

## SCHEDULES

### SCHEDULE 6

#### AMENDMENTS OF 1985 ACT

##### *Winding up*

- 23 In section 222(4) (obligation to preserve accounting records), for the words from " direction " onwards there shall be substituted the words " provision contained in rules made under section 106 of the Insolvency Act 1985 ".
- 24 For subsection (6) of section 461 (application of winding-up rules to petition under Part XVII) there shall be substituted the following subsection—
- “(6) The power under section 106 of the Insolvency Act 1985 to make rules shall, so far as it relates to a winding-up petition, apply for the purposes of a petition under this Part”
- 25 In sections 512(3), 515(5), 518(2), 622(7) and 624(7) (being provisions which refer to regulations under section 664), for the word " regulations " there shall be substituted the word "order ".
- 26 In section 512(4) (jurisdiction in relation to winding up), for the words " in bankruptcy" there shall be substituted the words " for the purposes of Part III of the Insolvency Act 1985 ".
- 27 (1) Section 518 (definition of inability to pay debts) shall be amended as follows.
- (2) In subsection (1)(a) after the word " demand " there shall be inserted the words " in the prescribed form ".
- (3) In subsection (1)(e), for the words from "(and. in determining " onwards there shall be substituted the words " as they fall due ".
- (4) After subsection (1) there shall be inserted the following subsection—
- “(1A) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.”
- 28 In section 519(1) (presentation of application for winding up), after the words " by the company " there shall be inserted the words " or the directors ".
- 29 In section 525(2) and (3) (restriction on proceedings against a company where winding-up order made or provisional liquidator appointed), after the words " against the company", in each place where they occur, there shall be inserted the words " or its property ".
- 30 For section 535 (liquidators in Scotland) there shall be substituted the following section—

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**“535 Liquidator in Scotland.**

Where a winding-up order is made by the court in Scotland, a liquidator shall be appointed by the court at the time when the order is made.”

- 31 (1) Section 539 (powers of liquidator) shall be amended as follows.
- (2) In subsection (1), for the words " committee of inspection ", there shall be substituted the words " committee established under section 74 or 75 of the Insolvency Act 1985 ".
- (3) Paragraph (c) of subsection (1) (power to appoint solicitor) shall be omitted and after subsection (2) there shall be inserted the following subsection—
- “(2A) Where the liquidator (not being the official receiver), in exercise of the powers conferred on him by this Act-
- (a) disposes of any property of the company to a person who is connected with the company (within the meaning of Part II of the Insolvency Act 1985); or
- (b) employs a solicitor to assist him in the carrying out of his functions, he shall, if there is for the time being a committee established under section 74 or 75 of that Act, give notice to the committee of that exercise of his powers.”
- (4) In subsection (4), for the words "committee of inspection" there shall be substituted the words " committee established under section 74 or 75 of the Insolvency Act 1985 ".
- 32 In section 552(3) (debts due from contributory), after the words " in full" there shall be inserted the words " (together with interest at the rate applicable under section 93 of the Insolvency Act 1985) ".
- 33 In section 562 (attendance at company meetings (Scotland)), for the words " committee of inspection " there shall be substituted the words " committee established under section 75 of the Insolvency Act 1985
- 34 In section 567(2) (delegation of powers to liquidator (England and Wales)), for the words " committee of inspection " there shall be substituted the words " committee established under section 74 of the Insolvency Act 1985 ".
- 35 In section 577 (statutory declaration that the company is able to pay its debts in full), in subsections (1) and (4) after the words " in full", and in subsection (5) after the word " debts ", there shall be inserted the words " (together with interest at the rate applicable under section 93 of the Insolvency Act 1985) ".
- 36 In section 584(1) (general company meeting at each year's end), for the words " section 586 " there shall be substituted the words " section 83(7) of the Insolvency Act 1985 ".
- 37 (1) In subsection (1) of section 589 (appointment of liquidator), for the words " section 588 " there shall be substituted the words " section 85 of the Insolvency Act 1985 ".
- (2) For subsection (2) of that section there shall be substituted the following subsection—

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- “(2) 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 company.”
- 38 (1) Section 590 (appointment of committee of inspection) shall be amended as follows.
- (2) For subsection (1) there shall be substituted the following subsection—
- “(1) The creditors at the meeting to be held under section 85 of the Insolvency Act 1985 or at any subsequent meeting may, if they think fit, appoint a committee of not more than 5 persons to exercise the functions conferred on it by or under this Act or Part U of that Act.”
- (3) In subsection (3), for the words " committee of inspection " there shall be substituted the words " committee established under this section ".
- (4) In subsection (5), for the words " committees of inspection " there shall be substituted the words " such committees ".
- 39 In section 591(2) (remuneration of liquidator: cesser of director's powers), for the words " committee of inspection " there shall be substituted the words " committee established under section 590 ".
- 40 In section 593 (application of section 582 to creditors' voluntary winding up), for the words " committee of inspection " there shall be substituted the words " committee established under section 590 ".
- 41 (1) In subsection (1) of section 598 (powers and duties of liquidator in voluntary winding up), for the words " committee of inspection " there shall be substituted the words " committee established under section 590 ".
- (2) After subsection (4) of that section there shall be inserted the following subsection—
- “(4A) Where the liquidator in exercise of the powers conferred on him by this Act disposes of any property of the company to a person who is connected with the company (within the meaning of Part IT of the Insolvency Act 1985), he shall, if there is for the time being a committee established under section 590 above, give notice to the committee of that exercise of his powers.”
- 42 After subsection (1) of section 625 (transactions in fraud of creditors) there shall be inserted the following subsection—
- “(1A) A person shall not be guilty of an offence under this section—
- (a) by reason of conduct constituting an offence under subsection (1) (a) above which occurred more than five years before the commencement of the winding up ; or
- (b) if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the creditors of the company.”
- 43 In section 626(1)(d) (failure to inform liquidator that false debt has been proved), for the words " for the period of a month to inform the liquidator of it " there shall be substituted the words " to inform the liquidator as soon as practicable ".
- 44 In section 632 (prosecution of delinquent officers and members of company), after subsection (2) there shall be inserted the following subsection—
- “(2A) If in the case of a winding up by the court in England and Wales it appears to the liquidator, not being the official receiver, that any past or present officer

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- of the company, or any member of it, has been guilty of an offence in relation to the company for which he is criminally liable, the liquidator shall report the matter to the official receiver.”
- 45 In section 651(1) (power of court, within two years of dissolution of company, to declare dissolution void), for the words " 2 years " there shall be substituted the words " 12 years ".
- 46 For subsection (2) of section 657 (effect of Crown disclaimer) there shall be substituted the following subsection—
- “(2) As regards property in England and Wales, subsections (3) and (5) to (7) of section 91 of the Insolvency Act 1985 and section 92 of that Act shall apply as if the property had been disclaimed by the liquidator under the said section 91 immediately before the dissolution of the company.”
- 47 For subsection (1) of section 658 (application of section 620) there shall be substituted the following subsection—
- “(1) Subsection (7) of section 91 of the Insolvency Act 1985 shall apply to land in England and Wales which by operation of law vests subject to a rentcharge in the Crown or any other person on the dissolution of a company as it applies to land so vesting on a disclaimer under that section.”
- 48 In section 659(2) (which refers to the costs of a winding up), for the word " costs " there shall be substituted the word " expenses ".
- 49 (1) In subsection (1) of section 664 (power to alter monetary limits), for the words " regulations in a " there shall be substituted the words " order made by ".
- (2) For subsection (2) of that section there shall be substituted the following subsections—
- “(2) An order under this section may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.
- (3) No order under this section increasing or reducing any of the money sums for the time specified in section 512(2), 515(3) or 518(1)(a) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (4) A statutory instrument containing an order under this section, other than an order to which subsection (3) above applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- 50 In section 667((1)(a)) (inability of unregistered company to pay debts), after the word " demand " there shall be inserted the words " in the prescribed form ".
- 51 In section 668(6) (inability of unregistered company to pay its debts assumed if demand not complied with within 10 days), for the words "10 days" there shall be substituted the words " 3 weeks ".
- 52 (1) In section 669 (inability of unregistered company to pay debts), at the end of paragraph (d) there shall be inserted the words " as they fall due ".
- (2) That section, as amended by sub-paragraph (1) above, shall be re-numbered as subsection (1) of that section and after that provision as so renumbered there shall be inserted the following subsection—

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“(2) An unregistered company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.”