



# Small Business, Enterprise and Employment Act 2015

## 2015 CHAPTER 26

### PART 10

#### INSOLVENCY

##### *Position of creditors*

#### **122 Abolition of requirements to hold meetings: company insolvency**

- (1) The Insolvency Act 1986 is amended as follows.
- (2) After section 246ZD (as inserted by section 118) insert—

##### *“Decisions by creditors and contributories*

#### **246ZE Decisions by creditors and contributories: general**

- (1) This section applies where, for the purposes of this Group of Parts, a person (“P”) seeks a decision about any matter from a company’s creditors or contributories.
- (2) The decision may be made by any qualifying decision procedure P thinks fit, except that it may not be made by a creditors’ meeting or (as the case may be) a contributories’ meeting unless subsection (3) applies.
- (3) This subsection applies if at least the minimum number of creditors or (as the case may be) contributories make a request to P in writing that the decision be made by a creditors’ meeting or (as the case may be) a contributories’ meeting.
- (4) If subsection (3) applies P must summon a creditors’ meeting or (as the case may be) a contributories’ meeting.

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- (5) Subsection (2) is subject to any provision of this Act, the rules or any other legislation, or any order of the court—
- (a) requiring a decision to be made, or prohibiting a decision from being made, by a particular qualifying decision procedure (other than a creditors' meeting or a contributories' meeting);
  - (b) permitting or requiring a decision to be made by a creditors' meeting or a contributories' meeting.
- (6) Section 246ZF provides that in certain cases the deemed consent procedure may be used instead of a qualifying decision procedure.
- (7) For the purposes of subsection (3) the “minimum number” of creditors or contributories is any of the following—
- (a) 10% in value of the creditors or contributories;
  - (b) 10% in number of the creditors or contributories;
  - (c) 10 creditors or contributories.
- (8) The references in subsection (7) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.
- (9) In this section references to a meeting are to a meeting where the creditors or (as the case may be) contributories are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place).
- (10) Except as provided by subsection (8), references in this section to creditors include creditors of a particular class.
- (11) In this Group of Parts “qualifying decision procedure” means a procedure prescribed or authorised under paragraph 8A of Schedule 8.

### **246ZF Deemed consent procedure**

- (1) The deemed consent procedure may be used instead of a qualifying decision procedure where a company's creditors or contributories are to make a decision about any matter, unless—
- (a) a decision about the matter is required by virtue of this Act, the rules, or any other legislation to be made by a qualifying decision procedure, or
  - (b) the court orders that a decision about the matter is to be made by a qualifying decision procedure.
- (2) If the rules provide for a company's creditors or contributories to make a decision about the remuneration of any person, they must provide that the decision is to be made by a qualifying decision procedure.
- (3) The deemed consent procedure is that the relevant creditors (other than opted-out creditors) or (as the case may be) the relevant contributories are given notice of—
- (a) the matter about which they are to make a decision,
  - (b) the decision that the person giving the notice proposes should be made (the “proposed decision”),
  - (c) the effect of subsections (4) and (5), and

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- (d) the procedure for objecting to the proposed decision.
- (4) If less than the appropriate number of relevant creditors or (as the case may be) relevant contributories object to the proposed decision in accordance with the procedure set out in the notice, the creditors or (as the case may be) the contributories are to be treated as having made the proposed decision.
- (5) Otherwise—
  - (a) the creditors or (as the case may be) the contributories are to be treated as not having made a decision about the matter in question, and
  - (b) if a decision about that matter is again sought from the creditors or (as the case may be) the contributories, it must be sought using a qualifying decision procedure.
- (6) For the purposes of subsection (4) the “appropriate number” of relevant creditors or relevant contributories is 10% in value of those creditors or contributories.
- (7) “Relevant creditors” means the creditors who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.
- (8) “Relevant contributories” means the contributories who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.
- (9) In this section references to creditors include creditors of a particular class.
- (10) The rules may make further provision about the deemed consent procedure.

#### **246ZG Power to amend sections 246ZE and 246ZF**

- (1) The Secretary of State may by regulations amend section 246ZE so as to change the definition of—
  - (a) the minimum number of creditors;
  - (b) the minimum number of contributories.
- (2) The Secretary of State may by regulations amend section 246ZF so as to change the definition of—
  - (a) the appropriate number of relevant creditors;
  - (b) the appropriate number of relevant contributories.
- (3) Regulations under this section may define the minimum number or the appropriate number by reference to any one or more of—
  - (a) a proportion in value,
  - (b) a proportion in number,
  - (c) an absolute number,and the definition may include alternative, cumulative or relative requirements.
- (4) Regulations under subsection (1) may define the minimum number of creditors or contributories by reference to all creditors or contributories, or by reference to creditors or contributories of a particular description.

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- (5) Regulations under this section may make provision that will result in section 246ZE or 246ZF having different definitions for different cases, including—
- (a) for creditors and for contributories,
  - (b) for different kinds of decisions.
- (6) Regulations under this section may make transitional provision.
- (7) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument.
- (8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”
- (3) In Schedule 8 (provisions which may be included in company insolvency rules), after paragraph 8 insert—
- “8A (1) Provision about the making of decisions by creditors and contributories, including provision—
- (a) prescribing particular procedures by which creditors and contributories may make decisions;
  - (b) authorising the use of other procedures for creditors and contributories to make decisions, if those procedures comply with prescribed requirements.
- (2) Provision under sub-paragraph (1) may in particular include provision about—
- (a) how creditors and contributories may request that a creditors' meeting or a contributories' meeting be held,
  - (b) the rights of creditors, contributories and others to be given notice of, and participate in, procedures,
  - (c) creditors' and contributories' rights to vote in procedures,
  - (d) the period within which any right to participate or vote is to be exercised,
  - (e) the proportion of creditors or contributories that must vote for a proposal for it to be approved,
  - (f) how the value of any debt or contribution should be determined,
  - (g) the time at which decisions taken by a procedure are to be treated as having been made.”

(4) In section 251 (interpretation of first Group of Parts)—

    - (a) after the definition of “the court” insert—
 

““deemed consent procedure” means the deemed consent procedure provided for by section 246ZF;”;
    - (b) after the definition of “prescribed” insert—
 

““qualifying decision procedure” has the meaning given by section 246ZE(11);”.

*Status: Point in time view as at 06/04/2019.*

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#### Commencement Information

- I1** S. 122 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)
- I2** S. 122 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(a) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)
- I3** S. 122 in force at 6.4.2019 for S. in so far as not already in force by S.I. 2019/816, reg. 4(a) (with reg. 5)

### 123 Abolition of requirements to hold meetings: individual insolvency

- (1) The Insolvency Act 1986 is amended as follows.
- (2) After section 379 insert—

*“Creditors' decisions*

#### **379ZA Creditors' decisions: general**

- (1) This section applies where, for the purposes of this Group of Parts, a person (“P”) seeks a decision from an individual's creditors about any matter.
- (2) The decision may be made by any creditors' decision procedure P thinks fit, except that it may not be made by a creditors' meeting unless subsection (3) applies.
- (3) This subsection applies if at least the minimum number of creditors request in writing that the decision be made by a creditors' meeting.
- (4) If subsection (3) applies, P must summon a creditors' meeting.
- (5) Subsection (2) is subject to any provision of this Act, the rules or any other legislation, or any order of the court—
  - (a) requiring a decision to be made, or prohibiting a decision from being made, by a particular creditors' decision procedure (other than a creditors' meeting);
  - (b) permitting or requiring a decision to be made by a creditors' meeting.
- (6) Section 379ZB provides that in certain cases the deemed consent procedure may be used instead of a creditors' decision procedure.
- (7) For the purposes of subsection (3) the “minimum number” of creditors is any of the following—
  - (a) 10% in value of the creditors;
  - (b) 10% in number of the creditors;
  - (c) 10 creditors.
- (8) The references in subsection (7) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.
- (9) In this section references to a meeting are to a meeting where the creditors are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place).

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- (10) Except as provided by subsection (8), references in this section to creditors include creditors of a particular class.
- (11) In this Group of Parts “creditors' decision procedure” means a procedure prescribed or authorised under paragraph 11A of Schedule 9.

### **379ZB Deemed consent procedure**

- (1) The deemed consent procedure may be used instead of a creditors' decision procedure where an individual's creditors are to make a decision about any matter, unless—
  - (a) a decision about the matter is required by virtue of this Act, the rules or any other legislation to be made by a creditors' decision procedure, or
  - (b) the court orders that a decision about the matter is to be made by a creditors' decision procedure.
- (2) If the rules provide for an individual's creditors to make a decision about the remuneration of any person, they must provide that the decision is to be made by a creditors' decision procedure.
- (3) The deemed consent procedure is that the relevant creditors (other than opted-out creditors) are given notice of—
  - (a) the matter about which the creditors are to make a decision,
  - (b) the decision the person giving the notice proposes should be made (the “proposed decision”),
  - (c) the effect of subsections (4) and (5), and
  - (d) the procedure for objecting to the proposed decision.
- (4) If less than the appropriate number of relevant creditors object to the proposed decision in accordance with the procedure set out in the notice, the creditors are to be treated as having made the proposed decision.
- (5) Otherwise—
  - (a) the creditors are to be treated as not having made a decision about the matter in question, and
  - (b) if a decision about that matter is again sought from the creditors, it must be sought using a creditors' decision procedure.
- (6) For the purposes of subsection (4) the “appropriate number” of relevant creditors is 10% in value of those creditors.
- (7) “Relevant creditors” means the creditors who, if the decision were to be made by a creditors' decision procedure, would be entitled to vote in the procedure.
- (8) In this section references to creditors include creditors of a particular class.
- (9) The rules may make further provision about the deemed consent procedure.

### **379ZC Power to amend sections 379ZA and 379ZB**

- (1) The Secretary of State may by regulations amend section 379ZA so as to change the definition of the minimum number of creditors.

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*Status: Point in time view as at 06/04/2019.*

**Changes to legislation:** There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, Cross Heading: Position of creditors. (See end of Document for details)

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- (2) The Secretary of State may by regulations amend section 379ZB so as to change the definition of the appropriate number of relevant creditors.
  - (3) Regulations under this section may define the minimum number or the appropriate number by reference to any one or more of—
    - (a) a proportion in value,
    - (b) a proportion in number,
    - (c) an absolute number,and the definition may include alternative, cumulative or relative requirements.
  - (4) Regulations under subsection (1) may define the minimum number of creditors by reference to all creditors, or by reference to creditors of a particular description.
  - (5) Regulations under this section may make provision that will result in section 379ZA or 379ZB having different definitions for different cases, including for different kinds of decisions.
  - (6) Regulations under this section may make transitional provision.
  - (7) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument.
  - (8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”
- (3) In Schedule 9 (provisions which may be included in individual insolvency rules), after paragraph 11 insert—

- “11A (1) Provision about the making of decisions by creditors, including provision—
- (a) prescribing particular procedures by which creditors may make decisions;
  - (b) authorising the use of other procedures for creditors to make decisions, if those procedures comply with prescribed requirements.
- (2) Provision under sub-paragraph (1) may in particular include provision about—
- (a) how creditors may request that a creditors' meeting be held,
  - (b) the rights of creditors and others to be given notice of, and participate in, procedures,
  - (c) creditors' rights to vote in procedures,
  - (d) the period within which any right to participate or vote is to be exercised,
  - (e) the proportion of creditors that must vote for a proposal for it to be approved,
  - (f) how the value of any debt should be determined,
  - (g) the time at which decisions taken by a procedure are to be treated as having been made.”

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- (4) In section 385(1) (miscellaneous definitions relating to individual insolvency)—
- (a) after the definition of “the court” insert—
- ““creditors' decision procedure” has the meaning given by section 379ZA(11);”;
- (b) after the definition of “debt relief order” insert—
- ““deemed consent procedure” means the deemed consent procedure provided for by section 379ZB;”.

#### Commencement Information

- I4** S. 123 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)
- I5** S. 123 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(b) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

### 124 Ability for creditors to opt not to receive certain notices: company insolvency

- (1) The Insolvency Act 1986 is amended as follows.
- (2) For the italic heading before section 246B substitute— “ Giving of notices etc by office-holders ”.
- (3) After section 246B insert—

#### “246C Creditors' ability to opt out of receiving certain notices

- (1) Any provision of the rules which requires an office-holder of a company to give a notice to creditors of the company does not apply, in circumstances prescribed by the rules, in relation to opted-out creditors.
- (2) Subsection (1)—
- (a) does not apply in relation to a notice of a distribution or proposed distribution to creditors;
- (b) is subject to any order of the court requiring a notice to be given to all creditors (or all creditors of a particular category).
- (3) Except as provided by the rules, a creditor may participate and vote in a qualifying decision procedure or a deemed consent procedure even though, by virtue of being an opted-out creditor, the creditor does not receive notice of it.
- (4) In this section—
- “give” includes deliver, furnish or send;
- “notice” includes any document or information in any other form;
- “office-holder”, in relation to a company, means—
- (a) a liquidator, provisional liquidator, administrator or administrative receiver of the company,
- (b) a receiver appointed under section 51 in relation to any property of the company, or
- (c) the supervisor of a voluntary arrangement which has taken effect under Part 1 in relation to the company.”



*Status: Point in time view as at 06/04/2019.*

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(4) After section 248 insert—

**“248A “Opted-out creditor”**

(1) For the purposes of this Group of Parts “opted-out creditor”, in relation to an office-holder of a company, means a person who—

- (a) is a creditor of the company, and
- (b) in accordance with the rules has elected (or is deemed to have elected) to be (and not to cease to be) an opted-out creditor in relation to the office-holder.

(2) In this section, “office-holder”, in relation to a company, means—

- (a) a liquidator, provisional liquidator, administrator or administrative receiver of the company,
- (b) a receiver appointed under section 51 in relation to any property of the company, or
- (c) the supervisor of a voluntary arrangement which has taken effect under Part 1 in relation to the company.”

(5) In Schedule 8 (provisions which may be included in company insolvency rules), after paragraph 5 insert—

“5A Provision for enabling a creditor of a company to elect to be, or to cease to be, an opted-out creditor in relation to an office-holder of the company (within the meaning of section 248A), including, in particular, provision—

- (a) for requiring an office-holder to provide information to creditors about how they may elect to be, or cease to be, opted-out creditors;
- (b) for deeming an election to be, or cease to be, an opted-out creditor in relation to a particular office-holder of a company to be such an election also in relation to any other office-holder of the company.”

**Commencement Information**

- I6** S. 124 in force at 26.5.2015 for specified purposes by S.I. 2015/1329, reg. 3(d)
- I7** S. 124 in force at 6.4.2017 for E.W. in so far as not already in force by S.I. 2016/1020, reg. 4(c)
- I8** S. 124 in force at 6.4.2019 for S. in so far as not already in force by S.I. 2019/816, reg. 4(b)

**125 Ability for creditors to opt not to receive certain notices: individual insolvency**

(1) The Insolvency Act 1986 is amended as follows.

(2) For the italic heading before section 379B substitute— “ Giving of notices etc by office-holders ”.

(3) After section 379B insert—

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*Status: Point in time view as at 06/04/2019.*

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### **“379C Creditors' ability to opt out of receiving certain notices**

- (1) Any provision of the rules which requires an office-holder to give a notice to creditors of an individual does not apply, in circumstances prescribed by the rules, in relation to opted-out creditors.
- (2) Subsection (1)—
  - (a) does not apply in relation to a notice of a distribution or proposed distribution to creditors;
  - (b) is subject to any order of the court requiring a notice to be given to all creditors (or all creditors of a particular category).
- (3) Except as provided by the rules, a creditor may participate and vote in a creditors' decision procedure or a deemed consent procedure even though, by virtue of being an opted-out creditor, the creditor does not receive notice of it.
- (4) In this section—
  - “give” includes deliver, furnish or send;
  - “notice” includes any document or information in any other form;
  - “office-holder”, in relation to an individual, means—
    - (a) where a bankruptcy order is made against the individual, the official receiver or the trustee in bankruptcy;
    - (b) where an interim receiver of the individual's property is appointed, the interim receiver;
    - (c) the supervisor of a voluntary arrangement approved under Part 8 in relation to the individual.”

- (4) After section 383 insert—

### **“383A “Opted-out creditor”**

- (1) For the purposes of this Group of Parts “opted-out creditor” in relation to an office-holder for an individual means a person who—
  - (a) is a creditor of the individual, and
  - (b) in accordance with the rules has elected (or is deemed to have elected) to be (and not to cease to be) an opted-out creditor in relation to the office-holder.
- (2) In this section, “office-holder”, in relation to an individual, means—
  - (a) where a bankruptcy order is made against the individual, the official receiver or the trustee in bankruptcy;
  - (b) where an interim receiver of the individual's property is appointed, the interim receiver;
  - (c) the supervisor of a voluntary arrangement approved under Part 8 in relation to the individual.”
- (5) In Schedule 9 (provisions capable of inclusion in individual insolvency rules), after paragraph 7 insert—

*Status: Point in time view as at 06/04/2019.*

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- “7A Provision for enabling a creditor of an individual to elect to be, or to cease to be, an opted-out creditor in relation to an office-holder for the individual (within the meaning of section 383A), including, in particular, provision—
- (a) for requiring an office-holder to provide information to creditors about how they may elect to be, or cease to be, opted-out creditors;
  - (b) for deeming an election to be, or cease to be, an opted-out creditor in relation to a particular office-holder for an individual to be such an election also in relation to any other office-holder for the individual.”

**Commencement Information**

**I9** S. 125 in force at 26.5.2015 for specified purposes by [S.I. 2015/1329, reg. 3\(d\)](#)

**I10** S. 125 in force at 6.4.2017 for E.W. in so far as not already in force by [S.I. 2016/1020, reg. 4\(d\)](#)

**126 Sections 122 to 125: further amendments**

Schedule 9 (abolition of requirements to hold meetings; opted-out creditors)—

- (a) makes amendments relating to sections 122 to 125, and
- (b) removes requirements to hold a general meeting of a company when the company's affairs are fully wound up.

**Commencement Information**

**I11** S. 126 in force at 26.5.2015 for specified purposes by [S.I. 2015/1329, reg. 3\(d\)](#)

**I12** S. 126 in force at 6.4.2017 for E.W. in so far as not already in force by [S.I. 2016/1020, reg. 4\(e\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))

**I13** S. 126 in force at 6.4.2019 for S. in so far as not already in force by [S.I. 2019/816, reg. 4\(c\)](#) (with [reg. 5](#))

**Status:**

Point in time view as at 06/04/2019.

**Changes to legislation:**

There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, Cross Heading: Position of creditors.