

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: INSOLVENCY

Trustees in bankruptcy

Section 133: Trustees in bankruptcy

756. The Insolvency Act 1986 currently provides that when the court makes a bankruptcy order the official receiver (the “OR”) is appointed receiver and manager of the bankrupt’s estate unless the court appoints an insolvency practitioner as trustee. This means that the OR’s duties are limited to protecting the estate and dealing with any urgent realisations of asset that are required pending the appointment of a trustee. In many bankruptcy cases it is the OR who is subsequently appointed as the trustee, who then has full powers to deal with all the assets.
757. The initial appointment as receiver and manager has not been shown to have any practical benefit in the administration of bankruptcy cases and serves to delay the realisation of assets.
758. This section introduces a new section 291A to the Insolvency Act 1986 which provides for the OR to be appointed trustee on the making of the bankruptcy order unless the court orders otherwise. It also introduces Schedule 10, which contains consequential amendments to Part IX and Schedule 10 of the Insolvency Act 1986, and also to Schedule 19 to the Enterprise and Regulatory Reform Act 2013. It will apply to England and Wales.
759. At present under section 293 the OR must decide whether to summon a meeting of creditors within 12 weeks of the bankruptcy order to appoint a trustee. The amendments in this section will remove that obligation, but will not remove the option for an insolvency practitioner to be appointed trustee in place of the official receiver or the ability of the creditors to request that this occurs.
760. This section will come into force by commencement order.