

Disapplication of section 440 to receivers in certain circumstances

523. (1) This section applies where either—

(a) an examiner has been appointed to a company, or

(b) an examiner has not been appointed to a company but, in the opinion of the court, such an appointment may yet be made.

(2) Where this section applies, on application being made to it in that behalf, the court may, subject to subsections (4) and (5), make, in relation to a receiver who stands appointed to the whole or any part of the property or undertaking of the company referred to in subsection (1), the following order.

(3) That order of the court is one providing that section 440 shall not apply as respects payments made by the receiver out of assets coming into his or her hands as such receiver.

(4) The court shall only make such an order if it would, in the opinion of the court, be likely to facilitate the survival of the company, and the whole or any part of its undertaking, as a going concern.

(5) An order referred to in subsection (2) shall not be made without each creditor of the company of the following class being afforded an opportunity to be heard, namely a creditor any of the debts owed to whom by the company are debts which in a winding up are relating to preferential payments) required to be paid in priority to all other debts.

(6) Subsection (2) is without prejudice to the generality of section 522 (1).