

SCHEDULES

SCHEDULE 10

APPLICATION OF COMPANIES WINDING UP LEGISLATION TO INCORPORATED FRIENDLY SOCIETIES

PART III

MODIFIED APPLICATION OF INSOLVENCY (NORTHERN IRELAND) ORDER 1989

Preliminary

37 In this Part of this Schedule, Part V of the Insolvency (Northern Ireland) Order 1989 is referred to as “Part V”; and that Order is referred to as “the Order”.

Members of a friendly society as contributories in winding up

38 (1) Article 61 (liability of members) of the Order is modified as follows.

(2) In paragraph (1), the reference to any past member shall be omitted.

(3) Sub-paragraphs (a) to (d) of paragraph (2) shall be omitted; and so shall paragraph (3).

(4) The extent of the liability of a member of an incorporated friendly society in a winding up shall not exceed the extent of his liability under paragraph 8 of Schedule 3 to this Act.

39 Articles 62 to 65 and 69 of the Order (miscellaneous provisions not relevant to incorporated friendly societies) do not apply.

40 (1) Article 13 (meaning of “contributory”) of the Order does not apply.

(2) In the enactments as applied to an incorporated friendly society “contributory”—

(a) means every person liable to contribute to the assets of the society in the event of its being wound up; and

(b) for the purposes of all proceedings for determining, and all proceedings prior to the determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory; and

(c) includes persons who are liable to pay or contribute to the payment of—

(i) any debt or liability of the incorporated friendly society being wound up; or

(ii) any sum for the adjustment of rights of members among themselves; or

(iii) the expenses of the winding up;

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but does not include persons liable to contribute by virtue of a declaration by the court under Article 177 (imputed responsibility for fraudulent trading) or Article 178 (wrongful trading) of the Order.

Voluntary winding up

- 41 (1) Article 70 of the Order does not apply.
- (2) In the enactments as applied to an incorporated friendly society, the expression “resolution for voluntary winding up” means a resolution passed under section 21(1) above.
- 42 Article 74 shall have effect with the omission of the words from the beginning to “and”.
- 43 (1) Paragraph (1) of Article 75 shall have effect as if for the words from the beginning to “meeting” there were substituted the words—
- “(1) Where it is proposed to wind up an incorporated friendly society voluntarily, the committee of management (or, in the case of an incorporated friendly society whose committee of management has more than two members, the majority of them) may at a meeting of the committee”.
- (2) The reference to the directors in paragraph (2) shall be construed as a reference to members of the committee of management.
- 44 Article 76 shall have effect as if for the words “directors' statutory declaration in accordance with Article 75” there were substituted the words “statutory declaration made in accordance with Article 75 by members of the committee of management”.
- 45 Article 81(1) and 82 shall have effect as if the word “directors” were omitted from each of them.
- 46 In paragraph (1) of Article 87 (appointment of liquidation committee) of the Order, the reference to functions conferred on a liquidation committee by or under that Order shall have effect as a reference to its functions by or under that Order as applied to incorporated friendly societies.
- 47 (1) Article 93 (distribution of property) of the Order does not apply; and the following applies in its place.
- (2) Subject to the provisions of Part V relating to preferential payments, an incorporated friendly society’s property in a voluntary winding up shall be applied in satisfaction of the society’s liabilities to creditors *pari passu* and, subject to that application, in accordance with the rules of the society.
- 48 Articles 96 and 97 (liquidator accepting shares, etc. as consideration for sale of company property) of the Order do not apply.

Winding up by the High Court

- 49 Article 102 (circumstances in which company may be wound up by the High Court) of the Order does not apply.
- 50 Article 104 (application for winding up) of the Order does not apply.

- 51 (1) In Article 105 (powers of High Court on hearing of petition) of the Order, paragraph (1) applies with the omission of the words from “but the Court” to the end of the paragraph.
- (2) The conditions which the Court may impose under Article 105 of the Order include conditions for securing—
- (a) that the incorporated friendly society be dissolved by consent of its members under section 20 above; or
 - (b) that the society amalgamates with, or transfers its engagements to, another friendly society under section 85 or 86 above; or
 - (c) that the society converts itself to a company under section 91 above,
- and may also include conditions for securing that any default which occasioned the petition be made good and that the costs of the proceedings on that petition be defrayed by the person or persons responsible for the default.
- 52 Article 106 (power of court, between petition and winding-up order, to stay or restrain proceedings against company) of the Order has effect with the omission of paragraph (2).
- 53 If, before the presentation of a petition for the winding up by the High Court of an incorporated friendly society, an instrument of dissolution under section 20 is placed in the society’s public file, Article 109(1) (commencement of winding up by the High Court) of the Order shall also apply in relation to the date on which the notice is so placed and to any proceedings in the course of the dissolution as it applies to the commencement date for, and proceedings in, a voluntary winding up.
- 54 (1) Article 110 of the Order (consequences of winding-up order) shall have effect with the following modifications.
- (2) Paragraphs (1) and (3) shall be omitted.
- (3) An incorporated friendly society shall, within 15 days of a winding-up order being made in respect of it, give notice of the order to the central office; and the central office shall keep the notice in the public file of the society.
- (4) If an incorporated friendly society fails to comply with sub-paragraph (3) above, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 55 Article 119 (appointment of liquidator by High Court in certain circumstances) of the Order does not apply.
- 56 In the application of Article 120(1) (liquidation committees), of the Order to incorporated friendly societies, the references to functions conferred on a liquidation committee by or under that Order shall have effect as references to its functions by or under that Order as so applied.
- 57 The conditions which the High Court may impose under Article 125 (power to stay winding up) of the Order shall include those specified in paragraph 51(2) above.
- 58 Article 132 (adjustment of rights of contributories) of the Order shall have effect with the modification that any surplus is to be distributed in accordance with the rules of the society.
- 59 Article 140(2) (liquidator’s powers) of the Order, the reference to an extraordinary resolution shall have effect as a reference to a special resolution.

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Winding up: general

- 60 Article 158 (power to make over assets to employees) of the Order does not apply.
- 61 (1) In Article 166 (dissolution: voluntary winding up) of the Order, paragraph (2) applies without the words from “and on the expiration” to the end of the paragraph and, in paragraph (3), the word “However” shall be omitted.
- (2) Articles 167 and 168 (early dissolution) of the Order do not apply.
- 62 In Article 169 (dissolution: winding up by the High Court) of the Order, paragraph (1) applies with the omission of the words from “and, subject” to the end of the paragraph; and in paragraphs (2) and (3) references to the Department shall have effect as references to the Commission.

Penal provisions

- 63 Articles 180 and 181 of the Order (restriction on re-use of name) do not apply.
- 64 (1) Articles 182 and 183 (prosecution of delinquent officers) of the Order do not apply in relation to offences committed by members of an incorporated friendly society acting in that capacity.
- (2) Articles 182(4) and 183(1) and (2) of the Order do not apply.
- (3) The references in paragraph (3) and (5) of Article 183 of the Order to the Department shall have effect as references to the Commission; and the reference in paragraph (3) to Article 182 of the Order shall have effect as a reference to that Article as supplemented by paragraph 65 below.
- 65 (1) Where a report is made to the prosecuting authority (within the meaning of Article 182) under Article 182(5) of the Order, in relation to an officer of an incorporated friendly society, he may, if he thinks fit, refer the matter to the Commission for further enquiry.
- (2) On such a reference to it the Commission shall exercise its power under section 65(1) above to appoint one or more investigators to investigate and report on the matter.
- (3) An answer given by a person to a question put to him in exercise of the powers conferred by section 65 above on a person so appointed may be used in evidence against the person giving it.

Preferential debts

- 66 Article 347 (meaning in Schedule 4 of “the relevant date”) of the Order applies with the omission of paragraphs (2) and (4) to (6).