

SCHEDULE 7

Article 11

PROVISIONS OF THE ACT WHICH APPLY WITH MODIFICATIONS FOR THE PURPOSES OF ARTICLE 11 WHERE JOINT BANKRUPTCY PETITION PRESENTED BY INDIVIDUAL MEMBERS WITHOUT WINDING UP PARTNERSHIP AS UNREGISTERED COMPANY

1.—(1) The provisions of the Act specified in sub-paragraph (2) below, are set out as modified in this Schedule.

(2) The provisions referred to in sub-paragraph (1) above are sections 264 to 266, 272, 275, 283, 284, 290, 292 to 301, 305, 312, 328, 331 and 387.

Section 264: Presentation of joint bankruptcy petition

2. Section 264 is modified so as to read as follows—

“**264.**—(1) Subject to section 266(1) below, a joint bankruptcy petition may be presented to the court by virtue of article 11 of the Insolvent Partnerships Order 1994 by all the members of an insolvent partnership in their capacity as such provided that all the members are individuals and none of them is a limited partner.

(2) A petition may not be presented under paragraph (1) by the members of an insolvent partnership which is an authorised institution or former authorised institution within the meaning of the Banking Act 1987(1).

(3) The petition—

- (a) shall be in Form 14 in Schedule 9 to the Insolvent Partnerships Order 1994; and
- (b) shall contain a request that the trustee shall wind up the partnership business and administer the partnership property without the partnership being wound up as an unregistered company under Part V of this Act.

(4) The petition shall either—

- (a) be accompanied by an affidavit in Form 15 in Schedule 9 to the Insolvent Partnerships Order 1994 made by the member who signs the petition, showing that all the members are individual members (and that none of them is a limited partner) and concur in the presentation of the petition, or
- (b) contain a statement that all the members are individual members and be signed by all the members.

(5) On presentation of a petition under this section, the court may make orders in Form 16 in Schedule 9 to the Insolvent Partnerships Order 1994 for the bankruptcy of the members and the winding up of the partnership business and administration of its property.”.

Section 265: Conditions to be satisfied in respect of members

3. Section 265 is modified so as to read as follows—

“**265.**—(1) Subject to the provisions of this section, a joint bankruptcy petition by virtue of article 11 of the Insolvent Partnerships Order 1994 may be presented—

- (a) to the High Court (other than to a district registry of that Court) if the partnership has, or at any time had, a principal place of business in England and Wales, or
- (b) to a county court in England and Wales if the partnership has, or at any time had, a principal place of business within the insolvency district of that court.

(1) 1987 c. 22.

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(2) A joint bankruptcy petition shall not be presented to the court by virtue of article 11 unless 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 joint bankruptcy petition is presented.”.

Section 266: Other preliminary conditions

4. Section 266 is modified so as to read as follows—

“**266.**—(1) If the court is satisfied, on application by any member of an insolvent partnership, that the presentation of the petition under section 264(1) by all the members of the partnership would be impracticable, the court may direct that the petition be presented by such member or members as are specified by the court.

(2) A joint bankruptcy petition shall not be withdrawn without the leave of the court.

(3) The court has a general power, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, to dismiss joint bankruptcy petition or to stay proceedings on such a petition; and, where it stay proceedings on a petition, it may do so on such terms and conditions as it thinks fit.”.

Section 272: Grounds of joint bankruptcy petition

5. Section 272 is modified so as to read as follows—

“**272.**—(1) A joint bankruptcy petition may be presented to the court by the members of a partnership only on the grounds that the partnership is unable to pay its debts.

(2) The petition shall be accompanied by—

(a) a statement of each member’s affairs in Form 17 in Schedule 9 to the Insolvent Partnerships Order 1994, and

(b) a statement of the affairs of the partnership in Form 18 in that Schedule, sworn by one or more members of the partnership.

(3) The statements of affairs required by subsection (2) shall contain—

(a) particulars of the member’s or (as the case may be) partnership’s creditors, debts and other liabilities and of their assets, and

(b) such other information as is required by the relevant form.”.

Section 275: Summary Administration

6. Section 275 is modified so as to read as follows—

“**275.**—(1) Where orders have been made against the members of an insolvent partnership by virtue of article 11 of the Insolvent Partnerships Order 1994, and the case is as specified in the next subsection, the court shall, if it appears to it appropriate to do so, issue a certificate for the summary administration of any member’s estate.

(2) That case is where it appears to the court—

(a) that the aggregate amount of the unsecured joint debts of the partnership and unsecured separate debts of the member concerned is less than the small bankruptcies level prescribed for the purposes of section 273 (as that section applies apart from the Insolvent Partnerships Order 1994), and

(b) that within the period of 5 years ending with the presentation of the joint bankruptcy petition the member concerned has neither been adjudged bankrupt

nor made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs.

(3) The court may at any time revoke a certificate issued under this section if it appears to it that, on any grounds existing at the time the certificate was issued, the certificate ought not to have been issued.”.

Section 283: Definition of member’s estate

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

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

- (a) all property belonging to or vested in the 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 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 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 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 a member, include references to any power exercisable by him over or in respect of property except insofar as the power is exercisable over or in respect of property not for the time being comprised in the member’s estate and—

- (a) is so exercisable at a time after either the official receiver has had his release in respect of that estate under section 299(2) in Chapter III or a meeting summoned by the trustee of that estate under section 331 in Chapter IV has been held, or
- (b) cannot be so exercised for the benefit of the member;

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 a member’s estate is so comprised subject to the rights of any person other than the member (whether as a secured creditor of the 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.”.

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Section 284: Restrictions on dispositions of property

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

“**284.**—(1) Where a member is adjudged bankrupt on a joint bankruptcy petition, 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 member as part of his estate.

(3) This section applies to the period beginning with the day of the presentation of the joint bankruptcy petition and ending with the vesting, under Chapter IV of this Part, of the 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 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 member’s estate; 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 a member of property held by him on trust for the partnership.”.

Section 290: Public examination of member

9. Section 290 is modified so as to read as follows—

“**290.**—(1) Where orders have been made against the members of an insolvent partnership of a joint bankruptcy petition, the official receiver may at any time before the discharge of any such member apply to the court for the public examination of that member.

(2) Unless the court otherwise orders, the official receiver shall make an application under subsection (1) if notice requiring him to do so is given to him, in accordance with the rules, by one of the creditors of the member concerned with the concurrence of not less than one-half, in value, of those creditors (including the creditor giving notice).

(3) On an application under subsection (1), the court shall direct that a public examination of the member shall be held on a day appointed by the court; and the member shall attend on that day and be publicly examined as to his affairs, dealings and property and as to those of the partnership.

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(4) The following may take part in the public examination of the member and may question him concerning the matters mentioned in subsection (3), namely—

- (a) the official receiver,
- (b) the trustee of the member's estate, if his appointment has taken effect,
- (c) any person who has been appointed as special manager of the member's estate or business or of the partnership property or business,
- (d) any creditor of the member who has tendered a proof in the bankruptcy.

(5) On an application under subsection (1), the court may direct that the public examination of a member under this section be combined with the public examination of any other person.

(6) If a member without reasonable excuse fails at any time to attend his public examination under this section he 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 292: Power to appoint trustee

10. Section 292 is modified so as to read as follows—

“**292.**—(1) The power to appoint a person as both trustee of the estates of the members of an insolvent partnership against whom orders are made on a joint bankruptcy petition and as trustee of the partnership is exercisable—

- (a) by a combined general meeting of the creditors of the members and of the partnership;
- (b) under section 295(2), 296(2) or 300(3) below in this Chapter, by the Secretary of State.

(2) No person may be appointed as trustee of the members' estates and as trustee of the partnership 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 each of the members.

(3) Any power to appoint a person as trustee of the members' estates and of the partnership includes power to appoint two or more persons as joint trustees; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

(4) The appointment of any person as trustee of the members' estates and of the partnership takes effect only if that person accepts the appointment in accordance with the rules. Subject to this, the appointment of any person as trustee takes effect at the time specified in his certificate of appointment.

(5) This section is without prejudice to the provisions of this Chapter under which the official receiver is, in certain circumstances, to be trustee of the members' estates and of the partnership.

Conflicts of interest

292A.—(1) If the trustee of the members' estates and of the partnership is of the opinion at any time that there is a conflict of interest between his functions as trustee of the members' estates and his functions as trustee of the partnership, or between his functions as trustee of the estates of two or more 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

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in place of the applicant to act both as trustee of the members' estates and as trustee of the partnership, or to act as joint trustee with the applicant.”.

Sections 293 and 294: Summoning of meeting to appoint trustee

11. Sections 293 and 294 are modified so as to read as follows—

“**293.**—(1) Where orders are made by virtue of article 11 of the Insolvent Partnerships Order 1994, the official receiver, by virtue of his office, becomes the trustee of the estates of the members and the trustee of the partnership and continues in office until another person becomes trustee under the provisions of this Part.

(2) The official receiver is, by virtue of his office, the trustee of the estates of the members and the trustee of the partnership during any vacancy.

(3) At any time when he is trustee, the official receiver may summon a combined meeting of the creditors of the members and the creditors of the partnership, for the purpose of appointing a trustee in place of the official receiver.

(4) 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 first order was made by virtue of article 11 of the Insolvent Partnerships Order 1994, to decide whether to exercise his power under subsection (3) 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 those creditors of the members and those of the partnership who are known to the official receiver or identified in a statement of affairs submitted under section 272, and

(c) (whether or not he has decided to exercise that power) to exercise his power to summon a meeting under subsection (3) if he is at any time requested to do so by one-quarter, in value, of either—

(i) the creditors of any member against whom an insolvency order has been made, or

(ii) the partnership’s creditors,

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.

(5) A notice given under subsection (4)(b) to the creditors shall contain an explanation of the creditors' power under subsection (4)(c) to require the official receiver to sum on a combined meeting of the creditors of the partnership and of the members against who insolvency orders have been made.

(6) If the official receiver, in pursuance of subsection (4)(a), has decided to exercise his power under subsection (3) to summon a meeting, he shall hold that meeting in the period of 4 months beginning with the day on which the first order was made by virtue of article 11 of the Insolvent Partnerships Order 1994.

(7) If (whether or not he has decided to exercise that power) the official receiver is requested, in accordance with the provisions of subsection (4)(c), to exercise his power under subsection (3) to summon a meeting, he shall hold that meeting in accordance with the rules.

(8) Where a meeting of creditors of the partnership and of the members has been held, and an insolvency order is subsequently made against a further insolvent member by virtue of article 11 of the Insolvent Partnerships Order 1994—

- (a) any person chosen at the 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 (4) of this section shall not apply.”.

Section 295: Failure of meeting to appoint trustee

12. Section 295 is modified so as to read as follows—

“295.—(1) If a meeting of creditors summoned under section 293 is held but no appointment of a person as trustee is made, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.

(2) On a reference made in pursuance of that decision, the Secretary of State shall either make an appointment or decline to make one.

(3) If—

- (a) the official receiver decides not to refer the need for an appointment to the Secretary of State, or
- (b) on such a reference the Secretary of State declines to make an appointment,

the official receiver shall give notice of his decision or, as the case may be, of the Secretary of State’s decision to the court.”.

Section 296: Appointment of trustee by Secretary of State

13. Section 296 is modified so as to read as follows—

“296.—(1) At any time when the official receiver is the trustee of the members' estates and of the partnership by virtue of any provision of this Chapter he may apply to the Secretary of State for the appointment of a person as trustee instead of the official receiver.

(2) On an application under subsection (1) the Secretary of State shall either make an appointment or decline to make one.

(3) Such an application may be made notwithstanding that the Secretary of State has declined to make an appointment either on a previous application under subsection (1) or on reference under section 295 or under section 300(2) below.

(4) Where a trustee has been appointed by the Secretary of State under subsection (2) of this section, and an insolvency order is subsequently made against a further insolvent member by virtue of article 11 of the Insolvent Partnerships Order 1994, then the trustee so appointed shall also be the trustee of the member against whom the subsequent order is made.

(5) Where the trustee of the members' estates and of the partnership has been appointed by the Secretary of State (whether under this section or otherwise) or has become trustee of a further insolvent member under subsection (4), the trustee shall give notice of his appointment or further appointment (as the case may be) to the creditors of the members and the creditors of the partnership or, if the court so allows, shall advertise his appointment in accordance with the court’s directions.

(6) Subject to subsection (7) below, in that notice or advertisement the trustee shall—

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- (a) state whether he proposes to summon a combined general meeting of the creditors of the members and of the creditors of the partnership for the purpose of establishing a creditors' committee under section 301, and
 - (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.
- (7) Where in a case where subsection (4) applies a meeting referred to in subsection (6) (a) has already been held, the trustee 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 301A(3), and
 - (b) if such a committee was not established, shall set out the power of the creditors to require him to summon a meeting for the purpose of determining whether a creditors' committee should be established.”.

Section 297: Rules applicable to meetings of creditors

14. Section 297 is modified so as to read as follows—

“**297.**—(1) This section applies where the court has made orders by virtue of article 11 of the Insolvent Partnerships Order 1994.

(2) Subject to subsection (3) 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 each member and of combined meetings of the creditors of the partnership and the creditors of the members.

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

Section 298: Removal of trustee; vacation of office

15. Section 298 is modified so as to read as follows—

“**298.**—(1) Subject as follows, the trustee of the estates of the members and of the partnership may be removed from office only by an order of the court.

(2) If the trustee was appointed by the Secretary of State, he may be removed by a direction of the Secretary of State.

(3) The trustee (not being the official receiver) shall vacate office if he ceases to be a person who is for the time being qualified to act as an insolvency practitioner in relation to any member or to the partnership.

(4) The trustee 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.

(5) 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 by virtue of article 11 of the Insolvent Partnerships Order 1994.

(6) The trustee shall vacate office on giving notice to the court that a final meeting has been held under section 331 in Chapter IV (final meeting of creditors of insolvent partnership or of members) and of the decision (if any) of that meeting.

(7) The trustee shall vacate office as trustee of a member if the order made by virtue of article 11 of the Insolvent Partnerships Order 1994 in relation to that member is annulled.”.

Section 299: Release of trustee

16. Section 299 is modified so as to read as follows—

“**299.**—(1) Where the official receiver has ceased to be the trustee of the members' estates and of the partnership and a person is appointed in his stead, the official receiver shall have his release with effect from the following time, that is to say—

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

(2) If the official receiver while he is the trustee gives notice to the Secretary of State that the administration of the estate of any member, or the winding up of the partnership business and administration of its affairs, is for practical purposes complete, he shall have his release as trustee of any member or as trustee of the partnership (as the case may be) with effect from such time as the Secretary of State may determine.

(3) A person other than the official receiver who has ceased to be the trustee of the estate of any member or of the partnership shall have 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 298(3), 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 298(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 the person vacated office.

(4) Where an order by virtue of article 11 of the Insolvent Partnerships Order 1994 is annulled in so far as it relates to any member, the trustee at the time of the annulment as his release in respect of that member with effect from such time as the court may determine.

(5) Where the trustee (including the official receiver when so acting) has his release under this section, he shall, with effect from the time specified in the preceding provisions of this section, be discharged from all liability both in respect of acts or omissions of his in the administration of the estates of the members and in the winding up of the partnership business and administration of its affairs and otherwise in relation to his conduct as trustee.

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 304 (liability of trustee).”.

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Section 300: Vacancy in office of trustee

17. Section 300 is modified so as to read as follows—

“**300.**—(1) This section applies where the appointment of any person as trustee of the members' estates and of the partnership fails to take effect or, such an appointment having taken effect, there is otherwise a vacancy in the office of trustee.

(2) The official receiver may refer the need for an appointment to the Secretary of State and shall be trustee until the vacancy is filled.

(3) On a reference to the Secretary of State under subsection (2) the Secretary of State shall either make an appointment or decline to make one.

(4) If on a reference under subsection (2) no appointment is made, the official receiver shall continue to be trustee, but without prejudice to his power to make a further reference.

(5) References in this section to a vacancy include a case where it is necessary, in relation to any property which is or may be comprised in a member's estate, to revive the trusteeship of that estate after the holding of a final meeting summoned under section 331 or the giving by the official receiver of notice under section 299(2).”.

Section 301: Creditors' committee

18. Section 301 is modified so as to read as follows—

“**301.**—(1) Subject as follows, a combined general meeting of the creditors of the member and of the partnership (whether summoned under the preceding provisions of this Chapter or otherwise) may establish a committee (known as “the creditors' committee”) to exercise the functions conferred on it by or under this Act.

(2) A combined general meeting of the creditors of the members and of the partnership shall not establish such a committee, or confer any functions on such a committee, at any time when the official receiver is the trustee, except in connection with an appointment made by that meeting of a person to be trustee instead of the official receiver.

Functions and membership of creditors' committee

301A.—(1) The committee established under section 301 shall act as creditors' committee for each member and as liquidation committee for the partnership, and shall as appropriate exercise the functions conferred on creditors' and liquidation committees in a bankruptcy or winding up 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 301.

(3) Where the appointment of the trustee also takes effect in relation to a further insolvent member under section 293(8) or 296(4), the trustee may appoint any creditor of that member (being qualified under the rules to be a member of the committee) to be an additional member of any creditors' committee already established under section 301, provided that the creditor concerned consents to act.

(4) The court may at any time, on application by a creditor of any member or of the partnership, 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.”.

Section 305: General functions and powers of trustee

19. Section 305 is modified so as to read as follows—

“**305.**—(1) The function of the trustee of the estates of the members and of the partnership is to get in, realise and distribute the estates of the members and the partnership property in accordance with the following provisions of this Chapter.

(2) The trustee shall have all the functions and powers in relation to the partnership and the partnership property that he has in relation to the members and their estates.

(3) In the carrying out of his functions and in the management of the members' estates and the partnership property the trustee is entitled, subject to the following provisions of this Chapter, to use his own discretion.

(4) It is the duty of the trustee, 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 purpose of enabling him to carry out his functions in relation to the bankruptcy of the members and the winding up of the partnership business and administration of its property.

(5) The official name of the trustee in his capacity as trustee of a member shall be “the trustee of the estate of, a bankrupt” (inserting the name of the member concerned); but he may be referred to as “the trustee in bankruptcy” of the particular member.

(6) The official name of the trustee in his capacity as trustee of the partnership shall be “the trustee of, a partnership” (inserting the name of the partnership concerned).”

Section 312: Obligation to surrender control to trustee

20. Section 312 is modified so as to read as follows—

“**312.**—(1) This section applies where orders are made by virtue of article 11 of the Insolvent Partnerships Order 1994 and a trustee is appointed.

(2) Any person who is or has been an officer of the partnership in question, or who is an executor or administrator of the estate of a deceased officer of the partnership, shall deliver up to the trustee of the partnership, for the purposes of the exercise of the trustee's functions under this Act, possession of any partnership property which he holds for the purposes of the partnership.

(3) Each member shall deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession.

This is without prejudice to the general duties of the members as bankrupts under section 333 in this Chapter.

(4) If any of the following is in possession of any property, books, papers or other records of which the trustee is required to take possession, namely—

- (a) the official receiver,
- (b) a person who has ceased to be trustee of a member's estate,
- (c) a person who has been the administrator of the partnership or supervisor of a voluntary arrangement approved in relation to the partnership under Part I,

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(d) a person who has been the supervisor of a voluntary arrangement approved in relation to a member under Part VIII,
the official receiver or, as the case may be, that person shall deliver up possession of the property, books, papers or records to the trustee.

(5) Any banker or agent of a member or of the partnership, or any other person who hold any property to the account of, or for, a member or the partnership shall pay or deliver to the trustee all property in his possession or under his control which forms part of the member's estate or which is partnership property and which he is not by law entitled to retain as against the member, the partnership or the trustee.

(6) If any person without reasonable excuse fails to comply with any obligation imposed by this section, he 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 328: Priority of expenses and debts

21. Section 328 is modified so as to read as follows—

“Priority of expenses

328.—(1) The provisions of this section shall apply in a case where article 11 of the Insolvent Partnerships Order 1994 applies, as regards priority of expenses incurred by a person acting as trustee of the estates of the members of an insolvent partnership and as trustee of that partnership.

(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 trustee may, with the sanction of any creditors' committee established under section 301 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.

Priority of debts in joint estate

328A.—(1) The provisions of this section and the next (which are subject to the provisions of section 9 of the Partnership Act 1890(2) as respects the liability of the estate of a deceased member) shall apply as regards priority of debts in a case where article 11 of the Insolvent Partnerships Order 1994 applies.

(2) After payment of expenses in accordance with section 328 and subject to section 328(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 328D on the joint debts (other than postponed debts);
- (d) the postponed debts;
- (e) interest under section 328D 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 328B(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 328B(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

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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 postponed debts of the member referred to in section 328B(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 328B(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

328B.—(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 328 and subject to section 328C(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 328A(5)(a));
- (c) interest under section 328D on the separate debts and under section 328A(6);
- (d) the postponed debts of the member (including any debt referred to in section 328A(7)(a));
- (e) interest under section 328D on the postponed debts of the member and under section 328A(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

328C.—(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.

(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 32 A(5) (a) or (7)(a), that value may be estimated by the responsible insolvency practitioner in accordance with section 322.

(4) Interest under section 328D on preferential debts ranks equally with interest of debts which are neither preferential debts nor postponed debts.

(5) Sections 328A and 328B 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(3), the Insolvency Regulations 1986(4) or the Insolvency Fees Order 1986(5) for his services in connection with—

- (a) the transfer of a surplus from the joint estate to a separate estate under section 28A(3),
- (b) a distribution from a separate estate to the joint estate in respect of a claim referred to in section 328A(5), (6), (7) or (8), or
- (c) a distribution from the estate of a separate partnership to the separate estates of the members of that partnership under subsection (7) above.”.

Interest on debts

328D.—(1) In the bankruptcy of each of the members of an insolvent partnership and in the winding up of that partnership’s business and administration of its property, interest is payable in accordance with this section, in the order of priority laid down by sections 328A and 328B, on any debt proved in the bankruptcy including so much of any such debt as represents interest on the remainder.

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

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

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

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(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 relevant order was made by virtue of article 11 of the Insolvent Partnerships Order 1994.

(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⁽⁶⁾ on the day on which the relevant order was made, and
- (b) the rate applicable to that debt apart from the bankruptcy or winding up.

Section 331: Final meeting

22. Section 331 is modified so as to read as follows—

“**331.**—(1) Subject as follows in this section and the next, this section applies where—

- (a) it appears to the trustee of the estates of the members and of the partnership that the administration of any member’s estate or the winding up of the partnership business and administration of the partnership property is for practical purposes complete, and
- (b) the trustee is not the official receiver.

(2) The trustee shall summon a final general meeting of the creditors of any such member or of the partnership (as the case may be) or a combined final general meeting of the creditors of any such members or (as the case may be) the creditors of any such member and of the partnership which—

- (a) shall as appropriate receive the trustee’s report of the administration of the estate of the member or members or of the winding up of the partnership business and administration of the partnership property, and
- (b) shall determine whether the trustee should have his release under section 299 in Chapter III in respect (as the case may be) of the administration of the estate of the member or members, or of the winding up of the partnership business and administration of the partnership property.

(3) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under section 330(1); but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report that the administration of the estate of the member or members or the winding up of the partnership business and administration of the partnership property is for practical purposes complete.

(4) In the administration of the members’ estates and the winding up of the partnership business and administration of the partnership property it is the trustee’s duty to retain sufficient sums from the property of the members and of the partnership to cover the expenses of summoning and holding any meeting required by this section.”.

Section 387: The “relevant date”

23. Section 387 is modified so as to read as follows—

“**387.** Where an order has been made in respect of an insolvent partnership by virtue of article 11 of the Insolvent Partnerships Order 1994, references in Schedule 6 to this Act to

(6) 1838 c. 110.

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the relevant date (being the date which determines the existence and amount of a referential debt) are to the date on which the said order was made.”.