

SCHEDULES

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—

“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)—

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- (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.
- (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

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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, 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)—

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- (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.
- (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

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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—

“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.”
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