

ENTERPRISE ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: Insolvency

Individuals

Section 264 & Schedule 22: Individual voluntary arrangement

763. Individual voluntary arrangements are an alternative to bankruptcy, without the same automatic restrictions, where the debtor comes to an arrangement with his or her creditors about the repayment of his or her debts. They generally provide a better return to creditors. Currently there are around 7,000 individual voluntary arrangements made each year, of which a very small minority are entered into after a bankruptcy order has been made.
764. At present, a debtor can make a proposal for an individual voluntary arrangement (see Part VIII of the Insolvency Act 1986). Those proposals also put forward a person to supervise the implementation of that arrangement, the nominee (on approval of an arrangement the nominee becomes supervisor). To act as the nominee (from 1 January 2003, as a result of the relevant amendments introduced by the Insolvency Act 2000) or supervisor, a person must be a qualified insolvency practitioner. In practice, the debtor sends the nominee a copy of the proposal and a statement of his or her affairs. He or she can then apply for an interim order that has the effect of staying any actions against them or their property (see sections 252–255 of the Insolvency Act 1986). The nominee reports to the court, stating whether a meeting of creditors should be called to consider the proposal. If a meeting is called and the creditors approve the individual voluntary arrangement, the interim order can be discharged and any bankruptcy order may be annulled. Modifications can be made to the proposal if the debtor so consents.
765. In order to encourage greater use of individual voluntary arrangements, this section makes two changes to the current individual voluntary arrangements regime.
766. First, it enables Official Receivers to act as nominees and supervisors for post-bankruptcy individual voluntary arrangements (see paragraph 3 of Schedule 22, which inserts a new Section 389B into the Insolvency Act 1986). This provides debtors and creditors with a choice of who should administer the arrangement: either a private sector insolvency practitioner or an Official Receiver. There is also an order-making power to extend the ability for the Official Receiver to act as nominee and supervisor to all cases.
767. Second, it introduces a new fast-track scheme for post-bankruptcy individual voluntary arrangements where the Official Receiver is the proposed nominee (see paragraph 2 of Schedule 22, which inserts a new section 263A – 263G into the Insolvency Act 1986). Under this regime, the proposal will be agreed with the Official Receiver and filed with the Court. No meeting of the creditors will be called and it will not be possible to modify the proposal. The Official Receiver will send out the proposal to the creditors on a ‘take it or leave it’ basis and the creditors will either agree to or disagree with the proposal by correspondence. If the individual voluntary arrangement

*These notes refer to the Enterprise Act 2002 (c.40)
which received Royal Assent on 7 November 2002*

is approved, the Official Receiver will notify the court and the court can then annul the bankruptcy order. It is proposed that the majority required for approval will remain unchanged (the provision on majority is set out in Rule 5.18 of the [Insolvency Rules 1986 \(SI1986/1925\)](#)), which majority is three quarters in value. From 1 January 2003, as a result of changes introduced by [SI 2002/2712](#), that provision will be found at Rule 5.23.