



Regulatory update – change on the way

The past three months have seen the publication of a spate of forthcoming regulatory and legislative changes. In this bulletin we investigate some of the more significant developments.

Insolvency Act 1986 (Amendment) Order 2015 – threshold for bankruptcy petitions

This order, which comes into effect on 1 October 2015, makes amendments to section 267(4) IA 1986, increasing the threshold for bankruptcy petitions to £5,000 (currently £750).

This change has implications not only for debt recovery claims, but for real estate matters (in particular) where threat of bankruptcy proceedings currently offers a more efficient process than claims for arrears and forfeiture

Deregulation Act 2015 – insolvency aspects

The Deregulation Act 2015 will come into force upon dates appointed by various commencement orders, however the following provisions came into effect on 26 May:

- Repeal of preferential treatment of “year in hand” holiday entitlements;
- Company/director administration appointments are now possible even where a winding up petition has been issued.

The Act will also, when the relevant provisions come into force:

- Confirm that directors do not need to give notice to the company and other prescribed persons of a proposed administration appointment where there is no qualifying floating charge holder;
- Introduce a new regime for the authorisation of insolvency practitioners (including provisions for partial authorisations relating to either individual or corporate work undertaken);
- Allow for release of administrators where there will be no distribution to unsecured creditors save under the prescribed part.

Protection of essential supplies

The Insolvency (Protection of Essential Supplies) Order 2015 comes into force on 1 October 2015. The Order seeks to prevent suppliers of essential services (utilities and IT) from using the critical nature of services from obtaining an unfair advantage due to administration or a voluntary arrangement.

The Order specifically prevents withdrawal of services or negotiation of additional payments. Instead suppliers can require the IP to guarantee payments as a condition of continued supply.

However, as a safeguard, the Order permits suppliers to apply to court to terminate if continuing to supply will cause hardship, and also allows termination if supplies are not paid for within 28 days of the due date.

Changes to the Insolvency Rules – provable debts and IP fees

A working draft of revised Insolvency Rules published on 27 March 2015, but date yet to be set for entry into force (optimistically scheduled for April 2016).

Amongst other things, the Rules codify the principle of provable debts becoming administration expense if adopted by the IP, and also codifies the principles set out in *Nortel Networks* on when a pre-existing obligation of the company will give rise to a provable debt.

Additionally, the Insolvency (Amendment) Rules 2015 (SI 2015/443) were laid before Parliament on 3 March 2015.

Although there is no firm commencement date for the Rules, in due course they will require administrators, liquidators (excluding MVLs and the OR) and trustees in bankruptcy will be required to give fee estimates for work to be done on a time basis, or proposed work if on a percentage of value of assets basis. IPs will also need to state in their progress report whether and, if so why, their remuneration or expenses are likely to exceed the figure in the fees estimate (and seek approval for the same). IPs will further be required to make a request or application to the creditors’ committee (or if none, to creditors) to vary a fixed basis of remuneration where an administrator or liquidator considers that there are sufficient assets to make a distribution to the unsecured creditors in addition to the prescribed part.

Small Business, Enterprise and Employment Act 2015 – insolvency aspects

The Small Business, Enterprise and Employment Act 2015 substantively came into force on 26 May 2015. The Act:

- Introduces the ability for new RPBs with power to grant full or partial licences;
- Grants the Secretary of State power to bring sanctions against IPs;
- Abolishes creditors meetings as primary decision making tool – instead decisions will be deemed passed unless 10% or more by value (or 10 in number) of creditors object;
- Gives administrators power to issue proceedings for wrongful or fraudulent trading (and permits administrators and liquidators to assign claims for wrongful/fraudulent trading);
- Removes need for sanction before liquidators or trustees exercise powers under Schedules 4 and 5 IA 1986
- Permits administrators to distribute the prescribed part without court sanction;
- Allows creditor consent to administration extensions by up to one year (currently only six months).

EC Insolvency Regulation now finalised

The final text of the EC Insolvency Regulation was published in the Official Journal on 5 June 2015, and is now known as Regulation (EU) 2015/848 (OJ reference L 141/19). Its provisions will apply from 26 June 2017.

For a full analysis of the impact of the revised Regulation, please see our [previous briefing](#).

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