

SCHEDULES

SCHEDULE 2

ADMINISTRATION: MINOR AND CONSEQUENTIAL AMENDMENTS

The 1989 Order

- 18.** The 1989 Order shall be amended as follows.
- 19.** In Article 5(1) (interpretation), omit the definitions of “administrator” and “administration order”.
- 20.**—(1) Article 6 (meaning of “insolvency” and “go into liquidation”) shall be amended as follows.
- (2) In paragraph (1) for “the making of an administration order or the appointment of an administrative receiver” substitute “or the appointment of an administrator or administrative receiver”.
- (3) For paragraph (3) substitute—
- “(3) The reference to a resolution for voluntary winding up in paragraph (2) includes a reference to a resolution which is deemed to occur by virtue of—
- (a) paragraph 84(5)(b) of Schedule B1, or
- (b) an order made following conversion of administration or a voluntary arrangement into winding up by virtue of Article 37 of the EC Regulation.”.
- 21.** In Article 14 (proposal for company voluntary arrangement)—
- (a) in paragraph (1) for “(other than one for which an administration order is in force, or which is being wound up)” substitute “(other than one which is in administration or being wound up)”, and
- (b) in paragraph (3) for sub-paragraph (a) substitute—
- “(a) where the company is in administration, by the administrator,”.
- 22.** In Article 18(3) (approval of company voluntary arrangement)—
- (a) for “an administration order is in force” substitute “is in administration”, and
- (b) for “discharge the administration order” substitute “provide for the appointment of the administrator to cease to have effect”.
- 23.** In Article 19(2)(c) (challenge of decision in relation to company voluntary arrangement) for “an administration order is in force” substitute “is in administration”.
- 24.** After Article 70(1) (voluntary winding up) insert—
- “(1A) Before a company passes a resolution for voluntary winding up it must give written notice of the resolution to the holder of any qualifying floating charge to which Article 59A applies.
- (1B) Where notice is given under subsection (1A) a resolution for voluntary winding up may be passed only—

- (a) after the end of the period of 5 business days beginning with the day on which the notice was given, or
- (b) if the person to whom the notice was given has consented in writing to the passing of the resolution.”.

25. At the end of Article 86 (creditors' voluntary winding up of company: appointment of liquidator) add—

“(4) The Court shall grant an application under paragraph (3) made by the holder of a qualifying floating charge in respect of the company’s property (within the meaning of paragraph 15 of Schedule B1) unless the Court thinks it right to refuse the application because of the particular circumstances of the case.”.

26. At the end of Article 107 (winding-up: avoidance of property disposition) (which becomes paragraph (1)) add—

“(2) This Article has no effect in respect of anything done by an administrator of a company while a winding-up petition is suspended under paragraph 41 of Schedule B1.”.

27. After Article 109(1) (commencement of winding up) insert—

“(1A) Where the Court makes a winding-up order by virtue of paragraph 14(1)(e) of Schedule B1, the winding up is deemed to commence on the making of the order.”.

28. In Article 119 (appointment by High Court of liquidator following administration or voluntary arrangement) for paragraph (1) substitute—

“(1) Where a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect, the High Court may appoint as liquidator of the company the person whose appointment as administrator has ceased to have effect.”.

29. In Article 176 (misfeasance of officers)—

- (a) in paragraph (1)(b) omit “, administrator”,
- (b) in paragraph (2) omit (in each place) “or administrator”, and
- (c) in paragraph (4)—
 - (i) omit “or administrator”, and
 - (ii) for “that person” substitute “he”.

30. Article 194(1) (administrator to be qualified insolvency practitioner) shall cease to have effect.

31. In Article 195(1) and (2) (appointment to office of two or more persons) omit “administrator,”.

32. In Article 196 (validity of office-holder’s act) omit “administrator,”.

33. In Article 197 (utility supplies)—

- (a) for paragraph (1)(a) substitute—
 - “(a) the company enters administration, or”, and
- (b) for paragraph (4)(a) substitute—
 - “(a) the date on which the company entered administration”.

34. For Article 198(1)(a) (getting in the company’s property) substitute—

- “(a) the company enters administration, or”.

35. For Article 199(4)(a) (co-operation with office-holder) substitute—

- “(a) the date on which the company entered administration,”.

36. For Article 202(1)(a) (transactions at an undervalue) substitute—

“(a) the company enters administration, or”.

37.—(1) Article 204 (relevant time for Articles 202 and 203) shall be amended as follows.

(2) For paragraph (1)(c) substitute—

“(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, and

(d) in either case, at a time between the filing with the Court of a copy of notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 and the making of an appointment under that paragraph.”.

(3) The word “and” after paragraph (1)(b) shall cease to have effect.

(4) For paragraph (3)(a), (aa) and (b) substitute—

“(a) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,

(b) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed under paragraph 15 or 23 of Schedule B1 following filing with the High Court of a copy of a notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,

(c) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed otherwise than as mentioned in sub-paragraph (a) or (b), the date on which the appointment takes effect,

(d) in a case where Article 202 or 203 applies by reason of a company going into liquidation either following conversion of administration into winding up by virtue of Article 37 of the EC Regulation or at the time when the appointment of an administrator ceases to have effect, the date on which the company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed), and

(e) in a case where Article 202 or 203 applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding up.”.

38.—(1) Article 205 (order under Article 202 or 203) shall be amended as follows.

(2) For paragraph (3A) substitute—

“(3A) Where Article 202 or 203 applies by reason of a company’s entering administration, a person has notice of the relevant proceedings if he has notice that—

(a) an administration application has been made,

(b) an administration order has been made,

(c) a copy of a notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 has been filed, or

(d) notice of the appointment of an administrator has been filed under paragraph 19 or 30 of that Schedule.”.

(3) For subsection (3B) substitute—

“(3B) Where Article 202 or 203 applies by reason of a company’s going into liquidation at the time when the appointment of an administrator of the company ceases to have effect, a person has notice of the relevant proceedings if he has notice that—

(a) an administration application has been made,

- (b) an administration order has been made,
- (c) a copy of a notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 has been filed,
- (d) notice of the appointment of an administrator has been filed under paragraph 19 or 30 of that Schedule, or
- (e) the company has gone into liquidation.”.

39. In Article 206(2) (extortionate credit transaction) for “the day on which the administration order was made or (as the case may be) the company went into liquidation” substitute “the day on which the company entered administration or went into liquidation”.

40.—(1) Article 207 (avoidance of floating charge) shall be amended as follows.

(2) The word “or” after paragraph (3)(b) shall cease to have effect.

(3) For paragraph (3)(c) substitute—

- “(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, or
- (d) in either case, at a time between the filing with the High Court of a copy of notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 and the making of an appointment under that paragraph.”.

(4) For paragraph (5)(a) and (b) substitute—

- “(a) in a case where this Article applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,
- (b) in a case where this Article applies by reason of an administrator of a company being appointed under paragraph 15 or 23 of Schedule B1 following filing with the High Court of a copy of notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,
- (c) in a case where this Article applies by reason of an administrator of a company being appointed otherwise than as mentioned in sub-paragraph (a) or (b), the date on which the appointment takes effect, and
- (d) in a case where this Article applies by reason of a company going into liquidation, the date of the commencement of the winding up.”.

41. For Article 208(1)(a) (unenforceability of lien on records) substitute—

- “(a) the company enters administration, or”.

42.—(1) Article 347 (preferential debts: “the relevant date”) shall be amended as follows.

(2) In paragraph (2) for sub-paragraphs (a) and (b) substitute—

- “(a) if the company is in administration, the date on which it entered administration, and
- (b) if the company is not in administration, the date on which the voluntary arrangement takes effect.”.

(3) In paragraph (3)—

- (a) in sub-paragraphs (a), (aa) and (ab) for “the date of the making of the administration order” substitute “the date on which the company entered administration”,

(b) after sub-paragraph (b) insert—

- “(ba) if the case does not fall within sub-paragraph (a), (aa), (ab) or (b) and the company is being wound up following administration pursuant to paragraph 84

of Schedule B1, the relevant date is the date on which the company entered administration;”, and

- (c) in sub-paragraph (c) for “sub-paragraph (a), (aa), (ab) or (b)” substitute “sub-paragraph (a), (aa), (ab), (b) or (ba)”.

- (4) After paragraph (3) insert—

“(3A) In relation to a company which is in administration (and to which no other provision of this Article applies) the relevant date is the date on which the company enters administration.”.

43.—(1) Article 366 (power to apply Parts II to VII to formerly authorised banks, &c.) shall be amended as follows.

- (2) For paragraph (1) substitute—

“(1) The Department may, by order subject to negative resolution, after consultation with the Financial Services Authority provide that specified provisions in Parts II to VII shall apply with specified modifications in relation to any person who—

- (a) has a liability in respect of a deposit which he accepted in accordance with the Banking Act 1979 or 1987, but
- (b) does not have permission under Part IV of the Financial Services and Markets Act 2000 (regulated activities) to accept deposits.

- (1A) Paragraph (1)(b) shall be construed in accordance with—

- (a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),
- (b) any relevant order under that section, and
- (c) Schedule 2 to that Act (regulated activities).”.

- (3) Omit paragraph (2).

44. In Article 368(1)(a) (application for order in relation to transaction defrauding creditor) for “in relation to which an administration order is in force” substitute “is in administration”.

45.—(1) Schedule A1 (moratorium where directors propose voluntary arrangement) shall be amended as follows.

- (2) In paragraph 4(1) (exclusion from eligibility for moratorium)—

- (a) for paragraph (a) substitute—

“(a) the company is in administration,”, and

- (b) after paragraph (f) (and before the word “or”) insert—

“(fa) an administrator appointed under paragraph 23 of Schedule B1 has held office in the period of 12 months ending with the date of filing.”.

- (3) In paragraph 23(1) (effect of moratorium on creditor) for paragraph (d) substitute—

“(d) no administration application may be made in respect of the company,

- (da) no administrator of the company may be appointed under paragraph 15 or 23 of Schedule B1.”.

(4) In paragraph 50 (challenge of directors' actions during moratorium) for sub-paragraph (7) substitute—

“(7) Sub-paragraph (8) applies where—

- (a) the appointment of an administrator has effect in relation to the company and that appointment was made in pursuance of—

- (i) an administration application made, or
 - (ii) a notice of intention to appoint filed,
- before the moratorium came into force, or
- (b) the company is being wound up in pursuance of a petition presented before the moratorium came into force.
- (8) No application for an order under this paragraph may be made by a creditor or member of the company; but such an application may be made instead by the administrator or (as the case may be) the liquidator.”.

46.—(1) Schedule 5 (scope of insolvency rules) shall be amended as follows.

(2) At the end of paragraph 1 (which becomes sub-paragraph (1)) add—

“(2) Rules made by virtue of this paragraph about the consequence of failure to comply with practice or procedure may, in particular, include provision about the termination of administration.”.

(3) In paragraph 10 (provision as to committees) for “Article 38, 59, 87 or 120” substitute “Article 59, 87 or 120, or paragraph 58 of Schedule B1”.

(4) After paragraph 14 insert—

“**14A.** Provision about the application of Article 150A which may include, in particular—

- (a) provision enabling a receiver to institute winding up proceedings;
- (b) provision requiring a receiver to institute winding up proceedings.”.

(5) After paragraph 14A (inserted by sub-paragraph (4)) insert—

“Administration

14B. Provision which—

- (a) applies in relation to administration, with or without modifications, a provision of Parts V to VII and any of Articles 5 to 8 in so far as that Article relates to that provision, or
- (b) serves a purpose in relation to administration similar to a purpose that may be served by the rules in relation to winding up by virtue of a provision of this Schedule.”.

(6) In paragraph 29 (general provision) for “Article 34, 57, 111, 121(2) or 199 of this Order” substitute “Article 57, 111, 121(2) or 199 of, or paragraph 48 of Schedule B1 to, this Order”.

47.—(1) Schedule 7 (punishment of offences) shall be amended as follows.

(2) After the entries for Schedule A1 insert—

“Sch. B1, para. 19(7).	Making false statement in statutory declaration where administrator appointed by holder of floating charge.	1. On indictment	2 years, or a fine or both.	
		2. Summary	6 months, or the statutory maximum or both	
Sch.B1, para. 21	Holder of floating charge failing to notify administrator	1. On indictment	2 years, or a fine or both.	One-tenth of the statutory maximum.
		2. Summary		

	or others of commencement of appointment.		6 months, or the statutory maximum or both	
Sch. B1, para. 28(4).	Making false statement in statutory declaration where appointment of administrator proposed by company or directors.	1. On indictment 2. Summary	2 years, or a fine or both. 6 months, or the statutory maximum or both.	
Sch. B1, para. 30(7).	Making false statement in statutory declaration where administrator appointed by company or directors.	1. On indictment 2. Summary	2 years, or a fine or both. 6 months, or the statutory maximum or both.	
Sch. B1, para. 33.	Company or directors failing to notify administrator or others of commencement of appointment.	1. On indictment 2. Summary	2 years, or a fine or both. 6 months, or the statutory maximum or both.	One-tenth of the statutory maximum.
Sch. B1, para. 46(2).	Administrator, company or officer failing to state in business document that administrator appointed.	Summary	One-fifth of the statutory maximum.	
Sch. B1, para. 47(9).	Administrator failing to give notice of his appointment.	Summary	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 49(4).	Failing to comply with provisions about statement of affairs where administrator appointed.	1. On indictment 2. Summary	A fine. The statutory maximum.	One-tenth of the statutory maximum.
Sch. B1, para. 50(7).	Administrator failing to send out statement of his proposals.	Summary.	One-fifth of the statutory maximum.	One fiftieth of the statutory maximum.
Sch. B1, para. 52(5).	Administrator failing to arrange initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

Sch. B1, para. 54(3).	Administrator failing to report decision taken at initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 55(7).	Administrator failing to report decision taken at creditors' meeting summoned to consider revised proposal.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 57(2).	Administrator failing to summon creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 72(6).	Administrator failing to file Court order enabling disposal of charged property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 73(5).	Administrator failing to file Court order enabling disposal of hire-purchase property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 78(3).	Administrator failing to notify registrar of automatic end of administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 79(6).	Administrator failing to give notice of extension by consent of term of office.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 81(6).	Administrator failing to give notice of termination of administration where objective achieved.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 85(9).	Administrator failing to comply with provisions where company moves to dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

Sch. B1, para. 87(3).	Administrator failing to notify registrar where court terminates administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 90(3).	Administrator failing to give notice on ceasing to be qualified.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.”

(3) Omit the entries for the following provisions—

- (a) Article 25(2),
- (b) Article 28(8),
- (c) Article 30(5),
- (d) Article 33(3),
- (e) Article 34(6),
- (f) Article 35(3),
- (g) Article 36(7), and
- (h) Article 39(6).