Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2017 ISBN 978-0-11-116267-5*

Draft Regulations laid before Parliament under sections 159(3) and 161(4) of the Small Business, Enterprise and Employment Act 2015, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2017 No. 000

INSOLVENCY

The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2017

Made - - - - ***
Coming into force in accordance with regulation 1(2) and (3)

The Treasury make the following Regulations in exercise of the powers conferred by sections 159(1), (2) and (9) and 161(2) of the Small Business, Enterprise and Employment Act 2015(**1**).

A draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with sections 159(3) and 161(4) of the Small Business, Enterprise and Employment Act 2015.

PART 1

Introductory provision

Citation and commencement

1.—(1) These Regulations may be cited as the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2017.

(2) This Part and Part 5 of these Regulations come into force on the day after the day on which these Regulations are made.

(3) Parts 2, 3 and 4 of these Regulations come into force on the 21st day after the day on which these Regulations are made.

(**1**) 2015 c. 26. Section 161(6) of the Act provides that any provision that may be included in an instrument under the Act subject to negative resolution procedure may be made by regulations subject to affirmative resolution procedure.

PART 2

Consequential amendments of primary legislation

The Building Societies Act 1986

2.—(1) The Building Societies Act 1986(**2**) is amended as follows.

(2) In Schedule 15 (application of companies winding up legislation to building societies), in Part 2 (modified application of Insolvency Act 1986 Parts 4, 12 and 13)(**3**)—

(a) in the heading after "IV," insert "6, 7," and at the end insert "and Schedule 10"; and

(b) after paragraph 6 insert—

"**6ZA.** Parts 4, 6, 7 and 12 of, and Schedule 10 to, the Act, in their application to building societies, have effect without the amendments of those Parts and that Schedule made by—

(a) section 122 of the Small Business, Enterprise and Employment Act 2015 (abolition of requirements to hold meetings: company insolvency);

(b) section 124 of that Act (ability for creditors to opt not to receive certain notices: company insolvency); and

(c) Part 1 of Schedule 9 to that Act (sections 122 to 125: further amendments).".

(3) In Schedule 15A (application of other companies insolvency legislation to building societies), in Part 2 (modified application of Parts 1 to 3 and 13 of Insolvency Act 1986)(**4**)—

(a) in the heading for "and 13" substitute ", 6, 7, 12 and 13"; and

(b) after paragraph 6 insert—

"**6A.** Parts 1, 3, 6, 7 and 12 of the Act, in their application to building societies, have effect without the amendments of those Parts made by—

(a) section 122 of the Small Business, Enterprise and Employment Act 2015 (abolition of requirements to hold meetings: company insolvency);

(b) section 124 of that Act (ability for creditors to opt not to receive certain notices: company insolvency); and

(c) Part 1 of Schedule 9 to that Act (sections 122 to 125: further amendments).".

The Companies Act 1989

3.—(1) Part 7 of the Companies Act 1989(**5**) (financial markets and insolvency) is amended as follows.

(2) In section 159 (proceedings of exchange or clearing house take precedence over insolvency procedures)—

(a) in subsection (4A)(**6**)—

(i) after "default proceedings—" insert—

"(za) where, in England and Wales, it appears to the relevant office-holder that a sum will be certified under section 162(1) to be payable,

(**2**) 1986 c. 53.
(**3**) The heading was amended by S.I 2017/400.
(**4**) Schedule 15A (with section 90A) was inserted by the Building Societies Act 1997 (c. 32), section 39 and Schedule 6. The heading was amended by S.I 2016/679 and 2017/400.
(**5**) 1989 c. 40.
(**6**) Subsection (4A) was inserted by S.I. 1991/880 and amended by S.I. 2009/853.

subsection (4) shall not prevent any proof or claim including or consisting of an estimate of that sum which has been lodged from being admitted for the purpose only of determining the entitlement of a creditor to participate in a qualifying decision procedure by which a decision about any matter is sought from the creditors;";

(ii) in paragraph (a)—

(aa) after "where" insert ", in Scotland,";

(bb) for "lodged or, in Scotland, submitted, from being admitted or, in Scotland, accepted," substitute "submitted from being accepted";

(iii) after paragraph (a) omit "and" and insert—

"(aa) in England and Wales, a creditor whose claim or proof has been lodged and admitted for the purpose of determining the entitlement of a creditor to participate in a qualifying decision procedure and which has not been subsequently wholly withdrawn, disallowed or rejected, is eligible as a creditor to be a member of a liquidation committee or, in bankruptcy proceedings or the administration of a company or other body, a creditors' committee;";

(iv) in paragraph (b)—

(aa) at the beginning insert "in Scotland,";

(bb) for "lodged and admitted or, in Scotland, submitted and accepted," substitute "submitted and accepted";

(cc) for the words from "bankruptcy proceedings" to "other body" substitute "the administration of a company or other body,"; and

(b) after subsection (4A) insert—

"(4B) In subsection (4A) "qualifying decision procedure" has the meaning given by section 246ZE(11) of the Insolvency Act 1986(**7**).".

(3) In section 163 (net sum payable on completion of default proceedings), in subsection (4)(**8**)—

(a) after paragraph (a) insert—

"(aa) in Scotland, that a meeting of creditors had been summoned under section 98 of the Insolvency Act 1986, or, in England and Wales, that a statement as to the affairs of the defaulter had been sent to the defaulter's creditors under section 99(1) of that Act(**9**),"; and

(b) in paragraph (b) omit the words from "that a meeting" to "Insolvency Act 1986 or".

The Friendly Societies Act 1992

4. In Schedule 10 to the Friendly Societies Act 1992(**10**) (application of companies winding up legislation to incorporated friendly societies), in Part 2 (modified application of Insolvency Act 1986 Parts 4, 12 and 13)(**11**)—

(a) in the heading after "IV," insert "6, 7," and at the end insert "and Schedule 10"; and

(b) after paragraph 6 insert—

(**7**) 1986 c. 45. Section 246ZE was inserted by the Small Business, Enterprise and Employment Act 2015, section 122(1) and (2).
(**8**) Subsection (4) was amended by S.I. 2009/853 and 2016/481.
(**9**) Section 99(1) was substituted by the Small Business, Enterprise and Employment Act 2015, section 126 and Schedule 9, paragraphs 1 and 23.
(**10**) 1992 c.40.
(**11**) The heading was amended by S.I 2017/400.

"**6A.** Parts 4, 6, 7 and 12 of, and Schedule 10 to, the Act, in their application to incorporated friendly societies, have effect without the amendments of those Parts and that Schedule made by—

(a) section 122 of the Small Business, Enterprise and Employment Act 2015 (abolition of requirements to hold meetings: company insolvency);

(b) section 124 of that Act (ability for creditors to opt not to receive certain notices: company insolvency); and

(b) Part 1 of Schedule 9 to that Act (sections 122 to 125: further amendments).".

The Financial Services and Markets Act 2000

5.—(1) The Financial Services and Markets Act 2000(**12**) is amended as follows.

(2) In section 355 (interpretation of Part 24 (insolvency)), in subsection (1)—

(a) after the definition of "court" insert—

""creditors' decision procedure" has the meaning given by section 379ZA(11)(**13**) of the 1986 Act;"; and

(b) at the end insert—

""qualifying decision procedure" has the meaning given by section 246ZE(11) of the 1986 Act.".

(3) In section 357(**14**) (powers of FCA and PRA to participate in proceedings: individual voluntary arrangements)—

(a) in subsection (2) for "(3)" substitute "(2A)";

(b) after subsection (2) insert—

"(2A) Where under section 257 of the 1986 Act the individual's creditors are asked to decide whether to approve the proposed voluntary arrangement—

(a) notice of the creditors' decision procedure must be given to the appropriate regulator; and

(b) the appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) the creditors' decision procedure by which the decision is made(**15**).

(2B) Notice of the decision made by the creditors' decision procedure is to be given to the appropriate regulator by the nominee or the nominee's replacement under section 256(3) or 256A(4) of the 1986 Act.";

(c) in subsection (3) for "section 257 of the 1986 Act (or Article 231 of the 1989 Order)" substitute "Article 231 of the 1989 Order"; and

(d) in subsection (7) for paragraph (a) substitute—

"(a) in the case of a PRA-authorised person, each of the FCA and the PRA, except that the references in subsections (2A)(b) and (3) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;".

(**12**) 2000 c. 8.
(**13**) Section 379ZA was inserted by the Small Business, Enterprise and Employment Act 2015, section 123(1) and (2).
(**14**) Section 357 was amended by the Financial Services Act 2012 (c. 21), Schedule 14, paragraphs 1 and 4.
(**15**) Part 15 of the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024) contains common rules about decision making for company and personal insolvency proceedings.

(4) In section 362(**16**) (powers of FCA and PRA to participate in proceedings: administration)—

(a) after subsection (5) insert—

"(5A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a qualifying decision procedure by which a decision about any matter is sought from the creditors of the company or partnership."; and

(b) for subsection (7) substitute—

"(7) "The appropriate regulator" means—

(a) where the company or partnership is a PRA-regulated person, each of the FCA and the PRA, except that the references in subsections (5) and (5A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;

(b) in any other case, the FCA.".

(5) In section 365(**17**) (powers of FCA and PRA to participate in proceedings: voluntary winding up)—

(a) after subsection (5) insert—

"(5A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a qualifying decision procedure by which a decision about any matter is sought from the creditors of the company."; and

(b) for subsection (8) substitute—

"(8) "The appropriate regulator" means—

(a) where the company is a PRA-authorised person, each of the FCA and the PRA, except that the references in subsections (5) and (5A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;

(b) in any other case, the FCA.".

(6) In section 371(**18**) (powers of FCA and PRA to participate in proceedings: winding up by the court)—

(a) after subsection (4) insert—

"(4A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a qualifying decision procedure by which a decision about any matter is sought from the creditors of the body."; and

(b) for subsection (6) substitute—

"(6) "The appropriate regulator" means—

(a) where the body is a PRA-regulated person, each of the FCA and the PRA, except that the references in subsections (4) and (4A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;

(b) in any other case, the FCA.".

(7) In section 374(**19**) (powers of FCA and PRA to participate in proceedings: bankruptcy)—

(a) after subsection (4) insert—

(**16**) Section 362 was amended by the Financial Services Act 2012, Schedule 14, paragraphs 1 and 8(1), (4), (5) and (6), and by the Enterprise Act 2002 (c. 40), Schedule 17, paragraph 57(d). There are other amendments, but they are not relevant.
(**17**) Section 365 was amended by the Financial Services Act 2012, Schedule 14, paragraphs 1 and 12, and by S.I. 2008/948.
(**18**) Section 371 was amended by the Financial Services Act 2012, Schedule 14, paragraphs 1 and 19, and by S.I. 2008/948.
(**19**) Section 374 was amended by the Financial Services Act 2012, Schedule 14, paragraphs 1 and 22, and by S.I. 2016/481.