

SCHEDULE 4

Article 8

PROVISIONS OF THE ACT WHICH APPLY WITH MODIFICATIONS
FOR THE PURPOSES OF ARTICLE 8 TO WINDING UP OF INSOLVENT
PARTNERSHIP ON CREDITOR'S PETITION WHERE CONCURRENT
PETITIONS ARE PRESENTED AGAINST ONE OR MORE MEMBERS

PART I

MODIFIED PROVISIONS OF PART V OF THE ACT

1.—(1) Sections 220 to 222 of the Act are set out as modified in Part I of this Schedule, and the provisions of the Act specified in sub-paragraph (2) below are set out as modified in Part II.

(2) The provisions referred to in sub-paragraph (1) are sections 117, 122 to 125, 131, 133, 136, 137, 139 to 141, 143, 146, 147, 168, 172, 174, 175, 189, 211, 230, 231, 234, 264, 265, 267, 268, 271, 283, 284, 288, 292 to 296, 298 to 303, 305, 314, 328, 331 and 356, and Schedule 4.

Section 220: Meaning of “unregistered company”

2. Section 220 is modified so as to read as follows—

“220. For the purposes of this Part, the expression “unregistered company” includes any insolvent partnership.”.

Section 221: Winding up of unregistered companies

3. Section 221 is modified so as to read as follows—

“221.—(1) Subject to subsections (2) and (3) below and to the provisions of this Part, any insolvent partnership may be wound up under this Act if it has, or at any time had, in England and Wales either—

- (a) a principal place of business, or
- (b) a place of business at which business is or has been carried on in the course of which the debt (or part of the debt) arose which forms the basis of the petition for winding up the partnership.

(2) Subject to subsection (3) below, an insolvent partnership shall not be wound up under this Act if the business of the partnership has not been carried on in England and Wales at any time in the period of 3 years ending with the day on which the winding-up petition is presented.

(3) If an insolvent partnership has a principal place of business situated in Scotland or in Northern Ireland, the court shall not have jurisdiction to wind up the partnership unless it had a principal place of business in England and Wales—

- (a) in the case of a partnership with a principal place of business in Scotland, at any time in the period of 1 year, or
- (b) in the case of a partnership with a principal place of business in Northern Ireland at any time in the period of 3 years,

ending with the day on which the winding-up petition is presented.

(4) No insolvent partnership shall be wound up under this Act voluntarily.

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(5) To the extent that they are applicable to the winding up of a company by the court in England and Wales on a creditor's petition, all the provisions of this Act and the Companies Act about winding up apply to the winding up of an insolvent partnership as an unregistered company—

- (a) with the exceptions and additions mentioned in the following subsections of this section, and
- (b) with the modifications specified in Part II of Schedule 4 to the Insolvent Partnerships Order 1994.

(6) Sections 73(1), 74(2)(a) to (d) and (3), 75 to 78, 83, 154, 202, 203, 205 and 250 shall not apply.

(7) Unless the contrary intention appears, a member of a partnership against whom a insolvency order has been made by virtue of article 8 of the Insolvent Partnerships Order 1994 shall not be treated as a contributory for the purposes of this Act.

(8) The circumstance in which an insolvent partnership may be wound up as an unregistered company is that the partnership is unable to pay its debts.

(9) Every petition for the winding up of an insolvent partnership under Part V of this Act shall be verified by affidavit in Form 2 in Schedule 9 to the Insolvent Partnerships Order 1994.”.

Section 222: Inability to pay debts: unpaid creditor for £750 or more

4. Section 222 is modified so as to read as follows—

“**222.**—(1) An insolvent partnership is deemed (for the purposes of section 221) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the partnership is indebted in a sum exceeding £750 then due and—

- (a) the creditor has served on the partnership, in the manner specified in subsection (2) below, a written demand in Form 4 in Schedule 9 to the Insolvent Partnerships Order 1994 requiring the partnership to pay the sum so due,
- (b) the creditor has also served on any one or more members or former members of the partnership liable to pay the sum due (in the case of a corporate member by leaving it at its registered office and in the case of an individual member by serving it in accordance with the rules) a demand in Form 4 in Schedule 9 to that Order, requiring that member or those members to pay the sum so due, and
- (c) the partnership and its members have for 3 weeks after the service of the demands, or the service of the last of them if served at different times, neglected to pay the sum or to secure or compound for it to the creditor's satisfaction.

(2) Service of the demand referred to in subsection (1)(a) shall be effected—

- (a) by leaving it at a principal place of business of the partnership in England and Wales, or
- (b) by leaving it at a place of business of the partnership in England and Wales at which business is carried on in the course of which the debt (or part of the debt) referred to in subsection (1) arose, or
- (c) by delivering it to an officer of the partnership, or
- (d) by otherwise serving it in such manner as the court may approve or direct.

(3) The money sum for the time being specified in subsection (1) is subject to increase or reduction by regulations under section 417 in Part XV; but no increase in the sum so

specified affects any case in which the winding-up petition was presented before the coming into force of the increase.”.

PART II

OTHER MODIFIED PROVISIONS OF THE ACT ABOUT WINDING UP BY THE COURT AND BANKRUPTCY OF INDIVIDUALS

Sections 117 and 265: High Court and county court jurisdiction

5. Sections 117 and 265 are modified so as to read as follows—

“117.—(1) Subject to the provisions of this section, the High Court has jurisdiction to wind up any insolvent partnership as an unregistered company by virtue of article 8 of the Insolvent Partnerships Order 1994 if the partnership has, or at any time had, in England and Wales either—

- (a) a principal place of business, or
- (b) a place of business at which business is or has been carried on in the course of which the debt (or part of the debt) arose which forms the basis of the petition for winding up the partnership.

(2) Subject to subsections (3) and (4) below, a petition for the winding up of an insolvent partnership by virtue of the said article 8 may be presented to a county court in England and Wales if the partnership has, or at any time had, within the insolvency district of that court either—

- (a) a principal place of business, or
- (b) a place of business at which business is or has been carried on in the course of which the debt (or part of the debt) arose which forms the basis of the winding-up petition

(3) Subject to subsection (4) below, the court only has jurisdiction to wind up an insolvent partnership if the business of the partnership has been carried on in England and Wales at any time in the period of 3 years ending with the day on which the petition for winding it up is presented.

(4) If an insolvent partnership has a principal place of business situated in Scotland or in Northern Ireland, the court shall not have jurisdiction to wind up the partnership unless it had a principal place of business in England and Wales—

- (a) in the case of a partnership with a principal place of business in Scotland, at any time in the period of 1 year, or
- (b) in the case of a partnership with a principal place of business in Northern Ireland at any time in the period of 3 years,

ending with the day on which the petition for winding it up is presented.

(5) Subject to subsection (6) below, the court has jurisdiction to wind up a corporate member or former corporate member, or make a bankruptcy order against an individual member or former individual member, of a partnership against which a petition has been presented by virtue of article 8 of the Insolvent Partnerships Order 1994 if it has jurisdiction in respect of the partnership.

(6) Petitions by virtue of the said article 8 for the winding up of an insolvent partnership and the bankruptcy of one or more members or former members of that partnership may not be presented to a district registry of the High Court.

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(7) The Lord Chancellor may by order in a statutory instrument exclude a county court from having winding-up jurisdiction, and for the purposes of that jurisdiction may attach its district, or any part thereof, to any other county court, and may by statutory instrument revoke or vary any such order.

In exercising the powers of this section, the Lord Chancellor shall provide that a county court is not to have winding-up jurisdiction unless it has for the time being jurisdiction for the purposes of Parts VIII to XI of this Act (individual insolvency).

(8) Every court in England and Wales having winding-up jurisdiction has for the purposes of that jurisdiction all the powers of the High Court; and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of a judge of that court or otherwise in relation to winding up.”.

Circumstances in which members of insolvent partnerships may be wound up or made bankrupt by the court: Section 122 corporate member Section 267 individual member

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(a) Section 122 is modified so as to read as follows—

“122. A corporate member or former corporate member may be wound up by the court if it is unable to pay its debts.”.

(b) Section 267 is modified so as to read as follows—

“267.—(1) Where a petition for the winding up of an insolvent partnership has been presented to the court by virtue of article 8 of the Insolvent Partnerships Order 1994, a creditor’s petition against any individual member or former individual member of that partnership by virtue of that article must be in respect of one or more joint debts owed by the insolvent partnership, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.

(2) Subject to section 268, a creditor’s petition may be presented to the court in respect of a joint debt or debts only if, at the time the petition is presented—

- (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceed the bankruptcy level,
- (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, immediately, and is unsecured,
- (c) the debt, or each of the debts, is a debt for which the individual member or former member is liable and which he appears to be unable to pay, and
- (d) there is no outstanding application to set aside a statutory demand served (under section 268 below) in respect of the debt or any of the debts.

(3) “The bankruptcy level” is £750; but the Secretary of State may by order in a statutory instrument substitute any amount specified in the order for that amount or (as the case may be) for the amount which by virtue of such an order is for the time being the amount of the bankruptcy level.

(4) An order shall not be made under subsection (3) unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.”.

Definition of inability to pay debts: Section 123-corporate member Section 268 individual member

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(a) Section 123 is modified so as to read as follows—

“**123.**—(1) A corporate member or former member is deemed unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the partnership is indebted in a sum exceeding £750 then due for which the member or former member is liable and—

- (a) the creditor has served on that member or former member and the partnership, in the manner specified in subsection (2) below, a written demand in Form 4 in Schedule 9 to the Insolvent Partnerships Order 1994 requiring that member or former member and the partnership to pay the sum so due, and
- (b) the corporate member or former member and the partnership have for 3 weeks after the service of the demands, or the service of the last of them if served at different times neglected to pay the sum or to secure or compound for it to the creditor’s satisfaction

(2) Service of the demand referred to in subsection (1)(a) shall be effected, in the case of the corporate member or former corporate member, by leaving it at its registered office, and, in the case of the partnership—

- (a) by leaving it at a principal place of business of the partnership in England and Wales, or
- (b) by leaving it at a place of business of the partnership in England and Wales at which business is carried on in the course of which the debt (or part of the debt) referred to in subsection (1) arose, or
- (c) by delivering it to an officer of the partnership, or
- (d) by otherwise serving it in such manner as the court may approve or direct.

(3) The money sum for the time being specified in subsection (1) is subject to increase or reduction by order under section 416 in Part XV.”.

(b) Section 268 is modified so as to read as follows—

“**268.**—(1) For the purposes of section 267(2)(c), an individual member or former individual member appears to be unable to pay a joint debt for which he is liable if the debt is payable immediately and the petitioning creditor to whom the insolvent partnership owes the joint debt has served—

- (a) on the individual member or former individual member in accordance with the rules a demand (known as “the statutory demand”), in Form 4 in Schedule 9 to the Insolvent Partnerships Order 1994, and
- (b) on the partnership in the manner specified in subsection (2) below a demand (known as “the written demand”) in the same form,

requiring the member or former member and the partnership to pay the debt or to secure or compound for it to the creditor’s satisfaction, and at least 3 weeks have elapsed since the service of the demands, or the service of the last of them if served at different times, and neither demand has been complied with nor the demand against the member set aside in accordance with the rules.

(2) Service of the demand referred to in subsection (1)(b) shall be effected—

- (a) by leaving it at a principal place of business of the partnership in England and Wales, or
- (b) by leaving it at a place of business of the partnership in England and Wales at which business is carried on in the course of which the debt (or part of the debt) referred to in subsection (1) arose, or

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- (c) by delivering it to an officer of the partnership, or
- (d) by otherwise serving it in such manner as the court may approve or direct.”.

Sections 124 and 264: Applications to wind up insolvent partnership and to wind up or bankrupt insolvent member

8. Sections 124 and 264 are modified so as to read as follows—

“**124.**—(1) An application to the court by virtue of article 8 of the Insolvent Partnerships Order 1994 for the winding up of an insolvent partnership as an unregistered company and the winding up or bankruptcy (as the case may be) of at least one of its members or former members shall—

- (a) in the case of the partnership, be by petition in Form 5 in Schedule 9 to that Order,
- (b) in the case of a corporate member or former corporate member, be by petition in Form 6 in that Schedule, and
- (c) in the case of an individual member or former individual member, be by petition in Form 7 in that Schedule.

(2) Each of the petitions mentioned in subsection (1) may be presented by any creditor or creditors to whom the partnership and the member or former member in question is indebted in respect of a liquidated sum payable immediately.

(3) The petitions mentioned in subsection (1)—

- (a) shall all be presented to the same court and, except as the court otherwise permits or directs, on the same day, and
- (b) except in the case of the petition mentioned in subsection (1)(c), shall be advertised in Form 8 in the said Schedule 9.

(4) At any time after presentation of a petition under this section the petitioner may, with the leave of the court obtained on application and on such terms as it thinks just, add other members or former members of the partnership as parties to the proceedings in relation to the insolvent partnership.

(5) Each petition presented under this section shall contain particulars of other petitions being presented in relation to the partnership, identifying the partnership and members concerned.

(6) The hearing of the petition against the partnership fixed by the court shall be in advance of the hearing of any petition against an insolvent member.

(7) On the day appointed for the hearing of the petition against the partnership, the petitioner shall, before the commencement of the hearing, hand to the court Form 9 in Schedule 9 to the Insolvent Partnerships Order 1994, duly completed.

(8) Any member of the partnership or any person against whom a winding-up or bankruptcy petition has been presented in relation to the insolvent partnership is entitled to appear and to be heard on any petition for the winding up of the partnership.

(9) A petitioner under this section may at the hearing withdraw a petition if—

- (a) subject to subsection (10) below, he withdraws at the same time every other petition which he has presented under this section; and
- (b) he gives notice to the court at least 3 days before the date appointed for the hearing of the relevant petition of his intention to withdraw the petition.

(10) A petitioner need not comply with the provisions of subsection (9)(a) in the case of a petition against an insolvent member if the court is satisfied on application made to it

by the petitioner that, because of difficulties in serving the petition or for any other reason, the continuance of that petition would be likely to prejudice or delay the proceedings on the petition which he has presented against the partnership or on any petition which he has presented against any other insolvent member.

(11) Where notice is given under subsection (9)(b), the court may, on such terms as it thinks just, substitute as petitioner, both in respect of the partnership and in respect of each insolvent member against whom a petition has been presented, any creditor of the partnership who in its opinion would have a right to present the petitions, and if the court makes such a substitution the petitions in question will not be withdrawn.

(12) Reference in subsection (11) to substitution of a petitioner includes reference to change of carriage of the petition in accordance with the rules.”.

Sections 125 and 271: Powers of court on hearing of petitions against insolvent partnership and members

9. Sections 125 and 271 are modified so as to read as follows—

“**125.**—(1) Subject to the provisions of section 125A, on hearing a petition under section 124 against an insolvent partnership or any of its insolvent members, the court may dismiss it, or adjourn the hearing conditionally or unconditionally or make any other order that it thinks fit; but the court shall not refuse to make a winding-up order against the partnership or a corporate member on the ground only that the partnership property or (as the case may be) the member’s assets have been mortgaged to an amount equal to or in excess of that property or those assets, or that the partnership has no property or the member no assets.

(2) An order under subsection (1) in respect of an insolvent partnership may contain directions as to the future conduct of any insolvency proceedings in existence against any insolvent member in respect of whom an insolvency order has been made.

Hearing of petitions against members

125A.—(1) On the hearing of a petition against an insolvent member the petitioner shall draw the court’s attention to the result of the hearing of the winding-up petition against the partnership and the following subsections of this section shall apply.

(2) If the court has neither made a winding-up order, nor dismissed the winding-up petition, against the partnership the court may adjourn the hearing of the petition against the member until either event has occurred.

(3) Subject to subsection (4) below, if a winding-up order has been made against the partnership, the court may make a winding-up order against the corporate member in respect of which, or (as the case may be) a bankruptcy order against the individual member in respect of whom, the insolvency petition was presented.

(4) If no insolvency order is made under subsection (3) against any member within 2 days of the making of the winding-up order against the partnership, the proceedings against the partnership shall be conducted as if the winding-up petition against the partnership had been presented by virtue of article 7 of the Insolvent Partnerships Order 1994 and the proceedings against any member shall be conducted under this Act without the modifications made by that Order (other than the modifications made to sections 168 and 303 by article 14).

(5) If the court has dismissed the winding-up petition against the partnership, the court may dismiss the winding-up petition against the corporate member or (as the case may be) the bankruptcy petition against the individual member. However, if an insolvency order is made against a member, the proceedings against that member shall be conducted under this

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Act without the modifications made by the Insolvent Partnerships Order 1994 (other than the modifications made to sections 168 and 303 of this Act by article 14 of that Order).

(6) The court may dismiss a petition against an insolvent member if it considers it just to do so because of a change in circumstances since the making of the winding-up order against the partnership.

(7) The court may dismiss a petition against an insolvent member who is a limited partner, if—

- (a) the member lodges in court for the benefit of the creditors of the partnership sufficient money or security to the court’s satisfaction to meet his liability for the debts and obligations of the partnership; or
- (b) the member satisfies the court that he is no longer under any liability in respect of the debts and obligations of the partnership.

(8) Nothing in sections 125 and 125A or in sections 267 and 268 prejudices the power of the court, in accordance with the rules, to authorise a creditor’s petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of those sections had been done only by or in relation to the remaining creditors or debts.”.

Sections 131 and 288: Statements of affairs Insolvent partnerships; corporate members; individual members

10. Sections 131 and 288 are modified so as to read as follows—

“131.—(1) This section applies where the court has, by virtue of article 8 of the Insolvent Partnerships Order 1994—

- (a) made a winding-up order or appointed a provisional liquidator in respect of an insolvent partnership, or
- (b) made a winding-up order or appointed a provisional liquidator in respect of any corporate member of that partnership, or
- (c) made a bankruptcy order in respect of any individual member of that partnership.

(2) The official receiver may require some or all of the persons mentioned in subsection (4) below to make out and submit to him a statement as to the affairs of the partnership or member in the prescribed form.

(3) The statement shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the debts and liabilities of the partnership or of the member (as the case may be), and of the partnership property and member’s assets;
- (b) the names and addresses of the creditors of the partnership or of the member (as the case may be);
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed or as the official receiver may require.

(4) The persons referred to in subsection (2) are—

- (a) those who are or have been officers of the partnership;
- (b) those who are or have been officers of the corporate member;
- (c) those who have taken part in the formation of the partnership or of the corporate member at any time within one year before the relevant date;

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- (d) those who are in the employment of the partnership or of the corporate member, or have been in such employment within that year, and are in the official receiver's opinion capable of giving the information required;
- (e) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the partnership or an officer of the corporate member.

(5) Where any persons are required under this section to submit a statement of affairs to the official receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the official receiver.

(6) The official receiver, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under subsection (2) or (3) above; or
- (b) either when giving the notice mentioned in subsection (5) or subsequently, extend the period so mentioned;

and where the official receiver has refused to exercise a power conferred by this sub section, the court, if it thinks fit, may exercise it.

(7) In this section

“employment” includes employment under a contract for services; and

“the relevant date” means—

- (a) in a case where a provisional liquidator is appointed, the date of his appointment; and
- (b) in a case where no such appointment is made, the date of the winding-up order.

(8) Any person who without reasonable excuse fails to comply with any obligation imposed under this section (other than, in the case of an individual member, an obligation in respect of his own statement of affairs), is liable to a fine and, for continued contravention, to a daily default fine.

(9) An individual member who without reasonable excuse fails to comply with any obligation imposed under this section in respect of his own statement of affairs, is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).”.

Section 133: Public examination of officers of insolvent partnerships

11. Section 133 is modified so far as insolvent partnerships are concerned so as to read as follows—

“**133.**—(1) Where an insolvent partnership is being wound up by virtue of article 8 of the Insolvent Partnerships Order 1994, the official receiver may at any time before the winding up is complete apply to the court for the public examination of any person who—

- (a) is or has been an officer of the partnership; or
- (b) has acted as liquidator or administrator of the partnership or as receiver or manager or, in Scotland, receiver of its property;
- (c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the formation of the partnership.

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(2) Unless the court otherwise orders, the official receiver shall make an application under subsection (1) if he is requested in accordance with the rules to do so by one-half, in value, of the creditors of the partnership.

(3) On an application under subsection (1), the court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the court; and that person shall attend on that day and be publicly examined as to the formation or management of the partnership or as to the conduct of its business and affairs, or his conduct or dealings in relation to the partnership.

(4) The following may take part in the public examination of a person under this section and may question that person concerning the matters mentioned in subsection (3), namely—

- (a) the official receiver;
- (b) the liquidator of the partnership;
- (c) any person who has been appointed as special manager of the partnership's property or business;
- (d) any creditor of the partnership who has tendered a proof in the winding up.

(5) On an application under subsection (1), the court may direct that the public examination of any person under this section in relation to the affairs of an insolvent partnership be combined with the public examination of any person under this Act in relation to the affairs of a corporate member of that partnership against which, or an individual member of the partnership against whom, an insolvency order has been made.”.

Sections 136, 293 and 294: Functions of official receiver in relation to office of responsible insolvency practitioner

12. Sections 136, 293 and 294 are modified so as to read as follows—

“**136.**—(1) The following provisions of this section and of section 136A have effect, subject to section 140 below, where insolvency orders are made in respect of an insolvent partnership and one or more of its insolvent members by virtue of article 8 of the Insolvent Partnerships Order 1994.

(2) The official receiver, by virtue of his office, becomes the responsible insolvency practitioner of the partnership and of any insolvent member and continues in office until another person becomes responsible insolvency practitioner under the provisions of this Part.

(3) The official receiver is, by virtue of his office, the responsible insolvency practitioner of the partnership and of any insolvent member during any vacancy.

(4) At any time when he is the responsible insolvency practitioner of the insolvent partnership and of any insolvent member, the official receiver may summon a combined meeting of the creditors of the partnership and the creditors of such member, for the purpose of choosing a person to be responsible insolvency practitioner in place of the official receiver.

Duty of official receiver to summon meetings

136A.—(1) It is the duty of the official receiver—

- (a) as soon as practicable in the period of 12 weeks beginning with the day on which the insolvency order was made against the partnership, to decide whether to exercise his power under section 136(4) to summon a meeting, and

- (b) if in pursuance of paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the court and to the creditors of the partnership and the creditors of any insolvent member against whom an insolvency order has been made, and
- (c) (whether or not he has decided to exercise that power) to exercise his power to summon a meeting under section 136(4) if he is at any time requested to do so in accordance with the rules by one-quarter, in value, of either—
 - (i) the partnership’s creditors, or
 - (ii) the creditors of any insolvent member against whom an insolvency order has been made,

and accordingly, where the duty imposed by paragraph (c) arises before the official receiver has performed a duty imposed by paragraph (a) or (b), he is not required to perform the latter duty.

(2) A notice given under subsection (1)(b) to the creditors shall contain an explanation of the creditors' power under subsection (1)(c) to require the official receiver to summon a combined meeting of the creditors of the partnership and of any insolvent member.

(3) If the official receiver, in pursuance of subsection (1)(a), has decided to exercise his power under section 136(4) to summon a meeting, he shall hold that meeting in the period of 4 months beginning with the day on which the insolvency order was made against the partnership.

(4) If (whether or not he has decided to exercise that power) the official receiver is requested, in accordance with the provisions of subsection (1)(c), to exercise his power under section 136(4) to summon a meeting, he shall hold that meeting in accordance with the rules.

(5) Where a meeting of creditors of the partnership and of any insolvent member has been held under section 136(4), and an insolvency order is subsequently made against a further insolvent member by virtue of article 8 of the Insolvent Partnerships Order 1994—

- (a) any person chosen at that meeting to be responsible insolvency practitioner in place of the official receiver shall also be the responsible insolvency practitioner of the member against whom the subsequent order is made, and
- (b) subsection (1) of this section shall not apply.”.

Sections 137, 295, 296 and 300: Appointment of responsible insolvency practitioner by Secretary of State

13. Sections 137, 295, 296 and 300 are modified so as to read as follows—

“137.—(1) This section and the next apply where the court has made insolvency orders in respect of an insolvent partnership and one or more of its insolvent members by virtue of article 8 of the Insolvent Partnerships Order 1994.

(2) The official receiver may, at any time when he is the responsible insolvency practitioner of the partnership and of any insolvent member, apply to the Secretary of State for the appointment of a person as responsible insolvency practitioner of both the partnership and of such member in his place.

(3) If a meeting is held in pursuance of a decision under section 136A(1)(a), but no person is chosen to be responsible insolvency practitioner as a result of that meeting, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.

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Consequences of section 137 application

137A.—(1) On an application under section 137(2), or a reference made in pursuance of a decision under section 137(3), the Secretary of State shall either make an appointment to decline to make one.

(2) If on an application under section 137(2), or a reference made in pursuance of a decision under section 137(3), no appointment is made, the official receiver shall continue to be responsible insolvency practitioner of the partnership and its insolvent member or members, but without prejudice to his power to make a further application or reference.

(3) Where a responsible insolvency practitioner has been appointed by the Secretary of State under subsection (1) of this section, and an insolvency order is subsequently made against a further insolvent member by virtue of article 8 of the Insolvent Partnerships Order 1994, then the practitioner so appointed shall also be the responsible insolvency practitioner of the member against whom the subsequent order is made.

(4) Where a responsible insolvency practitioner has been appointed by the Secretary of State under subsection (1), or has become responsible insolvency practitioner of a further insolvent member under subsection (3), that practitioner shall give notice of his appointment or further appointment (as the case may be) to the creditors of the insolvent partnership and the creditors of the insolvent member or members against whom insolvency orders have been made or, if the court so allows, shall advertise his appointment in accordance with the directions of the court.

(5) Subject to subsection (6) below, in that notice or advertisement the responsible insolvency practitioner shall—

- (a) state whether he proposes to summon, under section 141 below, a combined meeting of the creditors of the insolvent partnership and of the insolvent member or members against whom insolvency orders have been made, for the purpose of determining whether a creditors' committee should be established under that section, and
- (b) if he does not propose to summon such a meeting, set out the power under that section of the creditors of the partnership and of the insolvent member or members to require him to summon one.

(6) Where in a case where subsection (3) applies a meeting has already been held under section 141 below, the responsible insolvency practitioner shall state in the notice or advertisement whether a creditors' committee was established at that meeting and—

- (a) if such a committee was established, shall state whether he proposes to appoint additional members of the committee under section 141A(3), and
- (b) if such a committee was not established, shall set out the power under section 141 of the creditors of the partnership and of the insolvent member or members to require him to summon a meeting for the purpose of determining whether a creditors' committee should be established under that section.”.

Section 139: Rules applicable to meetings of creditors

14. Section 139 is modified so as to read as follows—

“**139.**—(1) This section applies where the court has made insolvency orders against a insolvent partnership and one or more of its insolvent members by virtue of article 8 of the Insolvent Partnerships Order 1994.

(2) Subject to subsection (4) below, the rules relating to the requisitioning, summoning, holding and conducting of meetings on the winding up of a company are to apply (with the necessary modifications) to the requisitioning, summoning, holding and conducting of—

- (a) separate meetings of the creditors of the partnership or of any corporate member against which an insolvency order has been made, and
- (b) combined meetings of the creditors of the partnership and the creditors of the insolvent member or members.

(3) Subject to subsection (4) below, the rules relating to the requisitioning, summoning, holding and conducting of meetings on the bankruptcy of an individual are to apply (with the necessary modifications) to the requisitioning, summoning, holding and conducting of separate meetings of the creditors of any individual member against whom an insolvency order has been made.

(4) Any combined meeting of creditors shall be conducted as if the creditors of the partnership and of the insolvent member or members were a single set of creditors.”.

Section 140: Appointment by the court following administration or voluntary arrangement

15. Section 140 is modified so as to read as follows—

“140.—(1) This section applies where insolvency orders are made in respect of an insolvent partnership and one or more of its insolvent members by virtue of article 8 of the Insolvent Partnerships Order 1994.

(2) Where the orders referred to in subsection (1) are made immediately upon the discharge of an administration order in respect of the partnership, the court may appoint a responsible insolvency practitioner the person who has ceased on the discharge of the administration order to be the administrator of the partnership.

(3) Where the orders referred to in subsection (1) are made at a time when there is a supervisor of a voluntary arrangement approved in relation to the partnership under Part I, the court may appoint as responsible insolvency practitioner the person who is the supervisor at the time when the winding-up order against the partnership is made.

(4) Where the court makes an appointment under this section, the official receiver does not become the responsible insolvency practitioner as otherwise provided by section 36(2), and he has no duty under section 136A(1)(a) or (b) in respect of the summoning of creditors' meetings.”.

Sections 141, 301 and 302: Creditors' Committee: Insolvent partnership and members

16. Sections 141, 301 and 302 are modified so as to read as follows—

“141.—(1) This section applies where—

- (a) insolvency orders are made in respect of an insolvent partnership and one or more of its insolvent members by virtue of article 8 of the Insolvent Partnerships Order 1994, and
- (b) a combined meeting of creditors has been summoned for the purpose of choosing a person to be responsible insolvency practitioner of the partnership and of any such insolvent member or members.

(2) The meeting of creditors may establish a committee (“the creditors' committee”) which shall consist of creditors of the partnership or creditors of any insolvent member against whom an insolvency order has been made, or both.

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(3) The responsible insolvency practitioner of the partnership and of its insolvent member or members (not being the official receiver) may at any time, if he thinks fit, summon a combined general meeting of the creditors of the partnership and of such member or members for the purpose of determining whether a creditors' committee should be established and, if it is so determined of establishing it.

The responsible insolvency practitioner (not being the official receiver) shall summon such a meeting if he is requested, in accordance with the rules, to do so by one-tenth, in value, of either—

- (a) the partnership's creditors, or
- (b) the creditors of any insolvent member against whom an insolvency order has been made.

Functions and membership of creditors' committee

141A.—(1) The committee established under section 141 shall act as liquidation committee for the partnership and for any corporate member against which an insolvency order has been made, and as creditors' committee for any individual member against whom an insolvency order has been made, and shall as appropriate exercise the functions conferred on liquidation and creditors' committees in a winding up or bankruptcy by or under this Act.

(2) The rules relating to liquidation committees are to apply (with the necessary modifications and with the exclusion of all references to contributories) to a committee established under section 141.

(3) Where the appointment of the responsible insolvency practitioner also takes effect in relation to a further insolvent member under section 136A(5) or 137A(3), the practitioner may appoint any creditor of that member (being qualified under the rules to be a member of the committee) to be a additional member of any creditors' committee already established under section 141, provided that the creditor concerned consents to act.

(4) The court may at any time, on application by a creditor of the partnership or of any insolvent member against whom an insolvency order has been made, appoint additional members of the creditors' committee.

(5) If additional members of the creditors' committee are appointed under subsection (3) or (4), the limit on the maximum number of members of the committee specified in the rules shall be increased by the number of additional members so appointed.

(6) The creditors' committee is not to be able or required to carry out its functions at any time when the official receiver is responsible insolvency practitioner of the partnership and of its insolvent member or members; but at any such time its functions are vested in the Secretary of State except to the extent that the rules otherwise provide.

(7) Where there is for the time being no creditors' committee, and the responsible insolvency practitioner is a person other than the official receiver, the functions of such a committee are vested in the Secretary of State except to the extent that the rules otherwise provide.”.

Sections 143, 168(4) and 305: General functions of responsible insolvency practitioner

17. Sections 143, 168(4) and 305 are modified so as to read as follows—

“**143.**—(1) The functions of the responsible insolvency practitioner of an insolvent partnership and of its insolvent member or members against whom insolvency orders have been made by virtue of article 8 of the Insolvent Partnerships Order 1994, are to secure that the partnership property and the assets of any such corporate member, and the estate of any

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such individual member, are got in, realised and distributed to their respective creditors and, if there is a surplus of such property or assets or in such estate, to the persons entitled to it.

(2) In the carrying out of those functions, and in the management of the partnership property and of the assets of any corporate member and of the estate of any individual member, the responsible insolvency practitioner is entitled, subject to the provisions of this Act, to use his own discretion.

(3) It is the duty of the responsible insolvency practitioner, if he is not the official receiver—

- (a) to furnish the official receiver with such information,
- (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
- (c) to give the official receiver such other assistance,

as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up of the partnership and any corporate member or the bankruptcy of any individual member.

(4) The official name of the responsible insolvency practitioner in his capacity as trustee of an individual member shall be “the trustee of the estate of , a bankrupt” (inserting the name of the individual member); but he may be referred to as “the trustee in bankruptcy” of the particular member.”.

Sections 146 and 331: Duty to summon final meeting of creditors

18. Sections 146 and 331 are modified so as to read as follows—

“**146.**—(1) This section applies, subject to subsection (3) of this section and section 332 below, if it appears to the responsible insolvency practitioner of an insolvent partnership which is being wound up by virtue of article 8 of the Insolvent Partnerships Order 1994 and of its insolvent member or members that the winding up of the partnership or of any corporate member, or the administration of any individual member’s estate, is for practical purposes complete and the practitioner is not the official receiver.

(2) The responsible insolvency practitioner shall summon a final general meeting of the creditors of the partnership or of the insolvent member or members (as the case may be) or a combined final general meeting of the creditors of the partnership and of the insolvent member or members which—

- (a) shall as appropriate receive the practitioner’s report of the winding up of the insolvent partnership or of any corporate member or of the administration of the estate of any individual member, and
- (b) shall determine whether the practitioner should have his release under section 174 in Chapter VII of this Part in respect of the winding up of the partnership or of the corporate member, or the administration of the individual member’s estate (as the case may be).

(3) The responsible insolvency practitioner may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the partnership property or the property of the insolvent member or members; but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the practitioner is able to report to the meeting that the winding up of the partnership or of any corporate member, or the administration of any individual member’s estate, is for practical purposes complete.

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(4) In the carrying out of his functions in the winding up of the partnership and of any corporate member and the administration of any individual member's estate, it is the duty of the responsible insolvency practitioner to retain sufficient sums from the partnership property and the property of any such insolvent member to cover the expenses of summoning and holding any meeting required by this section.”.

Section 147: Power of court to stay proceedings

19. Section 147 is modified, so far as insolvent partnerships are concerned, so as to read as follows—

“**147.**—(1) The court may, at any time after an order has been made by virtue of article of the Insolvent Partnerships Order 1994 for winding up an insolvent partnership, on the application either of the responsible insolvency practitioner or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in the winding up of the partnership ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) If, in the course of hearing an insolvency petition presented against a member of an insolvent partnership, the court is satisfied that an application has been or will be made under subsection (1) in respect of a winding-up order made against the partnership, the court may adjourn the petition against the insolvent member, either conditionally or unconditionally.

(3) Where the court makes an order under subsection (1) staying all proceedings on the order for winding up an insolvent partnership—

- (a) the court may, on hearing any insolvency petition presented against an insolvent member of the partnership, dismiss that petition; and
- (b) if any insolvency order has already been made by virtue of article 8 of the Insolvent Partnerships Order 1994 in relation to an insolvent member of the partnership, the court may make an order annulling or rescinding that insolvency order, or may make any other order that it thinks fit.

(4) The court may, before making any order under this section, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.”.

Sections 168, 303 and 314(7): Supplementary powers of responsible insolvency practitioner

20. Sections 168(1) to (3) and (5), 303 and 314(7) are modified so as to read as follows:—

“**168.**—(1) This section applies where the court has made insolvency orders in respect of an insolvent partnership and one or more of its insolvent members by virtue of article 8 of the Insolvent Partnerships Order 1994.

(2) The responsible insolvency practitioner of the partnership and of such member or members may at any time summon either separate or combined general meetings of—

- (a) the creditors or contributories of the partnership, and
- (b) the creditors or contributories of the member or members,

for the purpose of ascertaining their wishes.

(3) It is the duty of the responsible insolvency practitioner—

- (a) to summon separate meetings at such times as the creditors of the partnership or of the member (as the case may be), or the contributories of any corporate member, by resolution (either at the meeting appointing the responsible insolvency

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practitioner or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of such creditors or contributories (as the case may be); and

- (b) to summon combined meetings at such times as the creditors of the partnership and of the member or members by resolution (either at the meeting appointing the responsible insolvency practitioner or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of such creditors.

(4) The responsible insolvency practitioner may apply to the court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up of the insolvent partnership or in the winding up or bankruptcy of an insolvent member.

(5) If any person is aggrieved by an act or decision of the responsible insolvency practitioner, that person may apply to the court; and the court may confirm, reverse or modify the act or decision complained of, and make such order in the case as it thinks just.”.

Sections 172 and 298: Removal etc. of responsible insolvency practitioner or of provisional liquidator

21. Sections 172 and 298 are modified so as to read as follows—

“172.—(1) This section applies with respect to the removal from office and vacation of office of—

- (a) the responsible insolvency practitioner of an insolvent partnership which is being wound up by virtue of article 8 of the Insolvent Partnerships Order 1994 and of its insolvent member or members against whom insolvency orders have been made, or
- (b) a provisional liquidator of an insolvent partnership, and of any corporate member of that partnership, against which a winding-up petition is presented by virtue of that article,

and, subject to subsections (6) and (7) below, any removal from or vacation of office under this section relates to all offices held in the proceedings relating to the partnership.

(2) Subject as follows, the responsible insolvency practitioner or provisional liquidator may be removed from office only by an order of the court.

(3) If appointed by the Secretary of State, the responsible insolvency practitioner may be removed from office by a direction of the Secretary of State.

(4) A responsible insolvency practitioner or provisional liquidator, not being the official receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the insolvent partnership or any insolvent member of it against whom an insolvency order has been made.

(5) The responsible insolvency practitioner may, with the leave of the court (or, if appointed by the Secretary of State, with the leave of the court or the Secretary of State), resign his office by giving notice of his resignation to the court.

(6) Where a final meeting has been held under section 146 (final meeting of creditors of insolvent partnership or of insolvent members), the responsible insolvency practitioner whose report was considered at the meeting shall vacate office as liquidator of the insolvent partnership or of any corporate member or as trustee of the estate of any individual member (as the case may be as soon as he has given notice to the court (and, in the case of a corporate member, to the registrar of companies) that the meeting has been held and of the decisions (if any) of the meeting.

(7) The responsible insolvency practitioner shall vacate office as trustee of the estate of an individual member if the insolvency order against that member is annulled.”.

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Sections 174 and 299: Release of responsible insolvency practitioner or of provisional liquidator

22. Sections 174 and 299 are modified so as to read as follows—

“174.—(1) This section applies with respect to the release of—

- (a) the responsible insolvency practitioner of an insolvent partnership which is being wound up by virtue of article 8 of the Insolvent Partnerships Order 1994 and of its insolvent member or members against whom insolvency orders have been made, or
- (b) a provisional liquidator of an insolvent partnership, and of any corporate member of that partnership, against which a winding-up petition is presented by virtue of that article.

(2) Where the official receiver has ceased to be the responsible insolvency practitioner and a person is appointed in his stead, the official receiver has his release with effect from the following time, that is to say—

- (a) in a case where that person was nominated by a combined general meeting of creditor of the partnership and of any insolvent member or members, or was appointed by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced;
- (b) in a case where that person is appointed by the court, such time as the court may determine.

(3) If the official receiver while he is a responsible insolvency practitioner give notice to the Secretary of State that the winding up of the partnership or of any corporate member or the administration of the estate of any individual member is for practical purposes complete, he has his release as liquidator or trustee (as the case may be) with effect from such time as the Secretary of State may determine.

(4) A person other than the official receiver who has ceased to be a responsible insolvency practitioner has his release with effect from the following time, that is to say—

- (a) in the case of a person who has died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office;
- (b) in the case of a person who has been removed from office by the court or by the Secretary of State, or who has vacated office under section 172(4), such time as the Secretary of State may, on an application by that person, determine;
- (c) in the case of a person who has resigned, such time as may be directed by the court (or, if he was appointed by the Secretary of State, such time as may be directed by the court or as the Secretary of State may, on an application by that person, determine);
- (d) in the case of a person who has vacated office under section 172(6)—
 - (i) if the final meeting referred to in that subsection has resolved against that person’s release, such time as the Secretary of State may, on an application by that person, determine, and
 - (ii) if that meeting has not so resolved, the time at which that person vacated office.

(5) A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the court may, on an application by him, determine.

(6) Where a bankruptcy order in respect of an individual member is annulled, the responsible insolvency practitioner at the time of the annulment has his release with effect from such time as the court may determine.

(7) Where the responsible insolvency practitioner or provisional liquidator (including in both cases the official receiver when so acting) has his release under this section, he is, with effect from the time specified in the preceding provisions of this section discharged from all liability both in respect of acts or omissions of his in the winding up of the insolvent partnership or any corporate member or the administration of the estate of any individual member (as the case may be) and otherwise in relation to his conduct as responsible insolvency practitioner or provisional liquidator.

But nothing in this section prevents the exercise, in relation to a person who has had his release under this section, of the court's powers under section 212 (summary remedy against delinquent directors, liquidators, etc.) or section 304 (liability of trustee)."

Sections 175 and 328: Priority of expenses and debts

23. Sections 175 and 328(1) to (3) and (6) are modified so as to read as follows—

"Priority of expenses

175.—(1) The provisions of this section shall apply in a case where article 8 of the Insolvent Partnerships Order 1994 applies, as regards priority of expenses incurred by responsible insolvency practitioner of an insolvent partnership, and of any insolvent member of that partnership against whom an insolvency order has been made.

(2) The joint estate of the partnership shall be applicable in the first instance in payment of the joint expenses and the separate estate of each insolvent member shall be applicable in the first instance in payment of the separate expenses relating to that member.

(3) Where the joint estate is insufficient for the payment in full of the joint expenses, the unpaid balance shall be apportioned equally between the separate estates of the insolvent members against whom insolvency orders have been made and shall form part of the expenses to be paid out of those estates.

(4) Where any separate estate of an insolvent member is insufficient for the payment in full of the separate expenses to be paid out of that estate, the unpaid balance shall form part of the expenses to be paid out of the joint estate.

(5) Where after the transfer of any unpaid balance in accordance with subsection (3) or (4) any estate is insufficient for the payment in full of the expenses to be paid out of that estate, the balance then remaining unpaid shall be apportioned equally between the other estates.

(6) Where after an apportionment under subsection (5) one or more estates are insufficient for the payment in full of the expenses to be paid out of those estates, the total of the unpaid balances of the expenses to be paid out of those estates shall continue to be apportioned equally between the other estates until provision is made for the payment in full of the expenses or there is no estate available for the payment of the balance finally remaining unpaid, in which case it abates in equal proportions between all the estates.

(7) Without prejudice to subsections (3) to (6) above, the responsible insolvency practitioner may, with the sanction of any creditors' committee established under section 41 or with the leave of the court obtained on application—

- (a) pay out of the joint estate as part of the expenses to be paid out of that estate any expenses incurred for any separate estate of an insolvent member; or
- (b) pay out of any separate estate of an insolvent member any part of the expenses incurred for the joint estate which affects that separate estate.

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Priority of debts in joint estate

175A.—(1) The provisions of this section and the next (which are subject to the provisions of section 9 of the Partnership Act 1890(1) as respects the liability of the estate of a deceased member) shall apply as regards priority of debts in a case where article 8 of the Insolvent Partnerships Order 1994 applies.

(2) After payment of expenses in accordance with section 175 and subject to section 175C(2), the joint debts of the partnership shall be paid out of its joint estate in the following order of priority—

- (a) the preferential debts;
- (b) the debts which are neither preferential debts nor postponed debts;
- (c) interest under section 189 on the joint debts (other than postponed debts);
- (d) the postponed debts;
- (e) interest under section 189 on the postponed debts.

(3) The responsible insolvency practitioner shall adjust the rights among themselves of the members of the partnership as contributories and shall distribute any surplus to the members or, where applicable, to the separate estates of the members, according to their respective rights and interests in it.

(4) The debts referred to in each of paragraphs (a) and (b) of subsection (2) rank equally between themselves, and in each case if the joint estate is insufficient for meeting them, they abate in equal proportions between themselves.

(5) Where the joint estate is not sufficient for the payment of the joint debts in accordance with paragraphs (a) and (b) of subsection (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

- (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and
- (b) shall rank equally with the debts of the member referred to in section 175B(1)(b) below.

(6) Where the joint estate is sufficient for the payment of the joint debts in accordance with paragraphs (a) and (b) of subsection (2) but not for the payment of interest under paragraph (c) of that subsection, the responsible insolvency practitioner shall aggregate the value of that interest to the extent that it has not been satisfied or is not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

- (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and
- (b) shall rank equally with the interest on the separate debts referred to in section 175B(1)(c) below.

(7) Where the joint estate is not sufficient for the payment of the postponed joint debts in accordance with paragraph (d) of subsection (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the

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separate estate of each member of the partnership against whom an insolvency order has been made which—

- (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and
- (b) shall rank equally with the postponed debts of the member referred to in section 175B(1)(d) below.

(8) Where the joint estate is sufficient for the payment of the postponed joint debts in accordance with paragraph (d) of subsection (2) but not for the payment of interest under paragraph (e) of that subsection, the responsible insolvency practitioner shall aggregate the value of that interest to the extent that it has not been satisfied or is not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

- (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and
- (b) shall rank equally with the interest on the postponed debts referred to in section 175B(1)(e) below.

(9) Where the responsible insolvency practitioner receives any distribution from the separate estate of a member in respect of a debt referred to in paragraph (a) of subsection (5), (6), (7) or (8) above, that distribution shall become part of the joint estate and shall be distributed in accordance with the order of priority set out in subsection (2) above.

Priority of debts in separate estate

175B.—(1) The separate estate of each member of the partnership against whom an insolvency order has been made shall be applicable, after payment of expenses in accordance with section 175 and subject to section 175C(2) below, in payment of the separate debts of that member in the following order of priority—

- (a) the preferential debts;
- (b) the debts which are neither preferential debts nor postponed debts (including any debt referred to in section 175A(5)(a));
- (c) interest under section 189 on the separate debts and under section 175A(6);
- (d) the postponed debts of the member (including any debt referred to in section 175A(7)(a));
- (e) interest under section 189 on the postponed debts of the member and under section 175A(8).

(2) The debts referred to in each of paragraphs (a) and (b) of subsection (1) rank equally between themselves, and in each case if the separate estate is insufficient for meeting them, they abate in equal proportions between themselves.

(3) Where the responsible insolvency practitioner receives any distribution from the joint estate or from the separate estate of another member of the partnership against whom an insolvency order has been made, that distribution shall become part of the separate estate and shall be distributed in accordance with the order of priority set out in subsection (1) of this section.

Provisions generally applicable in distribution of joint and separate estates

175C.—(1) Distinct accounts shall be kept of the joint estate of the partnership and of the separate estate of each member of that partnership against whom an insolvency order is made.

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(2) No member of the partnership shall prove for a joint or separate debt in competition with the joint creditors, unless the debt has arisen—

- (a) as a result of fraud, or
- (b) in the ordinary course of a business carried on separately from the partnership business.

(3) For the purpose of establishing the value of any debt referred to in section 175A(5)(a) or (7)(a), that value may be estimated by the responsible insolvency practitioner in accordance with section 322 or (as the case may be) in accordance with the rules.

(4) Interest under section 189 on preferential debts ranks equally with interest on debts which are neither preferential debts nor postponed debts.

(5) Sections 175A and 175B are without prejudice to any provision of this Act or of any other enactment concerning the ranking between themselves of postponed debts and interest thereon, but in the absence of any such provision postponed debts and interest thereon rank equally between themselves.

(6) If any two or more members of an insolvent partnership constitute a separate partnership, the creditors of such separate partnership shall be deemed to be a separate set of creditors and subject to the same statutory provisions as the separate creditors of any member of the insolvent partnership.

(7) Where any surplus remains after the administration of the estate of a separate partnership, the surplus shall be distributed to the members or, where applicable, to the separate estates of the members of that partnership according to their respective rights and interests in it.

(8) Neither the official receiver, the Secretary of State nor a responsible insolvency practitioner shall be entitled to remuneration or fees under the Insolvency Rules 1986(2) the Insolvency Regulations 1986(3) or the Insolvency Fees Order 1986(4) for his service in connection with—

- (a) the transfer of a surplus from the joint estate to a separate estate under section 175A(3),
- (b) a distribution from a separate estate to the joint estate in respect of a claim referred to in section 175A(5), (6), (7) or (8), or
- (c) a distribution from the estate of a separate partnership to the separate estate of the members of that partnership under subsection (7) above.”

Sections 189 and 328: Interest on debts

24. Sections 189 and 328(4) and (5) are modified so as to read as follows—

“**189.**—(1) In the winding up of an insolvent partnership or the winding up or bankruptcy (as the case may be) of any of its insolvent members interest is payable in accordance with this section, in the order of priority laid down by sections 175A and 175B, on any debt proved in the winding up or bankruptcy, including so much of any such debt as represents interest on the remainder.

(2) Interest under this section is payable on the debts in question in respect of the periods during which they have been outstanding since the winding-up order was made against the partnership or any corporate member (as the case may be) or the bankruptcy order was made against any individual member.

(2) S.I. 1986/1925, amended by S.I. 1987/1919, S.I. 1989/397, S.I. 1991/495 and S.I. 1993/602.

(3) S.I. 1986/1994, amended by S.I. 1987/1959, S.I. 1988/1739 and S.I. 1991/380.

(4) S.I. 1986/2030, amended by S.I. 1988/95, S.I. 1990/560, S.I. 1991/496 and S.I. 1992/34.

(3) The rate of interest payable under this section in respect of any debt (“the official rate” for the purposes of any provision of this Act in which that expression is used) is whichever is the greater of—

- (a) the rate specified in section 17 of the Judgments Act 1838⁽⁵⁾ on the day on which the winding-up or bankruptcy order (as the case may be) was made, and
- (b) the rate applicable to that debt apart from the winding up or bankruptcy.”.

Sections 211 and 356: False representations to creditors

25. Sections 211 and 356(2)(d) are modified so as to read as follows—

“**211.**—(1) This section applies where insolvency orders are made against an insolvent partnership and any insolvent member or members of it by virtue of article 8 of the Insolvent Partnerships Order 1994.

(2) Any person, being a past or present officer of the partnership or a past or present officer (which for these purposes includes a shadow director) of a corporate member against which an insolvency order has been made—

- (a) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the creditors of the partnership (or any of them) or of the creditors of any of its members (or any of such creditors) to an agreement with reference to the affairs of the partnership or of any of its members or to the winding up of the partnership or of a corporate member, or the bankruptcy of an individual member, and
- (b) is deemed to have committed that offence if, prior to the winding up or bankruptcy (as the case may be), he has made any false representation, or committed any other fraud, for that purpose.

(3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.”.

Sections 230, 231 and 292: Appointment to office of responsible insolvency practitioner or provisional liquidator

26. Sections 230, 231 and 292 are modified so as to read as follows—

“**230.**—(1) This section applies with respect to the appointment of—

- (a) the responsible insolvency practitioner of an insolvent partnership which is being wound up by virtue of article 8 of the Insolvent Partnerships Order 1994 and of one or more of its insolvent members, or
- (b) a provisional liquidator of an insolvent partnership, or of any of its corporate members, against which a winding-up petition is presented by virtue of that article,

but is without prejudice to any enactment under which the official receiver is to be, or may be, responsible insolvency practitioner or provisional liquidator.

(2) No person may be appointed as responsible insolvency practitioner unless he is, at the time of the appointment, qualified to act as an insolvency practitioner both in relation to the insolvent partnership and to the insolvent member or members.

(5) 1838 c. 110.

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(3) No person may be appointed as provisional liquidator unless he is, at the time of the appointment, qualified to act as an insolvency practitioner both in relation to the insolvent partnership and to any corporate member in respect of which he is appointed.

(4) If the appointment or nomination of any person to the office of responsible insolvency practitioner or provisional liquidator relates to more than one person, or has the effect that the office is to be held by more than one person, then subsection (5) below applies.

(5) The appointment or nomination shall declare whether any act required or authorised under any enactment to be done by the responsible insolvency practitioner or by the provisional liquidator is to be done by all or any one or more of the persons for the time being holding the office in question.

(6) The appointment of any person as responsible insolvency practitioner takes effect only if that person accepts the appointment in accordance with the rules. Subject to this, the appointment of any person as responsible insolvency practitioner takes effect at the time specified in his certificate of appointment.

Conflicts of interest

230A.—(1) If the responsible insolvency practitioner of an insolvent partnership being wound up by virtue of article 8 of the Insolvent Partnerships Order 1994 and of one or more of its insolvent members is of the opinion at any time that there is a conflict of interest between his functions as liquidator of the partnership and his functions as responsible insolvency practitioner of any insolvent member, or between his functions as responsible insolvency practitioner of two or more insolvent members, he may apply to the court for directions.

(2) On an application under subsection (1), the court may, without prejudice to the generality of its power to give directions, appoint one or more insolvency practitioners either in place of the applicant to act as responsible insolvency practitioner of both the partnership and its insolvent member or members or to act as joint responsible insolvency practitioner with the applicant.”.

Section 234: Getting in the partnership property

27. Section 234 is modified, so far as insolvent partnerships are concerned, so as to read as follows—

“**234.**—(1) This section applies where—

- (a) insolvency orders are made by virtue of article 8 of the Insolvent Partnerships Order 1994 in respect of an insolvent partnership and its insolvent member or members, or
- (b) a provisional liquidator of an insolvent partnership and any of its corporate members is appointed by virtue of that article;

and “the office-holder” means the liquidator or the provisional liquidator, as the case may be.

(2) Any person who is or has been an officer of the partnership, or who is an executor or administrator of the estate of a deceased officer of the partnership, shall deliver up to the office-holder, for the purposes of the exercise of the office-holder’s functions under this Act and (where applicable) the Company Directors Disqualification Act 1986⁽⁶⁾, possession of any partnership property which he holds for the purposes of the partnership.

(6) 1986 c. 46.

(3) Where any person has in his possession or control any property, books, papers or records to which the partnership appears to be entitled, the court may require that person forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property books, papers or records to the office-holder or as the court may direct.

(4) Where the office-holder—

- (a) seizes or disposes of any property which is not partnership property, and
- (b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the next subsection has effect.

(5) In that case the office-holder—

- (a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office-holder's own negligence, and
- (b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.”.

Section 283: Definition of individual member's estate

28. Section 283 is modified so as to read as follows—

“**283.**—(1) Subject as follows, the estate of an individual member for the purposes of this Act comprises—

- (a) all property belonging to or vested in the individual member at the commencement of the bankruptcy, and
- (b) any property which by virtue of any of the provisions of this Act is comprised in that estate or is treated as falling within the preceding paragraph.

(2) Subsection (1) does not apply to—

- (a) such tools, books, vehicles and other items of equipment as are not partnership property and as are necessary to the individual member for use personally by him in his employment, business or vocation;
- (b) such clothing, bedding, furniture, household equipment and provisions as are not partnership property and as are necessary for satisfying the basic domestic needs of the individual member and his family.

This subsection is subject to section 308 in Chapter IV (certain excluded property reclaimable by trustee).

(3) Subsection (1) does not apply to—

- (a) property held by the individual member on trust for any other person, or
- (b) the right of nomination to a vacant ecclesiastical benefice.

(4) References in any provision of this Act to property, in relation to an individual member, include references to any power exercisable by him over or in respect of property except in so far as the power is exercisable over or in respect of property not for the time being comprised in the estate of the individual member and—

- (a) is so exercisable at a time after either the official receiver has had his release in respect of that estate under section 174(3) or a meeting summoned by the trustee of that estate under section 146 has been held, or
- (b) cannot be so exercised for the benefit of the individual member;

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and a power exercisable over or in respect of property is deemed for the purposes of any provision of this Act to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person (whether or not it becomes so exercisable at that time).

(5) For the purposes of any such provision of this Act, property comprised in an individual member's estate is so comprised subject to the rights of any person other than the individual member (whether as a secured creditor of the individual member or otherwise in relation thereto, but disregarding any rights which have been given up in accordance with the rules.

(6) This section has effect subject to the provisions of any enactment not contained in this Act under which any property is to be excluded from a bankrupt's estate.".

Section 284: Individual member: Restrictions on dispositions of property

29. Section 284 is modified so as to read as follows—

“**284.**—(1) Where an individual member is adjudged bankrupt by virtue of article 8 of the Insolvent Partnerships Order 1994, any disposition of property made by that member in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.

(2) Subsection (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid shall hold the sum paid for the individual member as part of his estate.

(3) This section applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting, under Chapter IV of his Part, of the individual member's estate in a trustee.

(4) The preceding provisions of this section do not give a remedy against any person—

(a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the petition had been presented, or

(b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this subsection, no remedy.

(5) Where after the commencement of his bankruptcy the individual member has incurred a debt to a banker or other person by reason of the making of a payment which is void under this section, that debt is deemed for the purposes of any provision of this Act to have been incurred before the commencement of the bankruptcy unless—

(a) that banker or person had notice of the bankruptcy before the debt was incurred, or

(b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.

(6) A disposition of property is void under this section notwithstanding that the property is not or, as the case may be, would not be comprised in the individual member's state; but nothing in this section affects any disposition made by a person of property held by him on trust for any other person other than a disposition made by an individual member of property held by him on trust for the partnership.".

30. Schedule 4 is modified so as to read as follows—

“SCHEDULE 4

Section 167

POWERS OF LIQUIDATOR IN A WINDING UP

PART I

POWERS EXERCISABLE WITH SANCTION

1. Power to pay any class of creditors in full.
2. Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the partnership, or whereby the partnership may be rendered liable.
3. Power to compromise, on such terms as may be agreed—
 - (a) all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the partnership and a contributory or alleged contributory or other debtor or person apprehending liability to the partnership, and
 - (b) all questions in any way relating to or affecting the partnership property or the winding up of the partnership,

and take any security for the discharge of any such debt, liability or claim and give a complete discharge in respect of it.

4. Power to bring or defend any action or other legal proceeding in the name and on behalf of any member of the partnership in his capacity as such or of the partnership.
5. Power to carry on the business of the partnership so far as may be necessary for its beneficial winding up.

PART II

POWERS EXERCISABLE WITHOUT SANCTION

6. Power to sell any of the partnership property by public auction or private contract, with power to transfer the whole of it to any person or to sell the same in parcels.
7. Power to do all acts and execute, in the name and on behalf of the partnership or of any member of the partnership in his capacity as such, all deeds, receipts and other documents.
8. Power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.
9. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of any member of the partnership in his capacity as such or of the partnership, with the same effect with respect to the liability of the partnership or of any member of the partnership in his capacity as such as if the bill or note had been drawn, accepted, made or endorsed in the course of the partnership's business.
10. Power to raise on the security of the partnership property any money requisite.

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11. Power to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the partnership.

In all such cases the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.

12. Power to appoint an agent to do any business which the liquidator is unable to do himself.

13. Power to do all such other things as may be necessary for winding up the partnership's affairs and distributing its property.”.