
EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 1 of the Legislative and Regulatory Reform Act 2006 (c. 51) (the “2006 Act”). It amends the Insolvency Act 1986 (c.45) (the “1986 Act”).

Articles 3 and 4 make amendments to the 1986 Act relating to communications and meetings in insolvency proceedings.

Article 3(1) inserts a new section 246A (remote attendance at meetings) into Part 6 of the 1986 Act (miscellaneous provisions applying to companies which are insolvent or in liquidation). The new section allows those attending meetings in corporate insolvency proceedings to do so other than by physical attendance or by proxy in that it allows a person to attend a meeting using any form of technology which permits them to be heard and to vote at the meeting. Article 3(1) also inserts a new section 246B (use of websites) into the 1986 Act which allows an office-holder to use a website as a means of sending documents and information to others in the course of insolvency proceedings. As a consequence of section 9 of the 2006 Act (which prevents an Order under that Act making provision in relation to matters within the competence of the Scottish Parliament), sections 246A and 246B will have only limited application in relation to corporate insolvency proceedings in Scotland.

Article 3(2) introduces the equivalent amendments for individual insolvency in England and Wales by inserting new sections 379A and 379B into Part 10 of the 1986 Act (individual insolvency: general provisions).

Article 4 inserts a new section 436B (references to things in writing) into the 1986 Act which clarifies that references in the 1986 Act to documents or information “in writing” include documents or information in electronic form. As a consequence, the equivalent provision in Schedule B1 to the 1986 Act, which relates solely to administration, is repealed.

Article 5 removes requirements (in six sections of the 1986 Act) for documents in insolvency proceedings in England and Wales to be sworn by affidavit and replaces them with a requirement for the relevant documents to be verified by a statement of truth.

Article 6 relates to members’ voluntary liquidation and creditors’ voluntary liquidation. It amends sections 93 (general company meeting at each year’s end) and 105 (meetings of company and creditors at year’s end) of the 1986 Act and inserts new sections 92A (progress report to company at year’s end (England and Wales)) and 104A (progress report to company and creditors at year’s end (England and Wales)). The effect is that the requirement imposed upon liquidators to summon annual meetings of members and creditors for the purpose of laying an account of the liquidator’s acts and dealings and of the conduct of the winding up during the preceding year (sections 93 and 105 of the 1986 Act) applies only to Scotland. In England and Wales, the requirement to summon a meeting is removed and replaced with a requirement to provide a progress report relating to matters prescribed in the Insolvency Rules 1986(1) to the members and creditors of the company as the case may be (sections 92A and 104A of the 1986 Act).

Article 7 amends sections 95 (effect of company’s insolvency) and 98 (meeting of creditors) of the 1986 Act as they apply to England and Wales by removing the requirement for notice of the meeting to be sent to creditors “by post”.

Article 8(1) relates to individual voluntary arrangements. It amends section 256A (debtor’s proposal and nominee’s report), so as to remove the requirement to submit a report to the court in those

(1) S.I. 1986/1925.

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cases in which no application has been made to the court for an interim order. Paragraph (2) makes amendments to section 257 (summoning of creditors' meeting) consequential upon the amendment made to section 256A and removes the reference to a report made to the court under section 256A, replacing it with a report to the debtor's creditors. Paragraph (3) amends section 259 (report of decisions to court) as a consequence of the change made to section 256A. The amendment removes the reference to a report being made to the court under section 256A.

Article 9 amends provisions in respect of fast-track voluntary arrangements. Paragraph (1) amends section 263C (result) by substituting for a requirement that the official receiver report to the court whether the voluntary arrangement has been approved or rejected, a requirement to merely notify the Secretary of State of the same. Paragraph (2) amends section 263F (revocation) consequential upon the amendment made to section 263C by substituting a reference to notification of the Secretary of State for the reference to the official receiver's report to the court.

Articles 10 and 11 respectively amend Schedules 4 and 5 to the 1986 Act. They remove the requirement on liquidators and trustees in bankruptcy in England and Wales to obtain the sanction of creditors, company members or the court, as the case may be, for certain actions they propose to take as part of their conduct of the insolvency.

Article 12 contains transitional provisions in relation to the introduction of certain of the amendments made by the Order.

A full Regulatory Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Insolvency Service website (www.insolvency.gov.uk) and is annexed to the Explanatory Document which is available alongside the instrument on the OPSI website.