
STATUTORY INSTRUMENTS

2005 No. 1516

INSOLVENCY, ENGLAND AND WALES

The Insolvent Partnerships (Amendment) Order 2005

<i>Made</i>	- - - -	<i>7th June 2005</i>
<i>Laid before Parliament</i>		<i>8th June 2005</i>
<i>Coming into force</i>	- -	<i>1st July 2005</i>

The Lord Chancellor, in exercise of the powers conferred upon him by section 420 of the Insolvency Act 1986(1) and section 21(2) of the Company Directors Disqualification Act 1986(2), with the concurrence of the Secretary of State, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Insolvent Partnerships (Amendment) Order 2005 and shall come into force on 1st July 2005 (“the commencement date”).

(2) In this Order—

“the Act” means the Insolvency Act 1986; and

“the 1994 Order” means the Insolvent Partnerships Order 1994(3).

Transitional provisions

2. The amendments to the 1994 Order set out in articles 3, 7 and 12 of this Order do not apply where a petition for an administration order has been presented in relation to an insolvent partnership before the commencement date.

Amendments to Part III of the Insolvent Partnerships Order 1994

3. For Part III of the 1994 Order (administration orders) substitute—

(1) 1986 c. 45; section 420 was amended by the Insolvency Act 1986 (Amendment) Regulations 2002, S.I. 2002/1037.
(2) 1986 c. 46; section 21(2) was amended by the Insolvency Act 2000 (c. 39), Schedule 4, paragraph 14(1) and (2). The amendments to section 21(2) made by the Companies Act 1989 (c. 40) are not relevant for the purposes of this Order.
(3) S.I. 1994/2421 as amended by S.I. 1996/1308, 2001/767, 2001/3649, 2002/1308, 2002/1555 and 2002/2708.

“PART III ADMINISTRATION

Administration in relation to insolvent partnership

6.—(1) The provisions of Part II of, and Schedule B1 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 2 to this Order.

(2) In its application to insolvent partnerships, Part II of, and Schedule B1 to, the Act (as modified as set out in Schedule 2 to this Order) shall be read subject to paragraph (3).

(3) For every reference to—

- (a) “administrative receiver” there shall be substituted “agricultural receiver”; and
- (b) “floating charge” there shall be substituted “agricultural floating charge”.

(4) For the purposes of the provisions of the Act applied by paragraph (1), the provisions of the Act specified in paragraph (5) below, insofar as they relate to the appointment of an administrator, shall also apply in relation to insolvent partnerships.

(5) The provisions referred to in paragraph (4) are—

- (a) Part VI,
- (b) Part VII (with the exception of section 250),
- (c) Part XII,
- (d) Part XIII,
- (e) sections 411, 413, 414 and 419 in Part XV, and
- (f) Parts XVI to XIX.

(6) For the purposes of this Article and the provisions of the Act applied by paragraph (1), “agricultural floating charge” shall be construed as a reference to a floating charge created under section 5 of the Agricultural Credits Act 1928.”.

Amendment to Article 8 of the Insolvent Partnerships Order 1994

4. In Article 8(5)(a) after “Part IV” insert “(other than section 176A)”.

Amendment to Article 10 of the Insolvent Partnerships Order 1994

5. In Article 10—

- (a) in paragraph (3)(a) after “Part IV” insert “(other than section 176A)”;
- (b) for paragraph (6) substitute—

“(6) Certain of the provisions referred to in paragraphs (2) and (4) are modified in their application in relation to the corporate or individual members of insolvent partnerships in such manner that, after modification, they are as set out in Part II of Schedule 4 to this Order.”.

Amendments to Schedule 1 to the Insolvent Partnerships Order 1994

6.—(1) Schedule 1 to the 1994 Order (modified provisions of Part 1 of, and Schedule A1 to, the Act (company voluntary arrangements) as applied by Article 4) is amended as follows.

(2) In modified section 1 (those who may propose an arrangement)—

- (a) in subsection (1) for “for which an administration order is in force” substitute “which is in administration”;
 - (b) in subsection (3)(a) for “an administration order is in force in relation to the partnership” substitute, “the partnership is in administration”;
 - (c) omit modified subsection (4).
- (3) In modified section 5 (effect of approval)—
- (a) in subsection (3) for “an administration order” substitute “is in administration”;
 - (b) in subsection (3)(a)(ii) for “discharge the administration order” substitute “provide for the appointment of the administrator to cease to have effect”.
- (4) In modified section 6 (challenge of decisions) in subsection (2)(d) for “an administration order or” substitute “is in administration or an”.
- (5) In modified paragraph 3 of Schedule A1—
- (a) in sub-paragraph (3)(a) for “£2.8” substitute “£5.6”; and
 - (b) in sub-paragraph (3)(b) for “£1.4” substitute “£2.8”.
- (6) In modified paragraph 4(1)(a) of Schedule A1 for “an administration order is in force in relation to the insolvent partnership” substitute “the partnership is in administration”.
- (7) For modified paragraph 12(1)(d) of Schedule A1 substitute—
- “(d) no administration application may be made in respect of the partnership,
 - (da) no administrator of the partnership may be appointed under paragraph 14 or 22 of Schedule B1.”.
- (8) For modified paragraph 40(7) of Schedule A1 substitute—
- “(7) Sub-paragraph (8) applies where—
 - (a) the appointment of an administrator has effect in relation to the insolvent partnership and the appointment took effect before the moratorium came into force, or
 - (b) the insolvent partnership is being wound up as an unregistered company or an order by virtue of article 11 of the Insolvent Partnerships Order 1994 has been made, in pursuance of a petition presented before the moratorium came into force.
 - (8) No application for an order under this paragraph may be made by a creditor or member of the insolvent partnership; but such an application may be made instead by the administrator (or as the case may be) the liquidator.”.

Amendment to Schedule 2 to the Insolvent Partnerships Order 1994

7. For Schedule 2 to the 1994 Order (modified provisions of Part II of the Act) substitute the provisions set out in Schedule 1 to this Order.

Amendment to Schedule 3 to the Insolvent Partnerships Order 1994

8. In paragraph 10 of Part II of Schedule 3 to the 1994 Order (modifications to Schedule 4) insert after modified paragraph 3 of modified Schedule 4 (powers of liquidator in a winding up) the following—

“3A. Power to bring legal proceedings under section 213, 214, 238, 239 or 423”.

Amendments to Schedule 4 of 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 1(2) of Part I after “283” insert “283A” and after “305” insert “313A”.

(3) In paragraph 15 of Part II (section 140: appointment by the court following administration or voluntary arrangement), in modified section 140(2) for “discharge of an administration order in respect of the partnership” substitute “appointment of an administrator in respect of the partnership ceasing to have effect” and for “who has ceased on the discharge of the administration order to be the administrator of the partnership” substitute “whose appointment as administrator has ceased to have effect”.

(4) After paragraph 28 of Part II (section 283: definition of individual member’s estate) insert new paragraph 28A as follows:—

“**28A.** Section 283A: Individual member’s home ceasing to form part of estate

Section 283A is modified so as to read as follows:—

“**283A.**—(1) This section applies where property comprised in the estate of an individual member consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

- (a) the individual member;
- (b) the individual member’s spouse, or
- (c) a former spouse of the individual member.

(2) At the end of the period of three years beginning with the date of the bankruptcy the interest mentioned in subsection (1) shall—

- (a) cease to be comprised in the individual member’s estate, and
- (b) vest in the individual member (without conveyance, assignment or transfer).

(3) Subsection (2) shall not apply if during the period mentioned in that subsection—

- (a) the trustee realises the interest mentioned in subsection (1),
- (b) the trustee applies for an order for sale in respect of the dwelling-house,
- (c) the trustee applies for an order for possession of the dwelling-house,
- (d) the trustee applies for an order under section 313 in Chapter IV in respect of that interest, or
- (e) the trustee and the individual member agree that the individual member shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in subsection (1) shall cease to form part of the estate.

(4) Where an application of a kind described in subsection (3)(b) to (d) is made during the period mentioned in subsection (2) and is dismissed, unless the court orders otherwise the interest to which the application relates shall on the dismissal of the application—

- (a) cease to be comprised in the individual member’s estate, and

(b) vest in the individual member (without conveyance, assignment or transfer).

(5) If the individual member does not inform the trustee or the official receiver of his interest in a property before the end of the period of three months beginning with the date of the bankruptcy, the period of three years mentioned in subsection (2)—

(a) shall not begin with the date of the bankruptcy, but

(b) shall begin with the date on which the trustee or official receiver becomes aware of the individual member's interest.

(6) The court may substitute for the period of three years mentioned in subsection (2) a longer period—

(a) in prescribed circumstances, and

(b) in such other circumstances as the court thinks appropriate.

(7) The rules may make provision for this section to have effect with the substitution of a shorter period for the period of three years mentioned in subsection (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).

(8) The rules may also, in particular, make provision—

(a) requiring or enabling the trustee of an individual member's estate to give notice that this section applies or does not apply;

(b) about the effect of a notice under paragraph (a);

(c) requiring the trustee of an individual member's estate to make an application to the Chief Land Registrar.

(9) Rules under subsection (8)(b) may, in particular—

(a) disapply this section;

(b) enable a court to disapply this section;

(c) make provision in consequence of a disapplication of this section;

(d) enable a court to make provision in consequence of a disapplication of this section;

(e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.”.”.

(5) After paragraph 29 of Part II (section 284: individual member: restrictions on dispositions of property) insert new paragraph 29A as follows—

“**29A.** Section 313A: Low value home: application for sale, possession or charge

Section 313A is modified so as to read as follows:—

“**313A.**—(1) This section applies where—

(a) property comprised in the individual member's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(i) the individual member,

(ii) the individual member's spouse, or

(iii) a former spouse of the individual member, and

(b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under section 313 in respect of the property.

(2) The court shall dismiss the application if the value of the interest is below the amount prescribed for the purposes of this subsection.

(3) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the order which prescribes the amount for the purposes of subsection (2).”.”.

(6) In paragraph 30 (modification of Schedule 4) insert after modified paragraph 3 of modified Schedule 4 the following—

“**3A.** Power to bring legal proceedings under section 213, 214, 238, 239 or 423.”.

Amendment to Schedule 7 to the Insolvent Partnerships Order 1994

10.—(1) Schedule 7 to the 1994 Order (modified provisions for the purposes of Article 11) is amended as follows.

(2) In paragraph 1(2) omit “275,”.

(3) Omit paragraph 6 (section 275: summary administration).

(4) After paragraph 7 (section 283: definition of member’s estate) insert new paragraph 7A as follows—

“**7A.** Section 283A: Bankrupt’s home ceasing to form part of estate

Section 283A is modified so as to read as follows:—

“**283A.**—(1) This section applies where property comprised in the estate of an individual member consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

- (a) the individual member;
- (b) the individual member’s spouse, or
- (c) a former spouse of the individual member.

(2) At the end of the period of three years beginning with the date of the bankruptcy the interest mentioned in subsection (1) shall—

- (a) cease to be comprised in the individual member’s estate, and
- (b) vest in the individual member (without conveyance, assignment or transfer).

(3) Subsection (2) shall not apply if during the period mentioned in that subsection—

- (a) the trustee realises the interest mentioned in subsection (1),
- (b) the trustee applies for an order for sale in respect of the dwelling-house,
- (c) the trustee applies for an order for possession of the dwelling-house,
- (d) the trustee applies for an order under section 313 in Chapter IV in respect of that interest, or
- (e) the trustee and the individual member agree that the individual member shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in

consideration of which the interest mentioned in subsection (1) shall cease to form part of the estate.

(4) Where an application of a kind described in subsection (3)(b) to (d) is made during the period mentioned in subsection (2) and is dismissed, unless the court orders otherwise the interest to which the application relates shall on the dismissal of the application—

- (a) cease to be comprised in the individual member's estate, and
- (b) vest in the individual member (without conveyance, assignment or transfer).

(5) If the individual member does not inform the trustee or the official receiver of his interest in a property before the end of the period of three months beginning with the date of the bankruptcy, the period of three years mentioned in subsection (2)—

- (a) shall not begin with the date of the bankruptcy, but
- (b) shall begin with the date on which the trustee or official receiver becomes aware of the individual member's interest.

(6) The court may substitute for the period of three years mentioned in subsection (2) a longer period—

- (a) in prescribed circumstances, and
- (b) in such other circumstances as the court thinks appropriate.

(7) The rules may make provision for this section to have effect with the substitution of a shorter period for the period of three years mentioned in subsection (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).

(8) The rules may also, in particular, make provision—

- (a) requiring or enabling the trustee of an individual member's estate to give notice that this section applies or does not apply;
- (b) about the effect of a notice under paragraph (a);
- (c) requiring the trustee of an individual member's estate to make an application to the Chief Land Registrar.

(9) Rules under subsection (8)(b) may, in particular—

- (a) disapply this section;
- (b) enable a court to disapply this section;
- (c) make provision in consequence of a disapplication of this section;
- (d) enable a court to make provision in consequence of a disapplication of this section;
- (e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.”.”.

(5) After paragraph 20 insert new paragraph 20A as follows—

“**20A.** Section 313A: Low value home: application for sale, possession or charge
Section 313A is modified so as to read as follows:—

“**313A.**—(1) This section applies where—

- (a) property comprised in the individual member’s estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—
 - (i) the individual member,
 - (ii) the individual member’s spouse, or
 - (iii) a former spouse of the individual member, and
 - (b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under section 313 in respect of the property.
- (2) The court shall dismiss the application if the value of the interest is below the amount prescribed for the purposes of this subsection.
- (3) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the order which prescribes the amount for the purposes of subsection (2).”.”.

Amendments to Schedule 8 to the Insolvent Partnerships Order 1994

11.—(1) Schedule 8 to the 1994 Order (modified provisions of Company Directors Disqualification Act 1986 for the purposes of Article 16) is amended as follows.

- (2) In modified section 6 (duty of court to disqualify unfit officers of insolvent partnerships)—
 - (a) in subsection (2)(a)(ii) for “an administration order is made in relation to the partnership” substitute “the partnership enters administration”;
 - (b) in subsection (2)(b)(ii) for “an administration order is made in relation to the company” substitute “the company enters administration”;
 - (c) in subsection (4)(b) for “an administration order has at any time been made” substitute “an administrator has at any time been appointed”.
- (3) In modified section 7(3)(b) (disqualification order or undertaking; and reporting provisions) for “in relation to which an administration order is in force” substitute “which is in administration”.
- (4) In modified Schedule 1 (matters for determining unfitness of officers of partnerships) in paragraph 12(a) for “section 22” substitute “paragraph 48 of Schedule B1”.

Amendment to Schedule 9 to the Insolvent Partnerships Order 1994

12. Schedule 9 to the 1994 Order (forms) is amended as follows—

- (a) in the entry for Form 1 for “Petition for administration order” substitute “Administration application”;
- (b) after the entry for Form 1 insert the following entries—
 - “IA Notice of intention to appoint an administrator by the members of the partnership
 - IB Notice of an appointment of an administrator by the members of the partnership (where a notice of intention to appoint has not been issued)”;
- (c) for Forms 1, 4 and 16 substitute the Forms so numbered in Schedule 2 to this Order and after Form 1 insert Forms IA and IB as set out in Schedule 2 to this Order.

Amendment to Schedule 10 to the Insolvent Partnerships Order 1994

13. Schedule 10 to the 1994 Order is amended as follows—

- (a) for “The Insolvency Regulations 1986” substitute “The Insolvency Regulations 1994”(4);
- (b) omit “The Insolvency Fees Order 1986”;
- (c) for “The Companies (Disqualification Orders) Regulations 1986” substitute “The Companies (Disqualification Orders) Regulations 2001(5);
- (d) for “The Insolvent Companies (Reports on Conduct of Directors) No. 2 Rules 1986” substitute “The Insolvent Companies (Reports on Conduct of Directors) Rules 1996(6);
- (e) for “The Insolvency Practitioners Regulations 1990” substitute “The Insolvency Practitioners Regulations 2005(7);
- (f) at the end insert—
 - “The Insolvency Practitioners and Insolvency Services Accounts (Fees) Order 2003(8);
 - The Insolvency Proceedings (Fees) Order 2004(9)

1st June 2005

Falconer of Thoroton C.

I concur, on behalf of the Secretary of State

7th June 2005

Gerry Sutcliffe
Parliamentary Under-Secretary for Employment
Relations and Consumer Affairs
Department of Trade and Industry

(4) S.I. 1994/2507.
(5) S.I. 2001/967.
(6) S.I. 1996/1909.
(7) S.I. 2005/524.
(8) S.I. 2003/3363.
(9) S.I. 2004/593.

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

SCHEDULE 1

Article 7

SUBSTITUTED SCHEDULE 2 TO THE INSOLVENT PARTNERSHIPS ORDER 1994

“SCHEDULE 2

Article 6

MODIFIED PROVISIONS OF PART II OF, AND SCHEDULE B1
TO, THE ACT (ADMINISTRATION) AS APPLIED BY ARTICLE 6

1. The following provisions of Schedule B1 and Schedule 1 to the Act are modified as follows.
2. Paragraph 2 is modified so as to read as follows—
 - “2. A person may be appointed as administrator of a partnership—
 - (a) by administration order of the court under paragraph 10,
 - (b) by the holder of an agricultural floating charge under paragraph 14, or
 - (c) by the members of the insolvent partnership in their capacity as such under paragraph 22.”
3. Paragraph 7 is modified so as to read as follows—
 - “7. A person may not be appointed as administrator of a partnership which is in administration (subject to the provisions of paragraphs 90 to 93, 95 to 97, and 100 to 103 about replacement and additional administrators).”
4. Paragraph 8 is modified so as to read as follows—
 - “8.—(1) A person may not be appointed as administrator of a partnership after—
 - (a) an order has been made in relation to it by virtue of Article 11 of the Insolvent Partnerships Order 1994; or
 - (b) an order has been made for it to be wound up by the court as an unregistered company.
 - (2) Sub-paragraph (1)(a) is subject to paragraph 38.
 - (3) Sub-paragraph (1)(b) is subject to paragraphs 37 and 38.”
5. Paragraph 11 is modified so as to read as follows—
 - “11. The court may make an administration order in relation to a partnership only if satisfied—
 - (a) that the partnership is unable to pay its debts, and
 - (b) that the administration order is reasonably likely to achieve the purpose of administration.”
6. Paragraph 12 is modified so as to read as follows—
 - “12.—(1) An application to the court for an administration order in respect of a partnership (“an administration application”) shall be by application in Form 1 in Schedule 9 to the Insolvent Partnerships Order 1994 and may be made only by—
 - (a) the members of the insolvent partnership in their capacity as such;
 - (b) one or more creditors of the partnership; or
 - (c) a combination of persons listed in paragraphs (a) and (b).
 - (2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify—

- (a) any person who has appointed an agricultural receiver of the partnership;
- (b) any person who is or may be entitled to appoint an agricultural receiver of the partnership;
- (c) any person who is or may be entitled to appoint an administrator of the partnership under paragraph 14; and
- (d) such other persons as may be prescribed.

(3) An administration application may not be withdrawn without the permission of the court.

(4) In sub-paragraph (1) “creditor” includes a contingent creditor and a prospective creditor.

(5) Sub-paragraph (1) is without prejudice to section 7(4)(b).”.

7. Paragraph 14 is modified so as to read as follows—

“14.—(1) The holder of a qualifying agricultural floating charge in respect of partnership property may appoint an administrator of the partnership.

(2) For the purposes of sub-paragraph (1) an agricultural floating charge qualifies if created by an instrument which—

- (a) states that this paragraph applies to the agricultural floating charge,
- (b) purports to empower the holder of the agricultural floating charge to appoint an administrator of the partnership,
- (c) purports to empower the holder of the agricultural floating charge to make an appointment which would be the appointment of an agricultural receiver.

(3) For the purposes of sub-paragraph (1) a person is the holder of a qualifying agricultural floating charge in respect of partnership property if he holds one or more charges of the partnership secured—

- (a) by a qualifying agricultural floating charge which relates to the whole or substantially the whole of the partnership property,
- (b) by a number of qualifying agricultural floating charges which together relate to the whole or substantially the whole of the partnership property, or
- (c) by charges and other forms of security which together relate to the whole or substantially the whole of the partnership property and at least one of which is a qualifying agricultural floating charge.”.

8. Paragraph 15 is modified so as to read as follows—

“15.—(1) A person may not appoint an administrator under paragraph 14 unless—

- (a) he has given at least two business days' written notice to the holder of any prior agricultural floating charge which satisfies paragraph 14(2); or
- (b) the holder of any prior agricultural floating charge which satisfies paragraph 14(2) has consented in writing to the making of the appointment.

(2) One agricultural floating charge is prior to another for the purposes of this paragraph if—

- (a) it was created first, or
- (b) it is to be treated as having priority in accordance with an agreement to which the holder of each agricultural floating charge was party.”.

9. Paragraph 22 is modified so as to read as follows—

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

“22. The members of the insolvent partnership may appoint an administrator.”.

10. Paragraph 23 is modified so as to read as follows—

“23.—(1) This paragraph applies where an administrator of a partnership is appointed—

- (a) under paragraph 22, or
- (b) on an administration application made by the members of the partnership.

(2) An administrator of the partnership may not be appointed under paragraph 22 during the period of 12 months beginning with the date on which the appointment referred to in sub-paragraph (1) ceases to have effect.”.

11. Paragraph 26 is modified so as to read as follows—

“26.—(1) A person who proposes to make an appointment under paragraph 22 shall give at least five business days' written notice to—

- (a) any person who is or may be entitled to appoint an agricultural receiver of the partnership, and
- (b) any person who is or may be entitled to appoint an administrator of the partnership under paragraph 14.

(2) A person who proposes to make an appointment under paragraph 22 shall also give such notice as may be prescribed to such other persons as may be prescribed.

(3) A notice under this paragraph must—

- (a) identify the proposed administrator, and
- (b) be in Form 1A in Schedule 9 to the Insolvent Partnerships Order 1994.”.

12. Paragraph 27 is modified so as to read as follows—

“27.—(1) A person who gives notice of intention to appoint under paragraph 26 shall file with the court as soon as is reasonably practicable a copy of—

- (a) the notice, and
- (b) any document accompanying it.

(2) The copy filed under sub-paragraph (1) must be accompanied by a statutory declaration made by or on behalf of the person who proposes to make the appointment—

- (a) that the partnership is unable to pay its debts,
- (b) that the partnership is not in liquidation, and
- (c) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by paragraphs 23 to 25, and
- (d) to such additional effect, and giving such information, as may be prescribed.

(3) A statutory declaration under sub-paragraph (2) must—

- (a) be in the prescribed form, and
- (b) be made during the prescribed period.

(4) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

- (a) which is false, and
- (b) which he does not reasonably believe to be true.”.

13. Paragraph 29 is modified so as to read as follows—

“**29.**—(1) A person who appoints an administrator of a partnership under paragraph 22 shall file with the court—

- (a) a notice of appointment, and
- (b) such other documents as may be prescribed.

(2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—

- (a) that the person is entitled to make an appointment under paragraph 22,
- (b) that the appointment is in accordance with this Schedule, and
- (c) that, so far as the person making the statement is able to ascertain, the statements made, and information given in the statutory declaration filed with the notice of intention to appoint remain accurate.

(3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—

- (a) that he consents to the appointment,
- (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
- (c) giving such other information and opinions as may be prescribed.

(4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by members of the partnership (unless he has reason to doubt its accuracy).

(5) The notice of appointment must be in Form 1B in Schedule 9 to the Insolvent Partnerships Order 1994 and any document accompanying it must be in the prescribed form.

(6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.

(7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

- (a) which is false, and
- (b) which he does not reasonably believe to be true.”.

14. Paragraph 35 is modified so as to read as follows—

“**35.**—(1) This paragraph applies where an administration application in respect of a partnership—

- (a) is made by the holder of a qualifying agricultural floating charge in respect of the partnership property, and
- (b) includes a statement that the application is made in reliance on this paragraph.

(2) The court may make an administration order—

- (a) whether or not satisfied that the partnership is unable to pay its debts; but
- (b) only if satisfied that the applicant could appoint an administrator under paragraph 14.”.

15. Paragraph 39 is modified so as to read as follows—

“**39.**—(1) Where there is an agricultural receiver of a partnership the court must dismiss an administration application in respect of the partnership unless—

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

- (a) the person by or on behalf of whom the agricultural receiver was appointed consents to the making of the administration order,
- (b) the court thinks that the security by virtue of which the agricultural receiver was appointed would be liable to be released or discharged under sections 238 to 240 (transaction at undervalue and preference) if an administration order were made, or
- (c) the court thinks that the security by virtue of which the agricultural receiver was appointed would be avoided under section 245 (avoidance of floating charge) if an administration order were made.

(2) Sub-paragraph (1) applies whether the agricultural receiver is appointed before or after the making of the administration application.”.

16. Paragraph 41 is modified so as to read as follows—

“41.—(1) When an administration order takes effect in respect of a partnership any agricultural receiver of the partnership shall vacate office.

(2) Where a partnership is in administration, any receiver of part of the partnership property shall vacate office if the administrator requires him to.

(3) Where an agricultural receiver vacates office under sub-paragraph (1) or (2), his remuneration shall be charged on and paid out of any partnership property which was in his custody or under his control immediately before he vacated office.

(4) In the application of sub-paragraph (3)—

- (a) “remuneration” includes expenses properly incurred and any indemnity to which the agricultural receiver is entitled out of the partnership property,
- (b) the charge imposed takes priority over security held by the person by whom or on whose behalf the agricultural receiver was appointed, and
- (c) the provision for payment is subject to paragraph 43.”.

17. Paragraph 42 is modified so as to read as follows—

“42.—(1) This paragraph applies to a partnership in administration.

(2) No order may be made for the winding up of the partnership.

(3) No order may be made by virtue of Article 11 of the Insolvent Partnerships Order 1994 in respect of the partnership.

(4) No order may be made under section 35 of the Partnership Act 1890 in respect of the partnership.

(5) Sub-paragraph (2) does not apply to an order made on a petition presented under—

- (a) section 124A(public interest); or
- (b) section 367 of the Financial Services and Markets Act 2000 (c. 8)(petition by Financial Services Authority).

(6) If a petition presented under a provision referred to in sub-paragraph (5) comes to the attention of the administrator, he shall apply to the court for directions under paragraph 63.”.

18. Paragraph 43 is modified so as to read as follows—

“43.—(1) This paragraph applies to a partnership in administration.

(2) No step may be taken to enforce security over the partnership property except—

- (a) with the consent of the administrator, or

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

(b) with the permission of the court.

(3) No step may be taken to repossess goods in the partnership's possession under a hire-purchase agreement except—

(a) with the consent of the administrator, or

(b) with the permission of the court.

(4) A landlord may not exercise a 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 except—

(a) with the consent of the administrator, or

(b) with the permission of the court.

(5) No legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the partnership or partnership property except—

(a) with the consent of the administrator, or

(b) with the permission of the court.

(6) An agricultural receiver of the partnership may not be appointed.

(7) Where the court gives permission for a transaction under this paragraph it may impose a condition on or a requirement in connection with the transaction.

(8) In this paragraph "landlord" includes a person to whom rent is payable."

19. Paragraph 47 is modified so as to read as follows—

"**47.**—(1) As soon as is reasonably practicable after appointment the administrator of a partnership shall by notice in the prescribed form require one or more relevant persons to provide the administrator with a statement of the affairs of the partnership.

(2) The statement must—

(a) be verified by a statement of truth in accordance with Civil Procedure Rules,

(b) be in the prescribed form,

(c) give particulars of the partnership property, debts and liabilities,

(d) give the names and addresses of the creditors of the partnership,

(e) specify the security held by each creditor,

(f) give the date on which each security was granted, and

(g) contain such other information as may be prescribed.

(3) In sub-paragraph (1) "relevant person" means—

(a) a person who is or has been an officer of the partnership,

(b) a person who took part in the formation of the partnership during the period of one year ending with the date on which the partnership enters administration,

(c) a person employed by the partnership during that period, and

(d) a person who is or has been during that period an officer or employee of a partnership which is or has been during that year an officer of the partnership.

(4) For the purpose of sub-paragraph (3) a reference to employment is a reference to employment through a contract of employment or a contract for services."

20. Paragraph 49 is modified so as to read as follows—

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

“**49.**—(1) The administrator of a partnership shall make a statement setting out proposals for achieving the purpose of administration.

(2) A statement under sub-paragraph (1) must, in particular—

- (a) deal with such matters as may be prescribed, and
- (b) where applicable, explain why the administrator thinks that the objective mentioned in paragraph 3(1)(a) or (b) cannot be achieved.

(3) Proposals under this paragraph may include a proposal for a voluntary arrangement under Part I of this Act (although this paragraph is without prejudice to section 4(3)).

(4) The administrator shall send a copy of the statement of his proposals—

- (a) to the court,
- (b) to every creditor of the partnership of whose claim and address he is aware, and
- (c) to every member of the partnership of whose address he is aware.

(5) The administrator shall comply with sub-paragraph (4)—

- (a) as soon as is reasonably practicable after the partnership enters administration, and
- (b) in any event, before the end of the period of eight weeks beginning with the day on which the partnership enters administration.

(6) The administrator shall be taken to comply with sub-paragraph (4)(c) if he publishes in the prescribed manner a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the partnership who applies in writing to a specified address.

(7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

(8) A period specified in this paragraph may be varied in accordance with paragraph 107.”.

21. Paragraph 52 is modified so as to read as follows—

“**52.**—(1) Paragraph 51(1) shall not apply where the statement of proposals states that the administrator thinks—

- (a) that the partnership has sufficient property to enable each creditor of the partnership to be paid in full,
- (b) that the partnership has insufficient property to enable a distribution to be made to unsecured creditors, or
- (c) that neither of the objectives specified in paragraph 3(1)(a) and (b) can be achieved.

(2) But the administrator shall summon an initial creditors' meeting if it is requested—

- (a) by creditors of the partnership whose debts amount to at least 10 per cent of the total debts of the partnership,
- (b) in the prescribed manner, and
- (c) in the prescribed period.

(3) A meeting requested under sub-paragraph (2) must be summoned for a date in the prescribed period.

(4) The period prescribed under sub-paragraph (3) may be varied in accordance with paragraph 107.”.

22. Paragraph 61 is modified so as to read as follows—

“61. The administrator of a partnership—

- (a) may prevent any person from taking part in the management of the partnership business, and
- (b) may appoint any person to be a manager of that business.”.

23. Paragraph 65 is modified so as to read as follows—

“65.—(1) The administrator of a partnership may make a distribution to a creditor of the partnership.

(2) Section 175(1) and (2)(a) shall apply in relation to a distribution under this paragraph as it applies in relation to a winding up.

(3) A payment may not be made by way of distribution under this paragraph to a creditor of the partnership who is neither secured nor preferential unless the court gives permission.”.

24. Paragraph 69 is modified so as to read as follows:—

“69.—(1) Subject to sub-paragraph (2) below, in exercising his function under this Schedule the administrator of a partnership acts as the agent of the members of the partnership in their capacity as such.

(2) An officer of the partnership shall not, unless he otherwise consents, be personally liable for the debts and obligations of the partnership incurred during the period when the partnership is in administration.”.

25. Paragraph 73 is modified so as to read as follows—

“73.—(1) An administrator’s statement of proposals under paragraph 49 may not include any action which—

- (a) affects the right of a secured creditor of the partnership to enforce his security,
- (b) would result in a preferential debt of the partnership being paid otherwise than in priority to its non-preferential debts, or
- (c) would result in one preferential creditor of the partnership being paid a smaller proportion of his debt than another.

(2) Sub-paragraph (1) does not apply to—

- (a) action to which the relevant creditor consents, or
- (b) a proposal for a voluntary arrangement under Part I of this Act (although this sub-paragraph is without prejudice to section 4(3)).

(3) The reference to a statement of proposals in sub-paragraph (1) includes a reference to a statement as revised or modified.”.

26. Paragraph 74 is modified so as to read as follows—

“74.—(1) A creditor or member of a partnership in administration may apply to the court claiming that—

- (a) the administrator is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors), or
- (b) the administrator proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors).

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

(2) A creditor or member of a partnership in administration may apply to the court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.

(3) The court may—

- (a) grant relief;
- (b) dismiss the application;
- (c) adjourn the hearing conditionally or unconditionally;
- (d) make an interim order;
- (e) make any other order it thinks appropriate.

(4) In particular, an order under this paragraph may—

- (a) regulate the administrator's exercise of his functions;
- (b) require the administrator to do or not do a specified thing;
- (c) require a creditors' meeting to be held for a specified purpose;
- (d) provide for the appointment of an administrator to cease to have effect;
- (e) make consequential provision.

(5) An order may be made on a claim under sub-paragraph (1) whether or not the action complained of—

- (a) is within the administrator's powers under that Schedule;
- (b) was taken in reliance on an order under paragraph 71 or 72.

(6) An order may not be made under this paragraph if it would impede or prevent the implementation of—

- (a) a voluntary arrangement approved under Part I, or
- (b) proposals or a revision approved under paragraph 53 or 54 more than 28 days before the day on which the application for the order under this paragraph is made.”.

27. Omit paragraph 83.

28. Paragraph 84 is modified so as to read as follows—

“84.—(1) If the administrator of a partnership thinks that the partnership has no property which might permit a distribution to its creditors, he shall file a notice to that effect with the court.

(2) The court may on the application of the administrator of a partnership disapply sub-paragraph (1) in respect of the partnership.

(3) On the filing of a notice in respect of a partnership under sub-paragraph (1) the appointment of an administrator of the partnership shall cease to have effect.

(4) If an administrator files a notice under sub-paragraph (1) he shall as soon as is reasonably practicable send a copy of the notice to each creditor of whose claim and address he is aware.

(5) At the end of the period of three months beginning with the date of filing of a notice in respect of a partnership under sub-paragraph (1) the partnership is deemed to be dissolved.

(6) On an application in respect of a partnership by the administrator or another interested person the court may—

- (a) extend the period specified in sub-paragraph (5);

- (b) suspend that period; or
- (c) disapply sub-paragraph (5).

(7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (4).”.

29. Paragraph 87 is modified to read as follows—

“**87.**—(1) An administrator may resign only in prescribed circumstances.

(2) Where an administrator may resign he may do so only—

- (a) in the case of an administrator appointed by administration order, by notice in writing to the court,
- (b) in the case of an administrator appointed under paragraph 14, by notice in writing to the holder of the agricultural floating charge by virtue of which the appointment was made, or
- (c) in the case of an administrator appointed under paragraph 22, by notice in writing to the members of the insolvent partnership.”.

30. Paragraph 89 is modified so as to read as follows—

“**89.**—(1) The administrator of a partnership shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the partnership.

(2) Where an administrator vacates office by virtue of sub-paragraph (1) he shall give notice in writing—

- (a) in the case of an administrator appointed by administration order, to the court,
- (b) in the case of an administrator appointed under paragraph 14, to the holder of the agricultural floating charge by virtue of which the appointment was made, or
- (c) in the case of an administrator appointed under paragraph 22, to the members of the insolvent partnership.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.”.

31. Paragraph 90 is modified so as to read as follows—

“**90.** Paragraphs 91 to 93 and 95 apply where an administrator—

- (a) dies
- (b) resigns
- (c) is removed from office under paragraph 88, or
- (d) vacates office under paragraph 89.”.

32. Paragraph 91 is modified so as to read as follows—

“**91.**—(1) Where the administrator was appointed by administration order, the court may replace the administrator on an application under this sub-paragraph made by—

- (a) a creditors' committee of the partnership,
- (b) the members of the partnership,
- (c) one or more creditors of the partnership, or
- (d) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remains in office.

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

(2) But an application may be made in reliance on sub-paragraph (1)(b) and (c) only where—

- (a) there is no creditors' committee of the partnership,
- (b) the court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement, or
- (c) the court is satisfied that for another reason it is right for the application to be made.”.

33. Paragraph 93 is modified so as to read as follows—

“**93.**—(1) Where the administrator was appointed under paragraph 22 by the members of the partnership they may replace the administrator.

(2) A replacement under this paragraph may be made only—

- (a) with the consent of each person who is the holder of a qualifying agricultural floating charge in respect of the partnership property, or
- (b) where consent is withheld, with the permission of the court.”.

34. Omit paragraph 94.

35. Paragraph 95 is modified so as to read as follows—

“**95.** The court may replace an administrator on the application of a person listed in paragraph 91(1) if the court—

- (a) is satisfied that a person who is entitled to replace the administrator under any of paragraphs 92 and 93 is not taking reasonable steps to make a replacement, or
- (b) that for another reason it is right for the court to make the replacement.”.

36. Paragraph 96 is modified so as to read as follows—

“**96.**—(1) This paragraph applies where an administrator of a partnership is appointed under paragraph 14 by the holder of a qualifying agricultural floating charge in respect of the partnership property.

(2) The holder of a prior qualifying agricultural floating charge in respect of the partnership property may apply to the court for the administrator to be replaced by an administrator nominated by the holder of the prior agricultural floating charge.

(3) One agricultural floating charge is prior to another for the purposes of this paragraph if—

- (a) it was created first, or
- (b) it is to be treated as having priority in accordance with an agreement to which the holder of each agricultural floating charge was party.”.

37. Paragraph 97 is modified so as to read as follows—

“**97.**—(1) This paragraph applies where—

- (a) an administrator of a partnership is appointed by the members of the partnership under paragraph 22, and
- (b) there is no holder of a qualifying agricultural floating charge in respect of the partnership property.

(2) A creditor’s meeting may replace the administrator.

(3) A creditors' meeting may act under sub-paragraph (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.”.

38. Paragraph 103 is modified so as to read as follows—

“**103.**—(1) Where a partnership is in administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the partnership.

(2) Where a partnership entered administration by administration order, an appointment under sub-paragraph (1) must be made by the court on the application of—

- (a) a person or group listed in paragraph 12(1)(a) to (c), or
- (b) the person or persons acting as the administrator of the partnership.

(3) Where a partnership entered administration by virtue of an appointment under paragraph 14, an appointment under sub-paragraph (1) must be made by—

- (a) the holder of the agricultural floating charge by virtue of which the appointment was made, or
- (b) the court on the application of the person or persons acting as the administrator of the partnership.

(4) Where a partnership entered administration by virtue of an appointment under paragraph 22, an appointment under sub-paragraph (1) above must be made either by the court on the application of the person or persons acting as the administrator of the partnership or—

- (a) by the members of the partnership, and
- (b) with the consent of each person who is the holder of a qualifying agricultural floating charge in respect of the partnership property or, where consent is withheld, with the permission of the court.

(5) An appointment under sub-paragraph (1) may be made only with the consent of the person or persons acting as the administrator of the partnership.”.

39. Omit paragraph 105.

40. Paragraph 106 is modified so as to read as follows—

“**106.**—(1) A person who is guilty of an offence under this Schedule is liable to a fine (in accordance with section 430 and Schedule 10).

(2) A person who is guilty of an offence under any of the following paragraphs of this Schedule is liable to a daily default fine (in accordance with section 430 and Schedule 10)—

- (a) paragraph 20,
- (b) paragraph 32,
- (c) paragraph 46,
- (d) paragraph 48,
- (e) paragraph 49,
- (f) paragraph 51,
- (g) paragraph 53,
- (h) paragraph 54,
- (i) paragraph 56,
- (j) paragraph 78,

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

- (k) paragraph 80,
- (l) paragraph 84, and
- (m) paragraph 89.”.

41. Paragraph 111 is modified so as to read as follows—

“**111.**—(1) In this Schedule—

“administrator” has the meaning given by paragraph 1 and, where the context requires, includes a reference to a former administrator,

“agricultural floating charge” means a charge which is an agricultural floating charge on its creation,

“correspondence” includes correspondence by telephonic or other electronic means,

“creditors' meeting” has the meaning given by paragraph 50,

“enters administration” has the meaning given by paragraph 1,

“in administration” has the meaning given by paragraph 1,

“hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

“holder of a qualifying agricultural floating charge” in respect of partnership property has the meaning given by paragraph 14,

“market value” means the amount which would be realised on a sale of property in the open market by a willing vendor,

“the purpose of administration” means an objective specified in paragraph 3, and

“unable to pay its debts” has the meaning given by sections 222, 223, and 224.

(2) A reference in this Schedule to a thing in writing includes a reference to a thing in electronic form.

(3) In this Schedule a reference to action includes a reference to inaction.”.

42. Omit paragraphs 112–116.

43. Schedule 1 is modified to read as follows:—

“SCHEDULE 1

Paragraph 60 of Schedule B1

POWERS OF ADMINISTRATOR

1. Power to take possession of, collect and get in the partnership property and, for that purpose, to take such proceedings as may seem to him expedient.

2. Power to sell or otherwise dispose of the partnership property by public auction or private auction or private contract or, in Scotland, to sell, feu, hire out or otherwise dispose of the partnership property by public roup or private bargain.

3. Power to raise or borrow money and grant security therefor over the partnership property.

4. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.

5. Power to bring or defend any action or other legal proceedings in the name and on behalf of any member of the partnership in his capacity as such or of the partnership.

6. Power to refer to arbitration any question affecting the partnership.

7. Power to effect and maintain insurances in respect of the partnership business and property.

8. 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, any deed, receipt or other document.

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.

10. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.

11. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the partnership property.

12. Power to make any payment which is necessary or incidental to the performance of his functions.

13. Power to carry on the business of the partnership.

14. Power to establish subsidiary undertakings of the partnership.

15. Power to transfer to subsidiary undertakings of the partnership the whole or any part of the business of the partnership or of the partnership property.

16. Power to grant or accept a surrender of a lease or tenancy of any of the partnership property, and to take a lease or tenancy of any property required or convenient for the business of the partnership.

17. Power to make any arrangement or compromise on behalf of the partnership or of its members in their capacity as such.

18. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the partnership and to receive dividends, and to accede to trust deeds for the creditors of any such person.

19. Power to present or defend a petition for the winding up of the partnership under the Insolvent Partnerships Order 1994.

20. Power to do all other things incidental to the exercise of the foregoing powers.””

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

SCHEDULE 2

Article 12

FORMS

Schedule 2 paragraph 6 ADMINISTRATION APPLICATION FORM 1
Paragraph 12(1) of Schedule B1

(a) Insert name of partnership In the matter of (a) _____

(hereinafter referred to as "the partnership") and in the matter of the Insolvent Partnerships Order 1994

(b) Insert title of court and number of proceedings (to be allocated by court) To (b) _____ No: _____ of _____

(c) Insert full name(s) and address(es) of applicant(s) 1. The application of (c) _____ being

*Delete as appropriate *(i) the members of the partnership, in reliance on paragraph 12(1) of Schedule B1 to the Insolvency Act 1986 ("the Schedule") as modified by the Insolvent Partnerships Order 1994

(d) Name(s) of all creditors applying *(ii) a creditor/ a creditor presenting this application on behalf of himself and the following creditors of the partnership: (d) _____, in reliance on paragraph 12(1) of the Schedule, as modified by the Insolvent Partnerships Order 1994

(e) Give details of charge relied on, date registered, (if any) financial limit *(iii) a holder of a qualifying agricultural floating charge, in reliance on paragraph 35 of the Schedule as modified by the Insolvent Partnerships Order 1994 (e) _____

*(iv) a holder of a qualifying agricultural floating charge, in reliance on paragraph 37 of the Schedule as applied by the Insolvent Partnerships Order 1994 (e) _____

*(v) the liquidator of the partnership, in reliance on paragraph 38 of the Schedule as applied by the Insolvent Partnerships Order 1994

*(vi) the supervisor of a voluntary arrangement, in reliance on section 7(4)(b) of the Insolvency Act 1986 as modified by the Insolvent Partnerships Order 1994

(f) Insert address of principal place of business 2. The principal place of business of the partnership is at (f) _____

(g) Insert nature of partnership's business 3. The nature of the partnership's business is (g) _____

*Delete as applicable 4. The partnership *is/is not *an insurance undertaking/credit institution/ an investment undertaking providing services involving the holding of securities for third parties/or a collective investment undertaking under Article 1.2 of the EC Regulation.

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

*Delete as applicable

(h) Insert whether main or territorial proceedings

*Delete as appropriate

(j) Insert full name(s) and address(es) of proposed administrator(s)

*Delete as applicable

(k) Insert address for service

(l) Insert full name(s) of proposed administrator(s)

(m) Insert details of any ancillary orders sought

*Delete as applicable

5. For the reasons stated in the *affidavit/witness statement in support of this application it is considered that the EC Regulation *will/will not apply. If it does apply, proceedings will be (h) _____ proceedings as defined in Article 3 of the EC Regulation

6. *The applicant(s) believe(s) that the partnership is unable to pay its debts for the reasons stated in the *affidavit/witness statement in support attached to this application.
(*Delete this paragraph if application is in reliance on paragraph 35 of Schedule B1)

7. The applicant(s) propose(s) that during the period for which the order is in force, the affairs, business and property of the partnership be managed by (j) _____
_____ whose statement(s) in Form 2.2B of the Insolvency Rules 1986 is/are attached to this application

8. An affidavit/witness statement in support of this application is attached

9. The *applicant's/applicant's solicitor's address for service is (k) _____

10. The applicant(s) therefore request(s) as follows:-

(1) that the court make an administration order in relation to (a) _____

(2) that (l) _____
be appointed to be the administrator(s) of the said partnership

(3)(m) _____
or

(4) that such other order may be made as the court thinks appropriate.

Signed _____
*Applicant/applicant's solicitor

Dated _____

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

(n) Insert name and address of Court/District Registry

Endorsement to be completed by the court	
This application having been presented to the court on _____	
will be heard at (n) _____	
_____ on	
(Date) _____ at	
(Time) _____ hours	
(or as soon thereafter as the application can be heard)	
The solicitor to the applicant is:-	
Name _____	
Address _____	

Telephone No: _____	
Reference _____	
[Whose Agents are:-	
Name _____	
Address _____	

Telephone No: _____	
Reference _____]	

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

Schedule 2 paragraph 9
Paragraph 22 of Schedule
B1

**NOTICE OF INTENTION TO APPOINT
AN ADMINISTRATOR BY THE
MEMBERS OF THE PARTNERSHIP**

FORM 1A

(a) Insert name of partnership **In the matter of (a)** _____

**(hereinafter referred to as "the partnership") and in the matter of the
Insolvent Partnerships Order 1994**

(b) Insert title of court and number of proceedings (to be allocated by court) **To (b)** _____
_____ No: _____ of _____

(c) Insert name and address of principal place of business of partnership **1. Notice is given that, in respect of (c)** _____
_____ the members of the partnership ("the appointors") intend to appoint

(d) Give name(s) and address(es) of proposed administrator(s) **(d)** _____
_____ as administrator(s) of the company

2. This notice is being given to the following person(s), being person(s) who is/are may be entitled to appoint an agricultural receiver of the partnership or an administrator of the partnership under paragraph 14 of Schedule B1 to the Insolvency Act 1986.

(e) Insert name and address of each person to whom notice is given **(e)** _____

3. The partnership has not, within the last twelve months:
(i) been in administration
(ii) been the subject of a moratorium under Schedule A1 to the Insolvency Act 1986 which has ended on a date when no voluntary arrangement was in force
(iii) been the subject of a voluntary arrangement which was made during a moratorium for the partnership under Schedule A1 to the Insolvency Act 1986 and which ended prematurely within the meaning of section 7B of the Insolvency Act 1986.

4. In relation to the partnership there is no:
(i) petition for winding up which has been presented but not yet disposed of
(ii) administration application which has not yet been disposed of, or
(iii) agricultural receiver in office.

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

*Delete as applicable

5. The partnership *is/is not *an insurance undertaking/a credit institution/an investment undertaking providing services involving the holding of funds or securities for third parties/or a collective investment undertaking under Article 1.2 of the EC Regulation.

(f) Insert whether main or territorial proceedings

6. For the following reasons it is considered that the EC Regulation *will/will not apply. If it does apply, these proceedings will be (f) _____ proceedings as defined in Article 3 of the EC Regulations _____

7. Attached to this notice is a copy of the record of the members' decision to appoint an administrator.

(g) Insert name and address of person making declaration

I (g) _____
(if making the declaration on behalf of appointor indicate capacity e.g. partner/solicitor)

hereby do solemnly and sincerely declare that:
(i) the partnership is unable to pay its debts
(ii) the partnership is not in liquidation, and
(iii) the statements in paragraph 3 and 4 are, so far as I am able to ascertain, true,
and that the information provided in this notice is to the best of my knowledge and belief true,

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835

Declared at _____

Signed _____

This _____ day of _____ 20

Note: This form now to be sent to all those required to be sent the form by Rule 2.20(2)

before me _____

A Commissioner for Oaths or Notary Public or Justice of the Peace or Solicitor or Duty Authorised Officer.

Consent of Agricultural Floating Charge Holder to Appointment of Administrator(s)
(Do not detach this part of the notice)

If, having read this notice, you have no objection to the making of this appointment you should complete the details in the box below and return a copy of this notice as soon as possible, and within five business days from receipt of this notice, to the appointor at the following address:

(h) Appointer to insert address

(h) _____

If your consent has not been given within five business days the appointor

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

may make the appointment notwithstanding that you have not replied.

(j) Insert name and address

(j) _____

being the holder of the following agricultural floating charge over the partnership property:

(k) Give details of charge, date registered and (if any) financial limit

(k) _____

consents to the appointment of the administrator(s) in accordance with the details of this notice.

Signed _____ Dated _____
(If signing on behalf of a partnership state position or office held)

(l) Insert date and time

Endorsement to be completed by court
This notice was filed (l) _____

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

Schedule 2 paragraph 9
Paragraph 22 of Schedule
B1

**NOTICE OF APPOINTMENT OF AN
ADMINISTRATOR BY THE MEMBERS OF THE
PARTNERSHIP**

FORM 1B

(where a notice of intention to appoint has not been issued)

(a) Insert name of
partnership

In the matter of (a)

**(hereinafter referred to as "the partnership") and in the matter of the
Insolvent Partnerships Order 1994**

(b) Insert title of court and
number of proceedings (to be
allocated by court)

To (b) _____

_____ No: _____ of _____

(c) Insert name and address
of principal place of business
of partnership

1. Notice is given that, in respect of (c) _____

_____ ("the Partnership")

the members of the partnership ("the appointor") hereby appoint

(d) Give name(s) and
address(es) of
administrator(s)

(d) _____

as administrator(s) of the partnership.

*Delete as applicable

2. The written statement(s) in Form 2.2B * is/are attached.

**3. The appointor is entitled to make an appointment under paragraph 22 of
Schedule B1 to the Insolvent Act 1986.**

**4. This appointment is in accordance with Schedule B1 to the Insolvency Act
1986.**

5. The partnership has not, within the last twelve months:-

(i) been in administration

(ii) been the subject of a moratorium under Schedule A1 to the Insolvency
Act 1986 which has ended on a date when no voluntary arrangement was in
force

(iii) been the subject of a voluntary arrangement which was made during a
moratorium for the partnership under Schedule A1 to the Insolvency Act
1986 and which ended prematurely within the meaning of section 7B of the
Insolvency Act 1986.

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

6. In relation to the partnership there is no:

- (i) petition for winding up which has been presented but not yet disposed of
- (ii) administration application which has not yet been disposed of, or
- (iii) agricultural receiver in office.

*Delete as applicable

7. The partnership * is/ is not * an insurance undertaking/a credit institution /an investment undertaking providing services involving the holding of funds or securities for third parties / or a collective investment undertaking under Article 1.2 of the EC Regulation.

(e) Insert whether main or territorial proceedings

8. For the following reasons it is considered that the EC Regulation *will/will not apply. If it does apply, these proceedings will be (e) _____ proceedings as defined in Article 3 of the EC Regulation:

9. Attached to this notice is a copy of the record of the members' decision of the directors to appoint an administrator.

10. Where there are joint administrators, a statement for the purposes of paragraph 100(2) of Schedule B1 to the Insolvency Act 1986 is attached.

(f) Insert name and address of person making declaration

I (f) _____
(If making the declaration on behalf of appointor indicate capacity e.g. partner/solicitor)

hereby do solemnly and sincerely declare that:

- (i) the partnership is unable to pay its debts
 - (ii) the partnership is not in liquidation, and
 - (iii) the statements in paragraphs 5 and 6 are, so far as I am able to ascertain, true,
- and the information provided in this notice is to the best of my knowledge and belief true,

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Declared at _____

Signed _____

This _____ day of _____ 20

Before me _____

A Commissioner for Oaths or Notary Public or Justice of the Peace or Solicitor or Duly Authorised Officer

Endorsement to be completed by the court

(g) Insert date and time

This notice was filed (g) _____

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

Schedule 4 paragraph 4
and paragraph 7
S222(1)(a)
S222(1)(b)
S123(1)(a)
S268(1)(a)

FORM 4 (page 1)

Written/Statutory Demand by Creditor

(a) Insert name of partnership In the matter of (a) _____
and in the matter of the Insolvent Partnerships Order 1994

WARNING TO DEBTOR – READ THE FOLLOWING NOTES CAREFULLY

- This is an important document. Please read the demand and the notes entitled “How to comply with a demand” and “How to have a demand set aside (applicable to individual members only)” on page 5 below.
- If the partnership has received this, the partnership must act upon it **within 21 days** or a winding-up order could be made against the partnership.
- If a corporate member of the partnership has received this, that member must act upon it **within 21 days** or a winding-up order could be made against the partnership.
- If, having received this as an individual member of the partnership, you wish to have this demand set aside, you must make application to do so **within 18 days** from its service on you. If you do not apply to set aside **within 18 days** or otherwise deal with this demand as set out in the notes **within 21 days** after its service on you, you could be made bankrupt and your property and goods taken away from you.

If you are in any doubt about your position you should seek advice **immediately** from a solicitor, your nearest Citizens Advice Bureau, or an Insolvency Practitioner.

To: _____
Address: _____

This DEMAND is served on you by the creditor:
Name: _____
Address: _____

DEMAND

Notes for Creditor

- If the creditor is entitled to the debt by way of assignment, details of the original creditor and any intermediary assignees should be given in Part B on page 4.
- If the amount of the debt includes interest not previously notified to the partnership as included in its liability, details should be given, including the grounds upon which interest is charged. The amount of interest must be shown separately.
- Any other charge accruing due from time to time may be claimed. The amount or rate of the charge must be identified and the grounds on which it is claimed must be stated.
- In either case the amount claimed must be limited to that which has accrued due at the date of the demand.
- If the creditor holds any security, the amount of the debt should be the sum the creditor is prepared to regard as unsecured for the purposes of this demand. Brief details of the total debt should be included and the nature of the security and the value put upon it by the creditor, as at the date of the demand, must be specified.
- If signatory of the demand is a solicitor or other agent of the creditor, the name of his/her firm should be given.

The creditor claims that the partnership owes the sum of £_____, full particulars of which are set out on page 3;

The creditor demands that the partnership or a member or former member of the partnership named in Part C of this notice do pay the above debt or secure or compound for it to the creditor's satisfaction.

[The creditor making this demand is a Minister of the Crown or a Government Department and it is intended to present a winding-up and/or bankruptcy petitions in the High Court in London]

[Delete if inappropriate]

Signature of individual _____

Name _____
(BLOCK LETTERS)

Date _____

*Position with or relationship to creditor:

*I am authorised to make this demand on the creditor's behalf.

Address _____

Tel. No. _____ Ref. _____

N.B. The person making this demand must complete the whole of this page, page 3, page 4 and page 5.

*Delete if signed by the creditor himself.

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

FORM 4 (page 3)

Particulars of Debt.

These particulars must include (a) when the debt was incurred, (b) the consideration for the debt (or if there is no consideration the way in which it arose), and (c) the amount due as at the date of this demand

Notes for Creditor

Please make sure that you have read the notes on page 2 before completing this page.

Note:

If space is insufficient continue on reverse of page and clearly indicate on this page that you are doing so.

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

FORM 4 (page 4)

PART A

The individual or individuals to whom any communication regarding this demand may be addressed is/are:-

Name (BLOCK LETTERS)	
Address	
Telephone number	
Reference	

PART B

For completion if the creditor is entitled to the debt by way of assignment

	Name	Date(s) of Assignment
Original creditor		
Assignees		

PART C

It is intended that a demand in respect of the debt shown on page 2 will also be served on the following:-

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

FORM 4 (page 5)

HOW TO COMPLY WITH A DEMAND

If the partnership or a corporate member wishes to avoid a winding-up petition being presented against it, it must pay the debt shown on page 2, particulars of which are set out on page 3 of this notice, within the period of **21 days after** its service. Alternatively, the partnership can attempt to come to a settlement with the creditor. To do this the partnership should:

- inform the individual (or one of the individuals) named in Part A above immediately that it is willing and able to offer security for the debt to the creditor’s satisfaction; or
- inform the individual (or one of the individuals) named in Part A immediately that it is willing and able to compound for the debt to the creditor’s satisfaction.

If the partnership disputes the demand in whole or in part it should:

- contact the individual (or one of the individuals) named in Part A immediately.

REMEMBER!	The partnership has only 21 days after the date of the service on it of this document before the creditor may present a winding-up petition against the partnership and winding-up or bankruptcy petitions against those members listed in Part C of this notice.
------------------	--

HOW TO HAVE A DEMAND SET ASIDE (applicable to individual members only)

If you are an individual member of the partnership and you consider that you have grounds to have this demand set aside or if you do not quickly receive a satisfactory written reply from the individual named at Part A whom you have contacted you should **apply within 18 days** from the date of service of this demand on you to the (a) [High Court of Justice, Strand, London WC2A 2LL]

[(b) _____ County Court whose address is:
_____]

to have the demand set aside.

Any application to set aside the demand (Form 6.4 in Schedule 4 to the Insolvency Rules 1986) should be made within 18 days from the date of service upon you and be supported by an affidavit (Form 6.5 in Schedule 4 to those Rules) stating the grounds on which the demand should be set aside. The forms may be obtained from the appropriate court when you attend to make the application.

REMEMBER!	<p>From the date of service on you of this document</p> <ul style="list-style-type: none"> • you have only 18 days to apply to the court to have the demand set aside, and • you have only 21 days before the creditor may present a bankruptcy petition against you.
------------------	--

- (a) Delete as applicable
- (b) Insert name and address of court

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

Schedule 7 para 2
S264(5)

FORM 16

**BANKRUPTCY ORDERS ON JOINT BANKRUPTCY
PETITION PRESENTED BY INDIVIDUAL MEMBERS**

(a) Insert names of individual members

In the matter of (a) _____

(hereinafter referred to as "the partnership") and in the matter of the Insolvent Partnerships Order 1994

(b) Insert title of court and number of proceedings (to be allocated by court)

In the (b) _____

No. _____ of _____

Upon the petition of the above-named individual members which was presented on

(c) Insert date

(c) _____

And upon hearing _____

(d) Insert full description of individual member as set out in the petition

And upon reading the petition and statements of affairs

It is ordered that (d) _____

_____ and (d) _____

_____ [and (d) _____

_____]
be adjudged bankrupt

(e) Delete as appropriate
(f) Insert name of debtor(s)
(g) Insert whether main, secondary or territorial proceedings

And the Court being satisfied that the EC Regulation (e) does/does not apply (e)

and it is ordered that the proceedings in relation to (f) _____

are (g) _____ proceedings as defined in Article 3 of the EC Regulation

And it is also ordered that the trustee of the individual members' estates be trustee of the partnership estate and that he wind up the affairs of the partnership and administer the partnership property.

Date _____

Time _____ hours

Important Notice to Bankrupts

(h) Insert address of official receiver's office

(e) [The] [One of the] official receiver(s) attached to the court is by virtue of this order trustee of the individual members' estates and trustee of the partnership. You are requested to attend upon the official receiver of the court at (h)

_____ immediately after you have received this order.

The official receiver's offices are open Monday to Friday (except on holidays) from 09.00 to 17.00 hours.

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

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Insolvent Partnerships Order 1994 (S.I.1994/2421) (“the 1994 Order”). The following are the main changes made to the 1994 Order.

1. Article 3 substitutes Article 6 of the 1994 Order to take account of the amendment to Part II of the Insolvency Act 1986 (c. 45) (“the 1986 Act”) by section 248 of the Enterprise Act 2002 (c. 40) (“the 2002 Act”). Section 248 of the 2002 Act substituted Part II of the Insolvency Act 1986 (1986 c. 45). The substituted Part II consists only of section 8 which gives effect to Schedule B1 to the Act, which was set out in Schedule 16 to the 2002 Act. Schedule B1 makes provision for companies to go into administration by court order on an administration application or upon the appointment of an administrator by the company, its directors or the holder of a qualifying floating charge.

2. Article 7 of this Order gives effect to Schedule 1 to this Order which substitutes Schedule 2 of the 1994 Order (modified provisions of Part II of the 1986 Act). The substituted Schedule 2 contains modifications to Schedule B1 to the 1986 Act.

3. Article 4 amends Article 8 of the 1994 Order to provide that the provisions of section 176A of the 1986 Act (prescribed part) do not apply to insolvent partnerships.

4. Article 5 amends Article 10 of the 1994 Order to remove a reference to summary administration consequent upon the abolition of that procedure by the 2002 Act.

5. Article 6 amends Schedule 1 to the 1994 Order consequent upon the changes to administration in the 2002 Act. Article 6(4) amends the provisions of modified Schedule A1 to take account of changes to the definition of small to medium enterprises in the Companies Act 1985 (Accounts of Small and Medium-Sized Enterprises and Audit Exemption) (Amendment) Regulations 2004 (S.I. 2004/16).

6. Article 8 amends Schedule 3 to the 1994 Order consequent upon amendments made in the 2002 Act.

7. Article 9 amends Schedule 4 to the 1994 Order to provide for the modified application of sections 283A and 313A of the 1986 Act which were inserted by the 2002 Act regarding treatment of the matrimonial home in bankruptcy.

8. Article 10 amends Schedule 7 to the 1994 Order to remove references to summary administration consequent upon the abolition of that procedure by the 2002 Act, and to make provision for the application of sections 283A and 313A of the 1986 Act as inserted by the 2002 Act regarding treatment of the matrimonial home in bankruptcy.

9. Article 11 amends Schedule 8 to the 1994 Order (modification of Company Directors Disqualification Act 1986) consequent upon amendments made by the 2002 Act.

10. Article 12 and Schedule 2 provide for modified Forms for the administration of Insolvent Partnerships.

11. Article 13 amends Schedule 10 to the 1994 Order to reflect the revocation and legislative replacement of certain applicable subordinate legislation.

No regulatory impact assessment has been prepared for this Order as it will not impose any significant costs on business.

Document Generated: 2023-06-26

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