

SCHEDULE 2

Consequential amendments to subordinate legislation

Insolvent Partnerships Order 1994

8.—(1) Schedule 4 (provisions which apply with modifications to winding up in certain circumstances) is amended as follows.

(2) In paragraph 12—

- (a) in section 136(1) as there modified, omit “and of section 136A”.
- (b) in section 136(4) as there modified, for “summon a combined meeting of” substitute “in accordance with the rules seek nominations from”;
- (c) after section 136(4) as there modified, insert—

“(5) It is the duty of the official receiver—

- (a) as soon as practicable in the period of 12 weeks beginning with the day on which the insolvency order was made, to decide whether to exercise his power under subsection (4), and
- (b) if in pursuance of paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the court and to the creditors of the partnership and of the creditors of any insolvent member against whom an insolvency order has been made, and
- (c) (whether or not he has decided to exercise that power) to exercise his power under subsection (4) if he is at any time requested, in accordance with the rules, to do so by one-quarter, in value, of either—
 - (i) the partnership’s creditors, or
 - (ii) the creditors of any insolvent member against whom an insolvency order has been made,

and accordingly, where the duty imposed by paragraph (c) arises before the official receiver has performed a duty imposed by paragraph (a) or (b), he is not required to perform the latter duty.

(6) A notice given under subsection (5)(b) to the creditors must contain an explanation of the creditors’ power under subsection (5)(c) to require the official receiver to seek nominations from the creditors of the partnership and of any insolvent member.”; and

(d) omit section 136A as there modified.

(3) In paragraph 13—

- (a) in section 137(3) as there modified—
 - (i) for “a meeting is held in pursuance of a decision under section 136A(1)(a)” substitute “a nomination is sought from the creditors of the partnership and of any insolvent member”; and
 - (ii) for “as a result of that meeting” substitute “by the creditors”;
- (b) in section 137A(5) as there modified, for the words from “shall” to the end substitute “must explain the procedure for establishing a liquidation committee under section 141.”; and
- (c) for section 137A(6) as there modified, substitute—

“(6) In a case where subsection (3) applies, in the notice or advertisement the responsible insolvency practitioner must—

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- (a) if a liquidation committee has already been established under section 141, state whether he proposes to appoint additional members of the committee under section 141A(3); or
 - (b) if such a committee has not been established, explain the procedure for establishing a liquidation committee under section 141.”
- (4) In paragraph 14—
- (a) for section 139(2) to (4) as there modified, substitute—
 - “(2) Subject to subsection (4) below, the rules relating to decision making on the winding up of a company are to apply (with the necessary modifications) to decisions sought from creditors of the partnership, of any corporate members against which an insolvency order has been made or of any insolvent member, where the decision is one to be made with creditors of the partnership.
 - (3) Subject to subsection (4) below, the rules relating to decision making on the bankruptcy of an individual are to apply (with the necessary modifications) to decisions sought from creditors of any individual member against whom an insolvency order has been made.
 - (4) Any decision to be made by the creditors of the partnership and of the insolvent member or members must be conducted as if there were a single set of creditors.”; and
 - (b) in the heading, for “meetings of creditors” substitute “decision making”.
- (5) In paragraph 15, in section 140(4) as there modified for the words from “he” to the end, substitute “section 136(5)(a) and (b) does not apply.”.
- (6) In paragraph 16, for section 141 as there modified substitute—
- “**141.**—(1) This section applies where insolvency orders are made in respect of an insolvent partnership and one or more of its insolvent members by virtue of article 8 of the Insolvent Partnerships Order 1994.
 - (2) If both the creditors of the partnership and the creditors of any insolvent members decide that a liquidation committee should be established, a liquidation committee is to be established in accordance with the rules.
 - (3) A “liquidation committee” is a committee having such functions as are conferred on it by or under this Act.
 - (4) The responsible insolvency practitioner must seek a decision from the creditors of the partnership and of any insolvent members as to whether a liquidation committee should be established if requested, in accordance with the rules, to do so by one-tenth in value of the creditors.”
- (7) In paragraph 18, for section 146 as there modified substitute—

“Final Account

- 146.**—(1) This section applies if it appears to the responsible insolvency practitioner of an insolvent partnership which is being wound up by virtue of article 8 of the Insolvent Partnerships Order 1994 and of its insolvent member or members that the winding up of the partnership or of any corporate member, or the administration of any individual member’s estate is for practical purposes complete and the practitioner is not the official receiver.
- (2) The responsible insolvency practitioner must make up an account of the winding up or administration, showing how it has been conducted and the property disposed of.
- (3) The responsible insolvency practitioner must—

- (a) send a copy of the account to the creditors of the partnership (other than opted-out creditors), and
 - (b) give the partnership's creditors (other than opted-out creditors) a notice explaining the effect of section 174(4)(d)(1) and how they may object to the liquidator's release.
- (4) The liquidator must during the relevant period send to the court and, in the case of a corporate member, send to the registrar of companies—
- (a) a copy of the account, and
 - (b) a statement of whether any of the partnership's creditors objected to the liquidator's release.
- (5) The relevant period is the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the responsible insolvency practitioner's release.”
- (8) After paragraph 19 insert—

“Sections 165 and 167

- 19A.**—(1) Section 165(2) has effect as if for “Parts 1 to 3” there were substituted “Parts 1 and 2”.
- (2) Section 167(1) has effect as if for “Parts 1 to 3” there were substituted “Parts 1 and 2”.”
- (9) In paragraph 20, in section 168 as there modified—
- (a) for subsection (2) substitute—

“(2) The responsible insolvency practitioner may seek a decision on any matter from the creditors of the partnership or of any insolvent member; and must seek a decision on a matter if requested to do so by one-tenth in value of the creditors.”; and
 - (b) omit subsection (3).
- (10) In paragraph 21 for section 172(6) as there modified substitute—
- “(6) A responsible insolvency practitioner who has produced an account of the winding up or administration under section 146 must vacate office immediately upon complying with the requirements of section 146(3).”
- (11) In paragraph 22, in section 174 as there modified—
- (a) in subsection (2)(a), for “a combined general meeting of” substitute “the”; and
 - (b) for subsection (4)(d) substitute—
 - “(d) in the case of a person who has vacated office under section 172(6)—
 - (i) if any of the creditors of the partnership or of any insolvent member objected to the person's release before the end of the period for so objecting prescribed by the rules, such time as the Secretary of State may, on an application by that person, determine, and
 - (ii) otherwise, the time at which the person vacated office.”
- (12) In paragraph 28, in section 283(4)(a) as there modified, for “a meeting summoned by the trustee of that estate under section 146 has been held” substitute “the trustee of that estate has vacated office under section 298(6)”.
- (13) In paragraph 30, in Schedule 4 as there modified, omit the heading to Part 1 of the Schedule.
- (14) In paragraph 30, in Schedule 4 as there modified, omit the heading to Part 2 of the Schedule.

(1) Section 174(4) was amended by the Small Business, Enterprise and Employment Act 2015 (c. 26), Schedule 9.

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