



Insolvency Act 1985

1985 CHAPTER 65

PART II

COMPANY INSOLVENCY ETC

CHAPTER I

DISQUALIFICATION AND PERSONAL LIABILITY OF DIRECTORS AND OTHERS

12 Duty of court to disqualify unfit directors of insolvent companies

- (1) The court shall make a disqualification order against a person in any case where, on an application under this section, the court is satisfied—
 - (a) that he is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently); and
 - (b) that his conduct as a director of that company (either taken alone or taken together with his conduct as a director of any other company or companies) makes him unfit to be concerned in the management of a company.
- (2) The period specified as the period of the disqualification in a disqualification order made under this section shall not be less than two years.
- (3) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under this section should be made against any person, an application for the making of such an order against that person may be made—
 - (a) by the Secretary of State ; or
 - (b) if the Secretary of State so directs in the case of a person who is or has been a director of a company which is being wound up by the court in England and Wales, by the official receiver.
- (4) Except with the leave of the court, an application for the making under this section of a disqualification order against any person shall not be made after the end of the period

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of two years beginning with the day on which the company of which that person is or has been a director became insolvent.

(5) If—

- (a) in the case of a person who is or has been a director of a company which is being wound up by the court in England and Wales, it appears to the official receiver;
- (b) in the case of a person who is or has been a director of a company which is being wound up otherwise than as mentioned in paragraph (a) above, it appears to the liquidator;
- (c) in the case of a person who is or has been a director of a company in relation to which an administration order is in force, it appears to the administrator ; or
- (d) in the case of a person who is or has been a director of a company of which there is an administrative receiver, it appears to that receiver,

that the conditions mentioned in subsection (1) above are satisfied as respects that person, the official receiver, the liquidator, the administrator or, as the case may be, the administrative receiver, shall forthwith report the matter to the Secretary of State.

(6) The Secretary of State or the official receiver may require the liquidator, administrator or administrative receiver of a company or the former liquidator, administrator or administrative receiver of a company—

- (a) to furnish him with such information with respect to any person's conduct as a director of the company; and
- (b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a director,

as the Secretary of State or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function of his under this section.

(7) For the purposes of this section a company becomes insolvent if—

- (a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up;
- (b) an administration order is made in relation to the company ; or
- (c) an administrative receiver of the company is appointed,

and references in this section to a person's conduct as a director of any company or companies include, where that company or any of those companies has become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

(8) In this section " the court" means—

- (a) in the case of a person who is or has been a director of a company which is being wound up by the court, the court by which the company is being wound up ;
- (b) in the case of a person who is or has been a director of a company which is being wound up voluntarily, any court having jurisdiction to wind up the company;
- (c) in the case of a person who is or has been a director of a company in relation to which an administration order is in force, the court by which that order was made; and
- (d) in any other case, the High Court or, in Scotland, the Court of Session.

- (9) In this section and sections 13 to 15 below "director" includes a shadow director within the meaning given by section 741(2) of the 1985 Act.

13 Disqualification after investigation of company

- (1) If it appears to the Secretary of State from a report made by inspectors under section 437 of the 1985 Act, or from information or documents obtained under section 447 or 448 of that Act, that it is expedient in the public interest that a disqualification order should be made against any person who is or has been a director of any company, he may apply to the court for such an order to be made against that person.
- (2) The court may make a disqualification order against a person where, on an application under this section, the court is satisfied that his conduct in relation to the company makes him unfit to be concerned in the management of a company.
- (3) In this section "the court" means the High Court or, in Scotland, the Court of Session.

14 Matters for determining unfitness of directors

- (1) Where it falls to a court to determine whether a person's conduct as a director of any particular company or companies makes him unfit as mentioned in section 12(1) or 13(2) above, the court shall, as respects his conduct as a director of that company or, as the case may be, each of those companies, have regard in particular—
- (a) to the matters mentioned in Part I of Schedule 2 to this Act; and
 - (b) where the company has become insolvent, to the matters mentioned in Part II of that Schedule ;
- and references in that Schedule to the director and to the company shall be construed accordingly.
- (2) Subsection (7) of section 12 above applies for the purposes of this section and Schedule 2 to this Act as it applies for the purposes of that section.
- (3) Subject to subsection (4) below, any reference in Schedule 2 to this Act to any enactment contained in the 1985 Act or this Act shall include, in relation to any time before the Coming into force of that enactment, a reference to the corresponding enactment in force at that time.
- (4) The Secretary of State may by order modify any of the provisions of Schedule 2 to this Act; and such an order may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.
- (5) The power to make orders under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

15 Responsibility for company's wrongful trading

- (1) Subject to subsection (3) below, if in the course of the winding up of a company it appears that subsection (2) below applies in relation to a person who is or has been a director of the company, the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the court thinks proper.

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- (2) This subsection applies in relation to a person if—
- (a) the company has gone into insolvent liquidation ;
 - (b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and
 - (c) that person was a director of the company at that time.
- (3) The court shall not make a declaration under subsection (1) above with respect to any person if it is satisfied that after the condition specified in subsection (2)(b) above was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the company's creditors as (assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation) he ought to have taken.
- (4) For the purposes of subsections (2) and (3) above the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—
- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company; and
 - (b) the general knowledge, skill and experience that that director has.
- (5) The reference in subsection (4) above to the functions carried out in relation to a company by a director of the company includes a reference to any functions which he does not carry out but which have been entrusted to him.
- (6) Subsections (3) to (6) of section 630 of the 1985 Act (responsibility for company's fraudulent trading) shall have effect in relation to a declaration under subsection (1) above as they have effect in relation to a declaration under subsection (2) of that section, and this section is without prejudice to that section.
- (7) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

16 Disqualification of persons held to be liable to contribute to company's assets

Where a court makes a declaration under section 15 above or section 630 of the 1985 Act that any person is to be liable to make a contribution to a company's assets, then, whether or not an application for such an order is made by any person, the court may, if it thinks fit, also make a disqualification order against the person to whom the declaration relates.

17 Restriction on use of company names

- (1) This section applies to a person where a company (" the relevant company ") has gone into insolvent liquidation and he was a director or shadow director of the company at any time in the period of twelve months ending with the day before it went into liquidation; and for the purposes of this section a name is a prohibited name in relation to such a person if—

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- (a) it is a name by which the relevant company was known at any time in the said period; or
 - (b) it is a name which is so similar to a name falling within paragraph (a) above as to suggest an association with the relevant company.
- (2) Except with the leave of the court or in such circumstances as may be prescribed, a person to whom this section applies shall not at any time in the period of five years beginning with the day on which the relevant company went into liquidation—
- (a) be a director of any other company that is known by a prohibited name; or
 - (b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company; or
 - (c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.
- (3) If a person acts in contravention of this section, he shall in respect of each offence, be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both ;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) In subsection (2) above "the court" means any court having jurisdiction to wind up companies; and on an application for leave under that subsection, the Secretary of State or the official receiver may appear and call the attention of the court to any matters which seem to him to be relevant.
- (5) References in this section, in relation to any time, to a name by which a company is known are references to the name of the company at that time or to any name under which the company carries on business at that time.
- (6) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.
- (7) In this section " company " includes a company which may be wound up under Part XXI of the 1985 Act.

18 Personal liability of persons acting while disqualified

- (1) A person shall be personally responsible for all the relevant debts of a company if at any time—
- (a) in contravention of a disqualification order, of section 17 above or of section 302 of the 1985 Act (provision against undischarged bankrupt acting as director etc.), he is involved in the management of the company; or
 - (b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given without the leave of the court by a person whom he knows at that time to be the subject of a disqualification order, to be in contravention in relation to that company of section 17 above or to be an undischarged bankrupt.
- (2) Where a person is personally responsible under this section for the relevant debts of a company he shall be jointly and severally liable in respect of those debts with the

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company and any other person who, whether under this section or otherwise, is so liable.

- (3) For the purposes of this section the relevant debts of a company are—
- (a) in relation to a person who is personally responsible under paragraph (a) of subsection (1) above, such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company ; and
 - (b) in relation to a person who is personally responsible under paragraph (b) of that subsection, such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.
- (4) For the purposes of this section a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.
- (5) For the purposes of this section a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the court by a person whom he knew at that time to be the subject of a disqualification order, to be in contravention in relation to that company of section 17 above or to be an undischarged bankrupt shall be presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.
- (6) In this section " company " includes a company which may be wound up under Part XXI of the 1985 Act.

19 Summary remedy against delinquent directors, liquidators etc.

- (1) This section applies if in the course of the winding up of a company it appears that a person who—
- (a) is or has been an officer of the company ;
 - (b) has acted as liquidator, administrator or administrative receiver of the company ; or
 - (c) not being a person falling within paragraph (a) or (b) above, is or has been concerned, or has taken part, in the promotion, formation or management of the company,
- has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.
- (2) The reference in subsection (1) above to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator or administrator of the company, a reference to any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator or administrator of the company.
- (3) The court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the person falling within subsection (1) above and compel him—
- (a) to repay, restore or account for the money or property, or any part of it, with interest at such rate as the court thinks just; or

- (b) to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just.
- (4) The power to make an application under subsection (3) above in relation to a person who has acted as liquidator or administrator of the company shall not be exercisable, except with the leave of the court, after that person has had his release.
- (5) The power of a contributory to make an application under subsection (3) above shall not be exercisable except with the leave of the court but shall be exercisable notwithstanding that he will not benefit from any order the court may make on the application.

CHAPTER II

VOLUNTARY ARRANGEMENTS

Preliminary

20 Application of Chapter II

This Chapter applies where

- (a) in the case of a company which is being wound up or in relation to which an administration order is in force, the liquidator or administrator intends; or
- (b) in the case of any other company, the directors intend,

to make a proposal to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs, being a proposal which provides for some person who is qualified to act as an insolvency practitioner in relation to the company (in this Chapter referred to as " the nominee ") to act in relation to the composition or scheme either as trustee or otherwise for the purpose of supervising its implementation.

Procedure pending consideration of proposal

21 Report by nominee who is not liquidator or administrator

- (1) Where the nominee is not the liquidator or administrator of the company, he shall, within twenty-eight days (or such longer period as the court may allow) after he is given notice of the proposal, submit a report to the court stating—
 - (a) whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal ; and
 - (b) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.
- (2) For the purposes of enabling the nominee to prepare his report the person intending to make the proposal shall submit to the nominee—
 - (a) a document setting out the terms of the composition or scheme which he is proposing ; and
 - (b) a statement of the company's affairs containing—

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- (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed ; and
 - (ii) such other information as may be prescribed.
- (3) The court may, on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this section, direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner in relation to the company.

22 Summoning of meetings

- (1) Where the nominee is not the liquidator or administrator of the company and a person has reported to the court under section 21 above that such meetings as are mentioned in subsection (1) of that section should be summoned, that person shall, unless the court otherwise directs, summon those meetings for the time, date and place proposed in his report.
- (2) Where the nominee is the liquidator or administrator of the company, he shall summon meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit.
- (3) The persons who shall be summoned to a creditors' meeting under this section shall be every creditor of the company of whose claim and address the person summoning the meeting is aware.

Consideration and implementation of proposal

23 Decisions of meetings

- (1) The meetings summoned under section 22 above shall decide whether to approve the proposed composition or scheme (with or without modifications).
- (2) The modifications subject to which the proposed composition or scheme may be approved may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner in relation to the company but shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 20 above.
- (3) Except with the concurrence of the secured creditor concerned, a meeting summoned under section 22 above shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security.
- (4) Except with the concurrence of the preferential creditor concerned, a meeting summoned under section 22 above shall not approve any proposal or modification under which—
- (a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts; or
 - (b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.
- (5) Subject to subsections (1) to (4) above, a meeting summoned under section 22 above shall be conducted in accordance with the rules.

- (6) After the conclusion in accordance with the rules of a meeting summoned under section 22 above, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.
- (7) In this section " preferential debt " means any of the debts which in a winding up are, under section 89 below and Schedule 4 to this Act (read with Schedule 3 to the Social Security Pensions Act 1975), to be paid in priority to all other debts, and " preferential creditor " shall be construed accordingly.
- (8) For the purposes of this section, Schedule 4 to this Act and Schedule 3 to the said Act of 1975 shall each have effect, in relation to a company which is not being wound up, as if—
 - (a) references to the relevant date were references to the date of the making of the administration order or, where no such order has been made, the date of the approval of the proposal; and
 - (b) references to the company being wound up were references to the administration order being made or, as the case may be, the proposal being approved.

24 Effect of an approval

- (1) This section has effect where each of the meetings summoned under section 22 above approves the proposed composition or scheme either with the same modifications or without modifications.
- (2) The approved composition or scheme shall take effect as if made by the company at the creditors' meeting and shall bind every person who in accordance with the rules had notice of, and was entitled to vote at, that meeting (whether or not he was present or represented at the meeting) as if he were a party to the composition or scheme.
- (3) Subject to subsection (4) below, if the company is being wound up or an administration order is in force in relation to the company, the court may do one or both of the following, namely—
 - (a) by order stay or sist all proceedings in the winding up or discharge the administration order ;
 - (b) give such directions with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the approved composition or scheme.
- (4) The court shall not make an order under subsection (3)(a) above—
 - (a) at any time before the end of the period of twenty-eight days beginning with the first day on which each of the reports required by section 23(6) above has been made to the court; or
 - (b) at any time when an application under section 25 below or an appeal in respect of such an application is pending or at any time in the period within which such an appeal may be brought

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25 Challenge of decisions

- (1) Subject to the provisions of this section, an application to the court may be made, by any of the persons specified in subsection (2) below, on one or both of the following grounds, namely—
 - (a) that a composition or scheme approved at the meetings summoned under section 22 above unfairly prejudices the interests of a creditor, member or contributory of the company;
 - (b) that there has been some material irregularity at or in relation to either of the meetings.
- (2) The persons who shall be entitled to make an application under this section shall be—
 - (a) a person entitled, in accordance with the rules, to vote at either of the meetings;
 - (b) the nominee or any person who has replaced him under section 21(3) or 23(2) above; and
 - (c) if the company is being wound up or an administration order is in force in relation to the company, the liquidator or administrator of the company.
- (3) An application under this section shall not be made after the end of the period of twenty-eight days beginning with the first day on which each of the reports required by section 23(6) above has been made to the court.
- (4) Where on an application under this section the court is satisfied as to either of the grounds mentioned in subsection (1) above, it may do one or both of the following, namely—
 - (a) revoke or suspend the approvals given by the meetings or, in a case falling within subsection (1)(b) above, any approval given by the meeting in question ;
 - (b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in a case falling within subsection (1)(b) above, a further company or, as the case may be, creditors' meeting to reconsider the original proposal.
- (5) Where at any time after giving a direction under subsection (4)(b) above for the summoning of meetings to consider a revised proposal the court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meetings.
- (6) In any case where the court, on an application made under this section with respect to any meeting, gives a direction under subsection (4)(b) above or revokes or suspends an approval under subsection (4)(a) or (5) above, the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done since the meeting under any composition or scheme approved by the meeting.
- (7) Except in pursuance of the preceding provisions of this section an approval given at a meeting summoned under section 22 above shall not be invalidated by any irregularity at or in relation to the meeting.

26 Implementation and supervision of approved composition or scheme

- (1) This section applies where a composition or scheme approved by the meetings summoned under section 22 above has taken effect

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- (2) The person who is for the time being carrying out in relation to the composition or scheme the functions conferred by virtue of the approval on the nominee, or by virtue of section 21(3) or 23(2) above on a person other than the nominee, shall be known as the supervisor of the composition or scheme.
- (3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on such an application the court may confirm, reverse or modify any act or decision of the supervisor, may give him directions or may make such other order as it thinks fit.
- (4) The supervisor may apply to the court for directions in relation to any particular matter arising under the composition or scheme and shall be included among the persons who may apply to the court for the winding up of the company or for an administration order to be made in relation to the company.
- (5) The court may, whenever—
 - (a) it is expedient to appoint a person to carry out the functions of the supervisor; and
 - (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,make an order appointing a person who is qualified to act as an insolvency practitioner in relation to the company, either in substitution for the existing supervisor or to fill a vacancy.
- (6) The power conferred by subsection (5) above shall be exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

CHAPTER III

ADMINISTRATION ORDERS

Making etc. of administration orders

27 Power to make order

- (1) Subject to subsection (2) below, if the court—
 - (a) is satisfied that a company is or is likely to become unable to pay its debts; and
 - (b) considers that the making of an order under this section would be likely to achieve one or more of the purposes mentioned in subsection (3) below,the court may make an administration order in relation to the company, that is to say, an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed by a person (to be known as "the administrator") appointed for the purpose by the court; and such an order shall specify the purpose or purposes for whose achievement it is made.
- (2) An administration order shall not be made in relation to a company—
 - (a) after the company has gone into liquidation;
 - (b) where the company is an insurance company within the meaning of the Insurance Companies Act 1982 ; or

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- (c) where the company is a recognised bank or licensed institution within the meaning of the Banking Act 1979 or an institution to which sections 16 and 18 of that Act apply as if it were a licensed institution.
- (3) The purposes referred to in subsection (1)(b) above are—
- (a) the survival of the company, and the whole or any part of its undertaking, as a going concern ;
 - (b) the approval under section 23 above of a composition in satisfaction of the company's debts or a scheme of arrangement of its affairs ;
 - (c) the sanctioning under section 425 of the 1985 Act of a compromise or arrangement between the company and any such persons as are mentioned in that section ; and
 - (d) a more advantageous realisation of the company's assets than would be effected on a winding up.
- (4) Section 518 of the 1985 Act (definition of inability to pay debts) shall apply for the purposes of this section as it applies for the purposes of Chapter II of Part XX of that Act.

28 Application for order

- (1) An application to the court for an administration order shall be by petition presented either by the company or the directors, or by a creditor or creditors (including any contingent or prospective creditor or creditors), or by all or any of those parties, together or separately.
- (2) Where a petition is presented to the court—
- (a) notice of the petition shall be given forthwith to any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company and to such other persons as may be prescribed; and
 - (b) the petition shall not be withdrawn except with the leave of the court.
- (3) Where the court is satisfied that there is an administrative receiver of the company, the court shall dismiss the petition unless it is also satisfied either—
- (a) that the person by whom or on whose behalf the receiver was appointed has consented to the making of the order; or
 - (b) that, if an administration order were made, any security by virtue of which the receiver was appointed would be liable to be released or discharged under section 101 below, would be avoided under section 104 below or would be challengeable under section 615A or 615B of the 1985 Act or under any rule of law in Scotland.
- (4) Subject to subsection (3) above, on hearing a petition the court may dismiss the petition, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
- (5) Without prejudice to the generality of subsection (4) above, an interim order under that subsection may restrict the exercise of any powers of the directors or of the company (whether by reference to the consent of the court or of a person qualified to act as an insolvency practitioner in relation to the company or otherwise).

29 Effect of application

- (1) During the period beginning with the presentation of a petition for an administration order and ending with the making of such an order or the dismissal of the petition—
 - (a) no resolution may be passed or order made for the winding up of the company ;
 - (b) no steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the court and subject to such terms as the court may impose; and
 - (c) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the court and subject to such terms as aforesaid.
- (2) Nothing in subsection (1) above shall require the leave of the court—
 - (a) for the presentation of a petition for the winding up of the company;
 - (b) for the appointment of an administrative receiver of the company; or
 - (c) for the carrying out by such a receiver (whenever appointed) of any of his functions.
- (3) Where
 - (a) a petition for an administration order is presented at a time when there is an administrative receiver of the company; and
 - (b) the person by or on whose behalf the receiver was appointed has not consented to the making of the order,the period mentioned in subsection (1) above shall be deemed not to begin unless and until that person so consents.
- (4) References in this section and section 30 below to hire-purchase agreements include references to conditional sale agreements, chattel leasing agreements and retention of title agreements.
- (5) In the application of this section and section 30 below to Scotland, references to execution being commenced or continued shall include references to diligence being carried out or continued and references to distress being levied shall be omitted.

30 Effect of order

- (1) On the making of an administration order—
 - (a) any petition for the winding up of the company shall be dismissed; and
 - (b) any administrative receiver of the company shall vacate office.
- (2) Where an administration order has been made, any receiver of part of the company's property shall vacate office on being required to do so by the administrator.
- (3) During the period for which an administration order is in force—
 - (a) no resolution may be passed or order made for the winding up of the company ;
 - (b) no administrative receiver of the company may be appointed;
 - (c) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, 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; and

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- (d) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as aforesaid.
- (4) Where at any time an administrative receiver of the company has vacated office under subsection (1)(b) above or a receiver of part of the company's property has vacated office under subsection (2) above—
 - (a) his remuneration and any expenses properly incurred by him; and
 - (b) any indemnity to which he is entitled out of the assets of the company,
 shall be charged on and, subject to subsection (3) above, paid out of any property of the company which was in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.
- (5) Neither an administrative receiver of a company who vacates office under subsection (1)(b) above nor a receiver of part of a company's property who vacates office under subsection (2) above shall be required on or after so vacating office to take any steps for the purpose of complying with any duty imposed on him by section 196 or 475 of the 1985 Act (duty to pay preferential creditors).

31 Notification of order

- (1) Every invoice, order for goods or business letter which, at a time when an administration order is in force in relation to a company, is issued by or on behalf of the company or the administrator, being a document on or in which the company's name appears, shall also contain the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator.
- (2) If default is made in complying with this section, the company and any of the following persons who without reasonable excuse authorises or permits the default, namely, the administrator and any officer of the company, shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum.

Administrators

32 Appointment of administrator

- (1) The administrator of a company shall be appointed either by the administration order or by an order under subsection (2) below.
- (2) If a vacancy occurs by death, resignation or otherwise in the office of administrator of a company, the court may by order fill the vacancy.
- (3) An application for an order under subsection (2) above may be made—
 - (a) by any continuing administrator of the company ; or
 - (b) where there is no such administrator, by any committee established under section 43 below; or
 - (c) where there is no such administrator and no such committee, by the company or the directors or by any creditor or creditors of the company.

33 General powers

- (1) The administrator of a company—
 - (a) may do all such things as may be necessary for the management of the affairs, business and property of the company; and
 - (b) without prejudice to the generality of paragraph (a) above, shall have the powers specified in Schedule 3 to this Act;and in the application of that Schedule to the administrator of a company the words "he" and "him" shall be taken to refer to the administrator.
- (2) The administrator of a company shall also have power—
 - (a) to remove any director of the company and to appoint any person to be a director of the company, whether to fill any vacancy or otherwise; and
 - (b) to call any meeting of the members or creditors of the company.
- (3) The administrator may apply to the court for directions in relation to any particular matter arising in connection with the carrying out of his functions.
- (4) Any power conferred on the company or its officers, whether by this Part or the 1985 Act or by the memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the administrator of his powers shall not be exercisable except with the consent of the administrator, which may be given either generally or in relation to particular cases.
- (5) In exercising his powers the administrator of a company shall be deemed to be acting as agent of the company.
- (6) A person dealing with the administrator of a company in good faith and for value shall not be concerned to inquire whether the administrator is acting within his powers.

34 Power to deal with charged property etc.

- (1) The administrator of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this subsection applies as if the property were not subject to the security.
- (2) Where, on an application by the administrator of a company, the court is satisfied that the disposal (with or without other assets) of—
 - (a) any property of the company subject to a security to which this subsection applies; or
 - (b) any goods in the possession of the company under a hire purchase agreement, would be likely to promote the purpose or one or more of the purposes specified in the administration order, the court may by order authorise the administrator to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.
- (3) Subsection (1) above applies to any security which, as created, was a floating charge and subsection (2) above applies to any other security.
- (4) Where any property is disposed of under subsection (1) above, the holder of the security shall have the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

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- (5) It shall be a condition of an order under subsection (2) above that—
- (a) the net proceeds of the disposal; and
 - (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,
- shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.
- (6) Where a condition imposed in pursuance of subsection (5) above relates to two or more securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.
- (7) An office copy of an order under subsection (2) above shall, within fourteen days after the making of the order, be sent by the administrator to the registrar of companies.
- (8) If the administrator without reasonable excuse fails to comply with subsection (7) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.
- (9) Where any property is disposed of under this section in its application to Scotland, the administrator shall grant to the disponee an appropriate document of transfer or conveyance of the property, and—
- (a) that document; or
 - (b) where any recording, intimation or registration of that document is a legal requirement for completion of title to the property, that recording, intimation or registration,
- has the effect of disencumbering the property of or, as the case may be, freeing the property from the security.
- (10) Where any goods in the possession of the company under a hire-purchase agreement are disposed of under this section in its application to Scotland, the disposal shall have the effect of extinguishing, as against the disponee, all rights of the owner of the goods under the hire-purchase agreement.
- (11) Nothing in this section shall be taken as prejudicing applications to the court under section 44 below.
- (12) References in this section to hire-purchase agreements include references to conditional sale agreements, chattel leasing agreements and retention of title agreements.

35 General duties

- (1) The administrator of a company shall, on his appointment, take into his custody or under his control all the property to which the company is or appears to be entitled.
- (2) The administrator of a company shall manage the affairs, business and property of the company—

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- (a) at any time before proposals have been approved (with or without modifications) under section 41 below, in accordance with any directions given by the court; and
 - (b) at any time after proposals have been so approved, in accordance with those proposals as from time to time revised, whether by him or a predecessor of his.
- (3) The administrator of a company shall summon a meeting of the company's creditors if—
- (a) he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors ; or
 - (b) he is directed to do so by the court.

36 Applications for discharge or variation of administration order

- (1) The administrator of a company may at any time apply to the court for the administration order to be discharged, or to be varied so as to specify an additional purpose.
- (2) The administrator of a company shall make an application under this section if—
- (a) it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement; or
 - (b) he is required to do so by a meeting of the company's creditors summoned for the purpose in accordance with the rules.
- (3) On the hearing of an application under this section, the court may by order discharge or vary the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it thinks fit.
- (4) Where the administration order is discharged or varied, the administrator shall, within fourteen days after the making of the order effecting the discharge or variation, send an office copy of that order to the registrar of companies.
- (5) If the administrator without reasonable excuse fails to comply with subsection (4) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

37 Vacation of office and release

- (1) The administrator of a company may at any time be removed from office by order of the court and may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.
- (2) The administrator of a company shall vacate office if—
- (a) he ceases to be qualified to act as an insolvency practitioner in relation to the company; or
 - (b) the administration order is discharged.
- (3) Where at any time a person ceases to be the administrator of a company—
- (a) his remuneration and any expenses properly incurred by him shall be charged on and paid out of any property of the company which is in his custody or

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under his control at that time in priority to any security to which section 34(1) above then applies; and

- (b) any sums payable in respect of debts or liabilities incurred, while he was administrator, under contracts entered into or contracts of employment adopted by him or a predecessor of his in the carrying out of his or the predecessor's functions shall be charged on and paid out of any such property as is mentioned in paragraph (a) above in priority to any charge arising under that paragraph;

and for the purposes of paragraph (b) above the administrator is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within fourteen days after his appointment.

- (4) A person who has ceased to be the administrator of a company shall have his release with effect from the following time, that is to say—
 - (a) in the case of a person who has died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office;
 - (b) in any other case, such time as the court may determine.
- (5) Where a person has his release under this section, he shall, with effect from the time specified in subsection (4) above, be discharged from all liability both in respect of acts or omissions of his in the administration and otherwise in relation to his conduct as administrator; but nothing in this section shall prevent the exercise, in relation to a person who has had his release under this section, of the court's powers under section 19 above.

Ascertainment and investigation of company's affairs

38 Information to be given by administrator

- (1) Where an administration order has been made, the administrator shall—
 - (a) forthwith send to the company and publish in the prescribed manner a notice of the order ; and
 - (b) within twenty-eight days after the making of the order, unless the court otherwise directs, send such a notice to all creditors of the company (so far as he is aware of their addresses).
- (2) Where an administration order has been made, the administrator shall also, within fourteen days after the making of the order, send an office copy of the order to the registrar of companies and to such other persons as may be prescribed.
- (3) If the administrator without reasonable excuse fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

39 Statement of affairs to be submitted to administrator

- (1) Where an administration order has been made, the administrator shall forthwith require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—

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- (a) particulars of the company's assets, debts and liabilities;
 - (b) the names and addresses of its creditors ;
 - (c) the securities held by them respectively;
 - (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed.
- (3) The persons referred to in subsection (1) above are—
- (a) those who are or have been officers of the company;
 - (b) those who have taken part in the company's formation at any time within one year before the date of the administration order;
 - (c) those who are in the company's employment or have been in its employment within that year, and are in the administrator's opinion capable of giving the information required;
 - (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company ;
- and in this subsection " employment" includes employment under a contract for services.
- (4) Where any persons are required under this section to submit a statement of affairs to the administrator, they shall do so (subject to subsection (5) below) before the end of the period of twenty-one days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrator.
- (5) The administrator, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above ; or
 - (b) either when giving the notice mentioned in subsection (4) above or subsequently, extend the period so mentioned ;
- and where the administrator has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.
- (6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum;
 - (b) on conviction on indictment, to a fine.

Administrators' proposals

40 Statement of proposals

- (1) Where an administration order has been made, the administrator shall, within three months (or such longer period at the court may allow) after the making of the order—
- (a) send to the registrar of companies and (so far as he is aware of their addresses) to all creditors a statement of his proposals for achieving the purpose or purposes specified in the order; and
 - (b) lay a copy of the statement before a meeting of the Company's creditors summoned for the purpose on not less than fourteen days' notice.

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- (2) The administrator shall also, within three months (or such longer period as the court may allow after the making of the order, either—
 - (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company ; or
 - (b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.
- (3) Subsection (3) of section 38 above applies for the purposes of this section as it applies for the purposes of that section.

41 Consideration of proposals by creditors' meeting

- (1) A meeting of creditors summoned under section 40 above shall decide whether to approve the administrator's proposals.
- (2) Such a meeting may approve the proposals with modifications but shall not do so unless the administrator consents to each modification.
- (3) Subject to subsections (1) and (2) above, a meeting summoned under section 40 above shall be conducted in accordance with the rules.
- (4) After the conclusion in accordance with the rules of a meeting summoned under section 40 above, the administrator shall report the result of the meeting to the court and shall give notice of that result to the registrar of companies and to such persons as may be prescribed.
- (5) If a report is given to the court under subsection (4) above that the meeting has declined to approve the administrator's proposals (with or without modifications), the court may by order discharge the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
- (6) Where the administration order is discharged, the administrator shall, within fourteen days after the making of the order effecting the discharge, send an office copy of that order to the registrar of companies.
- (7) If the administrator without reasonable excuse fails to comply with subsection (6) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

42 Approval of substantial revisions

- (1) This section applies where—
 - (a) proposals have been approved (with or without modifications) under section 41 above ; and
 - (b) the administrator proposes to make revisions of those proposals which appear to him substantial.
- (2) The administrator shall—
 - (a) send to all creditors of the company (so far as he is aware of their addresses) a statement in the prescribed form of his proposed revisions ; and

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- (b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than fourteen days' notice ;
and shall not make the proposed revisions unless they are approved by the meeting.
- (3) The administrator shall also either—
 - (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company ; or
 - (b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.
- (4) A meeting of creditors summoned under subsection (2) above may approve the proposed revisions with modifications but shall not do so unless the administrator consents to each modification.
- (5) Subject to subsections (2) and (4) above, such a meeting shall be conducted in accordance with the rules.
- (6) After the conclusion in accordance with the rules of a meeting summoned under subsection (2) above, the administrator shall give notice of the result of the meeting to the registrar of companies and to such persons as may be prescribed.

Miscellaneous

43 Committee of creditors

- (1) Where a meeting of creditors summoned under section 40 above has approved the administrator's proposals (with or without modifications), the meeting may, if it thinks fit, establish a committee to exercise the functions conferred on it by or under this Part.
- (2) If such a committee is established, the committee may, on giving not less than seven days' notice, require the administrator to attend before it at any reasonable time and furnish it with such information relating to the carrying out of his functions as it may reasonably require.

44 Protection of interests of creditors and members

- (1) At any time when an administration order is in force, a creditor or member of the company may apply to the court by petition for an order under this section on the ground—
 - (a) that the company's affairs, business and property are being or have been managed by the administrator in a manner which is unfairly prejudicial to the interests of its creditors or members generally or of some part of its creditors or members (including at least himself); or
 - (b) that any actual or proposed act or omission of the administrator is or would be so prejudicial.
- (2) On an application for an order under this section the court may, subject to subsection (3) below, make such order as it thinks fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
- (3) An order under this section shall not prejudice or prevent—

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- (a) the implementation of any composition or scheme approved under section 23 above or any compromise or arrangement sanctioned under section 425 of the 1985 Act; or
 - (b) where the application for the order was made more than twenty-eight days after the approval of any proposals or revised proposals under section 41 or 42 above, the implementation of those proposals or revised proposals.
- (4) Subject to subsection (3) above, an order under this section may in particular—
- (a) regulate the future management by the administrator of the company's affairs, business and property ;
 - (b) require the administrator to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained he has omitted to do;
 - (c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the court may direct;
 - (d) discharge the administration order and make such consequential provision as it thinks fit.
- (5) Where the administration order is discharged, the administrator shall, within fourteen days after the making of the order effecting the discharge, send an office copy of that order to the registrar of companies.
- (6) If the administrator without reasonable excuse fails to comply with subsection (5) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a fine not exceeding one-fiftieth of the statutory maximum.

CHAPTER IV

RECEIVERS AND MANAGERS (ENGLAND AND WALES)

Preliminary

45 Preliminary

- (1) This Chapter does not apply to receivers appointed under section 467 of the 1985 Act (power to appoint receivers under law of Scotland).
- (2) In this Chapter " administrative receiver " means—
 - (a) a receiver or manager of the whole (or substantially the whole) of a company's property appointed by or on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; or
 - (b) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the company's property.

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Receivers and managers appointed out of court

46 Appointment of receiver or manager

- (1) The appointment of a person as the receiver or manager of a company's property under powers contained in an instrument—
 - (a) shall be of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf; and
 - (b) subject to paragraph (a) above, shall be deemed to be made at the time at which the instrument of appointment is so received.
- (2) This section shall apply to the appointment of two or more persons as joint receivers or managers of a company's property under powers contained in an instrument subject to such modifications as may be prescribed by the rules.

47 Liability for invalid appointment

Where the appointment of a person as the receiver or manager of a company's property under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

Administrative receivers: general

48 General powers

- (1) The powers conferred on the administrative receiver of a company by the debentures by virtue of which he was appointed shall be deemed to include, except in so far as they are inconsistent with any of the provisions of those debentures, the powers specified in Schedule 3 to this Act; and in the application of that Schedule to the administrative receiver of a company—
 - (a) the words " he " and " him " shall be taken to refer to the administrative receiver ; and
 - (b) references to the property of the company shall be construed as references to the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.
- (2) A person dealing with the administrative receiver of a company in good faith and for value shall not be concerned to inquire whether the administrative receiver is acting within his powers.

49 Power to dispose of charged property etc.

- (1) Where, on an application by the administrative receiver of a company, the court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security other than one to which subsection (2) below applies would be likely to promote a more advantageous realisation of the company's assets than would

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otherwise be effected, the court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.

- (2) This subsection applies to—
- (a) any security held by the person by or on whose behalf the administrative receiver was appointed; and
 - (b) any security to which a security falling within paragraph (a) above has priority.
- (3) It shall be a condition of an order under this section that—
- (a) the net proceeds of the disposal; and
 - (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency,
- shall be applied towards discharging the sums secured by the security.
- (4) Where a condition imposed in pursuance of subsection (3) above relates to two or more securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.
- (5) An office copy of an order under this section shall, within fourteen days of the making of the order, be sent by the administrative receiver to the registrar of companies.
- (6) If the administrative receiver without reasonable excuse fails to comply with subsection (5) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.
- (7) In this section "relevant property", in relation to the administrative receiver of a company, means the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

50 Agency and liability for contracts

- (1) The administrative receiver of a company—
- (a) shall be deemed to be the agent of the company unless and until the company goes into liquidation ;
 - (b) shall be personally liable on any contract entered into by him in the carrying out of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the carrying out of those functions ; and
 - (c) shall be entitled in respect of that liability to an indemnity out of the assets of the company ;
- and for the purposes of paragraph (b) above the administrative receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within fourteen days after his appointment.
- (2) This section does not limit any right to indemnity which the administrative receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

51 Vacation of office

- (1) An administrative receiver of a company may at any time be removed from office by order of the court (but not otherwise) and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.
- (2) An administrative receiver of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.
- (3) Where at any time an administrative receiver of a company vacates office—
 - (a) his remuneration and any expenses properly incurred by him; and
 - (b) any indemnity to which he is entitled out of the assets of the company,shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.
- (4) Where an administrative receiver of a company vacates office otherwise than by death, he shall, within fourteen days after his vacation of office, send a notice to that effect to the registrar of companies.
- (5) If an administrative receiver of a company without reasonable excuse fails to comply with subsection (4) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

Administrative receivers: ascertainment and investigation of company's affairs

52 Information to be given by administrative receiver

- (1) Where an administrative receiver of a company is appointed, the administrative receiver shall—
 - (a) forthwith send to the company and publish in the prescribed manner a notice of his appointment; and
 - (b) within twenty-eight days after his appointment, unless the court otherwise directs, send such a notice to all the creditors of the company (so far as he is aware of their addresses).
- (2) This section and section 53 below do not apply in relation to the appointment of an administrative receiver to act—
 - (a) with an existing administrative receiver ; or
 - (b) in place of an administrative receiver dying or ceasing to act,except that, where they apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in this section and section 53 below to the administrative receiver include (subject to subsection (3) below) his successor and any continuing administrative receiver.
- (3) If the company is being wound up, this section and section 53 below apply notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (4) If the administrative receiver without reasonable excuse fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding one-fifth of

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the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

53 Statement of affairs to be submitted to administrative receiver

- (1) Where an administrative receiver of a company is appointed, the administrative receiver shall forthwith require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—
 - (a) particulars of the company's assets, debts and liabilities;
 - (b) the names and addresses of its creditors;
 - (c) the securities held by them respectively ;
 - (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed.
- (3) The persons referred to in subsection (1) above are—
 - (a) those who are or have been officers of the company ;
 - (b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver ;
 - (c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;
 - (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company ;and in this subsection " employment" includes employment under a contract for services.
- (4) Where any persons are required under this section to submit a statement of affairs to the administrative receiver, they shall do so (subject to subsection (5) below) before the end of the period of twenty-one days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrative receiver.
- (5) The administrative receiver, if he thinks fit, may—
 - (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above ; or
 - (b) either when giving the notice mentioned in subsection (4) above or subsequently, extend the period so mentioned ;and where the administrative receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.
- (6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum;
 - (b) on conviction on indictment, to a fine.

54 Report by administrative receiver

- (1) Where an administrative receiver of a company is appointed, he shall, within three months (or such longer period as the court may allow) after his appointment, send to the registrar of companies, to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—
 - (a) the events leading up to his appointment, so far as he is aware of them ;
 - (b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;
 - (c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors in accordance with section 89 below ; and
 - (d) the amount (if any) likely to be available for the payment of other creditors.
- (2) The administrative receiver shall also, within three months (or such longer period as the court may allow) after his appointment, either—
 - (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company; or
 - (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,and (in either case), unless the court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than fourteen days' notice.
- (3) The court shall not give a direction under subsection (2) above unless—
 - (a) the report states the intention of the administrative receiver to apply for the direction ; and
 - (b) a copy of the report is sent to the persons mentioned in paragraph (a) of that subsection, or a notice is published as mentioned in paragraph (b) of that subsection, not less than fourteen days before the hearing of the application.
- (4) Where the company has gone or goes into liquidation, the administrative receiver—
 - (a) shall, within seven days after his compliance with subsection (1) above or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator; and
 - (b) where he does so within the time limited for compliance with subsection (2) above, shall not be required to comply with that subsection.
- (5) A report under this section shall include a summary of the statement of affairs made out and submitted to the administrative receiver under section 53 above and of his comments (if any) on it.
- (6) Nothing in this section shall be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his functions.
- (7) Subsections (2) and (4) of section 52 above shall apply for the purposes of this section as they apply for the purposes of that section.

Status: This is the original version (as it was originally enacted).

55 Committee of creditors

- (1) Where a meeting of creditors is summoned under section 54 above, the meeting may, if it thinks fit, establish a committee to exercise the functions conferred on it by or under this Part.
- (2) If such a committee is established, the committee may on giving not less than seven days' notice require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

CHAPTER V

RECEIVERS (SCOTLAND)

56 Appointment of receiver

In section 469 of the 1985 Act (mode of appointment of receiver by holder of a charge)

- (a) for subsection (6) there shall be substituted the following subsection—

“(6) The appointment of a person as a receiver by an instrument of appointment in accordance with subsection (1) above—

- (a) shall be of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf; and

- (b) subject to paragraph (d) above, shall be deemed to be made on the day on and at the time at which the instrument of appointment is so received, as evidenced by a written docquet by that person or on his behalf;

and this subsection shall apply to the appointment of joint receivers subject to such modifications as may be prescribed.”; and

- (b) after subsection (7) there shall be inserted the following subsection—

“(8) In this section 'business day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain.”

57 Powers of receiver

Section 471 of the 1985 Act (which sets out the powers of receivers in Scotland) shall be amended as follows—

- (a) in paragraph (c) of subsection (1) after the word "to " there shall be inserted the words " raise or ";
- (b) paragraph (e) of that subsection shall be omitted ;
- (c) in paragraph (f) of that subsection, for the words " discharge servants " there shall be substituted the words " dismiss employees ";
- (d) for paragraph (m) of that subsection there shall be substituted the following paragraph—

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- “(m) power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property ;”;
- (e) in paragraph (o) of that subsection, for the words " so far as he thinks it desirable to do so " there shall be substituted the words " or any part of it " ;
(ft for paragraph (p) of that subsection there shall be substituted the following paragraphs—
 - “(p) power to grant or accept a surrender of a lease or tenancy of any of the property, and to take a lease or tenancy of any property required or convenient for the business of the company ;
 - (pp) power to make any arrangement or compromise on behalf of the company;
 - (ppp) power to call up any uncalled capital of the company;
 - (pppp) power to establish subsidiaries of the company;
 - (ppppp) power to transfer to subsidiaries of the company the business of the company or any part of it and any of the property ;”;
- (g) after paragraph (r) of that subsection there shall be inserted the following paragraph—
 - “(rr) power to change the situation of the company's registered office ;”;
- (h) for subsection (3) there shall be substituted the following subsection—
 - “(3) A person dealing with a receiver in good faith and for value shall not be concerned to inquire whether the receiver is acting within his powers.”

58 Agency and liability of receiver for contracts

- (1) Section 473 of the 1985 Act (agency and liability of receiver for contracts) shall be amended as follows.
- (2) In subsection (2)—
 - (a) the words " Subject to subsection (1) " shall be omitted ; and
 - (b) after the word " provides " there shall be inserted the words " , and on any contract of employment adopted by him in the carrying out of those functions "
- (3) After subsection (4) there shall be inserted the following subsections—
 - “(4A) For the purposes of subsection (2), a receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment.
 - (4B) This section does not limit any right to indemnity which the receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.”

59 Disposal of interest in property

- (1) Section 477 of the 1985 Act (disposal of interest in property) shall be amended as follows.

Status: This is the original version (as it was originally enacted).

- (2) In subsection (2)—
- (a) at the beginning there shall be inserted the words " Subject to subsection (2A) below, " ; and
 - (b) the words from " But that authorisation " to the end of the subsection shall be omitted.
- (3) After subsection (2) there shall be inserted the following subsections—
- “(2A) In the case of an application where a fixed security over the property or interest in question which ranks prior to the floating charge has not been met or provided for in full, the court shall not authorise the sale or disposal of the property or interest in question unless it is satisfied that the sale or disposal would be likely to provide a more advantageous realisation of the company's assets than would otherwise be effected.
- (2B) It shall be a condition of an authorisation to which subsection (2A) above applies that—
- (a) the net proceeds of the disposal; and
 - (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or interest in the open market by a willing seller, such sums as may be required to make good the deficiency,
- shall be applied towards discharging the sums secured by the fixed security.
- (2C) Where a condition imposed in pursuance of subsection (2B) above relates to two or more such fixed securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those fixed securities in the order of their priorities.
- (2D) A copy of an authorisation under subsection (2) above certified by the clerk of court shall, within 14 days of the granting of the authorisation, be sent by the receiver to the registrar of companies.
- (2E) If the receiver without reasonable excuse fails to comply with subsection (2D) above, he is liable to a fine and, for continued contravention, to a daily default fine.”

60 Vacation of appointment by receiver

- (1) Section 478 of the 1985 Act (vacation of appointment by receiver) shall be amended as follows.
- (2) For subsections (1) and (2) there shall be substituted the following subsections—
- “(1) A receiver may be removed from office by the court under subsection (3) below and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.
 - (2) A receiver shall vacate office if he ceases to be qualified (within the meaning of the Insolvency Act 1985) to act as an insolvency practitioner in relation to the company.”
- (3) For subsection (4) there shall be substituted the following subsection—

“(4) Where at any time a receiver vacates office—

- (a) his remuneration and any expenses properly incurred by him; and
- (b) any indemnity to which he is entitled out of the property of the company,

shall be paid out of the property of the company which is subject to the floating charge and shall have priority as provided for in section 476(1).”

(4) In subsection (5) for the words " 7 days " there shall be substituted the words " 14 days ".

61 Powers of court

For section 479 of the 1985 Act there shall be substituted the following section—

“479 Powers of court.

- (1) The court on the application of—
 - (a) the holder of a floating charge by virtue of which a receiver was appointed ; or
 - (b) a receiver appointed under section 467,may give directions to the receiver in respect of any matter arising in connection with the performance by him of his functions.
- (2) Where the appointment of a person as a receiver by the holder of a floating charge is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the court may order the holder of the floating charge to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.”

62 Information to be given by receiver

For section 481 of the 1985 Act there shall be substituted the following section—

“481 Information to be given by receiver.

- (1) Where a receiver is appointed, he shall—
 - (a) forthwith send to the company and publish notice of his appointment; and
 - (b) within 28 days after his appointment, unless the court otherwise directs, send such notice to all the creditors of the company (so far as he is aware of their addresses).
- (2) This section and section 482 do not apply in relation to the appointment of a receiver to act—
 - (a) with an existing receiver, or
 - (b) in place of a receiver dying or ceasing to act,except that, where they apply to a receiver who dies or ceases to act before they have been fully complied with, the references in this section and section 482 to the receiver include (subject to subsection (3) below) his successor and any continuing receiver.

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- (3) If the company is being wound up, this section and section 482 apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (4) If a person without reasonable excuse fails to comply with this section, he shall be liable to a fine and, for continued contravention, to a daily default fine.”

63 Company's statement of affairs

For section 482 of the 1985 Act there shall be substituted the following section—

“482 Company's statement of affairs.

- (1) Where a receiver of a company is appointed, the receiver shall forthwith require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—
 - (a) particulars of the company's assets, debts and liabilities;
 - (b) the names and addresses of its creditors ;
 - (c) the securities held by them respectively ;
 - (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed.
- (3) The persons referred to in subsection (1) above are—
 - (a) those who are or have been officers of the company;
 - (b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the receiver;
 - (c) those who are in the company's employment, or have been in its employment within that year, and are in the receiver's opinion capable of giving the information required ;
 - (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company ;

and in this subsection " employment" includes employment under a contract for services.
- (4) Where any persons are required under this section to submit a statement of affairs to the receiver they shall do so (subject to subsection (5) below) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the receiver.
- (5) The receiver, if he thinks fit, may—
 - (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above ; or
 - (b) either when giving the notice mentioned in subsection (4) above or subsequently extend the period so mentioned,

and where the receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

- (6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he shall be liable to a fine and, for continued contravention, to a daily default fine.”

64 Report by receiver

After section 482 of the 1985 Act there shall be inserted the following section—

“482A Report by receiver.

- (1) Where a receiver is appointed under section 467 he shall within 3 months (or such longer period as the court may allow) after his appointment, send to the registrar of companies, to the holder of the floating charge by virtue of which he was appointed and to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—
- (a) the events leading up to his appointment, so far as he is aware of them;
 - (b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company ;
 - (c) the amounts of principal and interest payable to the holder of the floating charge by virtue of which he was appointed and the amounts payable to preferential creditors in accordance with section 89 of the Insolvency Act 1985; and
 - (d) the amount (if any) likely to be available for the payment of other creditors.
- (2) The receiver shall also, within 3 months (or such longer period as the court may allow) after his appointment, either—
- (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company ; or
 - (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,
- and (in either case), unless the court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than 14 days' notice.
- (3) The court shall not give a direction under subsection (2) above unless—
- (a) the report states the intention of the receiver to apply for the direction ; and
 - (b) a copy of the report is sent to the persons mentioned in paragraph (a) of that subsection, or a notice is published as mentioned in paragraph (b) of that subsection, not less than 14 days before the hearing of the application.
- (4) Where the company has gone or goes into liquidation, the receiver—
- (a) shall, within 7 days after his compliance with subsection (1) above or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator ; and

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- (b) where he does so within the time limited for compliance with subsection (2) above, shall not be required to comply with that subsection.
- (5) A report under this section shall include a summary of the statement of affairs made out and submitted to the receiver under section 482 and of his comments (if any) on it.
- (6) Nothing in this section shall be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the receiver of his functions.
- (7) Subsections (2) and (4) of section 481 shall apply for the purposes of this section as they apply for the purposes of that section.
- (8) In this section 'secured creditor', in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and 'unsecured creditor' shall be construed accordingly."

65 Committee of creditors

After section 482A of the 1985 Act there shall be inserted the following section—

“482B Committee of creditors.

- (1) Where a meeting of creditors is summoned under section 482A above, the meeting may, if it thinks fit, establish a committee to exercise the functions conferred on it by or under this Act or Part II of the Insolvency Act 1985.
- (2) If such a committee is established, the committee may on giving not less than 7 days' notice require the receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.”

CHAPTER VI

WINDING UP

Winding up by the court

66 Company's statement of affairs

- (1) Where the court has made a winding-up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—
 - (a) particulars of the company's assets, debts and liabilities ;
 - (b) the names and addresses of the company's creditors;
 - (c) the securities held by them respectively ;

- (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed or as the official receiver may require.
- (3) The persons referred to in subsection (1) above are—
- (a) those who are or have been officers of the company;
 - (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
 - (c) those who are in the company's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;
 - (d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.
- (4) Where any persons are required under this section to submit a statement of affairs to the official receiver, they shall do so (subject to subsection (5) below) before the end of the period of twenty-one days beginning with the day after that on which the prescribed notice of the requirement is given to them by the official receiver.
- (5) The official receiver, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above ; or
 - (b) either when giving the notice mentioned in subsection (4) above or subsequently, extend the period so mentioned ;
- and where the official receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.
- (6) In this section—
- " employment " includes employment under a contract for services; and
 - " the relevant date " means—
- (a) in a case where a provisional liquidator is appointed, the date of his appointment; and
 - (b) in a case where no such appointment is made, the date of the winding-up order.
- (7) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (8) In the application of this section to Scotland references to the official receiver shall be construed as references to the liquidator or, in a case where a provisional liquidator is appointed, the provisional liquidator.

67 Investigation by the official receiver

- (1) Where a winding-up order is made by the court in England and Wales, it shall be the duty of the official receiver to investigate—
- (a) if the company has failed, the causes of the failure ; and

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- (b) generally, the promotion, formation, business, dealings and affairs of the company,
and to make such report (if any) to the court as he thinks fit.
- (2) A report by the official receiver under this section shall, in any proceedings, be prima facie evidence of the facts stated therein.

68 Public examination of officers

- (1) Where a company is being wound up by the court, the official receiver or, in Scotland, the liquidator may at any time before the dissolution of the company apply to the court for the public examination of any person who—
- (a) is or has been an officer of the company ; or
 - (b) has acted as liquidator or administrator of the company or as receiver or manager or, in Scotland, receiver of its property; or
 - (c) not being a person falling within paragraph (a) or (b) above, is or has been concerned, or has taken part, in the promotion, formation or management of the company.
- (2) Unless the court otherwise orders, the official receiver or, in Scotland, the liquidator shall make an application under subsection (1) above if he is requested in accordance with the rules to do so by—
- (a) one-half, in value, of the company's creditors ; or
 - (b) three-quarters, in value, of the company's contributories.
- (3) On an application under subsection (1) above, the court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of the company or as to the conduct of its business and affairs or his conduct or dealings in relation to the company.
- (4) The following may take part in the public examination of a person under this section and may question that person concerning the matters mentioned in subsection (3) above, namely—
- (a) the official receiver ;
 - (b) the liquidator of the company ;
 - (c) any person who has been appointed as special manager of the company's property or business ;
 - (d) any creditor of the company who has tendered a proof or, in Scotland, submitted a claim in the winding up;
 - (e) any contributory of the company.
- (5) If a person without reasonable excuse fails at any time to attend his public examination under this section, he shall be guilty of contempt of court and liable to be punished accordingly.
- (6) In a case where a person without reasonable excuse fails at any time to attend his examination under this section or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under this section, the court may cause a warrant to be issued to a constable or prescribed officer of the court—
- (a) for the arrest of that person ; and

- (b) for the seizure of any books, papers, records, money or goods in that person's possession ;

and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.

69 General functions of liquidators

- (1) The functions of the liquidator of a company which is being wound up by the court shall be to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.
- (2) It shall be the duty of the liquidator of a company which is being wound up by the court in England and Wales, if he is not the official receiver—
 - (a) to furnish the official receiver with such information;
 - (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records; and
 - (c) to give the official receiver such other assistance,as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up.
- (3) The provisional liquidator of a company shall carry out such functions as the court may confer on him.

70 Functions of official receiver in relation to office of liquidator

- (1) The following provisions of this section have effect, subject to section 73 below, on a winding-up order being made by the court in England and Wales.
- (2) The official receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator under the following provisions of this Chapter.
- (3) The official receiver is, by virtue of his office, the liquidator during any vacancy.
- (4) At any time when he is the liquidator of the company, the official receiver may—
 - (a) summon separate meetings of the company's creditors and contributories for the purpose of choosing a person to be liquidator of the company in place of the official receiver; or
 - (b) apply to the Secretary of State for the appointment of a person as liquidator of the company in place of the official receiver.
- (5) It shall be the duty of the official receiver—
 - (a) as soon as practicable in the period of twelve weeks beginning with the day on which the winding-up order was made to decide whether to exercise his power under subsection (4)(a) above to summon meetings and
 - (b) if in pursuance of paragraph (a) above he decides not to exercise that power, to give notice of his decision, before the end of that period, to the court and to the company's creditors and contributories; and
 - (c) (whether or not he has decided to exercise that power) to exercise his power to summon meetings under subsection (4)(a) above if he is at any time

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requested, in accordance with the rules, to do so by one-quarter, in value, of the company's creditors;

and, accordingly, where the duty imposed by paragraph (c) above arises before the official receiver has performed a duty imposed by paragraph (a) or (b) above, he shall not be required to perform the latter duty.

- (6) A notice given under subsection (5)(b) above to the company's creditors shall contain an explanation of the creditors' power under subsection (5)(c) above to require the official receiver to summon meetings of the company's creditors and contributories.
- (7) If meetings are held in pursuance of a decision under subsection (5)(a) above but no person is chosen to be liquidator of the company as a result of those meetings, it shall be the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.
- (8) On an application under subsection (4)(b) above, or a reference made in pursuance of a decision under subsection (7) above, the Secretary of State shall either make an appointment or decline to make one.
- (9) Where a liquidator has been appointed by the Secretary of State under subsection (8) above, the liquidator shall give notice of his appointment to the company's creditors or, if the court so allows, shall advertise his appointment in accordance with the directions of the court and in that notice or advertisement shall—
 - (a) state whether he proposes to summon a general meeting of the company's creditors under section 74 below for the purpose of determining (together with any meeting of contributories) whether a committee should be established under that section ; and
 - (b) if he does not propose to summon such a meeting, set out the power of the company's creditors under that section to require him to summon one.

71 Appointment of liquidator in Scotland

- (1) Where a winding-up order has been made by the court in Scotland, the liquidator appointed by the court under section 535 of the 1985 Act (in this section referred to as " the interim liquidator ") shall continue in office until another person becomes liquidator in his place under this section or section 72 below.
- (2) The interim liquidator shall, subject to subsection (3) below, as soon as practicable in the period of twenty-eight days beginning with the day on which the winding-up order was made or such longer period as the court may allow, summon separate meetings of the company's creditors and contributories for the purpose of choosing a person (who may be the person who is the interim liquidator) to be liquidator of the company in place of the interim liquidator.
- (3) If it appears to the interim liquidator, in any case where a company is being wound up on grounds including its inability to pay its debts, that it would be inappropriate to summon under subsection (2) above a meeting of the company's contributories, he may summon only a meeting of the company's creditors for the purpose mentioned in that subsection.
- (4) If one or more meetings are held in pursuance of this section but no person is appointed or nominated by the meeting or meetings, the interim liquidator shall make a report to the court which shall appoint either the interim liquidator or some other person to be liquidator of the company.

- (5) A person who becomes liquidator of the company in place of the interim liquidator shall, unless he is appointed by the court, forthwith notify the court of that fact.

72 Choice of liquidator at meetings of creditors and contributories

- (1) This section applies where a company is being wound up by the court and separate meetings of the company's creditors and contributories are summoned for the purpose of choosing a person to be liquidator of the company.
- (2) The creditors and the contributories at their respective meetings may nominate a person to be liquidator of the company.
- (3) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the contributories.
- (4) In the case of different persons being nominated, any contributory or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the court for an order either—
- (a) appointing the person nominated as liquidator by the contributories to be liquidator instead of, or jointly with, the person nominated by the creditors; or
 - (b) appointing some other person to be liquidator instead of the person nominated by the creditors.

73 Appointment of liquidator by the court following administration or voluntary arrangement

- (1) Where a winding-up order is made immediately upon the discharge of an administration order, the court may appoint as liquidator of the company the person who has ceased on the discharge of the administration order to be the administrator of the company.
- (2) Where a winding-up order is made at a time when there is a supervisor of a composition or scheme approved in relation to the company under Chapter II of this Part, the court may appoint as liquidator of the company the person who is the supervisor at the time when the winding-up order is made.
- (3) Where the court makes an appointment under subsection (1) or (2) above, subsections (2) and (5)(a) and (b) of section 70 above shall not apply in relation to the winding up.

74 Committee of creditors etc. in England and Wales

- (1) Where a winding-up order has been made by the court in England and Wales and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator of the company, those meetings may establish a committee to exercise the functions conferred on it by or under this Part or the 1985 Act.
- (2) The liquidator of a company, not being the official receiver, may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is determined that one should be established, of establishing it; and the liquidator of a company who is not the official receiver shall summon such

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a meeting if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.

- (3) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator of a company, and either the meeting of creditors or the meeting of contributories decides that a committee should be established under this section but the other meeting does not so decide or decides that a committee should not be so established, the committee shall be established in accordance with the rules, unless the court otherwise orders.
- (4) A committee established under this section shall not be able or required to carry out its functions at any time when the official receiver is the liquidator of the company; but at any such time the functions of such a committee shall be vested in the Secretary of State except to the extent that the rules otherwise provide.
- (5) Where in the case of any winding up there is for the time being no committee established under this section and the liquidator is a person other than the official receiver, the functions of such a committee shall be vested in the Secretary of State except to the extent that the rules otherwise provide.

75 Committee of creditors etc. in Scotland

- (1) Where a winding-up order has been made by the court in Scotland and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator of the company or, under section 71(3) above, only a meeting of the company's creditors has been summoned for that purpose, those meetings or, as the case may be, that meeting may establish a committee to exercise the functions conferred on it by or under this Part or the 1985 Act.
- (2) The liquidator of the company may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is determined that one should be established, of establishing it.
- (3) A liquidator appointed by the court otherwise than under section 72(4)(a) above shall be required to summon meetings under subsection (2) above if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.
- (4) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator of a company, and either the meeting of creditors or the meeting of contributories decides that a committee should be established under this section but the other meeting does not so decide or decides that a committee should not be so established, the committee shall be established in accordance with the rules, unless the court otherwise orders.
- (5) Where in the case of any winding up there is for the time being no committee established under this section, the functions of such a committee shall be vested in the court except to the extent that the rules otherwise provide.
- (6) In addition to the powers and duties conferred and imposed on it by this Act and the 1985 Act, a committee established under this section shall have such of the powers and duties of commissioners in a sequestration as may be conferred and imposed on such committees by the rules.

76 Power of official receiver to apply for early dissolution

- (1) The official receiver may at any time apply to the registrar of companies for the early dissolution of a company in respect of which a winding-up order has been made by the court in England and Wales if—
 - (a) he is the liquidator of the company ; and
 - (b) it appears to him—
 - (i) that the realisable assets of the company are insufficient to cover the expenses of the winding up; and
 - (ii) that the affairs of the company do not require any further investigation.
- (2) Before making an application to the registrar under subsection (1) above, the official receiver shall give not less than twenty-eight days' notice of his intention to do so to the company's creditors and contributories and, if there is an administrative receiver of the company, to that receiver.
- (3) With the giving with respect to a company of a notice under subsection (2) above the official receiver shall (subject to any directions under this section) cease to be required to perform any duties imposed on him in relation to the company, its creditors or its contributories by virtue of any provision of this Part or the 1985 Act, apart from a duty to make an application under subsection (1) above.
- (4) Where a notice has been given with respect to a company under subsection (2) above, the official receiver or any creditor or contributory of the company or the administrative receiver of the company (if there is one) may apply to the Secretary of State for directions under this section.
- (5) The grounds on which an application for directions may be made under subsection (4) above are—
 - (a) that the realisable assets of the company are sufficient to cover the expenses of the winding up;
 - (b) that the affairs of the company do require further investigation; or
 - (c) that for any other reason the early dissolution of the company is inappropriate.
- (6) On the receipt of an application under subsection (1) above the registrar shall forthwith register it and, at the end of the period of three months beginning with the day of its registration, the company shall be dissolved; but the Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give directions under this section at any time before the end of that period.
- (7) Directions under this section are directions making such provision as the Secretary of State thinks fit for enabling the winding up of the company to proceed as if no notice had been given under subsection (2) above and may, in the case of an application under subsection (6) above, include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.
- (8) An appeal to the court shall lie from any decision of the Secretary of State on an application for directions under this section.
- (9) It is the duty of the person on whose application any directions are given under this section, or in whose favour an appeal with respect to an application for such directions is determined, within seven days after the giving of the directions or the determination

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of the appeal, to deliver to the registrar for registration such a copy of the directions or determination as is prescribed.

- (10) If a person without reasonable excuse fails to deliver a copy as required by subsection (9) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

77 Early dissolution of company in Scotland

- (1) Where a winding-up order has been made by the court in Scotland, if after a meeting or meetings have been held under section 71 above it appears to the liquidator that the realisable assets of the company are insufficient to cover the expenses of the winding up, he may apply to the court for an order that the company be dissolved.
- (2) Where the liquidator makes an application under subsection (1) above, if the court is satisfied that the realisable assets of the company are insufficient to cover the expenses of the winding up and it appears to the court appropriate to do so, the court shall make an order that the company be dissolved in accordance with this section.
- (3) A copy of the order shall within fourteen days from its date be forwarded by the liquidator to the registrar of companies who shall forthwith register it; and, at the end of the period of three months beginning with the day of its registration, the company shall be dissolved.
- (4) The court may, on an application by any person who appears to the court to have an interest, order that the date at which the dissolution of the company is to take effect shall be deferred for such period as the court thinks fit.
- (5) It is the duty of the person on whose application an order is made under subsection (4) above, within seven days after the making of the order, to deliver to the registrar of companies such a copy of the order as is prescribed.
- (6) If the liquidator without reasonable excuse fails to comply with the requirements of subsection (3) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.
- (7) If a person without reasonable excuse fails to deliver a copy as required by subsection (5) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum, and for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

78 Duty of liquidator to summon final meeting

- (1) Subject to subsection (2) below, if it appears to the liquidator of a company which is being wound up by the court that the winding up of the company is for practical purposes complete and the liquidator is not the official receiver, the liquidator shall summon a final general meeting of the company's Creditors which—
- (a) shall receive the liquidator's report of the winding up; and
 - (b) shall determine whether the liquidator should have his release under section 80 below.
- (2) The liquidator may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the company's

property but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the liquidator is able to report to the meeting that the winding up of the company is for practical purposes complete.

- (3) In the carrying out of his functions in the winding up it shall be the duty of the liquidator of a company to retain sufficient sums from the company's property to cover the expenses of summoning and holding the meeting required by this section.

79 Removal of liquidator and vacation of office

- (1) This section applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up by the court or of a provisional liquidator.
- (2) Subject to the following provisions of this section, a liquidator may be removed from office only by an order of the court or by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules and a provisional liquidator may be removed from office only by an order of the court
- (3) Where—
 - (a) the official receiver is a liquidator otherwise than in succession under section 70(3) above to a person who held office as a result of a nomination by a meeting of the company's creditors or contributories; or
 - (b) a liquidator was appointed by the court otherwise than under section 72(4)(a) or 73(1) above, or was appointed by the Secretary of State,a general meeting of the company's creditors shall be summoned for the purpose of replacing him only if the liquidator thinks fit or the court so directs or the meeting is requested, in accordance with the rules, by not less than one-quarter, in value, of the company's creditors.
- (4) A liquidator who was appointed by the Secretary of State may be removed from office by a direction of the Secretary of State.
- (5) A liquidator or provisional liquidator, not being the official receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (6) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.
- (7) Where an order is made under section 77-above for the dissolution of the company, the liquidator shall vacate office when the dissolution of the company takes effect in accordance with that section.
- (8) Where a final meeting has been held under section 78 above, the liquidator whose report was considered at the meeting shall vacate office as soon as he has given notice to the court and the registrar of companies that the meeting has been held and of the decisions (if any) of the meeting.

80 Release of liquidator

- (1) This section applies with respect to the release of the liquidator of a company which is being wound up by the court or of a provisional liquidator.

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- (2) Where the official receiver has ceased to be a liquidator and a person becomes liquidator in his stead, the official receiver shall have his release with effect from the following time, that is to say—
- (a) in a case where that person was nominated by a general meeting of the company's creditors or contributories or was appointed by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced ;
 - (b) in a case where that person is appointed by the court, such time as the court may determine.
- (3) If the official receiver while he is a liquidator gives notice to the Secretary of State that the winding up is for practical purposes complete, he shall have his release with effect from such time as the Secretary of State may determine.
- (4) A person other than the official receiver who has ceased to be a liquidator shall have his release with effect from the following time, that is to say—
- (a) in the case of a person who has been removed from office by a general meeting of the company's creditors that has not resolved against his release or who has died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office;
 - (b) in the case of a person who has been removed from office by a general meeting of the company's creditors that has resolved against his release or by the court or the Secretary of State or who has vacated office under section 79(5) or (7) above, such time as the Secretary of State may, on an application by that person, determine ;
 - (c) in the case of a person who has resigned, such time as may be prescribed;
 - (d) in the case of a person who has vacated office under subsection (8) of section 79 above—
 - (i) if the final meeting referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine ; and
 - (ii) if that meeting has not resolved against that person's release, the time at which he vacated office.
- (5) A person who has ceased to hold office as a provisional liquidator shall have his release with effect from such time as the court may, on an application by that person, determine.
- (6) Where the official receiver or a liquidator or provisional liquidator has his release under this section, he shall, with effect from the time specified in the preceding provisions of this section, be discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator or provisional liquidator; but nothing in this section shall prevent the exercise, in relation to a person who has had his release under this section, of the court's powers under section 19 above.
- (7) In the application of this section to a case where the order for winding up has been made by the court in Scotland, the references to a determination by the Secretary of State as to the time from which a person who has ceased to be liquidator shall have his release shall be construed as references to such a determination by the Accountant of Court.

81 Dissolution of company

- (1) On the receipt by the registrar of companies of a notice served for the purposes of section 79(8) above or of a notice from the official receiver that the winding up of a company by the court is complete, the registrar shall forthwith register the notice and, subject to subsections (2) and (4) below, at the end of the period of three months beginning with the day of its registration, the company shall be dissolved.
- (2) The Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.
- (3) An appeal to the court shall lie from any decision of the Secretary of State on an application for a direction under subsection (2) above.
- (4) Subsection (2) above shall not apply in a case where the winding-up order was made by the court in Scotland, but in such a case the court may, on an application by any person appearing to the court to have an interest, order that the date at which the dissolution of the company is to take effect shall be deferred for such period as the court thinks fit.
- (5) It is the duty of the person—
 - (a) on whose application a direction is given under subsection (2) above;
 - (b) in whose favour an appeal with respect to an application for such a direction is determined; or
 - (c) on whose application an order is made under subsection (4) above,within seven days after the giving of the direction, the determination of the appeal or the making of the order, to deliver to the registrar for registration such a copy of the direction, determination or order as is prescribed.
- (6) If a person without reasonable excuse falls to deliver a copy as required by subsection (5) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

Voluntary winding Up

82 No liquidator appointed or nominated by company in voluntary winding up

- (1) This Section applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the company.
- (2) The powers of the directors of the company shall not be exercised, except with the sanction of the court or (in the case of a creditors' voluntary winding up) so far as may be necessary to secure compliance with section 85 below, during the period before the appointment or nomination of a liquidator of the company.
- (3) Subsection (2) above does not apply in relation to the powers of the directors of the company—
 - (a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and
 - (b) to do all such other things as may be necessary for the protection of the company's assets.

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- (4) If the directors of the company without reasonable excuse fall to comply with this section, they shall be liable on summary conviction to a fine not exceeding the statutory maximum.

83 Effect of insolvency on members' voluntary winding up

- (1) This section applies where, in the case of a members' voluntary winding up, the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the rate applicable under section 93 below) within the period stated in the directors' declaration under section 577 of the 1985 Act
- (2) The liquidator shall—
- (a) summon a meeting of creditors for a day not later than the twenty-eighth day after the day on which he formed the opinion mentioned in subsection (1) above ;
 - (b) send notices of the creditors' meeting to the creditors by post not less than seven days before the day on which that meeting is to be held;
 - (c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in two newspapers circulating in the relevant locality, that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period; and
 - (d) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;
- and the notice of the creditors' meeting shall state the duty imposed by paragraph (d) above.
- (3) The liquidator shall also—
- (a) make out a statement in the prescribed form as to the affairs of the company;
 - (b) lay that statement before the creditors' meeting; and
 - (c) attend and preside at that meeting.
- (4) The statement as to the affairs of the company shall be verified by affidavit by the liquidator and shall show—
- (a) particulars of the company's assets, debts and liabilities;
 - (b) the names and addresses of the company's creditors;
 - (c) the securities held by them respectively;
 - (d) the dates when the securities were respectively given ; and
 - (e) such further or other information as may be prescribed.
- (5) Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duty imposed by subsection (2)(c) above shall apply separately in relation to each of those localities.
- (6) Where the company had no place of business in Great Britain during the relevant period, references in subsections (2)(c) and (5) above to the company's principal place of business in Great Britain shall be construed as references to the company's registered office.
- (7) As from the day on which the creditors' meeting is held, this Part and the 1985 Act shall have effect as if—
- (a) the directors' declaration under section 577 of that Act had not been made ; and

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- (b) the creditors' meeting and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in section 85 below;
and, accordingly, the winding up shall become a creditors' voluntary winding up and any appointment made or committee established by the creditors' meeting shall be deemed to have been made or established by the creditors' meeting so mentioned.
- (8) Where the creditors' meeting is held three months or less before the end of the first year from the commencement of the winding up, nothing in section 594 of the 1985 Act (as applied by subsection (7) above) shall require the liquidator to summon a meeting of creditors at the end of that year.
- (9) In this section " the relevant period " means the period of six months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.
- (10) If the liquidator without reasonable excuse fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding the statutory maximum.

84 Liquidator nominated by company in creditors' voluntary winding up

- (1) This section applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.
- (2) The powers conferred on the liquidator by section 598 of the 1985 Act shall not be exercised, except with the sanction of the court, during the period before the holding of the creditors' meeting mentioned in section 85 below.
- (3) Subsection (2) above does not apply in relation to the power of the liquidator—
 - (a) to take into his custody or under his control all the property to which the company is or appears to be entitled;
 - (b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and
 - (c) to do all such other things as may be necessary for the protection of the company's assets.
- (4) The liquidator shall attend the creditors' meeting held under section 85 below and shall report to the meeting on any exercise by him of his powers (whether or not under this section or under section 598 or 602 of the 1985 Act).
- (5) If default is made—
 - (a) by the company in complying with subsection (2) or (3) of section 85 below ;
or
 - (b) by the directors in complying with subsection (4) or (5) of that section,the liquidator shall, within seven days of the relevant day, apply to the court for directions as to the manner in which that default is to be remedied.
- (6) In subsection (5) above "the relevant day" means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.
- (7) If the liquidator without reasonable excuse fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding the statutory maximum.

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85 Meeting of creditors in creditors' voluntary winding up

- (1) This section applies in relation to a creditors' voluntary winding up.
- (2) The company shall—
 - (a) cause a meeting of its creditors to be summoned for a day not later than the fourteenth day after the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed ;
 - (b) cause the notices of the creditors' meeting to be sent by post to the creditors not less than seven days before the day on which that meeting is to be held ; and
 - (c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in two newspapers circulating in the relevant locality, that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period.
- (3) The notice of the creditors' meeting shall state either—
 - (a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require ;
or
 - (b) a place in the relevant locality where, on the two business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge.
- (4) The directors of the company shall—
 - (a) make out a statement in the prescribed form as to the affairs of the company ;
 - (b) cause that statement to be laid before the creditors' meeting; and
 - (c) appoint one of their number to preside at that meeting;and it is the duty of the director so appointed to attend the meeting and preside over it.
- (5) The statement as to the affairs of the company shall be verified by affidavit by some or all of the directors of the company and shall show—
 - (a) particulars of the company's assets, debts and liabilities;
 - (b) the names and addresses of the company's creditors ;
 - (c) the securities held by them respectively ;
 - (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed.
- (6) Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duties imposed by subsections (2)(c) and (3) (b) above shall apply separately in relation to each of those localities.
- (7) Where the company had no place of business in Great Britain during the relevant period, references in subsections (2)(c) and (6) above to the company's principal place of business in Great Britain shall be construed as references to the company's registered office.
- (8) In this section " the relevant period " means the period of six months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

- (9) If—
- (a) the company without reasonable excuse fails to comply with subsection (2) or (3) above ;
 - (b) the directors without reasonable excuse fail to comply with subsection (4) or (5) above ; or
 - (c) any director without reasonable excuse fails to comply with subsection (4) above, so far as requiring him to attend and preside at the creditors' meeting, the company, the directors or the director (as the case may be) shall be guilty of an offence.
- (10) A person guilty of an offence under subsection (9) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

86 Removal etc. of liquidator in voluntary winding up

- (1) This section applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up voluntarily.
- (2) Subject to subsection (3) below, a liquidator may be removed from office only by an order of the court or—
- (a) in the case of a members' voluntary winding up, by a general meeting of the company summoned specially for that purpose ; or
 - (b) in the case of a creditors' voluntary winding up, by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules.
- (3) Where a. liquidator was appointed by the court under section 599 of the 1985 Act, a meeting such as is mentioned in subsection (2) above shall be summoned for the purpose of replacing him only if the liquidator thinks fit or the court so directs or the meeting is requested, in accordance with the rules—
- (a) in the case of a members' voluntary winding up, by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting ; or
 - (b) in the case of a creditors' voluntary winding up, by not less than one-half, in value, of the company's creditors.
- (4) A liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (5) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the registrar of companies.
- (6) Where—
- (a) in the case of a members' voluntary winding up, a final meeting of the company has been held under section 585 of the 1985 Act; or
 - (b) in the case of a creditors' voluntary winding up, final meetings of the company and of the creditors have been held under section 595 of that Act,
- the liquidator whose report was considered at the meeting or meetings shall vacate office as soon as he has complied with subsection (3) of that section and has given notice to the registrar of companies that the meeting or meetings have been held and of the decisions (if any) of the meeting or meetings.

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87 Release of liquidator in voluntary winding up

- (1) This section applies with respect to the release of the liquidator of a company which is being wound up voluntarily.
- (2) A person who has ceased to be a liquidator shall have his release with effect from the following time, that is to say—
 - (a) in the case of a person who has been removed from office by a general meeting of the company or by a general meeting of the company's creditors that has not resolved against his release or who has died, the time at which notice is given to the registrar of companies in accordance with the rules that that person has ceased to hold office;
 - (b) in the case of a person who has been removed from office by a general meeting of the company's creditors that has resolved against his release or by the court or who has vacated office under subsection (4) of section 86 above, such time as the Secretary of State may, on the application of that person, determine ;
 - (c) in the case of a person who has resigned, such time as may be prescribed;
 - (d) in the case of a person who has vacated office under subsection (6)(a) of section 86 above, the time at which he vacated office;
 - (e) in the case of a person who has vacated office under subsection (6)(b) of that section—
 - (i) if the final meeting of the creditors referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine ; and
 - (ii) if that meeting has not resolved against that person's release, the time at which he vacated office.
- (3) In the application of subsection (2) above to the winding up of a company registered in Scotland, the references to a determination by the Secretary of State as to the time from which a person who has ceased to be liquidator shall have his release shall be construed as references to such a determination by the Accountant of Court.
- (4) Where a liquidator has his release under subsection (2) above, he shall, with effect from the time specified in that subsection, be discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator; but nothing in this section shall prevent the exercise, in relation to a person who has had his release under subsection (2) above, of the court's powers under section 19 above.

Winding up subject to supervision of court

88 Abolition of winding up subject to supervision of court

No order shall be made under section 606 of the 1985 Act (power to order winding up under supervision of court) after the coming into force of this section.

Provisions applicable to every mode of winding up

89 Preferential debts

- (1) In a winding up the preferential debts listed in Part I of Schedule 4 to this Act shall be paid in priority to all other debts; and Part II of that Schedule shall have effect for the interpretation of the said Part I.
- (2) Preferential debts—
 - (a) shall rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
 - (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, shall have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.
- (3) Without prejudice to section 523 of the 1985 Act, where in the case of a company which is being wound up by the court in England and Wales, any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of the company in the period of three months ending with the date of the winding-up order, those goods or effects, or the proceeds of sale of those goods or effects, shall be charged for the benefit of the company with the preferential debts of the company to the extent that the property of the company is for the time being insufficient for meeting them.
- (4) Where by virtue of any charge under subsection (3) above any person surrenders any goods or effects to a company or makes a payment to a company, that person shall, in respect of the amount of the proceeds of the sale of those goods or effects by the liquidator of the company or, as the case may be, the amount of the payment, rank as a preferential creditor of the company, except as against so much of the company's property as is available for the payment of preferential creditors by virtue of the surrender or payment.

90 Power to appoint special manager

- (1) Where a company has gone into liquidation or a provisional liquidator of a company has been appointed, the court may, on an application under this section, appoint any person to be the special manager of the business or property of the company.
- (2) An application under this section may be made by the liquidator or provisional liquidator of the company in any case where it appears to him that the nature of the business or property of the company, or the interests of the company's creditors, contributories or members generally, require the appointment of another person to manage the business or property of the company.
- (3) A special manager appointed under this section shall have such powers as may be entrusted to him by the court.
- (4) The power of the court under subsection (3) above to entrust powers to a special manager shall include power to direct that any provision of this Part or of the 1985 Act that has effect in relation to the provisional liquidator or liquidator of a company shall have the like effect in relation to the special manager for the purposes of the carrying

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out by the special manager of any of the functions of the provisional liquidator or liquidator.

- (5) A special manager appointed under this section shall—
- (a) give such security or, in Scotland, caution as may be prescribed;
 - (b) prepare and keep such accounts as may be prescribed; and
 - (c) produce those accounts in accordance with the rules to the Secretary of State or to such other persons as may be prescribed.

91 Power to disclaim onerous property

- (1) Subject to the provisions of this section, the liquidator of a company that is being wound up in England and Wales may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.
- (2) The following is onerous property for the purposes of this section, that is to say—
 - (a) any unprofitable contract; and
 - (b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.
- (3) A disclaimer under this section—
 - (a) shall operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but
 - (b) shall not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.
- (4) A notice of disclaimer shall not be given under this section in respect of any property if—
 - (a) a person interested in the property has applied in writing to the liquidator or one of his predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not; and
 - (b) the period of twenty-eight days beginning with the day on which that application was made, or such longer period as the court may allow, has expired without a notice of disclaimer having been given under this section in respect of that property.
- (5) The disclaimer under this section of any property of a leasehold nature shall not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either—
 - (a) no application under section 92 below is made with respect to that property before the end of the period of fourteen days beginning with the day on which the last notice served under this subsection was served; or
 - (b) where such an application has been made, the court directs that the disclaimer shall take effect.
- (6) Where the court gives a direction under subsection (5) (b) above it may also, instead of or in addition to any order it makes under section 92 below, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

- (7) Where, in consequence of the disclaimer under this section of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person, the Crown or that person and the successors in title of the Crown or that person shall not be subject to any personal liability in respect of any sums becoming due under that rentcharge except sums becoming due after the Crown or that person or some person claiming under or through the Crown or that person has taken possession or control of the land or has entered into occupation of it.
- (8) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

92 Powers of court in respect of disclaimed property

- (1) This section applies where the liquidator of a company has disclaimed any property under section 91 above.
- (2) An application may be made to the court under this section by—
 - (a) any person who claims an interest in the disclaimed property; or
 - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.
- (3) Subject to subsections (4) and (5) below, the court may, on an application under this section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—
 - (a) a person entitled to it or a trustee for such a person ; or
 - (b) a person subject to such a liability as is mentioned in subsection (2)(b) above or a trustee for such a person.
- (4) The court shall not make an order by virtue of paragraph (b) of subsection (3) above except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (5) The court shall not make an order under this section vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person—
 - (a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up ; or
 - (b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.
- (6) For the purposes of an order under this section relating to only part of any property comprised in a lease, the requirements of subsection (5) above shall apply as if the lease comprised only the property to which the order relates.
- (7) Where subsection (5) above applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under this section on the terms required by virtue of that subsection, the court may, by order under this section, vest the company's estate or interest in the property in any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the company) to perform the lessee's covenants in the lease; and the court may vest that

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estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.

- (8) Where subsection (5) above applies and a person claiming under the company as underlessee or mortgagee declines to accept any order under this section, that person shall be excluded from all interest in the property.
- (9) The effect of any order under this section shall be taken into account in assessing for the purpose of section 91(8) above the extent of any loss or damage sustained by any person in consequence of the disclaimer
- (10) An order under this section vesting any property in any person shall not need to be completed by any conveyance, assignment or transfer.

93 Interest on debts

- (1) In a winding up interest shall be payable in accordance with this section on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.
- (2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation.
- (3) All interest under this section shall rank equally, whether or not the debts on which it is payable rank equally.
- (4) The rate of interest payable under this section in respect of any debt shall be whichever is the greater of—
 - (a) the rate specified in section 17 of the Judgments Act 1838 on the day on which the company went into liquidation; and
 - (b) the rate applicable to that debt apart from the winding up.
- (5) In the application of this section to Scotland—
 - (a) references to a debt proved in a winding up have effect as references to a claim accepted in a winding up ; and
 - (b) the reference to section 17 of the Judgments Act 1838 shall have effect as a reference to the rules.

94 Style and title of liquidators

The liquidator of a company shall be described—

- (a) where a person other than the official receiver is liquidator, by the style of " the liquidator " of the particular company; or
 - (b) where the official receiver is liquidator, by the style of " the official receiver and liquidator" of the particular company;
- and in neither case shall he be described by an individual name.

CHAPTER VII

GENERAL

Preliminary

95 Preliminary

- (1) The following provisions of this Chapter shall apply—
 - (a) where a company goes into liquidation;
 - (b) where an administration order is made in relation to a company; and
 - (c) except in the case of sections 101 to 105, where an administrative receiver of a company is appointed;and in those provisions " the office holder " means the liquidator, the administrator or the administrative receiver, as the case may be.
- (2) Sections 96 to 100 and 105 below shall apply where a provisional liquidator is appointed as they apply where a company goes into liquidation, and references in those sections to the office holder shall be construed accordingly.
- (3) Section 97 below shall apply where a composition or scheme approved by meetings summoned under section 22 above has taken effect as it applies where a company goes into liquidation as if references in that section to the office holder were references to the supervisor of the composition or scheme.

Provisions applying generally

96 General provisions as to office holders

- (1) Without prejudice to any enactment under which the official receiver is to be, or may be, liquidator of a company, the office holder must be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (2) If an appointment or nomination of any person to the office relates to more than one person or has the effect that the office is to be held by more than one person, the appointment or nomination shall declare whether any act required or authorised under any enactment to be done by the office holder is to be done by all or any one or more of the persons for the time being holding the office.
- (3) The acts of an individual as the office holder shall be valid notwithstanding any defect in his appointment, nomination or qualifications.

97 Supplies by utilities

- (1) If a request is made by or with the concurrence of the office holder for the giving after the relevant date of any of the supplies mentioned in subsection (2) below, the supplier—
 - (a) may make it a condition of the giving of the supply that the office holder personally guarantees the payment of any charges in respect of the supply; but
 - (b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any

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outstanding charges in respect of a supply given to the company before the relevant date are paid.

- (2) The supplies referred to in subsection (1) above are—
- (a) a supply of gas by the British Gas Corporation;
 - (b) a supply of electricity by an Electricity Board (within the meaning of the Energy Act 1983);
 - (c) a supply of water by statutory water undertakers or, in Scotland, a water authority within the meaning of the Water (Scotland) Act 1980;
 - (d) a supply of telecommunication services (within the meaning of the Telecommunications Act 1984) by a public telecommunications operator (within the meaning Of that Act).
- (3) In subsection (2) above the reference to telecommunication services does not include a reference to services consisting in the conveyance of cable programmes, that is to say programmes included in cable programme services (within the meaning of the Cable and Broadcasting Act 1984).
- (4) For the purposes of this section "the relevant date" is whichever is applicable of the following dates, namely—
- (a) the date on which the company went into liquidation;
 - (b) the date on which the administration order was made;
 - (c) the date on which the administrative receiver was appointed or if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed;
 - (d) the date on which the provisional liquidator was appointed ; and
 - (e) the date on which the composition or scheme was approved by the meetings summoned under section 22 above.

98 Delivery and seizure of property

- (1) Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the court may require that person forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office holder.
- (2) Where
- (a) the office holder seizes or disposes of any property which is not property of the company ; and
 - (b) at the time of seizure or disposal the office holder believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the office holder shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the office holder and shall have a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

99 Duty to co-operate with office holder

- (1) Each of the persons mentioned in subsection (2) below shall—

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- (a) give to the office holder such information concerning the company and its promotion, formation, business, dealings, affairs or property as the office holder may at any time after the relevant date reasonably require; and
 - (b) attend on the office holder at such times as the office holder may reasonably require.
- (2) The persons referred to in subsection (1) above are—
- (a) those who are or have at any time been officers of the company;
 - (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
 - (c) those who are in the employment of the company, or have been in its employment within that year, and are in the office holder's opinion capable of giving information which he requires; and
 - (d) those who are, or have within that year been, officers of, or in the employment of, another company which is, or within that year was, an officer of the company in question.
- (3) For the purposes of subsection (2) above " the relevant date " is whichever is applicable of the following dates, namely—
- (a) the date on which the company went into liquidation ;
 - (b) the date on which the administration order was made ;
 - (c) the date on which the administrative receiver was appointed or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed; and
 - (d) the date on which the provisional liquidator was appointed;
- and in that subsection " employment" includes employment under a contract for services.
- (4) This section shall apply in the case of a company that is being wound up by the court—
- (a) as if the persons referred to in subsection (2) above included any person who has acted as liquidator, administrator or administrative receiver of the company; and
 - (b) where the court is in England and Wales, as if references to the office holder included references to the official receiver, whether or not he is the liquidator of the company.
- (5) If a person without reasonable excuse fails to comply with any obligation imposed by this section, he shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum;
 - (b) on conviction on indictment, to a fine.

100 Inquiry into company's dealings etc.

- (1) The court may, on the application of the office holder, summon to appear before it—
- (a) any officer of the company ;
 - (b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company ; or

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- (c) any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company;

and the court may require any such person as is mentioned in paragraphs (a) to (c) above to submit an affidavit to the court containing an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (c) above.

- (2) In a case where a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section, the court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—

- (a) for the arrest of that person; and
(b) for the seizure of any books, papers, records, money or goods in that person's possession ;

and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

- (3) Any person who appears or is brought before the court under this section may be examined on oath, either orally or (except in Scotland) by interrogatories, concerning the company or the matters mentioned in subsection (1)(c) above.
- (4) If it appears to the court, on consideration of any evidence obtained under this section, that any person has in his possession any property of the company, the court may, on the application of the office holder, order that person to deliver the whole or any part of the property to the office holder at such time, in such manner and on such terms as the court thinks fit.
- (5) If it appears to the court, on consideration of any evidence obtained under this section, that any person is indebted to the company, the court may, on the application of the office holder, order that person to pay to the office holder, at such time and in such manner as the court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the court thinks fit.
- (6) This section shall apply in the case of a company in respect of which a winding-up order has been made by the court in England and Wales as if references to the office holder included references to the official receiver whether or not he is the liquidator of the company.
- (7) The court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under this section shall be examined in any part of the United Kingdom where he may for the time being be, or in a place outside the United Kingdom.

Provisions applying to liquidations and administrations

101 Transactions at an undervalue and preferences (England and Wales)

- (1) Subject to the following provisions of this section and to section 102 below, where a company has at a relevant time entered into a transaction with any person at an undervalue or given a preference to any person—
 - (a) the office holder may apply to the court for an order under this section; and
 - (b) the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction or, as the case may be, had not given that preference.
- (2) For the purposes of this section and section 102 below a company enters into a transaction with a person at an undervalue if—
 - (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or
 - (b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.
- (3) The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied—
 - (a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business; and
 - (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.
- (4) For the purposes of this section and section 102 below a company gives a preference to a person if—
 - (a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities; and
 - (b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.
- (5) The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b) above.
- (6) A company which has given a preference to a person connected with the company at the time the preference was given shall be presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (5) above.
- (7) The fact that something has been done in pursuance of the order of a court shall not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

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- (8) Subject to subsection (9) below, the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time for the purposes of this section if the transaction is entered into or the preference is given—
- (a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company, at a time in the period of two years ending with the commencement date; or
 - (b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of six months ending with that date; or
 - (c) in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.
- (9) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (8)(a) or (b) above, that time shall not be a relevant time for the purposes of this section unless the company—
- (a) is unable to pay its debts within the meaning of section 518 of the 1985 Act at that time; or
 - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction or preference ;
- but the requirements of this subsection shall be presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.
- (10) For the purposes of subsection (8) above the commencement date is—
- (a) in a case where this section applies by reason of the making of an administration order or of a company's going into liquidation immediately upon the discharge of an administration order, the date of the presentation of the petition on which the administration order was made; and
 - (b) in a case where this section applies by reason of a company's going into liquidation at another time, the date of the commencement of the winding up.
- (11) For the purposes of this section a person who is connected with a company by reason only of being its employee shall be deemed not to be connected with the company.

102 Orders under s. 101

- (1) Without prejudice to the generality of subsection (1)(b) of section 101 above, an order under that section with respect to a transaction or preference entered into or given by a company may (subject to subsection (2) below)—
- (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company;
 - (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
 - (c) release or discharge (in whole or in part) any security given by the company;
 - (d) require any person to pay, in respect of benefits received by him from the company, such sums to the office holder as the court may direct;
 - (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be under such new or revived obligations to that person as the court thinks appropriate;

- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference ; and
 - (g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.
- (2) An order under section 101 above may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction or, as the case may be, the person to whom the preference was given ; but such an order—
- (a) shall not prejudice any interest in property which was acquired from a person other than the company and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest; and
 - (b) shall not require a person who received a benefit from the transaction or preference in good faith, for value and without notice of the relevant circumstances to pay a sum to the office holder, except where that person was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the company.
- (3) For the purposes of this section the relevant circumstances, in relation to a transaction or preference, are—
- (a) the circumstances by virtue of which an order under section 101 above could be made in respect of the transaction or preference if the company were to go into liquidation, or an administration order were made in relation to the company, within a particular period after the transaction is entered into or the preference given; and
 - (b) if that period has expired, the fact that the company has gone into liquidation or that such an order has been made.
- (4) The provisions of section 101 above and this section shall apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the company had no power to enter into or give.

103 Extortionate credit transactions

- (1) This section applies where the company is, or has been a party to a transaction for, or involving, the provision of credit to the company.
- (2) The court may, on the application of the office holder, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of three years ending with the day on which the company went into liquidation or, as the case may be, the administration order was made.
- (3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

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- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
 - (b) it otherwise grossly contravened ordinary principles of fair dealing;
- and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.
- (4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit, that is to say—
- (a) provision setting aside the whole or part of any obligation created by the transaction;
 - (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held ;
 - (c) provision requiring any person who is or was a party to the transaction to pay to the office holder any sums paid to that person, by virtue of the transaction, by the company;
 - (d) provision requiring any person to surrender to the office holder any property held by him as security for the purposes of the transaction;
 - (e) provision directing accounts to be taken between any persons.
- (5) The powers conferred by this section shall be exercisable in relation to any transaction concurrently with any powers exercisable in relation to that transaction as a transaction at an undervalue or under section 615A of the 1985 Act (gratuitous alienations in Scotland).

104 Avoidance of certain floating charges

- (1) Subject to the provisions of this section, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—
- (a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge;
 - (b) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company; and
 - (c) the amount of such interest (if any) as is payable on the amount falling within paragraph (a) or (b) above in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.
- (2) Subject to subsection (3) below, the time at which a floating charge is created by a company is a relevant time for the purposes of this section if the charge is created—
- (a) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of two years ending with the commencement date;
 - (b) in the case of a charge which is created in favour of any other person, at a time in the period of twelve months ending with that date ; or

- (c) in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.
- (3) Where a company creates a floating charge at a time mentioned in subsection (2)(b) above and the person in favour of whom the charge is created is not connected with the company, that time shall not be a relevant time for the purposes of this section unless the company—
 - (a) is unable to pay its debts within the meaning of section 518 of the 1985 Act at that time; or
 - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction under which the charge is created.
- (4) For the purposes of subsection (2) above the commencement date is—
 - (a) in a case where this section applies by reason of the making of an administration order, the date of the presentation of the petition on which the order was made; and
 - (b) in a case where this section applies by reason of a company's going into liquidation, the date of the commencement of the winding up.
- (5) For the purposes of subsection (1)(a) above the value of any goods or services supplied by way of consideration for a floating charge shall be the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.

105 Unenforceability of liens on books etc.

- (1) Subject to subsection (2) below, a lien or other right to retain possession of any of the books, papers or other records of the company shall be unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the office holder.
- (2) Subsection (1) above does not apply to a lien on documents which give a title to property and are held as such.

CHAPTER VIII

SUPPLEMENTAL

106 Company insolvency rules

- (1) Rules may be made—
 - (a) in relation to England and Wales, by the Lord Chancellor with the concurrence of the Secretary of State; or
 - (b) in relation to Scotland, by the Secretary of State,for the purpose of giving effect to this Part and the 1985 Act so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

Status: This is the original version (as it was originally enacted).

- (2) Without prejudice to the generality of subsection (1) above or to any provision of this Part or of the 1985 Act by virtue of which rules under this section may be made with respect to any matter, rules under this section may contain—
- (a) any such provision as is specified in Schedule 5 to this Act or corresponds to provision contained immediately before the coming into force of this section in rules made, or having effect as if made, under section 663(1) or (2) of the 1985 Act; and
 - (b) such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor or, as the case may be, the Secretary of State necessary or expedient;
- and in Schedule 5 to this Act " liquidator " includes a provisional liquidator.
- (3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Regulations made by the Secretary of State under a power conferred by rules under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.
- (5) Nothing in this section or section 107 below shall be taken as prejudicing any power to make rules of court.

107 Fees orders

- (1) There shall be paid in respect of—
- (a) proceedings under this Part or the 1985 Act so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies ; and
 - (b) the performance by the official receiver or the Secretary of State of functions under this Part or that Act so far as so relating, such fees as the Lord Chancellor in relation to England and Wales, or the Secretary of State in relation to Scotland, may with the sanction of the Treasury by order direct; and the Treasury may by order direct by whom and in what manner the fees are to be collected and accounted for.
- (2) The Lord Chancellor may, with the sanction of the Treasury, by order provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for fees payable by virtue of this section.
- (3) An order under this section may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor, the Secretary of State or, as the case may be, the Treasury necessary or expedient.
- (4) An order under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.
- (5) Fees payable by virtue of this section shall be paid into the Consolidated Fund.
- (6) The application of this section to Scotland shall be without prejudice to the provisions of section 2 of the Courts of Law Fees (Scotland) Act 1895.

108 Construction of Part II

- (1) The provisions of this Part shall be construed as one with the 1985 Act and—

Status: This is the original version (as it was originally enacted).

- (a) so far as relating to the disqualification of directors and others involved in the management of companies, with Part IX of that Act;
 - (b) so far as relating to receivers or managers, with Part XIX of that Act; and
 - (c) so far as relating to the winding up of companies, with Part XX of that Act,
- and references in that Act to itself and to any of those Parts of that Act shall be construed accordingly.

(2) The following provisions, namely—

- (a) sections 295 and 301 of the 1985 Act (disqualification orders and register of such orders); and
- (b) paragraphs 1 and 3 to 5 of Part I of Schedule 12 to that Act (procedure for applying for and obtaining disqualification orders and applications for leave under such orders),

shall apply for the purposes of sections 12, 13 and 16 above; and references in those provisions to sections 296 to 299 of that Act shall be construed accordingly.

(3) In this Part, except in so far as the context otherwise requires—

" administrative receiver " means—

- (a) an administrative receiver within the meaning of Chapter IV of this Part;
or
- (b) a receiver appointed under section 467 of the 1985 Act in a case where the whole (or substantially the whole) of the company's property is attached by the floating charge;

" business day " means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain ;

" chattel leasing agreement " means an agreement for the bailment or, in Scotland, the hiring of goods which is capable of subsisting for more than three months;

" floating charge " means a charge which, as created, was a floating charge;

" insolvency ", in relation to a company, includes the approval of a composition or scheme under Chapter II of this Part, the making of an administration order or the appointment of an administrative receiver;

" office copy ", in relation to Scotland, means a copy certified by the clerk of court;

" preferential debt " means a debt listed in Part I of Schedule 4 to this Act and " preferential creditor " shall be construed accordingly;

" prescribed " means prescribed by the rules ;

" receiver ", in the expression " receiver or manager ", does not include a receiver appointed under section 467 of the 1985 Act;

" retention of title agreement " means an agreement for the sale of goods to a company, being an agreement—

- (a) which does not constitute a charge on the goods; but
- (b) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company as respects the goods or any property representing the goods ;

" the rules " means rules under section 106 above ;

" secured creditor ", in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and " unsecured creditor " shall be construed accordingly ;

Status: This is the original version (as it was originally enacted).

- " security " means—
- (a) in relation to England and Wales, any mortgage, charge, lien or other security ;
 - (b) in relation to Scotland, any security (whether heritable or movable), any floating charge and any right of lien or preference and any right of retention (other than a right of compensation or set off).
- (4) For the purposes of this Part a company goes into liquidation if it passes a resolution for voluntary winding up or an order for its winding up is made by the court at a time when it has not already gone into liquidation by passing such a resolution.
- (5) For the purposes of this Part a person is connected with a company if—
- (a) he is a director or shadow director of the company or an associate of such a director or shadow director; or
 - (b) he is an associate of the company.
- (6) For the purposes of this Part a person who is not a member of a company but to whom shares in the company have been transferred, or transmitted by operation of law, shall be regarded as a member of the company, and references to a member or members shall be construed accordingly.
- (7) Where any provision of this Part provides that a person is liable to a daily default fine of any amount for continued contravention of any offence, that person shall be liable on a second or subsequent summary conviction of the offence to a fine of that amount for each day on which the contravention is continued (instead of to any other penalty specified in that provision).

109 Minor and consequential amendments of 1985 Act

- (1) The 1985 Act shall have effect with the amendments specified in Schedule 6 to this Act (being minor and consequential amendments relating to the disqualification of directors and others involved in the management of companies and the insolvency and winding up of companies).
- (2) In the 1985 Act references to general rules under section 663(1) or (2) of that Act shall have effect as references to rules under section 106 above.
- (3) In the 1985 Act " administrative receiver " has the same meaning as in this Part.