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STATUTORY INSTRUMENTS

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**2002 No. 2708**

**The Insolvent Partnerships (Amendment) (No. 2) Order 2002**

**Citation and commencement**

1. This Order may be cited as the Insolvent Partnerships (Amendment) (No. 2) Order 2002 and shall come into force on 1st January 2003.

**Interpretation**

2.—(1) In this Order,

“the Act” means the Insolvency Act 1986,

“rule” means a rule of the Insolvency Rules 1986(1),

“the 1994 Order” means the Insolvent Partnerships Order 1994(2).

(2) In this Order a reference to a “modified section” means a section of the Act as modified by, and set out in, the 1994 Order.

**Amendment to section 388 of the Insolvency Act 1986**

3. For section 388(2A)(c)(3) of the Act substitute—

“(c) where a voluntary arrangement in relation to the insolvent partnership is proposed or approved under Part I of the Act, as nominee or supervisor.”.

**Amendment to Article 4 of the Insolvent Partnerships Order 1994**

4. For article 4(1) of the 1994 Order (voluntary arrangement of insolvent partnership) substitute—

“(1) The provisions of Part I of, and Schedule A1 to, the Act shall apply in relation to an insolvent partnership, certain of those provisions being modified in such manner that, after modification, they are as set out in Schedule 1 to this Order.”.

**Amendment to Article 19 of the Insolvent Partnerships Order 1994**

5. In article 19(4) of the 1994 Order (supplemental and transitional provisions), after “enactment” insert—

“except where paragraph 12 of Schedule A1 to the Act, as applied by this Order, has the effect of preventing a petition being so presented”.

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(1) S.I.1986/1925, amended by S.I. 1987/1919, 1989/397, 1991/495, 1993/602, 1995/586, 1999/359, 1999/1022, 2001/763, 2002/1307 and 2002/2712.  
(2) S.I. 1994/2421, amended by S.I. 1996/1308, 2001/767, 2001/3649, 2002/1308 and 2002/1555.  
(3) Section 388(2A) of the Insolvency Act 1986 was inserted by article 15(1), S.I. 1994/2421.

### **Substitution of Schedule 1 to the Insolvent Partnerships Order 1994**

6. For Schedule 1 to the 1994 Order (modified provisions of Part I of the Act) substitute the Schedule set out in Schedule 1 to this Order.

### **Amendments to Schedule 2 to the Insolvent Partnerships Order 1994**

7.—(1) Schedule 2 to the 1994 Order (modified provisions of Part II of the Act) is amended as follows.

(2) In paragraph 2 (section 8: power of court to make order), after modified section 8(6) insert—

“(7) In this Part a reference to an insolvent partnership includes a reference to an insolvent partnership in relation to which an administration order may be made by virtue of Article 3 of the EC Regulation.”.

(3) In paragraph 4 (section 10: effect of application), after modified section 10(1)(a) insert—

“(aa) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises forming part of the partnership property or let to one or more officers of the partnership in their capacity as such in respect of a failure by the partnership or one or more officers of the partnership to comply with any term or condition of the tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose;”.

(4) In paragraph 5 (section 11: effect of order), after modified section 11(3)(d) insert—

“(da) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises forming part of the partnership property or let to one or more officers of the partnership in their capacity as such in respect of a failure by the partnership or one or more officers of the partnership to comply with any term or condition of the tenancy of such premises, except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as the court may impose;”.

### **Amendment to Schedule 3 to the Insolvent Partnerships Order 1994**

8. In paragraph 3 of Part I of Schedule 3 to the 1994 Order (section 221: winding up of unregistered companies), after modified section 221(7)(c) insert—

“(d) at the time at which a moratorium for the insolvent partnership under section 1A comes to an end, no voluntary arrangement approved under Part I of this Act has effect in relation to the insolvent partnership.

(7A) A winding-up petition on the ground set out in section 221(7)(d) may only be presented by one or more creditors.”.

### **Amendment to Schedule 4 to the Insolvent Partnerships Order 1994**

9.—(1) Schedule 4 to the 1994 Order (modified provisions of the Act applying for purposes of Article 8) is amended as follows.

(2) In paragraph 3 of Part I (section 221: winding up of unregistered companies), for modified section 221(8) substitute—

“(8) The circumstances in which an insolvent partnership may be wound up as an unregistered company are as follows—

(a) the partnership is unable to pay its debts,

(b) at the time at which a moratorium for the insolvent partnership under section 1A comes to an end, no voluntary arrangement approved under Part I of this Act has effect in relation to the insolvent partnership.”.

(3) In paragraph 6(a) of Part II (circumstances in which members of insolvent partnerships may be wound up or made bankrupt by the court), for modified section 122 substitute—

“**122.** A corporate member or former corporate member of an insolvent partnership may be wound up by the court if—

(a) it is unable to pay its debts,

(b) there is a creditor, by assignment or otherwise, to whom the insolvent partnership is indebted and the corporate member or former corporate member is liable in relation to that debt and at the time at which a moratorium for the insolvent partnership under section 1A comes to an end, no voluntary arrangement approved under Part I of this Act has effect in relation to the insolvent partnership.”.

(4) In paragraph 6(b) of Part II (circumstances in which members of insolvent partnerships may be wound up or made bankrupt by the court),

(a) in modified section 267(2) after “Subject to”, insert “subsection (2A) below and”,

(b) after modified section 267(2) insert—

“(2A) A creditor’s petition may be presented to the court in respect of a joint debt or debts if at the time at which a moratorium for the insolvent partnership under section 1A comes to an end, no voluntary arrangement approved under Part I of this Act has effect in relation to the insolvent partnership.”.

## Forms

**10.** For Forms 5, 6 and 7 contained in Schedule 9 to the 1994 Order substitute Forms 5, 6 and 7 contained in Schedule 2 to this Order.

## Transitional provisions

**11.**—(1) The amendments to the 1994 Order set out in articles 3, 4, 5, 6, 8, 9 and 10 of, and Schedules 1 and 2 to, this Order do not apply where, in relation to a voluntary arrangement under Part I of the Act, as the case may be, a proposal is made by—

(a) the members of a partnership and before this Order comes into force the intended nominee has endorsed a copy of the written notice of the proposal under rule 1.4(3),

(b) the liquidator or the administrator (acting as nominee) and before this Order comes into force the liquidator or administrator (as the case may be) has sent out a notice summoning the meetings under section 3 of the Act as required by rule 1.11, or

(c) the liquidator or the administrator of a partnership (not acting as the nominee) and before this Order comes into force the intended nominee has endorsed a copy of the written notice of the proposal under rule 1.12(2).

(2) The amendments to the 1994 Order set out in article 7 of this Order do not apply where a petition for an administration order in relation to an insolvent partnership has been presented before this Order comes into force.

(3) Where, by virtue of the 1994 Order, provisions of the Act apply in a case falling within paragraph (1) or (2), those provisions shall continue to have effect as if this Order had not been made.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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22nd October 2002

*Irvine of Lairg, C.*

I concur, on behalf of the Secretary of State

29th October 2002

*Melanie Johnson,*  
Parliamentary Under-Secretary of State for  
Competition, Consumers and Markets,  
Department of Trade and Industry