

# **INSOLVENCY ACT 2000**

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## **EXPLANATORY NOTES**

### **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 liquidator<sup>1</sup> 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 death<sup>1</sup>. 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.

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.