

*These notes refer to the Insolvency Act 2000 (c.39)
which received Royal Assent on 30 November 2000*

INSOLVENCY ACT 2000

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Insolvency Act 2000 which received Royal Assent on 30 November 2000. They have been prepared by the Department of Trade and Industry in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act provides for:
 - small companies¹ in financial difficulty to make voluntary arrangements with their creditors by providing the option of a moratorium² to give the firm's management time to put a rescue plan to creditors and for minor modifications to be made to the provisions relating to the existing company³ and individual⁴ voluntary arrangement schemes and the administration order procedure⁵;
 - the Secretary of State to recognise a body which can authorise persons to act as nominees or supervisors in company or individual voluntary arrangements;
 - changes to the procedure for disqualifying persons who are unfit to be company directors by allowing the Secretary of State to accept undertakings which would have the same legal effects as disqualification orders⁶ made by a court and for various technical amendments to be made to existing legislation in relation to disqualification;
 - the procedure for reporting delinquent officers and members of a company with a view to prosecution to be changed;
 - amendment of section 219 of the Insolvency Act 1986 to ensure that it is compatible with the European Convention on Human Rights (ECHR);
 - the value of a deceased insolvent's interest in jointly-owned property to be recoverable for the benefit of the insolvent estate (England and Wales only);
 - a power to make rules or regulations concerning the investment of funds held in the Insolvency Services Account on behalf of bankruptcy estates, and the payment of interest on such funds; and
 - a power to make regulations to give effect with or without modifications to the model law on cross-border insolvency which was adopted by the United Nations Commission on International Trade Law (UNCITRAL) of which the UK is a member state; and for the amendment of section 426 of the Insolvency Act 1986 (co-operation between courts exercising insolvency jurisdiction).

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1. *Section 247(3) Companies Act 1985* defines a small company as one which satisfies two or more of the following criteria:
 - Turnover – not more than £2.8 million.
 - Balance sheet total – not more than £1.4 million.
 - Number of employees – not more than 50.
2. *Moratorium* is a temporary stay, or in Scotland a sists, on certain legal acts and processes from being performed or continued.
3. *Company Voluntary Arrangements* were introduced by the Insolvency Act 1986 Part I and provide a means for financially troubled companies to reach a legally binding agreement with their creditors in satisfaction of their debts or a scheme of arrangement of their affairs. A proposal for a voluntary arrangement will determine who the nominee is to be. The nominee is the person chosen by the directors to put their voluntary arrangement to the creditors and the company and to act as supervisor of the voluntary arrangement if it is implemented. A liquidator or an administrator of the company may also propose a voluntary arrangement.
4. *Individual Voluntary Arrangements* were introduced by the Insolvency Act 1986 Part VIII and similarly provide a means for financially troubled individuals to reach a legally binding agreement with their creditors in satisfaction of their debts or a scheme of arrangement of their affairs (England and Wales only).
5. *The Administration Order Procedure* was introduced by the Insolvency Act 1986 Part II.
6. A person can be disqualified by the courts, by way of a *disqualification order*, from being an insolvency practitioner or director or from being involved in the promotion, formation and management of a company, for a maximum of fifteen years, if his conduct in an insolvent company (or partnership in England and Wales) makes him unfit and if other specified conditions are satisfied.

BACKGROUND

Moratorium in company voluntary arrangements

4. Company rescues can be made more difficult or can be thwarted because of the absence of provision in the Insolvency Act 1986 for obtaining a short moratorium in the company voluntary arrangement procedure whilst a proposal for a voluntary arrangement is being considered.
5. The absence of a moratorium means that, until the arrangement is formally approved, any creditor can take legal action against the assets of the company and so jeopardise the prospects of the voluntary arrangement succeeding. The addition of an optional moratorium to this procedure will offer the management of a small company a short time within which to put a rescue plan to creditors.
6. In the last three years an average of 500 company voluntary arrangements have been agreed annually.

Disqualification Undertakings

7. The present director disqualification regime was introduced by the Company Directors Disqualification Act 1986. In particular, this allows the court to make a disqualification order against a director of an insolvent company whose conduct as a director of that

company either on its own or when taken with his conduct of other companies is such as to make him in the view of the court unfit to be involved in the management of a company. The application is made by the Secretary of State or the official receiver. Over the past two years, about 2800 disqualification orders have been made under Section 6.

8. At present disqualification can only be achieved by means of court proceedings and there are delays in getting cases through the courts. The power to accept undertakings which is to be conferred on the Secretary of State will mean that, where there is agreement, disqualification can be achieved administratively by the director giving an undertaking to the Secretary of State. This will result in earlier disqualification for those who give an undertaking. It will also save time.

Right of peaceable re-entry under Administration Order and Individual Voluntary Arrangement procedure

9. At present a landlord or other person entitled to rent may thwart a rescue attempt by exercising the right of peaceable re-entry in order to bring a tenant's lease to an end. The Act will prohibit that right, except with leave of court, whilst the company is subject to the administration order procedure and whilst an individual is subject to the individual voluntary arrangement procedure.

Reports by liquidators of criminal misconduct by company officers or members

10. In certain circumstances, Section 218 Insolvency Act 1986 requires a liquidator¹ to report suspicions of criminal misconduct by company officers or members to the Director of Public Prosecutions, who may then refer such reports to the Secretary of State for investigation. The Act requires liquidators to make such reports directly to the Secretary of State rather than to the Director of Public Prosecutions. In Scotland reports will continue to be made to the Lord Advocate who will no longer be able to require the Secretary of State to investigate the alleged offences.

¹ *A liquidator is the insolvency practitioner appointed to realise the assets of a company and distribute the proceeds to creditors in a liquidation.*

Restriction on use of answers obtained under compulsion

11. Section 219 of the Insolvency Act 1986 allows answers obtained under powers of compulsion, derived from the Companies Act 1985, to be used as evidence against that person. This is not compatible with the judgment of the ECHR in the case of Saunders v. UK. The Court decided that for the prosecution to use answers given pursuant to a power of compulsion in subsequent criminal proceedings infringed Mr Saunders' rights under Article 6 of the European Convention on Human Rights. The Act therefore amends section 219 to make it compatible with the Convention.

Property of deceased insolvents

12. The order-making power contained in Section 421 of the Insolvency Act 1986 is not sufficient to ensure that all property, the ownership of which was vested in a deceased insolvent immediately prior to his death (including his share in property held on a joint tenancy), is available to his creditors in insolvency proceedings where the insolvency order was made after the deceased insolvent's death¹. That means that in some instances, what may appear to be the main, if not the only asset, namely the debtor's interest in the matrimonial home, will be beyond the reach of his creditors. The Act therefore provides, by way of new Section 421A to the Insolvency Act, that the value of any interest in jointly-owned property, lost to the deceased insolvent's estate by the operation of the survivorship rules, is to be recoverable for the benefit of that estate and, therefore, for the creditors of the deceased insolvent.

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- 1 This was established by the decision of the Court of Appeal in the case of *In re Palmer Deceased (A Debtor)* 1994 Ch. 316.

Bankruptcy: Interest on sums held in Insolvency Services Account

13. For many years it has been possible for funds held in the Insolvency Services Account for a company in liquidation to be invested in government securities for the benefit of the estate. There was also a facility for funds in excess of £2,000 to be placed in an interest bearing account and since 1994, interest of 3.5% per annum has been paid automatically on such funds. Similar provisions have never applied to bankruptcy estate funds. The Act, therefore, gives the Secretary of State the power to make rules or regulations which will remove that anomaly.

Model law on cross-border insolvency

14. The UNCITRAL model law seeks to facilitate the process of obtaining recognition of foreign insolvency proceedings; to introduce a greater degree of certainty as to the assistance the courts can give a foreign officeholder and the stage of the proceedings at which the assistance is given; and to require courts with insolvency jurisdiction to co-operate with each other. The power taken in the Act will enable the Secretary of State in England and Wales (with the agreement of the Lord Chancellor) and in Scotland (with the consent of the Scottish Ministers) to give effect in our law to the model law, with or without modifications.

THE ACT

15. The matters dealt with in the Act may be summarised as follows:-
- Sections 1 – 3 and Schedules 1 – 3 deal with voluntary arrangements;
 - Section 4 deals with the qualification and authorisation of nominees and supervisors in voluntary arrangements;
 - Sections 5 – 8 and Schedule 4 deal with disqualification of company directors;
 - Section 9 prohibits the exercise of the right of forfeiture by peaceable re-entry during the administration procedure, except with leave of court;
 - Section 10 deals with the reporting of suspected offences;
 - Section 11 deals with the restriction on use of answers obtained under compulsion;
 - Section 12 deals with insolvent estates of deceased persons;
 - Section 13 deals with the interest on sums held to the credit of bankrupts' estates in the Insolvency Services Account;
 - Section 14 deals with the model law on cross-border insolvency; and
 - Section 15 deals with the rights of the Financial Services Authority to make certain applications to the court and makes repeals.

COMMENTARY ON SECTIONS

Section 1: Moratorium where directors propose voluntary arrangement

16. This Section introduces Schedule 1 to the Act, which makes the option of applying for a short moratorium available to an eligible company where its directors intend to put a proposal to the company and its creditors for a company voluntary arrangement.

Section 2: Company voluntary arrangements

17. This Section introduces Schedule 2 to the Act. The Schedule makes various amendments to the existing company voluntary arrangement procedure in Part I of the Insolvency Act 1986 and to the Building Societies Act 1986.

Section 3: Individual voluntary arrangements

18. This Section introduces Schedule 3 to the Act which makes various amendments to the existing individual voluntary arrangement procedure in Part VIII of the Insolvency Act 1986.

Section 4: Qualification or authorisation of nominees and supervisors

19. This Section amends Part XIII of the Insolvency Act 1986, which deals with insolvency practitioners¹ and their qualification.
20. *Subsection (2)* extends the meaning of “act as insolvency practitioner” so as to include a person who acts as a nominee in relation to a company or individual voluntary arrangement.
21. *Subsection (3)* inserts a new subsection (1A) to Section 389 of the Insolvency Act 1986. The amendment means that it will not be an offence to act as a nominee or supervisor whilst unauthorised to act as an insolvency practitioner provided that the individual is authorised to act as a nominee or a supervisor under subsection (4).
22. *Subsection (4)* introduces a new Section 389A to the Insolvency Act 1986, which provides for persons to act as nominees and supervisors if authorised to do so by a body recognised by the Secretary of State for that purpose and they satisfy the requirements for security and are not otherwise ineligible e.g. by reason of bankruptcy. The Secretary of State may only recognise a body which appears to him to meet specified criteria ensuring that its members are fit and proper persons and properly trained to act as nominees and supervisors and where such persons have appropriate bonding in place. The Secretary of State may revoke an order recognising such a body if, in his view, it no longer meets the requirements for recognition.

¹ *Insolvency practitioner* is a person who has the conduct of an insolvency procedure, e.g. a liquidator in a winding up of a company.

Section 5: Disqualification Orders

23. A person who is subject to a disqualification order made under the Company Directors Disqualification Act 1986 may not without the leave of the court:
- be a director of a company, or
 - be a liquidator or administrator of a company, or
 - be a receiver or manager 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,
- for the period specified in the order. It is a criminal offence to contravene a disqualification order. Civil liabilities may also be incurred in respect of such contravention.
24. *Subsection (1)* amends Section 1 of the Company Directors Disqualification Act 1986 by providing that an individual who is the subject of a disqualification order cannot obtain the leave of the court to act as an insolvency practitioner. This is to make it consistent with Section 390(4)(b) of the Insolvency Act 1986, which provides for an absolute ban on an individual acting as an insolvency practitioner if he is subject to a disqualification order.

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25. *Subsection (2)* further amends Section 1 of the Company Directors Disqualification Act 1986 and provides that any period of disqualification begins 21 days after the date on which the disqualification order is made unless the court orders otherwise.
26. *Subsection (3)* defines the term “receiver” for the purposes of the Company Directors Disqualification Act 1986.

Section 6: Disqualification undertakings

27. This Section amends the Company Directors Disqualification Act 1986 by providing that directors whom the Secretary of State considers unfit may consent to a period of disqualification without the need for court involvement by giving a disqualification undertaking to the Secretary of State. The period of disqualification would be for a maximum of fifteen years and in the case of an undertaking under Section 7 of the Company Directors Disqualification Act 1986, as amended by this Section, for a minimum period of two years. New Section 8A of that Act which will be inserted by this section provides that the disqualified person may subsequently apply to the court to vary the undertaking he has given.

Section 7: Effect of Northern Irish disqualifications

28. Disqualification in Northern Ireland is governed by the Companies (Northern Ireland) Order 1989 which makes similar provision for disqualification in Northern Ireland to that made for Great Britain by the Company Directors Disqualification Act 1986.
29. *Subsection (1)* of the section provides that a disqualification order made under Northern Irish legislation will have the same effects in Great Britain as one made under the Company Directors Disqualification Act 1986.
30. *Subsection (2)*: Disqualification is a devolved matter in Northern Ireland. The Assembly may, or may not, wish to bring in legislation for disqualification undertakings. If it should make such provision this section will enable effect to be given to the undertakings in Great Britain.

Section 8: Amendments

31. This section introduces Schedule 4 to the Act, which makes minor and consequential amendments about disqualification, Part I making such amendments to the Company Directors Disqualification Act 1986 and Part II to other enactments.

Section 9: Administration Orders

32. This section amends Sections 10 and 11 of the Insolvency Act 1986. The section provides that a landlord or other person to whom rent is payable may not exercise the right of forfeiture of the lease of a company’s premises by means of peaceable re-entry where a company has applied for, or is subject to, an administration order, except with leave of court.

Section 10: Investigation and prosecution of malpractice

33. This section amends Section 218 of the Insolvency Act 1986. The section provides that, in a winding up by the court, the court may direct the liquidator to report apparent criminal misconduct by past or present company officers or members of the company to the Secretary of State rather than to the Director of Public Prosecutions. The section also requires a liquidator in a voluntary winding up to report suspicions of criminal misconduct by company officers past or present or members, to the Secretary of State rather than to the Director of Public Prosecutions. It also provides that the Secretary of State may exercise powers under the Companies Act 1985 when investigating the alleged misconduct. In the case of a winding up in Scotland, such misconduct will still be reported to the Lord Advocate.

Section 11: Restriction on use of answers obtained under compulsion

34. This section amends Section 219 of the Insolvency Act 1986 so that answers given by an individual under a power of compulsion (conferred by Section 218(5)) cannot be used against him by the prosecution in subsequent criminal proceedings except in very limited circumstances.

Section 12: Insolvent estates of deceased persons

35. This section inserts a new Section 421A into the Insolvency Act 1986 by addressing the effects of the Court of Appeal decision in the case of *In re Palmer Deceased (A Debtor)* 1994 Ch. 316. In March 1994 the Court of Appeal attributed the ordinary, rather than the technical, meaning to “the estate of a deceased person” used in the context of an order-making power in Section 421. The consequence of that is that the debtor’s interest, on the day of his death, in his share in property held on a joint tenancy (usually the matrimonial home) does not become available to the trustee¹ to distribute among the creditors of a deceased insolvent. This section allows the trustee of a deceased insolvent, if certain conditions are met, to apply to the court to recover the value of the deceased insolvent’s former interest in a jointly-owned property from the survivor for the benefit of the estate. The purpose of an order under section 421A is to cover debts and other liabilities of the insolvent estate. Section 421A applies only in England and Wales.

1 *The trustee* is the person appointed to realise the assets of a deceased individual and distribute the proceeds to the creditors.

Section 13: Bankruptcy: Interest on sums held in Insolvency Services Account

36. This section enables the Lord Chancellor, with the concurrence of the Secretary of State, to make rules relating to the investment of bankruptcy estate funds held in the Insolvency Services Account and the payment of interest on those funds.

Section 14: Model law on cross-border insolvency

37. In England and Wales this section enables the Secretary of State (with the agreement of the Lord Chancellor) and in Scotland (with the agreement of the Scottish Ministers) to give effect, with or without modifications, to the UNCITRAL model law on cross-border insolvency by secondary legislation. The section provides that the secondary legislation may include amendments to section 426 of Insolvency Act 1986. This section provides for co-operation between courts exercising insolvency jurisdiction.

Section 15: Amendments of Financial Services and Markets Act 2000 and repeals

38. The Financial Services Authority is given the right to make an application under sections 6 or 7 of the Insolvency Act 1986 or its Northern Ireland equivalents (Articles 19 or 20 of the Insolvency (Northern Ireland) Order 1989). This section also makes repeals.

Section 17: Extent

39. This section provides that, apart from amendments made by the Act to provisions which apply to Northern Ireland, the Act does not apply to Northern Ireland.

Schedule 1: Moratorium where directors propose voluntary arrangement

40. *Paragraphs 1, 2, 3 and 4:* These paragraphs amend the Insolvency Act 1986 by the insertion of a new Section and Schedule (Section 1A and Schedule A1) to that Act so that the directors of eligible companies, if they so wish, can obtain a short moratorium for their company during which a proposal for a company voluntary arrangement can be put to its creditors.

41. *Paragraph 1 Schedule A1: Interpretation.* This defines some of the terms which are used in Schedule A1.
42. *Paragraphs 2 to 4 Schedule A1: Eligible companies.* These paragraphs set out which companies are eligible for a moratorium. To be eligible a company must satisfy two or more of the conditions for being a small company specified in Section 247(3) of the Companies Act 1985. Insurance companies as defined in the Insurance Companies Act 1982, certain banks (current and former), companies which are parties to market contracts, money market contracts or a related contract or any of whose property is subject to a market charge, money market charge or system-charge (market contract and market charge being defined by Part VII of the Companies Act 1989 and money market contract, related contract or money market charge being defined by the Financial Markets and Insolvency (Money Market) Regulations 1995 and system-charge being defined by the Financial Markets and Insolvency Regulations 1996) or companies which are “participants” (within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999) or any of whose property is subject to a collateral security charge (within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999) are ineligible for a moratorium¹. Also ineligible are companies which are subject to formal insolvency proceedings or where in the previous 12 months a moratorium failed.
- 1 Banks and insurance companies have special insolvency regimes which are designed to protect depositors (banks) and policyholders (insurance companies). Companies covered by Part VII of the Companies Act 1989 or the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 or the Financial Markets and Insolvency (Money Market) Regulations 1995 or the Financial Markets and Insolvency Regulations 1996 are subject to modified insolvency regimes. The modifications are designed to ensure that the financial markets continue to function in the event of the insolvency of one of their participants.
43. *Paragraph 5 Schedule A1* The Secretary of State may, by regulations, amend the eligibility criteria.
44. *Paragraph 6 Schedule A1: Nominee’s statement.* This paragraph places a duty upon the directors seeking a moratorium to provide information to the nominee. They must give him a document setting out the terms of the proposed company voluntary arrangement and another containing details of the company’s assets, debts and other liabilities, together with any other information the nominee may request. If the nominee considers that the proposal has a reasonable prospect of being approved and implemented, that sufficient funding is available and that meetings of the company and the creditors should be held, he must provide a statement to the directors to that effect. In reaching his view, the nominee may rely on the information provided by the directors unless he has reason to believe it may be inaccurate.
45. *Paragraph 7 Schedule A1: Documents to be submitted to Court.* To obtain a moratorium the directors must file certain documents at court. The list of documents to be filed may be amended by regulations.
46. *Paragraph 8 Schedule A1: Duration of moratorium.* This paragraph sets out the duration of a moratorium. It provides that a moratorium comes into force when the documents required to be submitted to the court are filed.
47. The maximum initial moratorium period is 28 days. This period is capable of extension or reduction by order of the Secretary of State. A meeting of the company and creditors held within the initial period may decide to extend the period of the moratorium by up to a further two months (see Paragraph 32 Schedule A1). The Secretary of State may by order increase or decrease that two month period.

48. The moratorium may be brought to an end by a decision of the meetings of creditors and the company to approve a company voluntary arrangement having effect under paragraph 36. Alternatively, it may be ended:-
- by a decision of the court;
 - by the withdrawal by the nominee of his consent to act;
 - by a decision of the meetings of creditors and company;
 - on the expiry of the initial moratorium period of 28 days if the nominee has failed to summon either of the first meetings of the company or creditors;
 - if either of those meetings has not met when summoned to be held, unless the moratorium is extended under paragraph 32; or
 - if there is no decision by the meetings to extend it.
49. *Paragraph 9 Schedule A1: Notification of beginning of moratorium.* This places a duty on the directors of the company to notify the nominee that a moratorium has come into force.
50. *Paragraphs 10 to 11 Schedule A1:* When a moratorium comes into force, and when it ends, the nominee must advertise that fact and also notify the registrar of companies and the company. In the case of a moratorium coming into force he must also notify any creditor who has petitioned for the winding up of the company and, where it ends, any creditor of whose claim he is aware.
51. *Paragraph 12 Schedule A1: Effects on creditors, etc.* This deals with the effects of a moratorium upon parties, other than the company, during the period that a moratorium is in force.
52. Save for an excepted petition¹ to wind up a company no insolvency proceedings can be commenced against the company. Except with the leave of the court, in each case, no steps may be taken to enforce any security over the company's property or repossess any goods in the company's possession under any hire-purchase agreement², nor can any other proceedings, execution or other legal process be commenced or continued or distraint be levied, nor can a landlord forfeit the lease of a company's premises by means of peaceable re-entry. No meeting of the company may be held or requisitioned without the consent of the nominee or the court.
53. Where a petition (other than an excepted petition) for the winding up of the company has been presented before the beginning of the moratorium, proceedings on the petition are stayed during the moratorium. Section 127³ of the Insolvency Act 1986 will not apply during the moratorium or in the 28 day period referred to in paragraph 37(5)(a) of Schedule A1. Where an excepted petition for the winding up of the company has been presented to the court before the beginning of a moratorium it can continue unaffected by the coming into force of the moratorium.

1 An *excepted petition* is a petition presented by the Secretary of State pursuant to Section 124A of the Insolvency Act 1986 on the grounds that it is in the public interest to wind up a company or pursuant to Section 72 (1)(b) of the Financial Services Act 1986 or Section 92(1)(b) of the Banking Act 1987 on the grounds that it is just and equitable that the company be wound up.

2 *Hire-purchase agreement* includes conditional sale, chattel leasing and retention of title agreements.

3 *Section 127 Insolvency Act 1986* provides that any disposal of a company's property, and any transfer of shares, or alteration in the status of the company's members made after the presentation to the court of a winding-up petition is invalid unless the court orders otherwise. Because of the disapplication of

section 127, disposals will be governed by the moratorium provisions instead of by that section.

54. *Paragraph 13 Schedule A1.* The moratorium, whilst in force, prevents a floating charge from crystallising, or restrictions being imposed on the disposal of any of the company's property.
55. *Paragraph 14 Schedule A1: Security granted during moratorium.* Security given over a company's assets during the moratorium will be unenforceable unless at the time it was granted there were reasonable grounds for believing it would benefit the company.
56. *Paragraph 15 Schedule A1: Paragraphs 16 to 23* apply in relation to a company which is subject to a moratorium. The fact that a company enters into a transaction in contravention of paragraphs 16 to 22 does not make that transaction void or unenforceable against the company.
57. *Paragraph 16 Schedule A1: Company Invoices, etc.* All invoices, orders and letters, on which the name of the company appears, must also state the name of the nominee and refer to the fact that a moratorium is in force. If this provision is breached the company and any officer of the company who, without reasonable excuse, authorises or permits the breach, commits an offence.
58. *Paragraph 17 Schedule A1: Obtaining credit during moratorium.* During the moratorium a company may not obtain credit to the value of £250 or more without first telling the person who is giving the credit that a moratorium is in force. Obtaining credit includes obtaining goods under a hire-purchase agreement and the case where goods are agreed to be sold under a conditional sale agreement. It also includes the receipt of payment in advance for the supply of goods or services. If this provision is breached the company and any officer of the company who knowingly and wilfully authorises or permits the breach commits an offence.
59. *Paragraphs 18 and 19 Schedule A1: Disposals and payments.* During the moratorium the company may only dispose of any of its property or make any payment of a debt which existed at the start of the moratorium if there are reasonable grounds for believing that the disposal or payment will benefit the company and it is approved by the moratorium committee¹, or, if there is no such committee, by the nominee. There is nothing to stop a company, during a moratorium, selling its property in the ordinary course of its business e.g. a garage selling cars. If the company makes a disposal or payment contrary to these provisions, otherwise than in pursuance of an order of court, the company and any officer of the company who, without reasonable excuse, authorises or permits the contravention commits an offence.

¹ See paragraph 35 of Schedule A1.

60. *Paragraphs 20 to 22 Schedule A1: Disposal of charged property, etc.* These paragraphs permit the disposal, during the moratorium, by the company (by sale or otherwise) of charged property¹ and any goods which are in the possession of the company under a hire-purchase agreement if the court or the holder of the security or owner concerned agrees. Provision is also made for how the property must be dealt with and how the sale proceeds are to be dealt with. If these provisions are breached the company and any officer of the company who, without reasonable excuse, authorises or permits the breach commits an offence.

¹ *Charged property* means property on which a creditor has a specific claim (e.g. by way of a mortgage) in respect of money owed to him.

61. *Paragraph 23 Schedule A1:* When a moratorium is in force, a company commits an offence if it enters into a market contract, a money market contract or a related contract grants a market charge, a money market charge or system-charge¹, gives a transfer order or provides any collateral security. Any officer of the company who, without reasonable excuse, authorises or permits the company to enter into such a transaction

also commits an offence. However the fact that a company enters into any of those transactions does not make the transaction void or have the effect of making any such transaction unenforceable by or against the company.

1 See paragraph 1 of Schedule A1 to the Act for the definition of these terms

62. *Paragraph 24 Schedule A1: Monitoring of company's activities.* This paragraph imposes a duty on the nominee to monitor the company's affairs during the moratorium in order to form an opinion as to whether or not the proposed voluntary arrangement (or that arrangement with any modifications of which he has been notified) has a reasonable prospect of being approved and implemented and the company is likely to have sufficient funds to enable it to continue its business through the moratorium. The term "business" refers to that business which the company proposes to carry on during the moratorium. The nominee may seek further information from the directors for the purpose of forming his opinion.
63. *Paragraph 25 Schedule A1: Withdrawal of consent to act.* This paragraph provides that a nominee must withdraw his consent to act if:
- he considers that the voluntary arrangement proposal (or, if he has received notice of modifications, the proposal as modified) no longer has a reasonable prospect of being approved or implemented; or
 - he considers that the company will not have sufficient funds to enable it to continue to carry on its business through the moratorium; or
 - he becomes aware that on the date of filing the company was not eligible for a moratorium; or
 - the directors do not provide him with necessary information which he requests.
64. The paragraph provides that the moratorium comes to an end if the nominee withdraws his consent to act. The paragraph further provides that a nominee may not withdraw his consent to act in other circumstances. Where the nominee does withdraw his consent he must give notice of that to various parties and failure to do so without reasonable excuse is an offence.
65. *Paragraph 26 Schedule A1: Challenge of nominee's actions, etc.* The court on the application of any creditor, director or member of the company or any other person affected by the moratorium who is dissatisfied by any decision or act of the nominee, may confirm, reverse or modify that decision or act and give directions to the nominee or make any order it sees fit, either during or after the moratorium.
66. *Paragraph 27 Schedule A1* sets out the course of action creditors may take if there are reasonable grounds for believing that the company has suffered a loss as a consequence of any act, omission or decision of the nominee, but the company does not propose to take any action. If the court concludes that the act of the nominee was not reasonable it may order the company to pursue any claim against the nominee or authorise a creditor to do so or make any other order it sees fit.
67. *Paragraph 28 Schedule A1: Replacement of nominee by court.* This paragraph provides that in certain circumstances (for example, if it is impracticable or inappropriate for the nominee to continue) the court may direct that the nominee be replaced by another person with the necessary qualification.
68. *Paragraphs 29 and 30 Schedule A1: Summoning of meetings/conduct of meetings.* These paragraphs provide for the summoning, conduct and reporting to the court of the outcome of such meetings of the creditors and the company as the nominee calls. He must call meetings of the creditors and of the company to be held within the period set out in paragraph 8(3).

69. *Paragraph 31 Schedule A1: Approval of voluntary arrangement.* This paragraph provides that the meetings summoned under paragraph 29 of Schedule A1 shall decide whether or not to approve the proposed voluntary arrangement (with or without modifications). But such modifications may not, without the concurrence of the creditors concerned, affect the right of a secured creditor to enforce his security or the rights of preferential creditors (as defined in Section 386 of the Insolvency Act 1986) to be paid in priority to other debts.
70. *Paragraphs 32 to 34 Schedule A1: Extension of Moratorium.* These paragraphs permit the initial period of the moratorium to be extended for a maximum period of up to two months provided certain conditions are satisfied.
71. The Secretary of State may make an order increasing or reducing the period by which the moratorium period may be extended.
72. *Paragraph 35 Schedule A1: Moratorium Committee.* Where a moratorium is extended this paragraph makes provision for a moratorium committee to be set up to exercise functions conferred on it by the meetings held under paragraph 29 of Schedule A1 where those meetings have approved an estimate of the expenses to be incurred in carrying out the committee's functions.
73. *Paragraph 36 Schedule A1: Effectiveness of decisions.* This paragraph determines when decisions under paragraphs 31, 32 or 35 of Schedule A1 are to take effect. It also provides that in the case of a conflict, the decision of the creditors' meeting is to prevail subject to the right of any member to apply to court for an order that the decision of the company meeting should prevail instead.
74. *Paragraph 37 Schedule A1: Effect of approval of voluntary arrangement.* This paragraph provides that a decision approving a company voluntary arrangement binds all creditors of the company owed money at the start of the moratorium including unknown creditors¹. If unknown creditors come to light after the voluntary arrangement has been completed they can claim the amount they would have received from the company. If the voluntary arrangement ends prematurely then all creditors cease to be bound by the voluntary arrangement. It also, subject to certain restrictions, requires the court to dismiss any petition (other than an excepted petition) for the winding up of the company.
- 1 *Unknown creditors* means persons who were not served with notice of the meeting at which the company voluntary arrangement was approved but who would have been entitled to vote had they had notice of it.
75. *Paragraph 38 Schedule A1: Challenge of decisions.* This paragraph provides, by way of application to the court, for the decision approving a company voluntary arrangement to be challenged on the ground that it unfairly prejudices the interests of a specific person or that there has been some material irregularity in the conduct of a meeting held under paragraph 29 of Schedule A1. Unknown creditors who come to light after the voluntary arrangement has been completed can apply to the court on grounds of unfair prejudice. On such an application the court may, for example, revoke or suspend the decision approving the voluntary arrangement or direct that new meetings be summoned to consider any revised proposal.
76. *Paragraph 39 Schedule A1: Implementation of voluntary arrangements.* This paragraph provides for the implementation of an agreed company voluntary arrangement, and for the person who is carrying out the functions of the nominee to become the supervisor of the voluntary arrangement. It also enables people who are dissatisfied with any action of the supervisor to apply to the court and sets out what the court can do in such circumstances. It also enables the supervisor to apply to court for directions or petition for the winding up of the company or an administration order¹ and enables the court to fill any vacancy in the office of supervisor.

1 *See Part II of the Insolvency Act 1986*

77. *Paragraph 40 Schedule A1: Challenge of directors' actions.* This paragraph provides that any creditor or member of the company can apply to the court if he considers that the company's affairs have been or are being managed in a way which is unfairly prejudicial to the interests of creditors or members or that an actual or proposed act or omission of the directors is or would be so prejudicial. The paragraph only applies in relation to acts or omissions of the directors during the moratorium. On such an application the court may, for example, make an order to regulate the management by the directors of the company's affairs or an order to bring the moratorium to an end. When making an order under this paragraph the court is required to have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value. In the event that the company subsequently enters administration or liquidation (on a petition presented before the moratorium) any such application under this paragraph is to be made instead by the administrator or liquidator (as the case may be).
78. *Paragraph 41 Schedule A1: Offences.* This paragraph provides that any person who was an officer of the company who did certain acts in the 12 months prior to the start of the moratorium is to be treated as having committed an offence, e.g. if the officer has fraudulently removed company property worth £500 or more, or destroys or falsifies the company's records in relation to its property in that period. Any person who is an officer of the company during the moratorium who does the same things also commits an offence. The paragraph provides defences which may be raised in relation to the offences.
79. *Paragraph 42 Schedule A1* This paragraph provides that it is an offence for an officer of the company to seek to obtain a moratorium, or an extension of it, by making a false representation or fraudulently doing, or failing to do, anything.
80. *Paragraph 43 Schedule A1: Void provisions in floating charge documents.* This paragraph provides that any provision in a floating charge is invalid if it provides for the obtaining of, or any action to obtain a moratorium, to be an event causing the charge to crystallise¹ or restrictions to be imposed on the disposal of property or a ground for the appointment of a receiver.
- 1 A *floating charge* is a charge over the assets for the time being of a company referred to in the mortgage or other document creating the charge. It only affects those assets under specific circumstances set out in that document, when it crystallises, that is, becomes a fixed charge over the actual assets owned by the company at that time which fall into the class(es) covered by the charge.
81. *Paragraph 44 Schedule A1:* This paragraph gives the Financial Services Authority the right to participate in the moratorium procedure if the company is or has been regulated by the Authority.
82. The remaining *paragraphs 5 to 12* of Schedule 1 make consequential amendments to various parts of the Insolvency Act 1986. For example the amendments to Section 233 will not permit suppliers of gas, water and electricity to require a nominee to pay outstanding debts for supply as a condition of supply during the moratorium. The amendment to Section 387 provides that the relevant date for determining preferential claims is the date on which the moratorium comes into force. A new Section 417A is added (order - making power to increase or reduce monetary sums specified in Schedule A1) to take account of the addition of the new company voluntary arrangement moratorium.

Schedule 2: Company voluntary arrangements

Part I – Amendments of the Insolvency Act 1986

83. This Schedule makes amendments to the provisions of the Insolvency Act 1986 relating to company voluntary arrangements where there is no moratorium. Paragraphs 84 to 90 summarise its principal provisions.

*These notes refer to the Insolvency Act 2000 (c.39)
which received Royal Assent on 30 November 2000*

84. The nominee must state in his report to the court whether in his opinion the proposed company voluntary arrangement has a reasonable prospect of being approved and implemented. (*Paragraph 3 of Schedule 2*).
85. Amendments are made to the circumstances in which the court may replace a nominee. (*Paragraph 3 of Schedule 2*).
86. A decision by the creditors' meeting to approve a proposed voluntary arrangement is to prevail where this conflicts with the decision by the meeting of the company, subject to the right of a member to challenge this on an application to the court. Where such an application is made and the company is or has been regulated by the Financial Services Authority, the Authority is entitled to be heard on that application. (*Paragraph 5 of Schedule 2*).
87. The company voluntary arrangement will bind all of the company's creditors including unknown creditors who are entitled to claim from the company the amounts they would have received if they come to light after the voluntary arrangement has been completed. Such creditors may also make an application to the court on the ground that their interests are unfairly prejudiced by the voluntary arrangement that is approved. (*Paragraphs 6 and 7 of Schedule 2*).
88. It is an offence for an officer of a company to seek to obtain the approval of the members or creditors to a proposed voluntary arrangement by making a false representation or fraudulently doing, or failing to do, anything. (*Paragraphs 8 and 12 of Schedule 2*).
89. The nominee or supervisor is required to report suspected offences to the Secretary of State in England and Wales (and to the Lord Advocate in Scotland). The Secretary of State is granted certain powers to investigate such suspected offences. (*Paragraph 10 of Schedule 2*).
90. There are also consequential amendments resulting from Section 4 (Qualification or authorisation of insolvency practitioners) and other minor amendments of a clarificatory nature.

Part II: Amendments of the Building Societies Act 1986

91. This deals with the interaction of the company voluntary arrangement procedure with the Building Societies Act 1986. Principally it prevents a building society from using the company voluntary arrangement moratorium procedure.

Schedule 3: Individual voluntary arrangements

92. This Schedule makes amendments to the provisions of the Insolvency Act 1986 relating to individual voluntary arrangements. Paragraphs 93-102 set out its principal provisions.
93. Except with the leave of the court, a landlord or any other person to whom rent is payable may not effect peaceable re-entry to premises let to a debtor, and distress may not be levied whilst an interim order is in force. (*Paragraph 2 of Schedule 3*). Similarly such persons may not effect peaceable re-entry (without leave) whilst an application for an interim order is pending and the court may forbid the levying of distress in that period. (*Paragraph 4 of Schedule 3*). An example of levying distress is where a landlord seizes goods for outstanding rent.
94. The nominee must state in his report to the court whether he considers that the proposed individual voluntary arrangement has a reasonable prospect of being approved and implemented. (*Paragraph 6 of Schedule 3*).
95. Amendments are made to the circumstances in which the court may replace a nominee. (*Paragraph 6 of Schedule 3*).

*These notes refer to the Insolvency Act 2000 (c.39)
which received Royal Assent on 30 November 2000*

96. An individual may put a proposal for an individual voluntary arrangement to his creditors without first having to obtain an interim order as is currently the case. (*Paragraphs 7 and 8 of Schedule 3*).
97. The individual voluntary arrangement will bind all of the individual's creditors including unknown creditors who are entitled to claim from the individual the amounts they would have received if they come to light after the voluntary arrangement has been completed. They may also make an application to the court on the ground that their interests are unfairly prejudiced by the voluntary arrangement that is approved. (*Paragraphs 10 and 11 of Schedule 3*).
98. It is an offence for an individual to seek to obtain the approval of an individual voluntary arrangement by making a false representation or fraudulently doing, or failing to do, anything. (*Paragraphs 12 and 16 of Schedule 3*).
99. The nominee or supervisor is required to report suspected offences to the Secretary of State. (*Paragraph 12 of Schedule 3*).
100. The amendments to section 347 of the Insolvency Act 1986 provide that sections 252(2) (b) and 254(1) will apply to all forms of distress. (*Paragraph 14 of Schedule 3*).
101. The amendment to Section 387 provides the relevant date for determining claims where no interim order is obtained is the date on which the voluntary arrangement takes effect. (*Paragraph 15 of Schedule 3*).
102. There are also consequential amendments resulting from Section 4 (Qualification or authorisation of insolvency practitioners) and other minor amendments of a clarificatory nature.

Schedule 4 Part I: Minor and consequential amendments about disqualification of company directors etc.

103. All of the provisions in this Part amend the Company Directors Disqualification Act 1986. Paragraphs 104 to 108 refer to particular amendments.
104. Provision is made as to the court in which an application for a disqualification order under Section 6 of that Act should be made. For example, where the company in question is being or has been wound up by the court, the application is made to that court. Proceedings are not invalidated by reasons of their being taken in the wrong court. (*Paragraph 5 of Schedule 4*).
105. Provision is made for Section 13 (criminal penalties for breach of disqualification order) and 15 (personal liability for company's debts where a person acts while disqualified) of the Company Directors Disqualification Act 1986 to apply in relation to Northern Irish disqualification orders. (*Paragraphs 8 and 10 of Schedule 4*).
106. Provision is made as to which court can give a disqualified person leave to act as a director or as a receiver (other than an administrative receiver) of the property of a company or to be concerned in the promotion, formation or management of a company. For example, where a person is subject to a disqualification order made by a court having jurisdiction to wind up companies, that person is required to make his application to that court. If a person is subject to a disqualification undertaking, the application for leave has to be made to a court to which the Secretary of State could have applied for a disqualification order had he not accepted the undertaking. Special provision is made for leave in a case where a person is subject to more than one disqualification order or undertaking. The amendments also require the Secretary of State to appear on the hearing of such an application. (*Paragraph 12 of Schedule 4*).
107. Regulations may be made for Northern Irish disqualification orders to be recorded in the register kept under Section 18 of the Company Directors Disqualification Act 1986. (*Paragraph 13(5) of Schedule 4*).

*These notes refer to the Insolvency Act 2000 (c.39)
which received Royal Assent on 30 November 2000*

108. Rules made under Section 411 of the Insolvency Act 1986 (Insolvency Rules) or any order made under Section 414 (Fees Order), 420 (insolvent partnerships order) or 422 (order applying parts of Insolvency Act to banks) of that Act may include provisions relating to Sections 1A (as inserted by Section 6 of the Act), 13 and 14 of the Company Directors Disqualification Act 1986. The first of those sections relates to disqualification undertakings and the second and third (as they are going to be amended by the Schedule) to offences relating to the breach of disqualification undertakings or orders. (*Paragraph 14 of Schedule 4*).

Part II: Consequential amendments of other enactments

109. Provisions in the Insolvency Act 1986, the Charities Act 1993, the Pensions Act 1995, the Police Act 1996 the Housing Act 1996 and the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 make reference to disqualification orders under the Company Directors Disqualification Act 1986. The paragraphs in this Part of the Schedule make consequential amendments to those provisions so as to give disqualification undertakings and Northern Irish disqualification orders the same effect in the context of each of those Acts, as a disqualification order made under the Company Directors Disqualification Act 1986. The Police Act 1997 is similarly modified but only in respect of disqualification undertakings.

COMMENCEMENT

110. A power is included in the Act to bring its provisions (with the exception of Section 14) into force by way of statutory instrument rather than bringing it into force on Royal Assent or on a date (or dates) specified in the Act. Section 14 which confers a power to make regulations comes into force when the Act is passed.

Hansard References

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Lords		
Introduction	3 February 2000	Vol 609 No 34 Col 350
Second Reading	4 April 2000	Vol 611 No69 Cols 1248 – 1273
Committee	15 June 2000	CWH 1 Vol 613 Cols 1 – 60
Report	11 July 2000	Vol 615 Cols 196 – 218
Third Reading	26 July 2000	Vol 616 Cols 481 – 495
House of Commons		
Introduction	27 July 2000	Votes and Proceedings No 124 Page 997
Second Reading	24 October 2000	Vol 355 No 146 Cols 160 – 193
Committee (Standing Committee B)	31 October 2000 2 November 2000 (am) 2 November 2000 (pm)	Cols 1 – 38 Cols 39 - 58 Cols 59 – 78

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	7 November 2000 (am) 7 November 2000 (pm)	Cols 79 – 114 Cols 115 – 136
Report and Third Reading	16 November 2000	Vol. 356 No. 161 Cols 1105 - 1166
House of Lords		
Consideration of Commons amendments	29 November 2000	Vol. 619 No. 176 Cols 1343 - 1357

Royal Assent - 10 March 1999	House of Lords Hansard Vol 619 Col 1491
	House of Commons Hansard Vol 357 Col 1231