



Insolvency Act 2000

2000 CHAPTER 39

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 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.

2 Company voluntary arrangements

Schedule 2 (which—

- (a) amends the provisions about company voluntary arrangements under Part I of the Insolvency Act 1986, and
- (b) in consequence of Schedule 1 and those amendments, makes amendments of the Building Societies Act 1986),

is to have effect.

3 Individual voluntary arrangements

Schedule 3 (which enables the procedure for the approval of individual voluntary arrangements under Part VIII of the 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.

4 Qualification or authorisation of nominees and supervisors

- (1) Part XIII of the 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.”
- (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 Company Directors Disqualification Act 1986 or to a disqualification order made under Part II of the Companies (Northern Ireland) Order 1989, or
 - (c) he is a patient within the meaning of Part VII of the Mental Health Act 1983 or section 125(1) of the 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.”

Disqualification of company directors etc.

5 Disqualification orders

- (1) In section 1 of the 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.”

6 Disqualification undertakings

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

(2) After section 1 there is inserted—

“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—

“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.”

7 Effect of Northern Irish disqualifications

- (1) After section 12 of the 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 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 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.

8 Amendments

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

Miscellaneous

9 Administration orders

- (1) Part II of the 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”.

10 Investigation and prosecution of malpractice

- (1) Section 218 of the 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”.

11 Restriction on use of answers obtained under compulsion

In section 219 of the 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 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 Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).”

12 Insolvent estates of deceased persons

(1) After section 421 of the 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,

Status: This is the original version (as it was originally enacted).

- (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.
- (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".

13 Bankruptcy: interest on sums held in Insolvency Services Account

- (1) In Schedule 9 to the 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”.

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 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 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—
 - (a) if they extend to England and Wales, of the Lord Chancellor,
 - (b) if they extend to Scotland, of the Scottish Ministers.

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 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”.

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.
- (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.

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.