
STATUTORY INSTRUMENTS

2002 No. 2708

INSOLVENCY, ENGLAND AND WALES

The Insolvent Partnerships (Amendment) (No. 2) Order 2002

Made - - - - 29th October 2002
Laid before Parliament 29th October 2002
Coming into force - - 1st January 2003

The Lord Chancellor, in exercise of the powers conferred upon him by section 420 of the Insolvency Act 1986⁽¹⁾, and all other powers enabling him in that behalf, with the concurrence of the Secretary of State, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Insolvent Partnerships (Amendment) (No. 2) Order 2002 and shall come into force on 1st January 2003.

Interpretation

2.—(1) In this Order,

“the Act” means the Insolvency Act 1986,

“rule” means a rule of the Insolvency Rules 1986⁽²⁾,

“the 1994 Order” means the Insolvent Partnerships Order 1994⁽³⁾.

(2) In this Order a reference to a “modified section” means a section of the Act as modified by, and set out in, the 1994 Order.

Amendment to section 388 of the Insolvency Act 1986

3. For section 388(2A)(c)⁽⁴⁾ of the Act substitute—

“(c) where a voluntary arrangement in relation to the insolvent partnership is proposed or approved under Part I of the Act, as nominee or supervisor.”.

(1) 1986 c. 45.

(2) S.I. 1986/1925, amended by S.I. 1987/1919, 1989/397, 1991/495, 1993/602, 1995/586, 1999/359, 1999/1022, 2001/763, 2002/1307 and 2002/2712.

(3) S.I. 1994/2421, amended by S.I. 1996/1308, 2001/767, 2001/3649, 2002/1308 and 2002/1555.

(4) Section 388(2A) of the Insolvency Act 1986 was inserted by article 15(1), S.I. 1994/2421.

Amendment to Article 4 of the Insolvent Partnerships Order 1994

4. For article 4(1) of the 1994 Order (voluntary arrangement of insolvent partnership) substitute

—
“(1) The provisions of Part I of, and Schedule A1 to, the Act shall apply in relation to an insolvent partnership, certain of those provisions being modified in such manner that, after modification, they are as set out in Schedule 1 to this Order.”.

Amendment to Article 19 of the Insolvent Partnerships Order 1994

5. In article 19(4) of the 1994 Order (supplemental and transitional provisions), after “enactment” insert—

“except where paragraph 12 of Schedule A1 to the Act, as applied by this Order, has the effect of preventing a petition being so presented”.

Substitution of Schedule 1 to the Insolvent Partnerships Order 1994

6. For Schedule 1 to the 1994 Order (modified provisions of Part I of the Act) substitute the Schedule set out in Schedule 1 to this Order.

Amendments to Schedule 2 to the Insolvent Partnerships Order 1994

7.—(1) Schedule 2 to the 1994 Order (modified provisions of Part II of the Act) is amended as follows.

(2) In paragraph 2 (section 8: power of court to make order), after modified section 8(6) insert—

“(7) In this Part a reference to an insolvent partnership includes a reference to an insolvent partnership in relation to which an administration order may be made by virtue of Article 3 of the EC Regulation.”.

(3) In paragraph 4 (section 10: effect of application), after modified section 10(1)(a) insert—

“(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 forming part of the partnership property or let to one or more officers of the partnership in their capacity as such in respect of a failure by the partnership or one or more officers of the partnership to comply with any term or condition of the tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose;”.

(4) In paragraph 5 (section 11: effect of order), after modified section 11(3)(d) insert—

“(da) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises forming part of the partnership property or let to one or more officers of the partnership in their capacity as such in respect of a failure by the partnership or one or more officers of the partnership to comply with any term or condition of the tenancy of such premises, except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as the court may impose;”.

Amendment to Schedule 3 to the Insolvent Partnerships Order 1994

8. In paragraph 3 of Part I of Schedule 3 to the 1994 Order (section 221: winding up of unregistered companies), after modified section 221(7)(c) insert—

“(d) at the time at which a moratorium for the insolvent partnership under section 1A comes to an end, no voluntary arrangement approved under Part I of this Act has effect in relation to the insolvent partnership.

(7A) A winding-up petition on the ground set out in section 221(7)(d) may only be presented by one or more creditors.”.

Amendment to Schedule 4 to the Insolvent Partnerships Order 1994

9.—(1) Schedule 4 to the 1994 Order (modified provisions of the Act applying for purposes of Article 8) is amended as follows.

(2) In paragraph 3 of Part I (section 221: winding up of unregistered companies), for modified section 221(8) substitute—

“(8) The circumstances in which an insolvent partnership may be wound up as an unregistered company are as follows—

- (a) the partnership is unable to pay its debts,
- (b) at the time at which a moratorium for the insolvent partnership under section 1A comes to an end, no voluntary arrangement approved under Part I of this Act has effect in relation to the insolvent partnership.”.

(3) In paragraph 6(a) of Part II (circumstances in which members of insolvent partnerships may be wound up or made bankrupt by the court), for modified section 122 substitute—

“**122.** A corporate member or former corporate member of an insolvent partnership may be wound up by the court if—

- (a) it is unable to pay its debts,
- (b) there is a creditor, by assignment or otherwise, to whom the insolvent partnership is indebted and the corporate member or former corporate member is liable in relation to that debt and at the time at which a moratorium for the insolvent partnership under section 1A comes to an end, no voluntary arrangement approved under Part I of this Act has effect in relation to the insolvent partnership.”.

(4) In paragraph 6(b) of Part II (circumstances in which members of insolvent partnerships may be wound up or made bankrupt by the court),

- (a) in modified section 267(2) after “Subject to”, insert “subsection (2A) below and”,
- (b) after modified section 267(2) insert—

“(2A) A creditor’s petition may be presented to the court in respect of a joint debt or debts if at the time at which a moratorium for the insolvent partnership under section 1A comes to an end, no voluntary arrangement approved under Part I of this Act has effect in relation to the insolvent partnership.”.

Forms

10. For Forms 5, 6 and 7 contained in Schedule 9 to the 1994 Order substitute Forms 5, 6 and 7 contained in Schedule 2 to this Order.

Transitional provisions

11.—(1) The amendments to the 1994 Order set out in articles 3, 4, 5, 6, 8, 9 and 10 of, and Schedules 1 and 2 to, this Order do not apply where, in relation to a voluntary arrangement under Part I of the Act, as the case may be, a proposal is made by—

- (a) the members of a partnership and before this Order comes into force the intended nominee has endorsed a copy of the written notice of the proposal under rule 1.4(3),

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- (b) the liquidator or the administrator (acting as nominee) and before this Order comes into force the liquidator or administrator (as the case may be) has sent out a notice summoning the meetings under section 3 of the Act as required by rule 1.11, or
- (c) the liquidator or the administrator of a partnership (not acting as the nominee) and before this Order comes into force the intended nominee has endorsed a copy of the written notice of the proposal under rule 1.12(2).

(2) The amendments to the 1994 Order set out in article 7 of this Order do not apply where a petition for an administration order in relation to an insolvent partnership has been presented before this Order comes into force.

(3) Where, by virtue of the 1994 Order, provisions of the Act apply in a case falling within paragraph (1) or (2), those provisions shall continue to have effect as if this Order had not been made.

22nd October 2002

Irvine of Lairg, C.

I concur, on behalf of the Secretary of State

29th October 2002

Melanie Johnson,
Parliamentary Under-Secretary of State for
Competition, Consumers and Markets,
Department of Trade and Industry

SCHEDULE 1

Article 6

“SCHEDULE 1

Article 4

MODIFIED PROVISIONS OF PART I OF, AND SCHEDULE A1 TO, THE ACT
(COMPANY VOLUNTARY ARRANGEMENTS) AS APPLIED BY ARTICLE 4

PART I

MODIFIED PROVISIONS OF SECTIONS 1 TO 7B OF THE ACT

For sections 1 to 7B of the Act there shall be substituted:—

“PART I

PARTNERSHIP VOLUNTARY ARRANGEMENTS

The proposal

Those who may propose an arrangement

1.—(1) The members of an insolvent partnership (other than one for which an administration order is in force, or which is being wound up as an unregistered company, or in respect of which an order has been made by virtue of article 11 of the Insolvent Partnerships Order 1994) may make a proposal under this Part to the partnership’s creditors for a composition in satisfaction of the debts of the partnership or a scheme of arrangement of its affairs (from here on referred to, in either case, as a “voluntary arrangement”).

(2) A proposal under this Part is one which provides for some person (“the nominee”) to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation; 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.

(3) Such a proposal may also be made—

- (a) where an administration order is in force in relation to the partnership, by the administrator,
- (b) where the partnership is being wound up as an unregistered company, by the liquidator, and
- (c) where an order has been made by virtue of article 11 of the Insolvent Partnerships Order 1994, by the trustee of the partnership.

(4) In this Part a reference to an insolvent partnership includes a reference to an insolvent partnership in relation to which a proposal for a voluntary arrangement may be made by virtue of Article 3 of the EC Regulation.

Moratorium

1A.—(1) Where the members of an eligible insolvent partnership intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the insolvent partnership.

(2) Subject to subsections (3), (4), (5), (6) and (7), the provisions of Schedule A1 to this Act have effect with respect to—

- (a) insolvent partnerships eligible for a moratorium under this section,
- (b) the procedure for obtaining such a moratorium,
- (c) the effects of such a moratorium, and
- (d) the procedure applicable (in place of sections 2 to 6 and 7) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.

(3) Certain of the provisions applied in relation to insolvent partnerships by virtue of subsection (2) are modified in their application in relation to insolvent partnerships in such manner that, after modification, they are as set out in Part II of Schedule 1 to the Insolvent Partnerships Order 1994.

(4) Paragraphs 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J, 4K(5), 5, 7(4), 8(8), 32(7), 34(2), 41(5) and 45 of Schedule A1 to this Act shall not apply.

(5) An insolvent partnership is not liable to a fine under paragraphs 16(2), 17(3), 18(3), 19(3), 22 or 23(1) of Schedule A1 to the Act.

(6) Notwithstanding subsection (5) an officer of an insolvent partnership may be liable to imprisonment or a fine under the paragraphs referred to in that subsection in the same manner as an officer of a company.

(7) In the application of Schedule A1, and the application of the entries in Schedule 10 relating to offences under Schedule A1, to insolvent partnerships—

- (a) references to the directors or members of a company shall be construed as references to the members of an insolvent partnership,
- (b) references to officers of a company shall be construed as references to the officers of an insolvent partnership,
- (c) references to a meeting of a company shall be construed as references to a meeting of the members of an insolvent partnership, and
- (d) references to a floating charge shall be construed as references to a floating charge created under section 5 of the Agricultural Credits Act 1928(6).

Procedure where nominee is not the liquidator, administrator or trustee

2.—(1) This section applies where the nominee under section 1 is not the liquidator, administrator or trustee of the insolvent partnership and the members of the partnership do not propose to take steps to obtain a moratorium under section 1A for the insolvent partnership.

(2) The nominee shall, within 28 days (or such longer period as the court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the court stating—

- (a) whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
- (b) whether, in his opinion, meetings of the members of the partnership and of the partnership's creditors should be summoned to consider the proposal, and
- (c) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.

(5) Paragraphs 4A to 4K are inserted into Schedule A1 by the Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002, S.I. 2002/1990.

(6) 1928 c. 43.

(3) The nominee shall also state in his report whether there are in existence any insolvency proceedings in respect of the insolvent partnership or any of its members.

(4) For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee—

- (a) a document setting out the terms of the proposed voluntary arrangement, and
- (b) a statement of the partnership's affairs containing—
 - (i) such particulars of the partnership's creditors and of the partnership's debts and other liabilities and of the partnership property as may be prescribed, and
 - (ii) such other information as may be prescribed.

(5) The court may—

- (a) on an application made by the person intending to make the proposal, 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 that person 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 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.

Summoning of meetings

3.—(1) Where the nominee under section 1 is not the liquidator, administrator or trustee of the insolvent partnership, and it has been reported to the court that such meetings as are mentioned in section 2(2) should be summoned, the person making the report shall (unless the court otherwise directs) summon those meetings for the time, date and place proposed in the report.

(2) Where the nominee is the liquidator, administrator or trustee of the insolvent partnership, he shall summon meetings of the members of the partnership and of the partnership's creditors to consider the proposal for such a time, date and place as he thinks fit.

(3) The persons to be summoned to a creditors' meeting under this section are every creditor of the partnership of whose claim and address the person summoning the meeting is aware.

Consideration and implementation of proposal

Decisions of meetings

4.—(1) The meetings under section 3 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

But they shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 1.

(3) A meeting so summoned shall not approve any proposal or modification which affects the right of a secured creditor of the partnership to enforce his security, except with the concurrence of the creditor concerned.

(4) Subject as follows, a meeting so summoned shall not approve any proposal or modification under which—

- (a) any preferential debt of the partnership is to be paid otherwise than in priority to such of its debts as are not preferential debts, or
- (b) a preferential creditor of the partnership is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

However, the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(5) Subject as above, each of the meetings shall be conducted in accordance with the rules.

(6) After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to all those who were sent notice of the meeting in accordance with the rules.

(7) References in this section to preferential debts and preferential creditors are to be read in accordance with section 386 in Part XII of this Act.

Approval of arrangement

4A.—(1) This section applies to a decision, under section 4, with respect to the approval of a proposed voluntary arrangement.

(2) The decision has effect if, in accordance with the rules—

- (a) it has been taken by both meetings summoned under section 3, or
- (b) (subject to any order made under subsection (6)) it has been taken by the creditors' meeting summoned under that section.

(3) If the decision taken by the creditors' meeting differs from that taken by the meeting of the members of the partnership, a member of the partnership may apply to court.

(4) An application under subsection (3) shall not be made after the end of the period of 28 days beginning with—

- (a) the day on which the decision was taken by the creditors' meeting, or
- (b) where the decision of the meeting of the members of the partnership was taken on a later day, that day.

(5) Where a member of an insolvent partnership which is regulated applies to the court under subsection (3), the Financial Services Authority is entitled to be heard on the application.

(6) On an application under subsection (3), the court may—

- (a) order the decision of the meeting of the members of the partnership to have effect instead of the decision of the creditors' meeting, or
- (b) make such other order as it thinks fit.

(7) In this section “regulated” in relation to an insolvent partnership means a person who—

- (a) is, or has been, an authorised person within the meaning given by section 31 of the Financial Services and Markets Act 2000(7),
- (b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or
- (c) is carrying on, or has carried on, a regulated activity, within the meaning given by section 22 of that Act, in contravention of the general prohibition within the meaning given by section 19 of that Act.

(7) 2000 c. 8.

Effect of approval

5.—(1) This section applies where a decision approving a voluntary arrangement has effect under section 4A.

(2) The voluntary arrangement—

- (a) takes effect as if made by the members of the partnership at the creditors' meeting, and
- (b) binds every person who in accordance with the rules—
 - (i) was entitled to vote at that 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 voluntary 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 insolvent partnership shall at that time become liable to pay to that person the amount payable under the arrangement.

(3) Subject as follows, if the partnership is being wound up as an unregistered company, or an administration order or an order by virtue of article 11 of the Insolvent Partnerships Order 1994 is in force, the court may do one or both of the following, namely—

- (a) by order—
 - (i) stay all proceedings in the winding up or in the proceedings under the order made by virtue of the said article 11 (as the case may be), including any related insolvency proceedings of a member of the partnership in his capacity as such, or
 - (ii) discharge the administration order;
- (b) give such directions as it thinks appropriate for facilitating the implementation of the voluntary arrangement with respect to—
 - (i) the conduct of the winding up, the proceedings by virtue of the said article 11 or the administration (as the case may be), and
 - (ii) the conduct of any related insolvency proceedings as referred to in paragraph (a)(i) above.

(4) The court shall not make an order under subsection (3)(a)—

- (a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court, or
- (b) at any time when an application under the next section or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

Challenge of decisions

6.—(1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—

- (a) that a voluntary arrangement which has effect under section 4A unfairly prejudices the interests of a creditor, member or contributory of the partnership;

(b) that there has been some material irregularity at or in relation to either of the meetings.

(2) The persons who may apply under this section are—

- (a) a person entitled, in accordance with the rules, to vote at either of the meetings;
- (b) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it;
- (c) the nominee or any person who has replaced him under section 2(5) or 4(2); and
- (d) if the partnership is being wound up as an unregistered company or an administration order or order by virtue of article 11 of the Insolvent Partnerships Order 1994 is in force, the liquidator, administrator or trustee of the partnership.

(3) An application under this section shall not be made—

- (a) after the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court, 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) on the ground that the voluntary arrangement prejudices his interests may be made after the voluntary arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on such an application the court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following, namely—

- (a) revoke or suspend any decision approving the voluntary arrangement which has effect under section 4A or, in a case falling within subsection (1)(b), any decision taken by the meeting in question which has effect under that section;
- (b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in a case falling within subsection (1)(b), a further meeting of the members of the partnership or (as the case may be) of the partnership's creditors to reconsider the original proposal.

(5) Where at any time after giving a direction under subsection (4)(b) for the summoning of meetings to consider a revised proposal the court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect under section 4A.

(6) In a case where the court, on an application under this section with respect to any meeting—

- (a) gives a direction under subsection (4)(b), or
- (b) revokes or suspends an approval under subsection (4)(a) or (5),

the court may give such supplemental directions as it thinks fit, and, in particular, directions with respect to things done under the voluntary arrangement since it took effect.

(7) Except in pursuance of the preceding provisions of this section, a decision taken at a meeting summoned under section 3 is not invalidated by any irregularity at or in relation to the meeting.

False representations, etc.

6A.—(1) If, for the purpose of obtaining the approval of the members or creditors of an insolvent partnership or of the members or creditors of any of its members to a proposal for a voluntary arrangement in relation to the partnership or any of its members, a person who is an officer of the partnership or an officer (which for this purpose includes a shadow director) of a corporate member in relation to which a voluntary arrangement is proposed—

- (a) makes a 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.

Implementation of proposal

7.—(1) This section applies where a voluntary arrangement has effect under section 4A.

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—

- (a) on the nominee by virtue of the approval given at one or both of the meetings summoned under section 3, or
- (b) by virtue of section 2(5) or 4(2) on a person other than the nominee,

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the partnership's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on the application the court may—

- (a) confirm, reverse or modify any act or decision of the supervisor,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(4) The supervisor—

- (a) may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement, and
- (b) is included among the persons who may apply to the court for the winding up of the partnership as an unregistered company or for an administration order to be made in relation to it.

(5) The court may, whenever—

- (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
- (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,

make an order appointing a person who is qualified to act as an insolvency practitioner or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

Prosecution of delinquent officers of partnership

7A.—(1) This section applies where a moratorium under section 1A has been obtained for an insolvent partnership or the approval of a voluntary arrangement in relation to an insolvent partnership has taken effect under section 4A or paragraph 36 of Schedule A1.

(2) If it appears to the nominee or supervisor that any past or present officer of the insolvent partnership has been guilty of any offence in connection with the moratorium or, as the case may be, voluntary arrangement for which such officer is criminally liable, the nominee or supervisor shall forthwith—

- (a) report the matter to the Secretary of State, and
- (b) provide the Secretary of State with such information and give him such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the nominee or supervisor 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 supervisor, and every officer and agent of the insolvent partnership past or present (other than the defendant), shall give the authority all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose—

“agent” includes any banker or solicitor of the insolvent partnership and any person employed by the insolvent partnership as auditor, whether that person is or is not an officer of the insolvent partnership,

“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 any person referred to in subsection (3) to comply with that subsection if he has failed to do so.

Arrangements coming to an end prematurely

7B. For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under section 4A or paragraph 36 of Schedule A1 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 5(2)(b)(i) or, as the case may be, paragraph 37(2)(b)(i) of Schedule A1.”.

PART II

MODIFIED PROVISIONS OF SCHEDULE A1 TO THE ACT

The following provisions of Schedule A1 to the Act are modified so as to read as follows:

“3.—(1) An insolvent partnership meets the requirements of this paragraph if the qualifying conditions are met—

- (a) in the year ending with the date of filing, or
- (b) in the tax year of the insolvent partnership which ended last before that date.

(2) For the purposes of sub-paragraph (1) the qualifying conditions are met by an insolvent partnership in a period if, in that period, it satisfies two or more of the requirements set out in sub-paragraph (3).

(3) The qualifying conditions referred to in this paragraph are—

- (a) turnover of not more than £2.8 million,
 - (b) assets of not more than £1.4 million, and
 - (c) no more than 50 employees.
- (4) For the purposes of sub-paragraph (3)—
- (a) the total of turnover is the amount which is or would be, as the case may be, entered as turnover in the partnership's tax return,
 - (b) the total of assets is the amount which—
 - (i) in the case of the period referred to in paragraph 3(1)(a), is entered in the partnership's statement of affairs which must be filed with the court under paragraph 7(1)(b), or
 - (ii) in the case of the period referred to in paragraph 3(1)(b), would be entered in the partnership's statement of affairs had it prepared such a statement on the last day of the period to which the amount for turnover is calculated for the purposes of paragraph 3(4)(a),
 - (c) the number of employees is the average number of persons employed by the insolvent partnership—
 - (i) in the case of the period referred to in paragraph 3(1)(a), in the period ending with the date of filing,
 - (ii) in the case of the period referred to in paragraph 3(1)(b), in the period to which the amount for turnover is calculated for the purposes of paragraph 3(4)(a).
- (5) Where the period covered by the qualifying conditions in respect of the insolvent partnership is not a year the total of turnover referred to in paragraph 3(3)(a) shall be proportionately adjusted.
- (6) The average number of persons employed by the insolvent partnership shall be calculated as follows—
- (a) by ascertaining the number of persons employed by it under contracts of service for each month of the year (whether throughout the month or not),
 - (b) by adding those figures together, and
 - (c) by dividing the resulting figure by the number of months during which persons were so employed by it during the year.
- (7) In this paragraph—
- “tax return” means a return under section 12AA of the Taxes Management Act 1970⁽⁸⁾,
 - “tax year” means the 12 months beginning with 6th April in any year.
- 4.—(1)** An insolvent partnership is excluded from being eligible for a moratorium if, on the date of filing—
- (a) an administration order is in force in relation to the insolvent partnership,
 - (b) the insolvent partnership is being wound up as an unregistered company,
 - (c) there is an agricultural receiver of the insolvent partnership,
 - (d) a voluntary arrangement has effect in relation to the insolvent partnership,
 - (e) there is a provisional liquidator of the insolvent partnership,

⁽⁸⁾ 1970 c. 9; section 12AA was inserted by the Finance Act 1994 (c. 9) and was amended by the Finance Act 1995 (c. 4), the Finance Act 1996 (c. 8), the Finance Act 1998 (c. 36) and the Finance Act 2001 (c. 9).

- (f) a moratorium has been in force for the insolvent partnership at any time during the period of 12 months ending with the date of filing and—
 - (i) no voluntary arrangement had effect at the time at which the moratorium came to an end, or
 - (ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely,
 - (g) a voluntary arrangement in relation to the insolvent partnership which had effect in pursuance of a proposal under section 1(3) has come to an end prematurely and, during the period of 12 months ending with the date of filing, an order under section 5(3)(a) has been made, or
 - (h) an order has been made by virtue of article 11 of the Insolvent Partnerships Order 1994.
- (2) Sub-paragraph (1)(b) does not apply to an insolvent partnership which, by reason of a winding-up order made after the date of filing, is treated as being wound up on that date.

Effect on creditors, etc.

- 12.—**(1) During the period for which a moratorium is in force for an insolvent partnership—
- (a) no petition may be presented for the winding-up of the insolvent partnership as an unregistered company,
 - (b) no meeting of the members of the partnership may be called or requisitioned except with the consent of the nominee or the leave of the court and subject (where the court gives leave) to such terms as the court may impose,
 - (c) no order may be made for the winding-up of the insolvent partnership as an unregistered company,
 - (d) no petition for an administration order in relation to the insolvent partnership may be presented,
 - (e) no agricultural receiver of the partnership may be appointed except with the leave of the court and subject to such terms as the court may impose,
 - (f) no landlord or other person to whom rent is payable may exercise any rights of forfeiture by peaceable re-entry in relation to premises forming part of the partnership property or let to one or more officers of the partnership in their capacity as such in respect of a failure by the partnership or one or more officers of the partnership to comply with any term or condition of the tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose,
 - (g) no other steps may be taken to enforce any security over the partnership property, or to repossess goods in the possession, under any hire-purchase agreement, of one or more officers of the partnership in their capacity as such, except with the leave of the court and subject to such terms as the court may impose,
 - (h) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the insolvent partnership or the partnership property except with the leave of the court and subject to such terms as the court may impose,
 - (i) no petition may be presented, and no order may be made, by virtue of article 11 of the Insolvent Partnerships Order 1994, and

(j) no application or order may be made under section 35 of the Partnership Act 1890⁽⁹⁾ in respect of the insolvent partnership.

(2) Where a petition, other than an excepted petition, for the winding-up of the insolvent partnership has been presented before the beginning of the moratorium, section 127 shall not apply in relation to any disposition of partnership property, any transfer of an interest in the insolvent partnership or alteration in status of a member of the partnership made during the moratorium or at a time mentioned in paragraph 37(5)(a).

(3) Paragraph (a) of sub-paragraph (1) does not apply to an excepted petition and, where such a petition has been presented before the beginning of the moratorium or is presented during the moratorium, paragraphs (b) and (c) of that sub-paragraph do not apply in relation to proceedings on the petition.

(4) For the purposes of this paragraph, “excepted petition” means a petition under—

- (a) article 7(1) of the Insolvent Partnerships Order 1994 presented by the Secretary of State on the grounds mentioned in subsections (b), (c) and (d) of section 124A of this Act,
- (b) section 72 of the Financial Services Act 1986⁽¹⁰⁾ on the ground mentioned in subsection (1)(b) of that section,
- (c) section 92 of the Banking Act 1987⁽¹¹⁾ on the ground mentioned in subsection (1) (b) of that section, or
- (d) section 367 of the Financial Services and Markets Act 2000⁽¹²⁾ on the ground mentioned in subsection (3)(b) of that section.

Disposal of charged property, etc

20.—(1) This paragraph applies where—

- (a) any partnership property of the insolvent partnership is subject to a security, or
- (b) any goods are in possession of one or more officers of the partnership in their capacity as such under a hire-purchase agreement.

(2) If the holder of the security consents, or the court gives leave, the insolvent partnership may dispose of the property as if it were not subject to the security.

(3) If the owner of the goods consents, or the court gives leave, the insolvent partnership may dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the members of the partnership.

(4) Where property subject to a security which, as created, was a floating charge is disposed of under sub-paragraph (2), the holder of the security has the same priority in respect of any partnership property directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) Sub-paragraph (6) applies to the disposal under sub-paragraph (2) or (as the case may be) sub-paragraph (3) of—

- (a) any property subject to a security other than a security which, as created, was a floating charge, or

⁽⁹⁾ 1890 c. 39 (53 & 54 Vict); section 35(a) was repealed by the Mental Health Act 1959 (c. 72), section 149(2) and Schedule 8

⁽¹⁰⁾ 1986 (c. 60); section 72(6) was added by the Open-Ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996, S.I. 1996/2827, regulation 75 and paragraph 13 of Schedule 8.

⁽¹¹⁾ 1987 (c. 22); section 92(1) was amended by the Bank of England Act 1998 (c. 11), section 23(1) and Schedule 5.

⁽¹²⁾ 2000 c. 8.

(b) any goods in the possession of one or more officers of the partnership in their capacity as such under a hire-purchase agreement.

(6) It shall be a condition of any consent or leave under sub-paragraph (2) or (as the case may be) sub-paragraph (3) that—

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be agreed, or determined by the court, to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(7) Where a condition imposed in pursuance of sub-paragraph (6) relates to two or more securities, that condition requires—

(a) the net proceeds of the disposal, and

(b) where paragraph (b) of sub-paragraph (6) applies, the sums mentioned in that paragraph,

to be applied towards discharging the sums secured by those securities in the order of their priorities.

(8) In this paragraph “floating charge” means a floating charge created under section 5 of the Agricultural Credits Act 1928.

Effect of approval of voluntary arrangement

37.—(1) This paragraph applies where a decision approving a voluntary arrangement has effect under paragraph 36.

(2) The approved voluntary arrangement—

(a) takes effect as if made by the members of the partnership at the creditors' meeting, and

(b) binds every person who in accordance with the rules—

(i) was entitled to vote at that 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 voluntary arrangement.

(3) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of sub-paragraph (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the insolvent partnership shall at that time become liable to pay to that person the amount payable under the arrangement.

(4) Where a petition for the winding-up of the insolvent partnership as an unregistered company or a petition by virtue of article 11 of the Insolvent Partnerships Order 1994, other than an excepted petition within the meaning of paragraph 12, was presented before the beginning of the moratorium, the court shall dismiss the petition.

(5) The court shall not dismiss a petition under sub-paragraph (4)—

- (a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required by paragraph 30(3) has been made to the court, or
- (b) at any time when an application under paragraph 38 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

Challenge of actions of officers of insolvent partnership

40.—(1) This paragraph applies in relation to acts or omissions of the officers of a partnership during a moratorium.

(2) A creditor or member of the insolvent partnership may apply to the court for an order under this paragraph on the ground—

- (a) that the partnership's affairs and business and partnership property are being or have been managed by the officers of the partnership in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including at least the petitioner), or
- (b) that any actual or proposed act or omission of the officers of the partnership is or would be so prejudicial.

(3) An application for an order under this paragraph may be made during or after the moratorium.

(4) On an application for an order under this paragraph the court may—

- (a) make such order as it thinks fit for giving relief in respect of the matters complained of,
- (b) adjourn the hearing conditionally or unconditionally, or
- (c) make an interim order or any other order that it thinks fit.

(5) An order under this paragraph may in particular—

- (a) regulate the management by the officers of the partnership of the partnership's affairs and business and partnership property during the remainder of the moratorium,
- (b) require the officers of the partnership to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained they have omitted to do,
- (c) require the summoning of a meeting of creditors or members of the partnership for the purpose of considering such matters as the court may direct,
- (d) bring the moratorium to an end and make such consequential provision as the court thinks fit.

(6) In making an order under this paragraph the court shall have regard to the need to safeguard the interests of persons who have dealt with the insolvent partnership in good faith and for value.

(7) In relation to any time when an administration order is in force in relation to the insolvent partnership, or the insolvent partnership is being wound up as an unregistered company or an order by virtue of article 11 of the Insolvent Partnerships Order 1994 has been made, in pursuance of a petition presented before the moratorium came into force, no application for an order under this paragraph may be made by a creditor or member of the insolvent partnership; but such an application may be made instead by the administrator or (as the case may be) trustee or liquidator.

42.—(1) If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for an insolvent partnership or any of its members (a moratorium meaning in the case of an individual the effect of an application for, or the making of, an interim order under Part VIII of the Act), a person who is an officer of an insolvent partnership or an officer (which for this purpose includes a shadow director) of a corporate member in relation to which a voluntary arrangement is proposed—

- (a) makes any false representation, or
- (b) fraudulently does, or omits to do, anything,

he commits an offence.

(2) Sub-paragraph (1) applies even if no moratorium or extension is obtained.

(3) A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.”.

SCHEDULE 2

Article 10

FORM 5Creditor’s Petition to Wind Up Partnership (Presented in Conjunction with Petitions against Members)

Schedule 4 para 8 S124(1)(a)

(a) Insert name of partnership **In the matter of (a)** _____

**(hereinafter referred to as “the partnership”) and in the matter of the
 Insolvent Partnerships Order 1994**

(b) Insert title of court and number of proceedings (to be allocated by court) To (b) _____
 _____ No: _____ of _____

(c) Insert full name(s) and address(es) of petitioner(s) The petition of (c) _____

(d) Insert the nature of the partnership’s business 1. The nature of the partnership’s business
 is/was (d) _____

(e) Delete as appropriate 2. (e) [The centre of main interests] [An establishment] of the
 partnership is at (f) _____
 within the jurisdiction of the court

OR

(f) Insert address of business applicable to show jurisdiction of the court (e) [The principal place of business of the partnership] [A place of
 business at which business was carried on by the partnership in the
 course of which the debt (or part of the debt) arose which forms the
 basis of this petition] is at (f) _____

 within the jurisdiction of the court.

If the partnership has a principal place of business in both England and Wales and in Scotland the relevant period is 1 year. In any other case it is 3 years.

3. The partnership has carried on its business in England and Wales at some time during the period of (e) [3 years] [1 year] ending with the day on which this petition is presented.

4. The partnership is/is not (e) [an insurance undertaking;] [a credit institution;] [an investment undertaking providing services involving the holding of funds or securities for third parties;] or [a collective investment undertaking] referred to in Article 1.2 of the EC Regulation.

(g) Insert name of person swearing affidavit 5. For the reasons stated in the affidavit of
 (g) _____ filed in support hereof it is
 considered that the EC Regulation (e) will/will not apply (e) [and that
 these proceedings will be (h) _____
 proceedings as defined in Article 3 of the EC Regulation].

(h) Insert whether main, secondary or territorial proceedings 6. The partnership is justly and truly indebted to me/us in the
 aggregate sum of £ _____. The above-mentioned debt is
 for a liquidated sum payable immediately.

(j) Insert date of service

(k) State manner of service of demand

(l) Insert full name of member or members

(m) Delete (1) or (2) appropriate

(1) that (a) _____ may be wound up by the Insolvent Partnerships Order 1994

OR
 (2) that such other

Under the EC Regulation
 (i) The centre of main interests of the partnership is in the territory of the United Kingdom
 (ii) Establishment of a transitory centre of main interests in the territory of the United Kingdom

NOTE 1:
 Petitions are also brought under the EC Regulation

NAME

NOTE 2:
 It is intended to serve

Status: This is the original version (as it was originally made). UK
Statutory Instruments are not carried in their revised form on this site.

**FORM 6 Creditor's Petition to Wind Up Corporate Member (Presented in Conjunction with
Petition against Partnership)**

Schedule 4 para 8 S124(1)(b)

(a) Insert name of corporate member subject to winding-up petition

In the matter of (a) _____

(hereinafter referred to as "the company") and in the matter of the Insolvent Partnerships Order 1994

(b) Insert title of court and number of proceedings (to be allocated by court)

To (b) _____
 _____ No: _____ of _____

(c) Insert full name(s) and address(es) of petitioner(s)

The petition of (c) _____

(d) Insert date of incorporation

1. The company was incorporated on (d) _____ under the Companies Act 19 _____.

(e) Insert address of registered office

2. The registered office of the company is at (e)

3. The nominal capital of the company is £ _____ divided into _____ shares of £ _____ each. The amount of the capital paid up or credited as paid up is £ _____

4. The principal objects for which the company was established are as follows:—

and other objects stated in the memorandum of association of the company.

(f) Delete as appropriate

5. The company is/is not (f)[an insurance undertaking;] [a credit institution;] [an investment undertaking providing services involving the holding of funds or securities for third parties;] or [a collective investment undertaking] referred to in Article 1.2 of the EC Regulation.

(g) Insert name of person swearing affidavit

6. For the reasons stated in the affidavit of (g) _____ filed in support hereof it is considered that the EC Regulation (f) will/will not apply (f) [and that these proceedings will be

(h) Insert whether main, secondary or territorial proceedings

(h) _____ proceedings as defined in Article 3 of the EC Regulation].

(j) Insert full name of partnership against which winding-up petition has been presented to the court

If the partnership has a principal place of business in both England and Wales and in Scotland the relevant period is _____ year. In any other case it is 3 years

(k) Insert appropriate date

(l) State manner of service of demand

(m) Delete (1) or (2) as appropriate

(1) that (a) _____ may be wound up under the Insolvent Partnerships Order 1994

OR

(2) that such other reasons exist

NOTE 1:
Petitions are also brought under section 124(1)(b) of the Insolvency Act 1986

NAME

NOTE 2:
It is intended to serve a copy of this petition on each of the persons named in the table above

Status: This is the original version (as it was originally made). UK
Statutory Instruments are not carried in their revised form on this site.

**FORM 7Creditor's Bankruptcy Petition against Individual Member (Presented in
Conjunction with Petition against Partnership)**

Schedule 4 para 8 S124(1)(c)

(a) Insert name of individual member subject of petition

In the matter of (a) _____

and in the matter of the Insolvent Partnerships Order 1994

(b) Insert title of court and number of proceedings (to be allocated by court)

To (b) _____
_____ No: _____ of _____

(c) Insert full name(s) and address(es) of petitioner(s)

I/We (c) _____

(d) Insert full name, place of residence and occupation of individual member

petition the court that a bankruptcy order may be made against
(d) _____

(e) Insert in full any other name(s) by which the member is or has been known

[also known as (e) _____
_____]

(f) Insert trading name (adding "with another or others", if this is so), business address and nature of business

[and carrying on business as (f) _____

_____]

(g) Insert any former address(es) at which the member has resided after the time at which the petition debt of the partnership (k) was incurred

[and lately residing at (g) _____

_____]

(h) Give the same details as specified in note (f) above for any other businesses which have been carried on at or after the time at which the petition debt of the partnership (k) was incurred or which the member may have incurred debts or liabilities still unpaid or unsatisfied

(j) Delete as appropriate

(k) Insert full name of partnership against which a winding-up petition has been presented to this court. If the partnership has a principal place of business both in England and Wales and in Scotland the relevant period is 3 years. In any other case it is 3 years

(l) Insert appropriate date

(m) State date and manner of service of demand

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Insolvent Partnerships Order 1994 (S.I.1994/2421) (the “1994 Order”).

The following are the main changes made to the 1994 Order:

1. Article 3 makes a change to the definition of the expression “act as insolvency practitioner” in section 388 of the Insolvency Act 1986 (c. 45) in relation to insolvent partnerships. It provides for acting as a nominee in a voluntary arrangement in relation to an insolvent partnership to be included within that expression.

2. Article 4 amends article 4(1) of the 1994 Order, the amended article applies Part I of the Insolvency Act 1986, together with Schedule A1 to that Act, to insolvent partnerships. Part I and certain provisions of Schedule A1 are set out in modified form in Schedule 1 to this Order. Schedule A1 to the Insolvency Act 1986, introduced by the Insolvency Act 2000, provides for a moratorium for small companies in financial difficulty.

3. Article 5 provides that article 19 of the 1994 Order does not affect the moratorium under paragraph 12 of Schedule A1 to the Insolvency Act 1986.

4. Article 6 and Part I of Schedule 1 make amendments to the existing partnership voluntary arrangement (PVA) procedure set out in Schedule 1 to the 1994 Order which is currently applied to insolvent partnerships. The changes made include technical amendments, making it an offence for an officer of a partnership or of a corporate member to make false representations in order to obtain the approval of a voluntary arrangement (for the insolvent partnership or its members). The introduction of this offence brings the existing PVA procedure into line with that provided for companies in the new moratorium procedure introduced by the Insolvency Act 2000 (c. 39). By virtue of the insertion of section 1A (as modified) into that Schedule it also makes the new moratorium for small companies mentioned above available to insolvent partnerships.

5. Article 7 provides for the expression “partnership” to include a partnership in relation to which an administration order may be made by virtue of the Council Regulation (EC) No. 1346/2000 of 29th May 2000 on insolvency proceedings (a similar provision is included in relation to partnership voluntary arrangements in modified Part I of the Act). It also provides that the amendments made to sections 10 and 11 of the Insolvency Act 1986 (c. 45) by section 9 of the Insolvency Act 2000 (which restricts the exercise of the right of peaceable re-entry by landlords or others in relation to property let to a company) are applied (as modified) to partnerships.

6. The Insolvency Act 2000 amended the Insolvency Act 1986 to provide that where a voluntary arrangement does not have effect at the end of the moratorium, creditors of a company may petition for its winding up. Articles 8 and 9 apply this new ground for the making of a winding up order to insolvent partnerships and for the making of winding up orders or bankruptcy orders against their members, as the case may be.

7. Article 10 provides for the replacement of Forms 5, 6 and 7 in the 1994 Order with amended forms. The amendment provides for the new ground for making winding up orders or bankruptcy orders. The new forms are to be found in Schedule 2 to this Order.

8. Article 11 makes transitional provisions for the PVA moratorium procedure and for the exercise of landlord’s rights of re-entry where a partnership is subject to an administration order. The provisions are similar to those provided for companies.

9. The cost to business of compliance with the provisions of the Insolvency Act 2000 is detailed in the Regulatory Impact Assessment prepared for that Act. Copies of the Assessment are available from the Policy Unit, The Insolvency Service, 21 Bloomsbury Street, London WC1B 3QW.