Draft Order laid before Parliament under section 14(1) of the Legislative and Regulatory Reform Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No.

REGULATORY REFORM

INSOLVENCY

THE LEGISLATIVE REFORM (INSOLVENCY) (MISCELLANEOUS PROVISIONS) ORDER 2009

Made - - - -	***
Coming into force - -	*6th April 2010*

The Secretary of State for Business, Enterprise and Regulatory Reform makes the following Order, in exercise of the powers conferred by section 1 of the Legislative and Regulatory Reform Act 2006(**1**).

For the purposes of section 3(1) of that Act, he considers that the conditions in section 3(2) are satisfied, where relevant.

He has consulted in accordance with section 13(1) and (2) of that Act.

He laid a draft Order and an explanatory document before Parliament in accordance with section 14(1) of that Act.

Pursuant to section 15 of that Act, the super-affirmative resolution procedure (within the meaning of Part 1 of that Act) applies in relation to the making of the Order.

The period of 60 days referred to in section 18(2) of that Act has expired.

In accordance with section 18(4) of that Act, the draft Order has been approved by resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009 and comes into force on 6th April 2010.

(2) Subject to paragraph (3), this Order extends to England and Wales and to Scotland.

(3) Articles 3(2), 5(7), 7, 8, 9, 10(2) and 11 do not extend to Scotland.

(**1**) 2006 c.51; section 13(1) has been amended by the Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1338), Schedule 1, paragraph 147; see section 32 for the definition of "Minister of the Crown".

Amendments to the Insolvency Act 1986

2. The Insolvency Act 1986(**2**) is amended as specified in articles 3 to 11 of this Order.

Provisions relating to communication

Attendance at meetings and use of websites

3.—(1) After section 246 insert—

"Remote attendance at meetings

Remote attendance at meetings

246A.—(1) Subject to subsection (2), this section applies to—

(a) any meeting of the creditors of a company summoned under this Act or the rules, or

(b) any meeting of the members or contributories of a company summoned by the office-holder under this Act or the rules, other than a meeting of the members of a company in a members' voluntary winding up.

(2) This section does not apply where—

(a) a company is being wound up in Scotland, or

(b) a receiver is appointed under section 51 in Chapter 2 of Part 3.

(3) Where the person summoning a meeting ("the convener") considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(4) Where a meeting is conducted and held in the manner referred to in subsection (3), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(5) For the purposes of this section—

(a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(b) a person is able to exercise the right to vote at a meeting when—

(i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(6) The convener of a meeting which is to be conducted and held in the manner referred to in subsection (3) shall make whatever arrangements the convener considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote, and

(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(7) Where in the reasonable opinion of the convener—

(a) a meeting will be attended by persons who will not be present together at the same place, and

(**2**) 1986 c. 45.

(b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under this Act or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(8) In making the arrangements referred to in subsection (6) and in forming the opinion referred to in subsection (7)(b), the convener must have regard to the legitimate interests of the creditors, members or contributories and others attending the meeting in the efficient despatch of the business of the meeting.

(9) If—

(a) the notice of a meeting does not specify a place for the meeting,

(b) the convener is requested in accordance with the rules to specify a place for the meeting, and

(c) that request is made—

(i) in the case of a meeting of creditors or contributories, by not less than ten percent in value of the creditors or contributories, or

(ii) in the case of a meeting of members, by members representing not less than ten percent of the total voting rights of all the members having at the date of the request a right to vote at the meeting,

it shall be the duty of the convener to specify a place for the meeting.

(10) In this section, "the office-holder", in relation to a company, means—

(a) its liquidator, provisional liquidator, administrator, or administrative receiver, or

(b) where a voluntary arrangement in relation to the company is proposed or has taken effect under Part 1, the nominee or the supervisor of the voluntary arrangement.

Use of websites

Use of websites

246B.—(1) Subject to subsection (2), where any provision of this Act or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—

(a) in accordance with the rules, and

(b) in such circumstances as may be prescribed.

(2) This section does not apply where—

(a) a company is being wound up in Scotland, or

(b) a receiver is appointed under section 51 in Chapter 2 of Part 3.

(3) In this section, "the office-holder" means—

(a) the liquidator, provisional liquidator, administrator, or administrative receiver of a company, or

(b) where a voluntary arrangement in relation to a company is proposed or has taken effect under Part 1, the nominee or the supervisor of the voluntary arrangement.".

(2) After section 379 insert—

"Remote attendance at meetings

Remote attendance at meetings

379A.—(1) Where—

(a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or

(b) a voluntary arrangement in relation to an individual is proposed or is approved under Part 8,

this section applies to any meeting of the individual's creditors summoned under this Act or the rules.

(2) Where the person summoning a meeting ("the convener") considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in subsection (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this section—

(a) a person exercises the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(b) a person exercises the right to vote at a meeting when—

(i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(5) The convener of a meeting which is to be conducted and held in the manner referred to in subsection (2) may make whatever arrangements the convener considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote, and

(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the convener—

(a) a meeting will be attended by persons who will not be present together at the same place, and

(b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under this Act or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in subsection (5) and in forming the opinion referred to in subsection (6)(b), the convener must have regard to the legitimate interests of the creditors and others attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

(a) the notice of a meeting does not specify a place for the meeting,

(b) the convener is requested in accordance with the rules to specify a place for the meeting, and

(c) that request is made by not less than ten percent in value of the creditors,

it shall be the duty of the convener to specify a place for the meeting.

Use of websites

Use of websites

379B.—(1) This section applies where—

(a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or

(b) a voluntary arrangement in relation to an individual is proposed or is approved under Part 8,

and "the office-holder" means the official receiver, the trustee in bankruptcy, the interim receiver, the nominee or the supervisor of the voluntary arrangement, as the case may be.

(2) Where any provision of this Act or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—

(a) in accordance with the rules, and

(b) in such circumstances as may be prescribed.".

References to things in writing

4.—(1) After section 436A (proceedings under EC Regulation: modified definition of property)(**3**) insert—

"**References to things in writing**

436B.—(1) A reference in this Act to a thing in writing includes that thing in electronic form.

(2) Subsection (1) does not apply to the following provisions—

(a) section 53 (mode of appointment by holder of charge),

(b) section 67(2) (report by receiver),

(c) section 70(4) (reference to instrument creating a charge),

(d) section 111(2) (dissent from arrangement under s. 110),

(e) in the case of a winding up of a company registered in Scotland, section 111(4),

(f) section 123(1) (definition of inability to pay debts),

(g) section 198(3) (duties of sheriff principal as regards examination),

(h) section 222(1) (inability to pay debts: unpaid creditor for £750 or more), and

(i) section 223 (inability to pay debts: debt remaining unsatisfied after action brought).".

(2) Paragraph 111(2) of Schedule B1(**4**) is repealed.

(**3**) Section 436A was inserted by the Insolvency Act 1986 (Amendment)(No 2) Regulations 2002 (S.I. 2002/1240).
(**4**) Schedule B1 was inserted by the Enterprise Act 2002 (c. 40), section 248 and Schedule 16.