a claim,

(d) bring the moratorium to an end and make such consequential provision as the court thinks fit.

(5) On an application under sub-paragraph (1) the court shall have regard to the interests of the members and creditors of the company generally.

Replacement of nominee by court

28 (1) The court may—

(a) on an application made by the directors in a case where the nominee has failed to comply with any duty imposed on him under this Schedule or has died, or

(b) on an application made by the directors or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(2) A person may only be appointed as a replacement nominee under this paragraph if he submits to the court a statement indicating his consent to act.

PART V

CONSIDERATION AND IMPLEMENTATION OF VOLUNTARY ARRANGEMENT

Summoning of meetings

29 (1) Where a moratorium is in force, the nominee shall summon meetings of the company and its creditors for such a time, date (within the period for the time being specified in paragraph 8(3)) and place as he thinks fit.

(2) The persons to be summoned to a creditors' meeting under this paragraph are every creditor of the company of whose claim the nominee is aware.

Conduct of meetings

30 (1) Subject to the provisions of paragraphs 31 to 35, the meetings summoned under paragraph 29 shall be conducted in accordance with the rules.

(2) A meeting so summoned may resolve that it be adjourned (or further adjourned).

(3) After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.

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Approval of voluntary arrangement

31 (1) The meetings summoned under paragraph 29 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3) The modifications shall not include one by virtue of which the proposal ceases to be a proposal such as is mentioned in section 1.

(4) A meeting summoned under paragraph 29 shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(5) Subject to sub-paragraph (6), a meeting so summoned shall not approve any proposal or modification under which—

(a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, or

(b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(6) The meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(7) The directors of the company may, before the beginning of the period of seven days which ends with the meetings (or either of them) summoned under paragraph 29 being held, give notice to the nominee of any modifications of the proposal for which the directors intend to seek the approval of those meetings.

(8) References in this paragraph to preferential debts and preferential creditors are to be read in accordance with section 386 in Part XII of this Act.

Extension of moratorium

32 (1) Subject to sub-paragraph (2), a meeting summoned under paragraph 29 which resolves that it be adjourned (or further adjourned) may resolve that the moratorium be extended (or further extended), with or without conditions.

(2) The moratorium may not be extended (or further extended) to a day later than the end of the period of two months which begins—

(a) where both meetings summoned under paragraph 29 are first held on the same day, with that day,

(b) in any other case, with the day on which the later of those meetings is first held.

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(3) At any meeting where it is proposed to extend (or further extend) the moratorium, before a decision is taken with respect to that proposal, the nominee shall inform the meeting—

(a) of what he has done in order to comply with his duty under paragraph 24 and the cost of his actions for the company, and

(b) of what he intends to do to continue to comply with that duty if the moratorium is extended (or further extended) and the expected cost of his actions for the company.

(4) Where, in accordance with sub-paragraph (3)(b), the nominee informs a meeting of the expected cost of his intended actions, the meeting shall resolve whether or not to approve that expected cost.

(5) If a decision not to approve the expected cost of the nominee's intended actions has effect under paragraph 36, the moratorium comes to an end.

(6) A meeting may resolve that a moratorium which has been extended (or further extended) be brought to an end before the end of the period of the extension (or further extension).

(7) The Secretary of State may by order increase or reduce the period for the time being specified in sub-paragraph (2).

33 (1) The conditions which may be imposed when a moratorium is extended (or further extended) include a requirement that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(2) A person may only be appointed as a replacement nominee by virtue of sub-paragraph (1) if he submits to the court a statement indicating his consent to act.

(3) At any meeting where it is proposed to appoint a replacement nominee as a condition of extending (or further extending) the moratorium—

(a) the duty imposed by paragraph 32(3)(b) on the nominee shall instead be imposed on the person proposed as the replacement nominee, and

(b) paragraphs 32(4) and (5) and 36(1)(e) apply as if the references to the nominee were to that person.

34 (1) If a decision to extend, or further extend, the moratorium takes effect under paragraph 36, the nominee shall, in accordance with the rules, notify the registrar of companies and the court.

(2) If the moratorium is extended, or further extended, by virtue of an order under paragraph 36(5), the nominee shall, in accordance with the rules, send an office copy of the order to the registrar of companies.

(3) If the nominee without reasonable excuse fails to comply with this paragraph, he is liable to a fine.

Moratorium committee

35 (1) A meeting summoned under paragraph 29 which resolves that the moratorium be extended (or further extended) may, with the consent of the

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nominee, resolve that a committee be established to exercise the functions conferred on it by the meeting.

(2) The meeting may not so resolve unless it has approved an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.

(3) Any expenses, not exceeding the amount of the estimate, incurred by the committee in the exercise of its functions shall be reimbursed by the nominee.

(4) The committee shall cease to exist when the moratorium comes to an end.

Effectiveness of decisions

36 (1) Sub-paragraph (2) applies to references to one of the following decisions having effect, that is, a decision, under paragraph 31, 32 or 35, with respect to—

(a) the approval of a proposed voluntary arrangement,
(b) the extension (or further extension) of a moratorium,
(c) the bringing of a moratorium to an end,
(d) the establishment of a committee, or
(e) the approval of the expected cost of a nominee's intended actions.

(2) The decision has effect if, in accordance with the rules—

(a) it has been taken by both meetings summoned under paragraph 29, or
(b) (subject to any order made under sub-paragraph (5)) it has been taken by the creditors' meeting summoned under that paragraph.

(3) If a decision taken by the creditors' meeting under any of paragraphs 31, 32 or 35 with respect to any of the matters mentioned in sub-paragraph (1) differs from one so taken by the company meeting with respect to that matter, a member of the company may apply to the court.

(4) An application under sub-paragraph (3) shall not be made after the end of the period of 28 days beginning with—

(a) the day on which the decision was taken by the creditors' meeting, or
(b) where the decision of the company meeting was taken on a later day, that day.

(5) On an application under sub-paragraph (3), the court may—

(a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or
(b) make such other order as it thinks fit.

Effect of approval of voluntary arrangement

37 (1) This paragraph applies where a decision approving a voluntary arrangement has effect under paragraph 36.

(2) The approved voluntary arrangement—

(a) takes effect as if made by the company at the creditors' meeting, and

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(b) binds every person who in accordance with the rules—
(i) was entitled to vote at that meeting (whether or not he was present or represented at it), or
(ii) would have been so entitled if he had had notice of it,
as if he were a party to the voluntary arrangement.

(3) If—
(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of sub-paragraph (2)(b)(ii) has not been paid, and
(b) the arrangement did not come to an end prematurely,
the company shall at that time become liable to pay to that person the amount payable under the arrangement.

(4) Where a petition for the winding up of the company, other than an excepted petition within the meaning of paragraph 12, was presented before the beginning of the moratorium, the court shall dismiss the petition.

(5) The court shall not dismiss a petition under sub-paragraph (4)—
(a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required by paragraph 30(3) has been made to the court, or
(b) at any time when an application under paragraph 38 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

Challenge of decisions

38 (1) Subject to the following provisions of this paragraph, any of the persons mentioned in sub-paragraph (2) may apply to the court on one or both of the following grounds—
(a) that a voluntary arrangement approved at one or both of the meetings summoned under paragraph 29 and which has taken effect unfairly prejudices the interests of a creditor, member or contributory of the company,
(b) that there has been some material irregularity at or in relation to either of those meetings.

(2) The persons who may apply under this paragraph are—
(a) a person entitled, in accordance with the rules, to vote at either of the meetings,
(b) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it, and
(c) the nominee.

(3) An application under this paragraph shall not be made—
(a) after the end of the period of 28 days beginning with the first day on which each of the reports required by paragraph 30(3) has been made to the court, or
(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

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but (subject to that) an application made by a person within sub-paragraph (2)(b) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on an application under this paragraph the court is satisfied as to either of the grounds mentioned in sub-paragraph (1), it may do any of the following—
  (a) revoke or suspend—
    (i) any decision approving the voluntary arrangement which has effect under paragraph 36, or
    (ii) in a case falling within sub-paragraph (1)(b), any decision taken by the meeting in question which has effect under that paragraph,
  (b) give a direction to any person—
    (i) for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the directors may make, or
    (ii) in a case falling within sub-paragraph (1)(b), for the summoning of a further company or (as the case may be) creditors' meeting to reconsider the original proposal.

(5) Where at any time after giving a direction under sub-paragraph (4)(b)(i) the court is satisfied that the directors do not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect under paragraph 36.

(6) Where the court gives a direction under sub-paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect of the moratorium.

(7) Sub-paragraph (8) applies in a case where the court, on an application under this paragraph—
  (a) gives a direction under sub-paragraph (4)(b), or
  (b) revokes or suspends a decision under sub-paragraph (4)(a) or (5).

(8) In such a case, the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—
  (a) things done under the voluntary arrangement since it took effect, and
  (b) such things done since that time as could not have been done if a moratorium had been in force in relation to the company when they were done.

(9) Except in pursuance of the preceding provisions of this paragraph, a decision taken at a meeting summoned under paragraph 29 is not invalidated by any irregularity at or in relation to the meeting.

Implementation of voluntary arrangement

39 (1) This paragraph applies where a voluntary arrangement approved by one or both of the meetings summoned under paragraph 29 has taken effect.

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(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—
  (a) by virtue of the approval of the arrangement, on the nominee, or
  (b) by virtue of paragraph 31(2), on a person other than the nominee,

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court.

(4) On an application under sub-paragraph (3) the court may—
  (a) confirm, reverse or modify any act or decision of the supervisor,
  (b) give him directions, or
  (c) make such other order as it thinks fit.

(5) The supervisor—
  (a) may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement, and
  (b) is included among the persons who may apply to the court for the winding up of the company or for an administration order to be made in relation to it.

(6) The court may, whenever—
  (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
  (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,

make an order appointing a person who is qualified to act as an insolvency practitioner, or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

(7) The power conferred by sub-paragraph (6) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

PART VI

MISCELLANEOUS

Challenge of directors' actions

40 (1) This paragraph applies in relation to acts or omissions of the directors of a company during a moratorium.

(2) A creditor or member of the company may apply to the court for an order under this paragraph on the ground—
  (a) that the company's affairs, business and property are being or have been managed by the directors in a manner which is unfairly prejudicial to the interests of its creditors or members generally,

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or of some part of its creditors or members (including at least the petitioner), or

(b) that any actual or proposed act or omission of the directors is or would be so prejudicial.

(3) An application for an order under this paragraph may be made during or after the moratorium.

(4) On an application for an order under this paragraph the court may—

(a) make such order as it thinks fit for giving relief in respect of the matters complained of,

(b) adjourn the hearing conditionally or unconditionally, or

(c) make an interim order or any other order that it thinks fit.

(5) An order under this paragraph may in particular—

(a) regulate the management by the directors of the company's affairs, business and property during the remainder of the moratorium,

(b) require the directors to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained they have omitted to do,

(c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the court may direct,

(d) bring the moratorium to an end and make such consequential provision as the court thinks fit.

(6) In making an order under this paragraph the court shall have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.

(7) In relation to any time when an administration order is in force in relation to the company, or the company is being wound up, in pursuance of a petition presented before the moratorium came into force, no application for an order under this paragraph may be made by a creditor or member of the company; but such an application may be made instead by the administrator or (as the case may be) liquidator.

Offences

41 (1) This paragraph applies where a moratorium has been obtained for a company.

(2) If, within the period of 12 months ending with the day on which the moratorium came into force, a person who was at the time an officer of the company—

(a) did any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or

(b) was privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,

he is to be treated as having committed an offence at that time.

(3) If, at any time during the moratorium, a person who is an officer of the company—

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(a) does any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or

(b) is privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,

he commits an offence.

(4) Those things are—

(a) concealing any part of the company's property to the value of £500 or more, or concealing any debt due to or from the company, or

(b) fraudulently removing any part of the company's property to the value of £500 or more, or

(c) concealing, destroying, mutilating or falsifying any book or paper affecting or relating to the company's property or affairs, or

(d) making any false entry in any book or paper affecting or relating to the company's property or affairs, or

(e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company's property or affairs, or

(f) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).

(5) For the purposes of this paragraph, "officer" includes a shadow director.

(6) It is a defence—

(a) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (a) or (f) of sub-paragraph (4) to prove that he had no intent to defraud, and

(b) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (c) or (d) of sub-paragraph (4) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(7) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under sub-paragraph (2) or (3), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in circumstances which—

(a) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under sub-paragraph (2), or

(b) amount to an offence under sub-paragraph (3),

commits an offence.

(8) A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.

(9) The money sums specified in paragraphs (a) and (b) of sub-paragraph (4) are subject to increase or reduction by order under section 417A in Part XV.

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42 (1) If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for a company, a person who is an officer of the company—
(a) makes any false representation, or
(b) fraudulently does, or omits to do, anything,
he commits an offence.

(2) Sub-paragraph (1) applies even if no moratorium or extension is obtained.

(3) For the purposes of this paragraph, "officer" includes a shadow director.

(4) A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.

Void provisions in floating charge documents

43 (1) A provision in an instrument creating a floating charge is void if it provides for—
(a) obtaining a moratorium, or
(b) anything done with a view to obtaining a moratorium (including any preliminary decision or investigation),
to be an event causing the floating charge to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company or a ground for the appointment of a receiver.

(2) In sub-paragraph (1), "receiver" includes a manager and a person who is appointed both receiver and manager.

Functions of the Financial Services Authority

44 (1) This Schedule has effect in relation to a moratorium for a regulated company with the modifications in sub-paragraphs (2) to (16) below.

(2) Any notice or other document required by virtue of this Schedule to be sent to a creditor of a regulated company must also be sent to the Authority.

(3) The Authority is entitled to be heard on any application to the court for leave under paragraph 20(2) or 20(3) (disposal of charged property, etc.).

(4) Where paragraph 26(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the court include the Authority.

(5) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.

(6) Where paragraph 27(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the court include the Authority.

(7) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.

(8) The persons to be summoned to a creditors' meeting under paragraph 29 include the Authority.

(9) A person appointed for the purpose by the Authority is entitled to attend and participate in (but not to vote at)—

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(a) any creditors' meeting summoned under that paragraph,

(b) any meeting of a committee established under paragraph 35 (moratorium committee).

(10) The Authority is entitled to be heard on any application under paragraph 36(3) (effectiveness of decisions).

(11) Where paragraph 38(1) (challenge of decisions) applies, the persons who may apply to the court include the Authority.

(12) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.

(13) Where paragraph 39(3) (implementation of voluntary arrangement) applies, the persons who may apply to the court include the Authority.

(14) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.

(15) Where paragraph 40(2) (challenge of directors' actions) applies, the persons who may apply to the court include the Authority.

(16) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.

(17) This paragraph does not prejudice any right the Authority has (apart from this paragraph) as a creditor of a regulated company.

(18) In this paragraph—

"the Authority" means the Financial Services Authority, and

"regulated company" means a company which—

(a) is, or has been, an authorised person within the meaning given by section 31 of the [M31]Financial Services and Markets Act 2000,

(b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or

(c) is carrying on, or has carried on, a regulated activity, within the meaning given by section 22 of that Act, in contravention of the general prohibition within the meaning given by section 19 of that Act.

Subordinate legislation

45 (1) Regulations or an order made by the Secretary of State under this Schedule may make different provision for different cases.

(2) Regulations so made may make such consequential, incidental, supplemental and transitional provision as may appear to the Secretary of State necessary or expedient.

(3) Any power of the Secretary of State to make regulations under this Schedule may be exercised by amending or repealing any enactment contained in this Act (including one contained in this Schedule) or contained in the [M32]Company Directors Disqualification Act 1986.

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(4) Regulations (except regulations under paragraph 5) or an order made by the Secretary of State under this Schedule shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Regulations under paragraph 5 of this Schedule are to be made by statutory instrument and shall only be made if a draft containing the regulations has been laid before and approved by resolution of each House of Parliament."

Textual Amendments

F1 Definitions of
"money market contract"
and
"money market charge"
in Sch. 1 para. 4 (as inserting Sch. A1 para. 1 into 1986 c. 45) repealed (3.7.2002) by S.I. 2002/1555, **art. 28(2)**

F2 Definition of
"related contract"
in Sch. 1 para. 4 (as inserting Sch. A1 para. 1 into 1986 c. 45) repealed (3.7.2002) by S.I. 2002/1555, **art. 28(2)**

F3 Words in Sch. 1 para. 4 (as inserting Sch. A1 para. 2 into 1986 c. 45) substituted (3.7.2002) by S.I. 2002/1555, **art. 29(2)**

F4 Words in Sch. 1 para. 4 (as inserting Sch. A1 para. 2 into 1986 c. 45) omitted (3.7.2002) by virtue of S.I. 2002/1555, **art. 28(3)**

F5 Words in Sch. 1 para. 4 (as inserting Sch. A1 para. 2 into 1986 c. 45) inserted (3.7.2002) by S.I. 2002/1555, **art. 29(3)**

F6 Words in Sch. 1 para. 4 (as inserting Sch. A1 para. 12 into 1986 c. 45) inserted (3.7.2002) by S.I. 2002/1555, **art. 30**

F7 Words in Sch. 1 para. 4 (as inserting Sch. A1 para. 23 into 1986 c. 45) omitted (3.7.2002) by virtue of S.I. 2002/1555, **art. 28(4)**

Commencement Information

I12 Sch. 1 para. 4 wholly in force at 1.1.2003; Sch. 1 para. 4 not in force at Royal Assent see s. 16(1); Sch. 1 para. 4 in force for specified purposes at 11.5.2001 by S.I. 2001/1751, **art. 2**; Sch. 1 para. 4 in force insofar as not already in force at 1.1.2003 by S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Marginal Citations

M25 1989 c. 40.
M26 S.I. 1999/2979.
M27 S.I. 1996/1469
M28 1985 c. 6.
M29 1986 c. 60.
M30 1987 c. 22.
M31 2000 c. 8.
M32 1986 c. 46.

5 In section 27(3)(a) (protection of interests of creditors and members when administration order in force), "section 4 in" is omitted.

6 In section 122(1) (grounds on which company may be wound up by the court), after paragraph (f) there is inserted—

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"(fa) at the time at which a moratorium for the company under section 1A comes to an end, no voluntary arrangement approved under Part I has effect in relation to the company".

7 In section 124 (application for winding up of company), after subsection (3) there is inserted—

"(3A) A winding-up petition on the ground set out in section 122(1)(fa) may only be presented by one or more creditors".

8 (1) Section 233 (conditions which may be imposed on supply of gas, water, electricity, etc.) is amended as follows.

(2) In subsection (1)—

(a) after paragraph (b) there is inserted—

"(ba) a moratorium under section 1A is in force, or",

(b) in paragraph (c), for the words from "under Part I" to "section 3" there is substituted " approved under Part I ", and

(c) after "receiver" (in the second place) there is inserted " the nominee, ".

(3) In subsection (4)—

(a) after paragraph (b) there is inserted—

"(ba) the date on which the moratorium came into force",

and

(b) in paragraph (c), for the words following "arrangement" there is substituted " took effect ".

9 In section 387 (date which determines existence and amount of preferential debt), after subsection (2) there is inserted—

"(2A) For the purposes of paragraph 31 of Schedule A1 (meetings to consider company voluntary arrangement where a moratorium under section 1A is in force), the relevant date in relation to a company is the date of filing."

10 After section 417 there is inserted—

"**417A Money sums (company moratorium).**

(1) The Secretary of State may by order increase or reduce any of the money sums for the time being specified in the following provisions of Schedule A1 to this Act—

paragraph 17(1) (maximum amount of credit which company may obtain without disclosure of moratorium);

paragraph 41(4) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer).

(2) An order under this section may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.

(3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament."

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

11 In section 432(4) (offences by bodies corporate), at the end there is inserted " and those under paragraphs 16(2), 17(3)(a), 18(3)(a), 19(3)(a), 22(1) and 23(1)(a) of Schedule A1 ".

12 In Schedule 10 (punishment of offences), before the entry relating to paragraph 4(3) of Schedule 7 there are inserted the following entries—

"Sch. A1, para. 9(2).	Directors failing to notify nominee of beginning of moratorium.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 10(3).	Nominee failing to advertise or notify beginning of moratorium.	Summary.	One-fifth of the statutory maximum.
Sch. A1, para. 11(2).	Nominee failing to advertise or notify end of moratorium.	Summary.	One-fifth of the statutory maximum.
Sch. A1, para. 16(2).	Company and officers failing to state in correspondence etc. that moratorium in force.	Summary.	One-fifth of the statutory maximum.
Sch. A1, para. 17(3)(a).	Company obtaining credit without disclosing existence of moratorium.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
Sch. A1, para. 17(3)(b).	Obtaining credit for company without disclosing existence of moratorium.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 18(3)(a).	Company disposing of property otherwise than in ordinary way of business.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
Sch. A1, para. 18(3)(b).	Authorising or permitting disposal of company property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 19(3)(a).	Company making payments in respect of	1. On indictment. 2. Summary.	A fine. The statutory maximum.

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

	liabilities existing before beginning of moratorium.		
Sch. A1, para. 19(3)(b).	Authorising or permitting such a payment.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 20(9).	Directors failing to send to registrar office copy of court order permitting disposal of charged property.	Summary.	One-fifth of the statutory maximum.
Sch. A1, para. 22(1).	Company disposing of charged property.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
Sch. A1, para. 22(2).	Authorising or permitting such a disposal.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 23(1)(a).	Company entering into market contract, etc.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
Sch. A1, para. 23(1)(b).	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 25(6).	Nominee failing to give notice of withdrawal of consent to act.	Summary.	One-fifth of the statutory maximum.
Sch. A1, para. 34(3).	Nominee failing to give notice of extension of moratorium.	Summary.	One-fifth of the statutory maximum.
Sch. A1, para. 41(2).	Fraud or privity to fraud in anticipation of moratorium.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 41(3).	Fraud or privity to fraud during moratorium.	1. On indictment. 2. Summary.	7 years or a fine, or both.

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

			6 months or the statutory maximum, or both.
Sch. A1, para. 41(7).	Knowingly taking in pawn or pledge, or otherwise receiving, company property.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
Sch. A1, para. 42(1).	False representation or fraud for purpose of obtaining or extending moratorium.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.”

SCHEDULE 2

Section 2.

COMPANY VOLUNTARY ARRANGEMENTS

PART I

AMENDMENTS OF THE INSOLVENCY ACT 1986

1 The [M33]Insolvency Act 1986 is amended as follows.

Marginal Citations
M33 1986 c. 45.

2 In section 1(2) (proposal for a voluntary arrangement), for “in relation to the company” there is substituted “ or authorised to act as nominee, in relation to the voluntary arrangement ”.

3 In section 2 (procedure where nominee is not the liquidator or administrator)—

(a) in subsection (2)(a), at the beginning there is inserted—

“whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,

(aa)”.

(b) for subsection (4) there is substituted—

“(4) The court may—

(a) on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this section or has died, or

(b) on an application made by that person or the nominee, in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement."

4 In section 4(2) (decisions of meetings), for "in relation to the company" there is substituted " or authorised to act as nominee, in relation to the voluntary arrangement ".

5 After section 4 there is inserted—

"**4A Approval of arrangement.**

(1) This section applies to a decision, under section 4, with respect to the approval of a proposed voluntary arrangement.

(2) The decision has effect if, in accordance with the rules—
(a) it has been taken by both meetings summoned under section 3, or
(b) (subject to any order made under subsection (4)) it has been taken by the creditors' meeting summoned under that section.

(3) If the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company may apply to the court.

(4) An application under subsection (3) shall not be made after the end of the period of 28 days beginning with—
(a) the day on which the decision was taken by the creditors' meeting, or
(b) where the decision of the company meeting was taken on a later day, that day.

(5) Where a member of a regulated company, within the meaning given by paragraph 44 of Schedule A1, applies to the court under subsection (3), the Financial Services Authority is entitled to be heard on the application.

(6) On an application under subsection (3), the court may—
(a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or
(b) make such other order as it thinks fit."

6 In section 5 (effect of approval of voluntary arrangement)—
(a) for subsection (1) there is substituted—

"(1) This section applies where a decision approving a voluntary arrangement has effect under section 4A.",
(b) in subsections (2) and (3), "approved" is omitted,
(c) in subsection (2), for paragraph (b) there is substituted—

"(b) binds every person who in accordance with the rules—
(i) was entitled to vote at that meeting (whether or not he was present or represented at it), or
(ii) would have been so entitled if he had had notice of it,
as if he were a party to the voluntary arrangement.

(2A) If—

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of subsection (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement."

7 (1) Section 6 (challenge of decisions) is amended as follows.

(2) In subsection (1)(a), for "approved at the meetings summoned under section 3" there is substituted " which has effect under section 4A ".

(3) In subsection (2), after paragraph (a) there is inserted—

"(aa) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it".

(4) In subsection (3)—

(a) after "be made" there is inserted " (a) ",

(b) at the end there is inserted "or

(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within subsection (2)(aa) on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely. "

(5) In subsection (4)(a)—

(a) for "the approvals given by the meetings" there is substituted " any decision approving the voluntary arrangement which has effect under section 4A ",

(b) for "approval given by the meeting in question" there is substituted " decision taken by the meeting in question which has effect under that section ".

(6) In subsection (5), for "approval given at the previous meetings" there is substituted " decision approving the voluntary arrangement which has effect under section 4A ".

(7) In subsection (6), for the words from "since" to the end there is substituted " under the voluntary arrangement since it took effect ".

(8) In subsection (7), for "an approval given" there is substituted " a decision taken ".

8 After that section there is inserted—

"**6A False representations, etc.**

(1) If, for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement, a person who is an officer of the company—

(a) makes any false representation, or

(b) fraudulently does, or omits to do, anything,

he commits an offence.

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Subsection (1) applies even if the proposal is not approved.

(3) For purposes of this section "officer" includes a shadow director.

(4) A person guilty of an offence under this section is liable to imprisonment or a fine, or both."

9 In section 7 (implementation of proposal)—

(a) in subsection (1), for the words following "voluntary arrangement" there is substituted " has effect under section 4A ",

(b) in subsection (2), for paragraph (a) there is substituted—

"(a) on the nominee by virtue of the approval given at one or both of the meetings summoned under section 3",

(c) in subsection (5), for "in relation to the company" there is substituted " or authorised to act as supervisor, in relation to the voluntary arrangement ".

10 After that section there is inserted—

"**7A Prosecution of delinquent officers of company.**

(1) This section applies where a moratorium under section 1A has been obtained for a company or the approval of a voluntary arrangement in relation to a company has taken effect under section 4A or paragraph 36 of Schedule A1.

(2) If it appears to the nominee or supervisor that any past or present officer of the company has been guilty of any offence in connection with the moratorium or, as the case may be, voluntary arrangement for which he is criminally liable, the nominee or supervisor shall forthwith—

(a) report the matter to the appropriate authority, and

(b) provide the appropriate authority with such information and give the authority such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the nominee or supervisor and relating to the matter in question) as the authority requires.

In this subsection, "the appropriate authority" means—

(i) in the case of a company registered in England and Wales, the Secretary of State, and

(ii) in the case of a company registered in Scotland, the Lord Advocate.

(3) Where a report is made to the Secretary of State under subsection (2), he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act to investigate a company's affairs.

(4) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Act to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Secretary of State in his investigation.

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) An answer given by a person to a question put to him in exercise of the powers conferred by subsection (3) may be used in evidence against him.

(6) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

(a) no evidence relating to the answer may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(7) Subsection (6) applies to any offence other than—

(a) an offence under section 2 or 5 of the [M34]Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or

(b) an offence under section 44(1) or (2) of the [M35]Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).

(8) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the nominee or supervisor, and every officer and agent of the company past and present (other than the defendant or defender), shall give the authority all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose—

"agent" includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company,

"prosecuting authority" means the Director of Public Prosecutions, the Lord Advocate or the Secretary of State.

(9) The court may, on the application of the prosecuting authority, direct any person referred to in subsection (8) to comply with that subsection if he has failed to do so.

7B Arrangements coming to an end prematurely.

For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under section 4A or paragraph 36 of Schedule A1 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of section 5(2)(b)(i) or, as the case may be, paragraph 37(2)(b)(i) of Schedule A1."

Marginal Citations

M34 1911 c. 6.

M35 1995 c. 39.

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

11 In section 387(2)(b) (date which determines existence and amount of preferential debt), for the words following "date" there is substituted " on which the voluntary arrangement takes effect ".

12 In Schedule 10 (punishment of offences), before the entry relating to section 12(2) there is inserted the following entry—

"6A(1).	False representation or fraud for purpose of obtaining members' or creditors' approval of proposed voluntary arrangement.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both."

PART II

AMENDMENTS OF THE BUILDING SOCIETIES ACT 1986

13 (1) **[**[F8]The Authority**]**may appoint one or more competent persons to investigate and report on any matter reported to **[**[F8]the Authority**]** under section 7A(2) of the [M36]Insolvency Act 1986; and section 55 of the [M37]Building Societies Act 1986 (investigations) applies to such a person and the investigations as it applies to a person appointed under section 55(1) and an investigation under that section.

(2) Section 57(5) to (5B) of that Act (use in evidence of answers given to questions) applies to answers given under section 55(3) as extended by sub-paragraph (1) as it applies to answers given under section 57.

Textual Amendments

F8 Words in Sch. 2 para. 13(1) substituted (3.7.2002) by S.I. 2002/1555, **art. 31**

Marginal Citations

M36 1986 c. 45.

M37 1986 c. 53.

14 (1) Schedule 15A to the [M38]Building Societies Act 1986 (application of companies insolvency legislation to building societies) is amended as follows.

(2) In paragraph 1(2)(a), after "Parts I" there is inserted " (except section 1A) ".

(3) At the end of paragraph 8 there is inserted—

"and subsection (1) of section 2 shall have effect with the omission of the words from "and the directors" to the end.

8A In subsection (2) of section 4A of the Act (approval of arrangement) as applied to a building society, paragraph (b) and the word "or" immediately preceding that paragraph are omitted."

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) After paragraph 9 there is inserted—

"9A In section 7A of the Act (prosecution of delinquent officers) as applied to a building society—

(a) in subsection (2), for paragraphs (i) and (ii) there is substituted "the Commission",

(b) subsections (3) to (7) are omitted,

(c) in subsection (8), for "Secretary of State" there is substituted "Commission"."

Marginal Citations

M38 1986 c. 53.

SCHEDULE 3

Section 3.

INDIVIDUAL VOLUNTARY ARRANGEMENTS

1 The Insolvency Act 1986 is amended as follows.

2 In section 252 (interim order of court)—

(a) in subsection (2)(a), after "with," there is inserted—

"(aa) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the court",

(b) in subsection (2)(b), after "continued" there is inserted " and no distress may be levied ".

3 In section 253 (application for interim order)—

(a) in subsection (1), after "proposal" there is inserted " under this Part, that is, a proposal ",

(b) at the end of subsection (2) there is inserted " and the nominee must be a person who is qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement ",

(c) in subsection (4), for the words from "his proposal" to "arrangement)" there is substituted " the proposal ".

4 In section 254 (effect of application), in subsection (1)—

(a) after "pending" there is inserted—

"(a) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the court, and

(b)",

(b) after "may" there is inserted—

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"forbid the levying of any distress on the debtor's property or its subsequent sale, or both, and".

5 In section 255 (cases in which interim order can be made), in subsection (1)—

(a) in paragraph (a), for "such a proposal as is mentioned in that section" there is substituted " a proposal under this Part ",

(b) in paragraph (d), the words from "to his creditors" to "to the debtor, and" are omitted.

6 In section 256 (nominee's report on debtor's proposal)—

(a) in subsection (1)(a), at the beginning there is inserted—

"whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,

(aa)".

(b) for subsection (3) there is substituted—

"(3) The court may—

(a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died, or

(b) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3A) The court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this section, direct that the interim order shall continue, or (if it has ceased to have effect) be renewed, for such further period as the court may specify in the direction."

7 After section 256 there is inserted—

" Procedure where no interim order made

256A Debtor's proposal and nominee's report.

(1) This section applies where a debtor (being an individual)—

(a) intends to make a proposal under this Part (but an interim order has not been made in relation to the proposal and no application for such an order is pending), and

(b) if he is an undischarged bankrupt, has given notice of the proposal to the official receiver and, if there is one, the trustee of his estate,

unless a bankruptcy petition presented by the debtor is pending and the court has, under section 273, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) For the purpose of enabling the nominee to prepare a report to the court, the debtor shall submit to the nominee—
  (a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and
  (b) a statement of his affairs containing—
    (i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and
    (ii) such other information as may be prescribed.

(3) If the nominee is of the opinion that the debtor is an undischarged bankrupt, or is able to petition for his own bankruptcy, the nominee shall, within 14 days (or such longer period as the court may allow) after receiving the document and statement mentioned in subsection (2), submit a report to the court stating—
  (a) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,
  (b) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and
  (c) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(4) The court may—
  (a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died, or
  (b) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

  direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(5) The court may, on an application made by the nominee, extend the period within which the nominee is to submit his report.

Creditors' meeting"

8 In section 257 (summoning of creditors' meeting), in subsection (1)—
  (a) after "256" there is inserted " or 256A ", and
  (b) for "256(3)(a)" there is substituted " 256(3) or 256A(4) ".

9 In section 258 (decisions of creditors' meeting), in subsection (3), for "in relation to the debtor" there is substituted " or authorised to act as nominee, in relation to the voluntary arrangement " and for "such as is mentioned in section 253" there is substituted " under this Part ".

10 In section 260 (effect of approval), for subsection (2)(b) there is substituted—
  "(b) binds every person who in accordance with the rules—
    (i) was entitled to vote at the meeting (whether or not he was present or represented at it), or
    (ii) would have been so entitled if he had had notice of it,

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

as if he were a party to the arrangement.

(2A) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of subsection (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the debtor shall at that time become liable to pay to that person the amount payable under the arrangement."

11 (1) In section 262 (challenge of meeting's decision), in subsection (2)—

(a) for paragraph (b) there is substituted—

"(b) a person who—

(i) was entitled, in accordance with the rules, to vote at the creditors' meeting, or

(ii) would have been so entitled if he had had notice of it",

(b) in paragraph (c), for "256(3)(a)" there is substituted " 256(3), 256A(4) ".

(2) In subsection (3) of that section—

(a) after "be made" there is inserted " (a) ",

(b) at the end there is inserted "or

(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within subsection (2)(b)(ii) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it has come to an end prematurely. "

12 After that section there is inserted—

"**262A False representations etc.**

(1) If for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement, the debtor—

(a) makes any false representation, or

(b) fraudulently does, or omits to do, anything,

he commits an offence.

(2) Subsection (1) applies even if the proposal is not approved.

(3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

262B Prosecution of delinquent debtors.

(1) This section applies where a voluntary arrangement approved by a creditors' meeting summoned under section 257 has taken effect.

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) If it appears to the nominee or supervisor that the debtor has been guilty of any offence in connection with the arrangement for which he is criminally liable, he shall forthwith—

(a) report the matter to the Secretary of State, and

(b) provide the Secretary of State with such information and give the Secretary of State such access to and facilities for inspecting and taking copies of documents (being information or documents in his possession or under his control and relating to the matter in question) as the Secretary of State requires.

(3) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the nominee or, as the case may be, supervisor shall give the authority all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose, "prosecuting authority" means the Director of Public Prosecutions or the Secretary of State.

(4) The court may, on the application of the prosecuting authority, direct a nominee or supervisor to comply with subsection (3) if he has failed to do so.

262C Arrangements coming to an end prematurely.

For the purposes of this Part, a voluntary arrangement approved by a creditors' meeting summoned under section 257 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of section 260(2)(b)(i)."

13 In section 263 (implementation and supervision of approved voluntary arrangement)—

(a) in subsection (2), for "256(3)(a)" there is substituted " 256(3), 256A(4) ", and

(b) in subsection (5), for "in relation to the debtor" there is substituted " or authorised to act as supervisor, in relation to the voluntary arrangement ".

14 In section 347 (distress, etc.)—

(a) in subsection (1), after "(subject to" there is inserted " sections 252(2)(b) and 254(1) above and ",

(b) in subsection (8), at the beginning there is inserted " Subject to sections 252(2)(b) and 254(1) above. "

15 In section 387 (date which determines existence and amount of preferential debt), in subsection (5), for the words following "undischarged bankrupt" there is substituted—

"(a) where an interim order has been made under section 252 with respect to his proposal, the date of that order, and

(b) in any other case, the date on which the voluntary arrangement takes effect."

16 In Schedule 10 (punishment of offences), after the entry relating to section 235(5) there is inserted the following entry—

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

" 262A(1).	False representation or fraud for purpose of obtaining creditors' approval of proposed voluntary arrangement.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both."

SCHEDULE 4

Section 8.

MINOR AND CONSEQUENTIAL AMENDMENTS ABOUT DISQUALIFICATION OF COMPANY DIRECTORS ETC.

Commencement Information
I13 Sch. 4 wholly in force at 2.4.2001, see s. 16(1) and S.I. 2001/766, **art. 2(1)(a)** (subject to art. 3)

PART I

AMENDMENTS OF THE COMPANY DIRECTORS DISQUALIFICATION ACT 1986

1 The [M39]Company Directors Disqualification Act 1986 is amended in accordance with this Part.

Marginal Citations
M39 1986 c. 46.

2 In section 1(3) (disqualification orders), after "an order" there is inserted " or to a disqualification undertaking " and after "those orders" there is inserted " or, as the case may be, in the order and the undertaking ".

3 In section 2(1) (disqualification on conviction of indictable offence), for the words following "a company" there is substituted " with the receivership of a company's property or with his being an administrative receiver of a company ".

4 In section 4 (disqualification for fraud, etc., in winding up), in subsection (1)(b), for "or receiver or manager of its property" there is substituted " receiver of the company's property or administrative receiver of the company " and for "receiver or manager" (in the second place) there is substituted " receiver or administrative receiver ".

5 (1) In section 6 (disqualification of unfit directors)—

(a) for subsection (3) there is substituted—

"(3) In this section and section 7(2), "the court" means—

(a) where the company in question is being or has been wound up by the court, that court,

Status: *Point in time view as at 01/01/2003.*
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(b) where the company in question is being or has been wound up voluntarily, any court which has or (as the case may be) had jurisdiction to wind it up,

(c) where neither of the preceding paragraphs applies but an administration order has at any time been made, or an administrative receiver has at any time been appointed, in relation to the company in question, any court which has jurisdiction to wind it up.

(3A) Sections 117 and 120 of the [M40]Insolvency Act 1986 (jurisdiction) shall apply for the purposes of subsection (3) as if the references in the definitions of "registered office" to the presentation of the petition for winding up were references—

(a) in a case within paragraph (b) of that subsection, to the passing of the resolution for voluntary winding up,

(b) in a case within paragraph (c) of that subsection, to the making of the administration order or (as the case may be) the appointment of the administrative receiver.

(3B) Nothing in subsection (3) invalidates any proceedings by reason of their being taken in the wrong court; and proceedings—

(a) for or in connection with a disqualification order under this section, or

(b) in connection with a disqualification undertaking accepted under section 7,

may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

(3C) In this section and section 7, "director" includes a shadow director".

Marginal Citations

M40 1986 c. 45.

6 In section 7 (applications to court under section 6; reporting provisions)—

(a) in subsection (1)(b), after "being" there is inserted " or has been ",

(b) for the sidenote there is substituted " Disqualification order or undertaking; and reporting provisions ".

7 In section 9 (matters for determining unfitness of directors)—

(a) in subsection (1), "or shadow director" is omitted,

(b) at the end of subsection (2) there is inserted " and in this section and that Schedule "director" includes a shadow director ".

8 In section 13 (criminal penalties)—

(a) after "disqualification order or" there is inserted " disqualification undertaking or in contravention ",

(b) after "12(2)" there is inserted " or 12A ".

9 In section 14(1) (offences by body corporate), after "disqualification order" there is inserted " or disqualification undertaking or in contravention of section 12A ".

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

10 (1) Section 15 (personal liability for company's debts where person acts while disqualified) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), after "disqualification order or" there is inserted " disqualification undertaking or in contravention " and after "11" there is inserted " or 12A ",

(b) in paragraph (b), after "disqualification order" there is inserted " or disqualification undertaking or a disqualification order under Part II of the [M41]Companies (Northern Ireland) Order 1989 ".

(3) In subsection (5), after "disqualification order" there is inserted " or disqualification undertaking or a disqualification order under Part II of the Companies (Northern Ireland) Order 1989 ".

Marginal Citations

M41 S.I. 1989/2404 (N.I. 18).

11 (1) In section 16 (application for disqualification order), in subsection (2), for "5" there is substituted " 4 ".

12 (1) For section 17 (application for leave under an order) there is substituted—

"**17 Application for leave under an order or undertaking.**

(1) Where a person is subject to a disqualification order made by a court having jurisdiction to wind up companies, any application for leave for the purposes of section 1(1)(a) shall be made to that court.

(2) Where—

(a) a person is subject to a disqualification order made under section 2 by a court other than a court having jurisdiction to wind up companies, or

(b) a person is subject to a disqualification order made under section 5,

any application for leave for the purposes of section 1(1)(a) shall be made to any court which, when the order was made, had jurisdiction to wind up the company (or, if there is more than one such company, any of the companies) to which the offence (or any of the offences) in question related.

(3) Where a person is subject to a disqualification undertaking accepted at any time under section 7 or 8, any application for leave for the purposes of section 1A(1)(a) shall be made to any court to which, if the Secretary of State had applied for a disqualification order under the section in question at that time, his application could have been made.

(4) But where a person is subject to two or more disqualification orders or undertakings (or to one or more disqualification orders and to one or more disqualification undertakings), any application for leave for the purposes of section 1(1)(a) or 1A(1)(a) shall be made to any court to which any such application relating to the latest order to be made, or undertaking to be accepted, could be made.

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) On the hearing of an application for leave for the purposes of section 1(1)(a) or 1A(1)(a), the Secretary of State shall appear and call the attention of the court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses."

13 (1) Section 18 (register of disqualification orders) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (b), after "order" there is inserted " or a disqualification undertaking ",

(b) after paragraph (c) there is inserted "or

(d) leave is granted by a court for a person subject to such an undertaking to do anything which otherwise the undertaking prohibits him from doing".

(3) After subsection (2) there is inserted—

"(2A) The Secretary of State shall include in the register such particulars as he considers appropriate of disqualification undertakings accepted by him under section 7 or 8 and of cases in which leave has been granted as mentioned in subsection (1)(d)."

(4) In subsection (3)—

(a) after "order" there is inserted " or undertaking ",

(b) at the end there is inserted—

"and, in the case of a disqualification undertaking, any other particulars he has included in the register".

(5) After subsection (4) there is inserted—

"(4A) Regulations under this section may extend the preceding provisions of this section, to such extent and with such modifications as may be specified in the regulations, to disqualification orders made under Part II of the [M42]Companies (Northern Ireland) Order 1989."

(6) For the sidenote there is substituted " Register of disqualification orders and undertakings ".

Marginal Citations

M42 S.I. 1989/2404 (N.I. 18).

14 (1) Section 21 (interaction with Insolvency Act 1986) is amended as follows.

(2) In subsection (2)—

(a) after "Sections" there is inserted " 1A ",

(b) after "10" there is inserted " 13, 14 ",

(c) after "this Act" there is inserted " and sections 1 and 17 of this Act as they apply for the purposes of those provisions ".

(3) In subsection (3)—

(a) after "sections" there is inserted " 1A ",

(b) after "10" there is inserted " 13, 14 ",

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(c) after "this Act" there is inserted " and sections 1 and 17 of this Act as they apply for the purposes of those provisions ".

15 (1) Section 22 (interpretation) is amended as follows.

(2) At the end of subsection (3) there is inserted " and references to acting as an insolvency practitioner are to be read in accordance with section 388 of that Act ".

(3) In subsection (4), the words following "called" are omitted.

PART II

CONSEQUENTIAL AMENDMENTS OF OTHER ENACTMENTS

Insolvency Act 1986 (c. 45)

16 (1) The Insolvency Act 1986 is amended as follows.

(2) In section 390(4)(b) (persons not qualified to act as insolvency practitioners)—

(a) after "made" there is inserted " or a disqualification undertaking accepted ",

(b) after "1986" there is inserted " or to a disqualification order made under Part II of the Companies (Northern Ireland) Order 1989 ".

(3) In section 426(10) (co-operation between courts)—

(a) in paragraph (a)—

(i) after "provision" there is inserted " extending to England and Wales and ",

(ii) after "sections" there is inserted " 1A ",

(iii) for "12, 15" there is substituted " 12 to 15 ",

(iv) for "and extending to England and Wales" there is substituted " and sections 1 to 17 of that Act as they apply for the purposes of those provisions of that Act ",

(b) in paragraph (b)—

(i) after "sections" there is inserted " 1A ",

(ii) for "12, 15" there is substituted " 12 to 15 ",

(iii) after "1986" there is inserted " and sections 1 to 17 of that Act as they apply for the purposes of those provisions of that Act ".

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40.)

17 In section 8(1)(d) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (persons disqualified from being concerned in the management and control of a recognised body)—

(a) after "disqualification order" there is inserted " or disqualification undertaking ",

(b) after "1986" there is inserted " or to a disqualification order under Part II of the [M43]Companies (Northern Ireland) Order 1989 ".

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations
M43 S.I. 1989/2404 (N.I. 18).

Charities Act 1993 (c. 10)

18 In section 72 of the Charities Act 1993 (persons disqualified for being trustees of a charity)—

(a) in subsection (1)(f), after "disqualification order" there is inserted " or disqualification undertaking " and after the first mention of "1986" there is inserted " to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989 ",

(b) for subsection (3)(a) there is substituted—

"(a) in the case of a person subject to a disqualification order or disqualification undertaking under the [M44]Company Directors Disqualification Act 1986, leave for the purposes of section 1(1)(a) or 1A(1)(a) of that Act has been granted for him to act as director of the charity,

(aa) in the case of a person subject to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989, leave has been granted by the High Court in Northern Ireland for him to act as director of the charity",

(c) in subsection (4)(a)—

(i) in sub-paragraph (i), after "disqualification order" there is inserted " or disqualification undertaking ",

(ii) in sub-paragraph (ii), for "or 12(2)" there is substituted " 12(2) or 12A " and after "order" there is inserted " Northern Irish disqualification orders ".

Marginal Citations
M44 1986 c. 46.

Pensions Act 1995 (c. 26)

19 (1) The Pensions Act 1995 is amended as follows.

(2) In section 4(1)(e) (suspension orders), after "1986" there is inserted " or under Part II of the Companies (Northern Ireland) Order 1989 ".

(3) In section 29(1)(f) (persons disqualified for being trustees of trust schemes)—

(a) after "disqualification order" there is inserted " or disqualification undertaking ",

(b) after the first mention of "1986" there is inserted " to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989 ".

Police Act 1996 (c. 16)

20 In paragraph 11(1)(c) of Schedule 2, and paragraph 7(1)(c) of Schedule 2A, to the Police Act 1996 (persons disqualified for being members of police authorities)—

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) after "disqualification order" there is inserted " or disqualification undertaking ",

(b) after the first mention of "1986" there is inserted " to a disqualification order under Part II of the [M45]Companies (Northern Ireland) Order 1989 ".

Marginal Citations

M45 S.I. 1989/2404 (N.I. 18).

Housing Act 1996 (c. 52)

21 In paragraph 4(2)(b) of Schedule 1 to the Housing Act 1996 (powers to remove directors, trustees etc. of registered social landlords)—

(a) after "disqualification order" there is inserted " or disqualification undertaking ",

(b) at the end there is inserted " or to a disqualification order under Part II of the Companies (Northern Ireland) Order 1989 ".

Police Act 1997 (c. 50)

22 (1) The Police Act 1997 is amended as follows.

(2) In section 91 (Commissioners for the purposes of Part III), at the end of subsection (7)(b) there is inserted " or his disqualification undertaking is accepted under section 7 or 8 of the [M46]Company Directors Disqualification Act 1986 ".

(3) In Schedule 2 (members of Service Authorities), in paragraph 3(1)(c)—

(a) after "disqualification order" there is inserted " or disqualification undertaking ",

(b) after "1986 or" there is inserted " to a disqualification order under ".

Marginal Citations

M46 1986 c. 46.

SCHEDULE 5

Section 15.

REPEALS

Commencement Information

I14 Sch. 5 wholly in force at 1.1.2003; Sch. 5 not in force at Royal Assent see s. 16(1); Sch. 5 in force for specified purposes at 2.4.2001 by S.I. 2001/766, **art. 2(1)(c)** (subject to art. 3); Sch. 5 in force insofar as not already in force at 1.1.2003 by S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Chapter	Short title	Extent of repeal

Status: *Point in time view as at 01/01/2003.*
Changes to legislation: *Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

1986 c. 45.	The Insolvency Act 1986.	In subsections (2) and (3) of section 5, “approved”. In section 27(3)(a), “section 4 in”. In section 218, subsection (2) and, in subsection (6)(b), “to the prosecuting authority”. In section 255(1)(d), the words from “to his creditors” to “to the debtor, and”.
1986 c. 46.	The Company Directors Disqualification Act 1986.	In section 9(1), “or shadow director”. In section 22(4), the words following “called”.
1989 c. 40.	The Companies Act 1989.	Section 78.

Status:
Point in time view as at 01/01/2003.

Changes to legislation:
Insolvency Act 2000 is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.