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

2008 No.

INSOLVENCY

REGULATORY REFORM

The Legislative Reform (Insolvency) (Individual Voluntary Arrangements) Order 2008

Made - - - -	*... 2009*
Coming into force - -	*6th April 2009*

The Secretary of State for Business, Enterprise and Regulatory Reform, in exercise of the powers conferred by section 1(1) and (8) of the Legislative and Regulatory Reform Act 2006(**1**), makes the following Order:

For the purposes of section 3(1) of the Legislative and Regulatory Reform Act 2006, he considers, where relevant, that the conditions under section 3(2) are satisfied.

He has consulted in accordance with section 13(1) and (3) 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 affirmative resolution procedure (within the meaning of Part 1 of that Act) applies in relation to the making of the Order.

In accordance with section 17(2) of that Act, the draft has been approved by resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Legislative Reform (Insolvency) (Individual Voluntary Arrangements) Order 2008 and shall come into force on 6th April 2009.

(2) In this Order, "the Act" means the Insolvency Act 1986(**2**).

(**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; section 32 defines "Minister of the Crown".

(**2**) 1986 c. 45; section 256A was inserted by the Insolvency Act 2000 (c.23), Schedule 3, paragraphs 1 and 7; section 257(1) has been amended by paragraphs 1 and 8 of that Schedule; sections 263A to 263F were inserted by the Enterprise Act 2002 (c.40), Schedule 22, paragraph 2; section 389A was inserted by the Insolvency Act 2000 (c.23), section 4(1) and (4).

(3) The provisions of this Order do not extend to Northern Ireland and except as provided for by paragraph (4), do not extend to Scotland.

(4) Article 6, which amends section 389A of the Act, extends to Scotland.

Amendments to Part 8 of the Insolvency Act 1986

2. Part 8 of the Act (insolvency of individuals) is amended as set out in articles 3 and 4.

Individual voluntary arrangements – removal of requirement to report to court

3.—(1) In section 256A (debtor's proposal and nominee's report)—

(a) in subsection (2), for the words "to the court", substitute "under subsection (3)";

(b) in subsection (3), for the words "report to the court" substitute "report to the debtor's creditors".

(2) In section 257 (summoning of creditors' meeting), for subsection (1) substitute—

"(1) Where it has been reported to the court under section 256 or to the debtor's creditors under section 256A that a meeting of debtor's creditors should be summoned, the nominee (or his replacement under section 256(3) or 256A(4)) shall summon that meeting for the time, date and place proposed in his report unless, in the case of a report to which section 256 applies, the court otherwise directs.".

(3) In section 259 (report of decisions to court)—

(a) for subsection (1) substitute—

"(1) After the conclusion in accordance with the rules of the meeting summoned under section 257, the chairman of the meeting shall—

(a) give notice of the result of the meeting to such persons as may be prescribed, and

(b) where the meeting was summoned under section 257 pursuant to a report to the court under section 256(1)(aa)), report the result of it to the court.";

(b) in subsection (2), for the words "debtor's proposal" substitute "voluntary arrangement proposed under section 256".

Fast-track voluntary arrangement – extension of availability

4.—(1) For section 263A (availability), substitute the following—

"**Availability**

263A.—(1) Section 263B applies where—

(a) an individual debtor intends to make a proposal to his creditors for a voluntary arrangement,

(b) no interim order is applied for under section 253, and

(c) the circumstances in subsection (2) or (3) apply.

(2) The circumstances in this subsection are—

(a) the debtor is an undischarged bankrupt, and

(b) the official receiver is specified in the proposal as the nominee in relation to the voluntary arrangement.

(3) The circumstances in this subsection are—

(a) the debtor is an undischarged bankrupt or is able to petition for his own bankruptcy,

(b) a nominee other than the official receiver is specified in the proposal as the nominee in relation to the voluntary arrangement,

(c) the aggregate amount of the debtor's debts so far as unsecured (including any unsecured shortfall due to secured creditors) does not exceed the maximum amount,

(d) neither the existence nor the amount of any one of the debtor's unsecured debts is disputed by him, and

(e) if at any time during the period of six years ending with the day before the day upon which the debtor submits his proposal to the nominee a voluntary arrangement having effect by virtue of section 263D(2) has been in force for the debtor, that arrangement was fully implemented before the expiry of that period in respect of all the persons bound by it.

(4) The "maximum amount" for the purposes of this section is £75,000.

(5) The Secretary of State may by order made by statutory instrument amend subsection (4) so as to substitute a different sum for the sum for the time being specified there.

(6) An instrument containing an order under subsection (5) may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.".

(2) In section 263B (decision)—

(a) in subsections (1), (2), (4) and (5), for all references to "official receiver", substitute "nominee";

(b) for subsection (3) substitute—

"(3) For the purposes of subsection (2), a person is a "creditor" only if—

(a) the nominee is aware of his claim and his address, and

(b) where the debtor is an undischarged bankrupt, the person is a creditor of the debtor in respect of a bankruptcy debt.";

(c) after subsection (5) insert—

"(6) In respect of a nominee other than the official receiver, the court may—

(a) on an application made by the debtor in a case where the nominee has failed to make the arrangements required by this section or has died, or

(b) on an application made by the debtor or the nominee where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.".

(3) In section 263C (result), for "the official receiver shall report to the court" substitute "the nominee shall notify the Secretary of State".

(4) In section 263D (approval of voluntary arrangement)—

(a) in subsection (1), for "the official receiver reports to the court" substitute "the nominee notifies the Secretary of State";

(b) for subsection (3) substitute—

"(3) Where the debtor is an undischarged bankrupt, the court shall annul the bankruptcy order in respect of the debtor on an application made—

(a) where the official receiver is the nominee, by the official receiver;

(b) where the official receiver is not the nominee—

(i) by the bankrupt, or

(ii) where the bankrupt has not made an application within the period prescribed for the purposes of section 261(2)(b), by the official receiver.".

(5) In section 263E (implementation), after the word "meeting" insert "(for which purpose, the reference in subsection (2) of section 263 to section 256(3), 256A(4) or 258(3), shall be read as a reference to section 263B(6))".

(6) In section 263F (revocation)—

(a) in subsection (2), for paragraphs (c) and (d) substitute—

"(c) where the official receiver is not the nominee in respect of the arrangements made under section 263B(2), the nominee or his replacement under section 263B(6), or

(d) where the official receiver is the nominee in respect of the arrangements made under section 263B(2)—

(i) the trustee of the bankrupt's estate, or

(ii) the official receiver.";

(b) for subsection (3) substitute—

"(3) An application under subsection (2) may not be made after the end of the period of 28 days beginning with the date on which the nominee notifies the Secretary of State under section 263C.".

Transitional provisions relating to amendments to Part 8 of the Insolvency Act 1986

5.—(1) In this article—

"a proposal for a voluntary arrangement" means a proposal under Part 8 of the Act, by a debtor to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs;

"former provisions" means the provisions of the Act as they were prior to the amendments made by this Order.

(2) Where a proposal for a voluntary arrangement is made to a nominee under section 256A of the Act prior to the day on which this Order comes into force, the former provisions relevant to a proposal under that section shall continue to apply to it.

Amendments to Part 13 of the Insolvency Act 1986

6.—(1) Section 389A (authorisation of nominees and supervisors) of the Act is amended as follows.

(2) For subsections (1) and (2) substitute—

"(1) Section 389 does not apply—

(a) to a person acting as nominee or supervisor in relation to a voluntary arrangement proposed or approved under Part 1, if he is authorised so to act under this section;

(b) to a person acting as nominee or supervisor in relation to a voluntary arrangement proposed or approved under Part 8, if he is authorised so to act under this section.