

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: INSOLVENCY

Position of creditors

*Section 122: Abolition of requirements to hold meetings: company insolvency and
Section 123: Abolition of requirements to hold meetings: individual insolvency*

720. The process of having a meeting of creditors to agree a resolution in insolvency proceedings is longstanding. At a meeting of creditors, attendees are able to vote on proposals and give their approval to the office-holder for certain actions, for example agreeing a voluntary arrangement proposal, approving an office holder's release from office, or approving the office-holder's remuneration. Meetings of contributories, who are current or former shareholders of a company liable to contribute to its assets, may also take place in insolvency proceedings. Provisions are already in place for all of these meetings to take place remotely or, in certain cases, for resolutions to be made by correspondence.
721. These sections amend the Insolvency Act 1986 so that physical meetings will not be the default mechanism for seeking decisions from creditors and contributories in insolvency proceedings. The changes will apply to England and Wales and Scotland in respect of company insolvency, and to England and Wales in respect of individual insolvency. They will come into force by commencement regulations.
722. The sections allow office-holders in insolvency proceedings to choose the most appropriate way of engaging with creditors and contributories when required to do so, with the exception that there will only be a physical meeting if this has been requested certain numbers of the creditors or contributories, as the case may be.
723. Those numbers are stated as being 10% of the total value of claims, 10% of the total number of creditors or contributories, and an absolute number of 10 requests. There is provision for these thresholds to be altered by regulations using the affirmative resolution procedure.
724. The sections set out a process of deemed consent, where office holders will be able to write to creditors or contributories with a proposal, and provided that objections are received from less than 10% of creditors or contributories by total value of claims, the proposal will be deemed to be approved. In the event that more than that amount object to the proposal, the office holder will be required to use an alternative decision making process if they still wish to seek a decision on the matter. The amount of 10% by total value of claims is also subject to alteration by regulations, using the affirmative resolution procedure.

*These notes refer to the Small Business, Enterprise and Employment
Act 2015 (c.26) which received Royal Assent on 26 March 2015*

- 725. Deemed consent may not be used for approval of an office holder's remuneration, or where a particular decision is expressly required to be made by way of a decision-making procedure, either in legislation or by the court.
- 726. The sections make provision for the Insolvency Rules to prescribe how creditors or contributories may request that a physical meeting be held and to prescribe further in relation to the deemed consent and other decision making procedures. The Insolvency Rules will also be able to provide for the use of particular methods of decision making, including physical meetings of creditors or contributories, under specific circumstances and for certain parties, such as company officers and bankrupt individuals to be able to participate, but not vote, in decision making procedures.