

## SCHEDULES

### SCHEDULE 1

Section 21(10).

#### SINGLE REGULATOR OF INSOLVENCY PRACTITIONERS: SUPPLEMENTARY PROVISION

##### *Operation of this Schedule*

- 1.—(1) This Schedule has effect in relation to regulations under section 21 designating a body (referred to in this Schedule as “the Regulations”) as follows—
- (a) paragraphs 2 to 13 have effect where the Regulations establish the body;
  - (b) paragraphs 6, 7 and 9 to 13 have effect where the Regulations designate an existing body (see section 21(2)(b));
  - (c) paragraph 14 also has effect where the Regulations designate an existing body that is an unincorporated association.
- (2) Provision made in the Regulations by virtue of paragraph 6 or 12, where that paragraph has effect as mentioned in sub-paragraph (1)(b), may only apply in relation to—
- (a) things done by or in relation to the body in or in connection with the exercise of functions conferred on it by the Regulations; and
  - (b) functions of the body which are functions so conferred.

##### *Name, members and chair*

- 2.—(1) The Regulations must prescribe the name by which the body is to be known.
- (2) The Regulations must provide that the members of the body must be appointed by the Department after such consultation as the Department thinks appropriate.
- (3) The Regulations must provide that the Department must appoint one of the members as the chair of the body.
- (4) The Regulations may include provision about—
- (a) the terms on which the members of the body hold and vacate office;
  - (b) the terms on which the person appointed as the chair holds and vacates that office.

*Remuneration etc.*

3.—(1) The Regulations must provide that the body must pay to its chair and members such remuneration and allowances in respect of expenses properly incurred by them in the exercise of their functions as the Department may determine.

(2) The Regulations must provide that, as regards any member (including the chair) in whose case the Department so determines, the body must pay or make provision for the payment of—

- (a) such pension, allowance or gratuity to or in respect of that person on retirement or death as the Department may determine; or
- (b) such contributions or other payment towards the provision of such a pension, allowance or gratuity as the Department may determine.

(3) The Regulations must provide that where—

- (a) a person ceases to be a member of the body otherwise than on the expiry of the term of office; and
- (b) it appears to the Department that there are special circumstances which make it right for that person to be compensated,

the body must make a payment to the person by way of compensation of such amount as the Department may determine.

*Staff*

4. The Regulations must provide that—

- (a) the body may appoint such persons to be its employees as the body considers appropriate; and
- (b) the employees are to be appointed on such terms and conditions as the body may determine.

*Proceedings*

5.—(1) The Regulations may make provision about the proceedings of the body.

(2) The Regulations may, in particular—

- (a) authorise the body to exercise any function by means of committees consisting wholly or partly of members of the body;
- (b) provide that the validity of proceedings of the body, or of any such committee, is not affected by any vacancy among the members or any defect in the appointment of a member.

*Fees*

6.—(1) The Regulations may make provision—

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

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- (a) about the setting and charging of fees by the body in connection with the exercise of its functions;
  - (b) for the retention by the body of any such fees payable to it;
  - (c) about the application by the body of such fees.
- (2) The Regulations may, in particular, make provision—
- (a) for the body to be able to set such fees as appear to it to be sufficient to defray the expenses of the body exercising its functions, taking one year with another;
  - (b) for the setting of fees by the body to be subject to the approval of the Department.
- (3) The expenses referred to in sub-paragraph (2)(a) include any expenses incurred by the body on such staff, accommodation, services and other facilities as appear to it to be necessary or expedient for the proper exercise of its functions.

#### *Consultation*

7. The Regulations may make provision as to the circumstances and manner in which the body must consult others before exercising any function conferred on it by the Regulations.

#### *Training and other services*

- 8.—(1) The Regulations may make provision authorising the body to provide training or other services to any person.
- (2) The Regulations may make provision authorising the body—
- (a) to charge for the provision of any such training or other services; and
  - (b) to calculate any such charge on the basis that it considers to be the appropriate commercial basis.

#### *Report and accounts*

- 9.—(1) The Regulations must require the body, at least once in each 12 month period, to report to the Department on—
- (a) the exercise of the functions conferred on it by the Regulations; and
  - (b) such other matters as may be prescribed in the Regulations.
- (2) The Regulations must require the Department to lay before the Assembly a copy of each report received under this paragraph.
- (3) Unless section 394 of the Companies Act 2006 applies to the body (duty on every company to prepare individual accounts), the Regulations must provide that

the Department may give directions to the body with respect to the preparation of its accounts.

(4) Unless the body falls within sub-paragraph (5), the Regulations must provide that the Department may give directions to the body with respect to the audit of its accounts.

(5) The body falls within this sub-paragraph if it is a company whose accounts—

- (a) are required to be audited in accordance with Part 16 of the Companies Act 2006 (see section 475 of that Act); or
- (b) are exempt from the requirements of that Part under section 482 of that Act (non-profit making companies subject to public sector audit).

(6) The Regulations may provide that, whether or not section 394 of the Companies Act 2006 applies to the body, the Department may direct that any provisions of that Act specified in the directions are to apply to the body with or without modifications.

#### *Funding*

**10.** The Regulations may provide that the Department may make grants to the body.

#### *Financial penalties*

**11.—(1)** This paragraph applies where the Regulations include provision enabling the body to impose a financial penalty on a person who is, or has been, authorised to act as an insolvency practitioner (see section 21(5)).

(2) The Regulations—

- (a) must include provision about how the body is to determine the amount of a penalty; and
- (b) may, in particular, prescribe a minimum or maximum amount.

(3) The Regulations must provide that, unless the Department (with the consent of the Department of Finance and Personnel) otherwise directs, income from penalties imposed by the body is to be paid into the Consolidated Fund.

(4) The Regulations may also, in particular—

- (a) include provision for a penalty imposed by the body to be enforced as a debt;
- (b) prescribe conditions that must be met before any action to enforce a penalty may be taken.

#### *Status etc.*

**12.** The Regulations must provide that—

- (a) the body is not to be regarded as acting on behalf of the Crown; and
- (b) its members, officers and employees are not to be regarded as Crown servants.

#### *Transfer schemes*

**13.—**(1) This paragraph applies if the Regulations make provision designating a body (whether one established by the Regulations or one already in existence) in place of a body designated by earlier regulations under section 21; and those bodies are referred to as the “new body” and the “former body” respectively.

(2) The Regulations may make provision authorising the Department to make a scheme (a “transfer scheme”) for the transfer of property, rights and liabilities from the former body to the new body.

(3) The Regulations may provide that a transfer scheme may include provision—

- (a) about the transfer of property, rights and liabilities that could not otherwise be transferred;
- (b) about the transfer of property acquired, and rights and liabilities arising, after the making of the scheme.

(4) The Regulations may provide that a transfer scheme may make consequential, supplementary, incidental or transitional provision and may in particular—

- (a) create rights, or impose liabilities, in relation to property or rights transferred;
- (b) make provision about the continuing effect of things done by the former body in respect of anything transferred;
- (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the former body in respect of anything transferred;
- (d) make provision for references to the former body in an instrument or other document in respect of anything transferred to be treated as references to the new body;
- (e) make provision for the shared ownership or use of property;
- (f) if the TUPE regulations do not apply to in relation to the transfer, make provision which is the same or similar.

(5) The Regulations must provide that, where the former body is an existing body, a transfer scheme may only make provision in relation to—

- (a) things done by or in relation to the former body in or in connection with the exercise of functions conferred on it by previous regulations under section 21; and
- (b) functions of the body which are functions so conferred.

(6) In sub-paragraph (4)(f), “TUPE regulations” means the [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(SI 2006/246\)](#).

(7) In this paragraph—

- (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
- (b) references to the transfer of property include the grant of a lease.

*Additional provision where body is unincorporated association*

**14.—**(1) This paragraph applies where the body is an unincorporated association.

(2) The Regulations must provide that any relevant proceedings may be brought by or against the body in the name of any body corporate whose constitution provides for the establishment of the body.

(3) In sub-paragraph (2) “relevant proceedings” means proceedings brought in or in connection with the exercise of any function conferred on the body by the Regulations.