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# SCHEDULES

## [<sup>F1</sup>SCHEDULE A1

### MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT

#### Textual Amendments

- F1** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### Modifications etc. (not altering text)

- C1** Sch. A1 applied (with modifications) (E.W.) (1.1.2003) by S.I. 1994/2421, **art. 4(1)**, **Sch. 1** (as amended (1.1.2003) by S.I. 2002/2708, **arts. 4-6** (with transitional provisions in **art. 11**) and (1.7.2005) by S.I. 2005/1516, **art. 6**)
- C2** Sch. A1 extended (24.6.2003) by The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003 (S.I. 2003/1633), **regs. 1, 15**, **Sch. 2 para. 7**

## PART I

### INTRODUCTORY

#### *Interpretation*

<sup>F2</sup><sub>1</sub>

In this Schedule—

“the beginning of the moratorium” has the meaning given by paragraph 8(1),

“the date of filing” means the date on which the documents for the time being referred to in paragraph 7(1) are filed or lodged with the court,

“hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

“market contract” and “market charge” have the meanings given by Part VII of the <sup>M1</sup>Companies Act 1989,

<sup>F3</sup>  
...

“moratorium” means a moratorium under section 1A,

“the nominee” includes any person for the time being carrying out the functions of a nominee under this Schedule,

<sup>F3</sup>  
...

“the settlement finality regulations” means the <sup>M2</sup>Financial Markets and Insolvency (Settlement Finality) Regulations 1999,

“system-charge” has the meaning given by the <sup>M3</sup>Financial Markets and Insolvency Regulations 1996.

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#### Textual Amendments

- F2** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)
- F3** Sch. A1 para. 1: definitions of “money market contract” and “money market charge” and “related contract” repealed (3.7.2002) by S.I. 2002/1555, **art. 28(2)**

#### Marginal Citations

- M1** 1989 c. 40.  
**M2** S.I. 1999/2979.  
**M3** S.I. 1996/1469

#### *Eligible companies*

- <sup>F4</sup>2 (1) A company is eligible for a moratorium if it meets the requirements of paragraph 3, unless—
- (a) it is excluded from being eligible by virtue of paragraph 4, or
  - (b) it falls within sub-paragraph (2).
- (2) A company falls within this sub-paragraph if—
- [ it effects or carries out contracts of insurance, but is not exempt from
  - <sup>F5</sup>(a) the general prohibition, within the meaning of section 19 of the Financial Services and Markets Act 2000, in relation to that activity,
  - (b) it has permission under Part IV of that Act to accept deposits,
  - (bb) it has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22),]
  - (c) it is a party to a market contract <sup>F6</sup>. . . or any of its property is subject to a market charge <sup>F6</sup>. . . or a system-charge, or
  - (d) it is a participant (within the meaning of the settlement finality regulations) or any of its property is subject to a collateral security charge (within the meaning of those regulations).
- [ Paragraphs (a), (b) and (bb) of sub-paragraph (2) must be read with—
- <sup>F7</sup>(3) (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]

#### Textual Amendments

- F4** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, ss. 1, 16, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions **arts. 3-5**)
- F5** Sch. A1 para. 2(a)-(bb) substituted for Sch. A1 para. 2(a)-(b) (3.7.2002) by S.I. 2002/1555, **art. 29(2)**
- F6** Words in Sch. A1 para. 2(2)(c) omitted (3.7.2002) by virtue of S.I. 2002/1555, **art. 28(3)**
- F7** Sch. A1 para. 2(3) inserted (3.7.2002) by S.I. 2002/1555, **art. 29(3)**

- <sup>F8</sup>3 (1) A company meets the requirements of this paragraph if the qualifying conditions are met—
- (a) in the year ending with the date of filing, or

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- (b) in the financial year of the company which ended last before that date.
- (2) For the purposes of sub-paragraph (1)—
- (a) the qualifying conditions are met by a company in a period if, in that period, it satisfies two or more of the requirements for being a small company specified for the time being in [F9]section 382(3) of the Companies Act 2006], and
- (b) a company's financial year is to be determined in accordance with that Act.
- (3) [F10]Section 382(4), (5) and (6)] of that Act apply for the purposes of this paragraph as they apply for the purposes of that section.
- [ A company does not meet the requirements of this paragraph if it is a [F12]parent
- [F11](4) company] of a group of companies which does not qualify as a small group or a medium-sized group [F13]in relation to] the financial year of the company which ended last before the date of filing.
- [F14](5) For the purposes of sub-paragraph (4)—
- (a) “group” has the same meaning as in Part 15 of the Companies Act 2006 (see section 474(1) of that Act); and
- (b) a group qualifies as small in relation to a financial year if it so qualifies under section 383(2) to (7) of that Act, and qualifies as medium-sized in relation to a financial year if it so qualifies under section 466(2) to (7) of that Act.]]
- [ Expressions used in this paragraph that are defined expressions in Part 15 of the
- [F15](6) Companies Act 2006 (accounts and reports) have the same meaning in this paragraph as in that Part.]

#### Textual Amendments

- F8** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions arts. 3-5)
- F9** Words in Sch. A1 para. 3(2) substituted (6.4.2008 with application in accordance with Sch. 1 para. 99(6)) by *The Companies Act 2006 (Consequential Amendments etc) Order 2008* (S.I. 2008/948), **art. 3(1)**, **Sch. 1 para. 99(2)** (with arts. 6, 11, 12)
- F10** Words in Sch. A1 para. 3(3) substituted (6.4.2008 with application in accordance with Sch. 1 para. 99(6)) by *The Companies Act 2006 (Consequential Amendments etc) Order 2008* (S.I. 2008/948), **art. 3(1)**, **Sch. 1 para. 99(3)** (with arts. 6, 11, 12)
- F11** Sch. A1 para. 3(4)(5) inserted (1.1.2003) by S.I. 2002/1990, **regs. 2, 3(2)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5 of the commencing S.I.)
- F12** Words in Sch. A1 para. 3(4) substituted (6.4.2008 with application in accordance with Sch. 1 para. 99(6)) by *The Companies Act 2006 (Consequential Amendments etc) Order 2008* (S.I. 2008/948), **art. 3(1)**, **Sch. 1 para. 99(4)(a)** (with arts. 6, 11, 12)
- F13** Words in Sch. A1 para. 3(4) substituted (6.4.2008 with application in accordance with Sch. 1 para. 99(6)) by *The Companies Act 2006 (Consequential Amendments etc) Order 2008* (S.I. 2008/948), **art. 3(1)**, **Sch. 1 para. 99(4)(b)** (with arts. 6, 11, 12)
- F14** Sch. A1 para. 3(5) substituted (6.4.2008) by *The Companies Act 2006 (Consequential Amendments etc) Order 2008* (S.I. 2008/948), **art. 3(1)**, **Sch. 1 para. 99(5)** (with arts. 6, 11, 12)
- F15** Sch. A1 para. 3(6) inserted (1.10.2009) by *The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009*, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 71(4)(a)} (with art. 10, Sch. 1 para. 84)

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- <sup>F16</sup>4 (1) A company is excluded from being eligible for a moratorium if, on the date of filing—
- [ the company is in administration,]
  - <sup>F17</sup>(a) the company is being wound up,
  - (c) there is an administrative receiver of the company,
  - (d) a voluntary arrangement has effect in relation to the company,
  - (e) there is a provisional liquidator of the company,
  - (f) a moratorium has been in force for the company at any time during the period of 12 months ending with the date of filing and—
    - (i) no voluntary arrangement had effect at the time at which the moratorium came to an end, or
    - (ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely, or
  - [ an administrator appointed under paragraph 22 of Schedule B1 has held
  - <sup>F18</sup>(fa) office in the period of 12 months ending with the date of filing,]
  - (g) a voluntary arrangement in relation to the company which had effect in pursuance of a proposal under section 1(3) has come to an end prematurely and, during the period of 12 months ending with the date of filing, an order under section 5(3)(a) has been made.
- (2) Sub-paragraph (1)(b) does not apply to a company which, by reason of a winding-up order made after the date of filing, is treated as being wound up on that date.

#### Textual Amendments

- F16** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F17** Sch. A1 para. 4(1)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 37(2)(a) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F18** Sch. A1 para. 4(1)(fa) inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 37(2)(b) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

#### Capital market arrangement

- [  
<sup>F19</sup>4A A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a party to an agreement which is or forms part of a capital market arrangement under which—
- (i) a party has incurred, or when the agreement was entered into was expected to incur, a debt of at least £10 million under the arrangement, and
  - (ii) the arrangement involves the issue of a capital market investment.]

#### Textual Amendments

- F19** Sch. A1 paras. 4A-4K inserted (1.1.2003) by S.I. 2002/1990, **art. 3(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provision in arts. 3-5 of the commencing S.I.)

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### *Public private partnership*

- [<sup>F20</sup>4B A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a project company of a project which—
- (i) is a public-private partnership project, and
  - (ii) includes step-in rights.]

#### **Textual Amendments**

**F20** Sch. A1 paras. 4A-4K inserted (1.1.2003) by [S.I. 2002/1990](#), [art. 3\(3\)](#); [S.I. 2002/2711](#), [art. 2](#) (subject to transitional provision in arts. 3-5 of the commencing S.I.)

### *Liability under an arrangement*

- [<sup>F21</sup>4C (1) A company is also excluded from being eligible for a moratorium if, on the date of filing, it has incurred a liability under an agreement of £10 million or more.
- (2) Where the liability in sub-paragraph (1) is a contingent liability under or by virtue of a guarantee or an indemnity or security provided on behalf of another person, the amount of that liability is the full amount of the liability in relation to which the guarantee, indemnity or security is provided.
- (3) In this paragraph—
- (a) the reference to “liability” includes a present or future liability whether, in either case, it is certain or contingent,
  - (b) the reference to “liability” includes a reference to a liability to be paid wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the liability is incurred).]

#### **Textual Amendments**

**F21** Sch. A1 paras. 4A-4K inserted (1.1.2003) by [S.I. 2002/1990](#), [art. 3\(3\)](#); [S.I. 2002/2711](#), [art. 2](#) (subject to transitional provision in arts. 3-5 of the commencing S.I.)

### *Interpretation of capital market arrangement*

- [<sup>F22</sup>4D (1) For the purposes of paragraph 4A an arrangement is a capital market arrangement if—
- (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or
  - (b) at least one party guarantees the performance of obligations of another party, or
  - (c) at least one party provides security in respect of the performance of obligations of another party, or
  - (d) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (options, futures and contracts for differences).
- (2) For the purposes of sub-paragraph (1)—

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- (a) a reference to holding as trustee includes a reference to holding as nominee or agent,
- (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
- (c) a person holds a capital market investment if he has a legal or beneficial interest in it.

(3) In paragraph 4A, 4C, 4J and this paragraph—

“agreement” includes an agreement or undertaking effected by—

- (a) contract,
- (b) deed, or
- (c) any other instrument intended to have effect in accordance with the law of England and Wales, Scotland or another jurisdiction, and

“party” to an arrangement includes a party to an agreement which—

- (a) forms part of the arrangement,
- (b) provides for the raising of finance as part of the arrangement, or
- (c) is necessary for the purposes of implementing the arrangement.]

#### Textual Amendments

**F22** Sch. A1 paras. 4A-4K inserted (1.1.2003) by [S.I. 2002/1990, art. 3\(3\)](#); [S.I. 2002/2711, art. 2](#) (subject to transitional provision in arts. 3-5 of the commencing S.I.)

#### Capital market investment

[<sup>F23</sup>4E (1) For the purposes of paragraphs 4A and 4D, an investment is a capital market investment if—

- (a) it is within article 77 [<sup>F24</sup>or 77A] of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (debt instruments) and
- (b) it is rated, listed or traded or designed to be rated, listed or traded.

(2) In sub-paragraph (1)—

“listed” means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation),

“rated” means rated for the purposes of investment by an internationally recognised rating agency,

“traded” means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

(3) In sub-paragraph (2)—

“foreign market” has the same meaning as “relevant market” in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335) (foreign markets),

“recognised investment exchange” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange).]

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#### Textual Amendments

- F23** Sch. A1 paras. 4A-4K inserted (1.1.2003) by [S.I. 2002/1990](#), [art. 3\(3\)](#); [S.I. 2002/2711](#), [art. 2](#) (subject to transitional provision in arts. 3-5 of the commencing S.I.)
- F24** Words in Sch. A1 para. 4E(1)(a) inserted (24.2.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2010](#) (S.I. 2010/86), [art. 4](#), [Sch. para. 1\(a\)](#)

- [<sup>F25</sup>4F (1) For the purposes of paragraphs 4A and 4D an investment is also a capital market investment if it consists of a bond or commercial paper issued to one or more of the following—
- (a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,
  - (b) a person who is, when the agreement mentioned in paragraph 4A is entered into, a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that order,
  - (c) a person to whom article 49(2) of that order applies (high net worth company, &c.),
  - (d) a person who is, when the agreement mentioned in paragraph 4A is entered into, a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that order, and
  - (e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.
- (2) For the purposes of sub-paragraph (1)—
- (a) in applying article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 for the purposes of sub-paragraph (1)(a)
    - 
    - (i) in article 19(5)(b), ignore the words after “exempt person”,
    - (ii) in article 19(5)(c)(i), for the words from “the controlled activity” to the end substitute “a controlled activity”, and
    - (iii) in article 19(5)(e) ignore the words from “where the communication” to the end, and
  - (b) in applying article 49(2) of that order for the purposes of sub-paragraph (1)(c), ignore article 49(2)(e).
- (3) In sub-paragraph (1)—
- “bond” shall be construed in accordance with article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 [<sup>F26</sup>, and includes any instrument falling within article 77A of that Order] (S.I. 2001/544), and
- “commercial paper” has the meaning given by article 9(3) of that order.]

#### Textual Amendments

- F25** Sch. A1 paras. 4A-4K inserted (1.1.2003) by [S.I. 2002/1990](#), [art. 3\(3\)](#); [S.I. 2002/2711](#), [art. 2](#) (subject to transitional provision in arts. 3-5 of the commencing S.I.)
- F26** Words in Sch. A1 para. 4F(3) inserted (24.2.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2010](#) (S.I. 2010/86), [art. 4](#), [Sch. para. 1\(b\)](#)



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### Debt

- [<sup>F27</sup>4G The debt of at least £10 million referred to in paragraph 4A—
- (a) may be incurred at any time during the life of the capital market arrangement, and
  - (b) may be expressed wholly or partly in a foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into).]

#### Textual Amendments

**F27** Sch. A1 paras. 4A-4K inserted (1.1.2003) by [S.I. 2002/1990](#), [art. 3\(3\)](#); [S.I. 2002/2711](#), [art. 2](#) (subject to transitional provision in arts. 3-5 of the commencing S.I.)

### Interpretation of project company

- [<sup>F28</sup>4H (1) For the purposes of paragraph 4B a company is a “project company” of a project if—
- (a) it holds property for the purpose of the project,
  - (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,
  - (c) it is one of a number of companies which together carry out the project,
  - (d) it has the purpose of supplying finance to enable the project to be carried out, or
  - (e) it is the holding company of a company within any of paragraphs (a) to (d).
- (2) But a company is not a “project company” of a project if—
- (a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but
  - (b) it also performs a function which is not—
    - (i) within sub-paragraph (1)(a) to (d),
    - (ii) related to a function within sub-paragraph (1)(a) to (d), or
    - (iii) related to the project.
- (3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.]

#### Textual Amendments

**F28** Sch. A1 paras. 4A-4K inserted (1.1.2003) by [S.I. 2002/1990](#), [art. 3\(3\)](#); [S.I. 2002/2711](#), [art. 2](#) (subject to transitional provision in arts. 3-5 of the commencing S.I.)

### Public-private partnership project

- [<sup>F29</sup>4I (1) In paragraph 4B “public-private partnership project” means a project—
- (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
  - (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.
- (2) In sub-paragraph (1) “resources” includes—



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- (a) funds (including payment for the provision of services or facilities),
  - (b) assets,
  - (c) professional skill,
  - (d) the grant of a concession or franchise, and
  - (e) any other commercial resource.
- (3) In sub-paragraph (1) “public body” means—
- (a) a body which exercises public functions,
  - (b) a body specified for the purposes of this paragraph by the Secretary of State, and
  - (c) a body within a class specified for the purposes of this paragraph by the Secretary of State.
- (4) A specification under sub-paragraph (3) may be—
- (a) general, or
  - (b) for the purpose of the application of paragraph 4B to a specified case.]

#### Textual Amendments

**F29** Sch. A1 paras. 4A-4K inserted (1.1.2003) by [S.I. 2002/1990](#), [art. 3\(3\)](#); [S.I. 2002/2711](#), [art. 2](#) (subject to transitional provision in arts. 3-5 of the commencing S.I.)

#### Step-in rights

- [<sup>F30</sup>4J (1) For the purposes of paragraph 4B a project has “step-in rights” if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—
- (i) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or
  - (ii) make arrangements for carrying out all or part of the project.
- (2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.]

#### Textual Amendments

**F30** Sch. A1 paras. 4A-4K inserted (1.1.2003) by [S.I. 2002/1990](#), [art. 3\(3\)](#); [S.I. 2002/2711](#), [art. 2](#) (subject to transitional provision in arts. 3-5 of the commencing S.I.)

#### “Person”

- [<sup>F31</sup>4K For the purposes of paragraphs 4A to 4J, a reference to a person includes a reference to a partnership or another unincorporated group of persons.]

#### Textual Amendments

**F31** Sch. A1 paras. 4A-4K inserted (1.1.2003) by [S.I. 2002/1990](#), [art. 3\(3\)](#); [S.I. 2002/2711](#), [art. 2](#) (subject to transitional provision in arts. 3-5 of the commencing S.I.)

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- <sup>F32</sup>5 The Secretary of State may by regulations modify the qualifications for eligibility of a company for a moratorium.

#### Textual Amendments

**F32** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

## PART II

### OBTAINING A MORATORIUM

#### *Nominee's statement*

- <sup>F33</sup>6 (1) Where the directors of a company wish to obtain a moratorium, they shall submit to the nominee—
- (a) a document setting out the terms of the proposed voluntary arrangement,
  - (b) a statement of the company's affairs containing—
    - (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, and
  - (c) any other information necessary to enable the nominee to comply with sub-paragraph (2) which he requests from them.
- (2) The nominee shall submit to the directors a statement in the prescribed form indicating whether or not, in his opinion—
- (a) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
  - (b) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and
  - (c) meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.
- (3) In forming his opinion on the matters mentioned in sub-paragraph (2), the nominee is entitled to rely on the information submitted to him under sub-paragraph (1) unless he has reason to doubt its accuracy.
- (4) The reference in sub-paragraph (2)(b) to the company's business is to that business as the company proposes to carry it on during the moratorium.

#### Textual Amendments

**F33** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

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*Documents to be submitted to court*

- F347** (1) To obtain a moratorium the directors of a company must file (in Scotland, lodge) with the court—
- (a) a document setting out the terms of the proposed voluntary arrangement,
  - (b) a statement of the company’s affairs containing—
    - (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,
  - (c) a statement that the company is eligible for a moratorium,
  - (d) a statement from the nominee that he has given his consent to act, and
  - (e) a statement from the nominee that, in his opinion—
    - (i) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
    - (ii) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and
    - (iii) meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.
- (2) Each of the statements mentioned in sub-paragraph (1)(b) to (e), except so far as it contains the particulars referred to in paragraph (b)(i), must be in the prescribed form.
- (3) The reference in sub-paragraph (1)(e)(ii) to the company’s business is to that business as the company proposes to carry it on during the moratorium.
- (4) The Secretary of State may by regulations modify the requirements of this paragraph as to the documents required to be filed (in Scotland, lodged) with the court in order to obtain a moratorium.

**Textual Amendments**

- F34** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by [2000 c. 39, s. 1, Sch. 1 para. 4](#); [S.I. 2001/1751, art. 2](#); [S.I. 2002/2711, art. 2](#) (subject to transitional provisions in [arts. 3-5](#))

*Duration of moratorium*

- F358** (1) A moratorium comes into force when the documents for the time being referred to in paragraph 7(1) are filed or lodged with the court and references in this Schedule to “the beginning of the moratorium” shall be construed accordingly.
- (2) A moratorium ends at the end of the day on which the meetings summoned under paragraph 29(1) are first held (or, if the meetings are held on different days, the later of those days), unless it is extended under paragraph 32.
- (3) If either of those meetings has not first met before the end of the period of 28 days beginning with the day on which the moratorium comes into force, the moratorium ends at the end of the day on which those meetings were to be held (or, if those meetings were summoned to be held on different days, the later of those days), unless it is extended under paragraph 32.
- (4) If the nominee fails to summon either meeting within the period required by paragraph 29(1), the moratorium ends at the end of the last day of that period.

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- (5) If the moratorium is extended (or further extended) under paragraph 32, it ends at the end of the day to which it is extended (or further extended).
- (6) Sub-paragraphs (2) to (5) do not apply if the moratorium comes to an end before the time concerned by virtue of—
  - (a) paragraph 25(4) (effect of withdrawal by nominee of consent to act),
  - (b) an order under paragraph 26(3), 27(3) or 40 (challenge of actions of nominee or directors), or
  - (c) a decision of one or both of the meetings summoned under paragraph 29.
- (7) If the moratorium has not previously come to an end in accordance with sub-paragraphs (2) to (6), it ends at the end of the day on which a decision under paragraph 31 to approve a voluntary arrangement takes effect under paragraph 36.
- (8) The Secretary of State may by order increase or reduce the period for the time being specified in sub-paragraph (3).

#### Textual Amendments

- F35** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### *Notification of beginning of moratorium*

- F369** (1) When a moratorium comes into force, the directors shall notify the nominee of that fact forthwith.
- (2) If the directors without reasonable excuse fail to comply with sub-paragraph (1), each of them is liable to imprisonment or a fine, or both.

#### Textual Amendments

- F36** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

- F3710** (1) When a moratorium comes into force, the nominee shall, in accordance with the rules—
- (a) advertise that fact forthwith, and
  - (b) notify the registrar of companies, the company and any petitioning creditor of the company of whose claim he is aware of that fact.
- (2) In sub-paragraph (1)(b), “petitioning creditor” means a creditor by whom a winding-up petition has been presented before the beginning of the moratorium, as long as the petition has not been dismissed or withdrawn.
- (3) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he is liable to a fine.

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#### Textual Amendments

**F37** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### *Notification of end of moratorium*

- F38** 11 (1) When a moratorium comes to an end, the nominee shall, in accordance with the rules—
- (a) advertise that fact forthwith, and
  - (b) notify the court, the registrar of companies, the company and any creditor of the company of whose claim he is aware of that fact.
- (2) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he is liable to a fine.

#### Textual Amendments

**F38** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

### **F39** PART III

#### EFFECTS OF MORATORIUM

#### Textual Amendments

**F39** Sch. A1 (Pts. I-VI) inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 para. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### *Effect on creditors, etc.*

- F40** 12 (1) During the period for which a moratorium is in force for a company—
- (a) no petition may be presented for the winding up of the company,
  - (b) no meeting of the company may be called or requisitioned except with the consent of the nominee or the leave of the court and subject (where the court gives leave) to such terms as the court may impose,
  - (c) no resolution may be passed or order made for the winding up of the company,
  - [ no administration application may be made in respect of the company,
- F41** (d) no administrator of the company may be appointed under paragraph 14 or 22 of Schedule B1,]
- (e) no administrative receiver of the company may be appointed,

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- (f) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose,
  - (g) 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 leave of the court and subject to such terms as the court may impose, and
  - (h) 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 the court may impose.
- (2) Where a petition, other than an excepted petition, for the winding up of the company has been presented before the beginning of the moratorium, section 127 shall not apply in relation to any disposition of property, transfer of shares or alteration in status made during the moratorium or at a time mentioned in paragraph 37(5)(a).
- (3) In the application of sub-paragraph (1)(h) to Scotland, the reference to execution being commenced or continued includes a reference to diligence being carried out or continued, and the reference to distress being levied is omitted.
- (4) Paragraph (a) of sub-paragraph (1) does not apply to an excepted petition and, where such a petition has been presented before the beginning of the moratorium or is presented during the moratorium, paragraphs (b) and (c) of that sub-paragraph do not apply in relation to proceedings on the petition.
- (5) For the purposes of this paragraph, "excepted petition" means a petition under—
- (a) section 124A [<sup>F42</sup>or 124B] of this Act,
  - (b) section 72 of the <sup>M4</sup>Financial Services Act 1986 on the ground mentioned in subsection (1)(b) of that section, or
  - (c) section 92 of the <sup>M5</sup>Banking Act 1987 on the ground mentioned in subsection (1)(b) of that section.
- [ <sup>F43</sup>(d) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.]

#### Textual Amendments

- F40** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, [Sch. 1 para. 4](#); S.I. 2001/1751, [art. 2](#); S.I. 2002/2711, [art. 2](#) (subject to transitional provisions in [arts. 3-5](#))
- F41** Sch. A1 para. 12(1)(d)(da) substituted (15.9.2003) for Sch. A1 para. 12(1)(d) by 2002 c. 40, ss. 248(3), 279, [Sch. 17 para. 37\(3\)](#) (with s. 249(1)-(3)(6)); S.I. 2003/2093, [art. 2\(1\)](#), [Sch. 1](#) (subject to [arts. 3-8](#) (as amended by S.I. 2003/2332, [art. 2](#)))
- F42** Words in Sch. A1 para. 12(5)(a) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), [reg. 73\(4\)\(b\)](#)
- F43** Sch. A1 para. 12(5)(d) inserted (3.7.2002) by S.I. 2002/1555, [art. 30](#)

#### Modifications etc. (not altering text)

- C3** Sch. A1 para. 12(1)(g) excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), [reg. 8\(5\)](#)

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- C4** Sch. A1 para. 12(1)(g) excluded by [The Financial Market and Insolvency \(Settlement Finality\) Regulations 1999 \(S.I. 1999/2979\)](#), reg. 19(4) (as inserted (1.10.2009) by [The Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009 \(S.I. 2009/1972\)](#), reg. 7(c))

**Marginal Citations**

- M4** [1986 c. 60.](#)  
**M5** [1987 c. 22.](#)

- 13 (1) This paragraph applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.
- (2) If the conditions for the holder of the charge to give a notice having the effect mentioned in sub-paragraph (4) are met at any time, the notice may not be given at that time but may instead be given as soon as practicable after the moratorium has come to an end.
- (3) If any other event occurs at any time which (apart from this sub-paragraph) would have the effect mentioned in sub-paragraph (4), then—
- (a) the event shall not have the effect in question at that time, but
  - (b) if notice of the event is given to the company by the holder of the charge as soon as is practicable after the moratorium has come to an end, the event is to be treated as if it had occurred when the notice was given.
- (4) The effect referred to in sub-paragraphs (2) and (3) is—
- (a) causing the crystallisation of the floating charge, or
  - (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.
- (5) Application may not be made for leave under paragraph 12(1)(g) or (h) with a view to obtaining—
- (a) the crystallisation of the floating charge, or
  - (b) the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.

**Modifications etc. (not altering text)**

- C5** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by [2000 c. 39, s. 1, Sch. 1 para. 4](#); [S.I. 2001/1751, art. 2](#); [S.I. 2002/2711, art. 2](#) (subject to transitional provisions in [arts. 3-5](#))

- <sup>F44</sup>14 Security granted by a company at a time when a moratorium is in force in relation to the company may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the company.

**Textual Amendments**

- F44** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by [2000 c. 39, s. 1, Sch. 1 para. 4](#); [S.I. 2001/1751, art. 2](#); [S.I. 2002/2711, art. 2](#) (subject to transitional provisions in [arts. 3-5](#))



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### *Effect on company*

- <sup>F45</sup>15 (1) Paragraphs 16 to 23 apply in relation to a company for which a moratorium is in force.
- (2) The fact that a company enters into a transaction in contravention of any of paragraphs 16 to 22 does not—
- (a) make the transaction void, or
  - (b) make it to any extent unenforceable against the company.

#### **Textual Amendments**

- F45** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, [Sch. 1 para. 4](#); S.I. 2001/1751, [art. 2](#); S.I. 2002/2711, [art. 2](#) (subject to transitional provisions in [arts. 3-5](#))

### *Company invoices, etc.*

- <sup>F46</sup><sup>F47</sup>16 (1) Every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, and all the company's websites, must also contain the nominee's name and a statement that the moratorium is in force for the company.]
- (2) If default is made in complying with sub-paragraph (1), the company and (subject to sub-paragraph (3)) any officer of the company is liable to a fine.
- (3) An officer of the company is only liable under sub-paragraph (2) if, without reasonable excuse, he authorises or permits the default.

#### **Textual Amendments**

- F46** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, [Sch. 1 para. 4](#); S.I. 2001/1751, [art. 2](#); S.I. 2002/2711, [art. 2](#) (subject to transitional provisions in [arts. 3-5](#))
- F47** Sch. A1 para. 16(1) substituted (1.10.2008) by [The Companies \(Trading Disclosures\) \(Insolvency\) Regulations 2008 \(S.I. 2008/1897\)](#), [reg. 3\(1\)](#)

### *Obtaining credit during moratorium*

- <sup>F48</sup>17 (1) The company may not obtain credit to the extent of £250 or more from a person who has not been informed that a moratorium is in force in relation to the company.
- (2) The reference to the company obtaining credit includes the following cases—
- (a) where goods are bailed (in Scotland, hired) to the company under a hire-purchase agreement, or agreed to be sold to the company under a conditional sale agreement, and
  - (b) where the company is paid in advance (whether in money or otherwise) for the supply of goods or services.
- (3) Where the company obtains credit in contravention of sub-paragraph (1)—
- (a) the company is liable to a fine, and
  - (b) if any officer of the company knowingly and wilfully authorised or permitted the contravention, he is liable to imprisonment or a fine, or both.

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- (4) The money sum specified in sub-paragraph (1) is subject to increase or reduction by order under section 417A in Part XV.

#### Textual Amendments

**F48** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### *Disposals and payments*

- <sup>F49</sup>18 (1) Subject to sub-paragraph (2), the company may only dispose of any of its property if—
- (a) there are reasonable grounds for believing that the disposal will benefit the company, and
  - (b) the disposal is approved by the committee established under paragraph 35(1) or, where there is no such committee, by the nominee.
- (2) Sub-paragraph (1) does not apply to a disposal made in the ordinary way of the company's business.
- (3) If the company makes a disposal in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the court—
- (a) the company is liable to a fine, and
  - (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he is liable to imprisonment or a fine, or both.

#### Textual Amendments

**F49** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

- <sup>F50</sup>19 (1) Subject to sub-paragraph (2), the company may only make any payment in respect of any debt or other liability of the company in existence before the beginning of the moratorium if—
- (a) there are reasonable grounds for believing that the payment will benefit the company, and
  - (b) the payment is approved by the committee established under paragraph 35(1) or, where there is no such committee, by the nominee.
- (2) Sub-paragraph (1) does not apply to a payment required by paragraph 20(6).
- (3) If the company makes a payment in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the court—
- (a) the company is liable to a fine, and
  - (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he is liable to imprisonment or a fine, or both.

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### Textual Amendments

**F50** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

### *Disposal of charged property, etc.*

- <sup>F51</sup>20 (1) This paragraph applies where—
- (a) any property of the company is subject to a security, or
  - (b) any goods are in the possession of the company under a hire-purchase agreement.
- (2) If the holder of the security consents, or the court gives leave, the company may dispose of the property as if it were not subject to the security.
- (3) If the owner of the goods consents, or the court gives leave, the company may dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.
- (4) Where property subject to a security which, as created, was a floating charge is disposed of under sub-paragraph (2), the holder of the security has 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.
- (5) Sub-paragraph (6) applies to the disposal under sub-paragraph (2) or (as the case may be) sub-paragraph (3) of—
- (a) any property subject to a security other than a security which, as created, was a floating charge, or
  - (b) any goods in the possession of the company under a hire-purchase agreement.
- (6) It shall be a condition of any consent or leave under sub-paragraph (2) or (as the case may be) sub-paragraph (3) that—
- (a) the net proceeds of the disposal, and
  - (b) where those proceeds are less than such amount as may be agreed, or 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.
- (7) Where a condition imposed in pursuance of sub-paragraph (6) relates to two or more securities, that condition requires—
- (a) the net proceeds of the disposal, and
  - (b) where paragraph (b) of sub-paragraph (6) applies, the sums mentioned in that paragraph,
- to be applied towards discharging the sums secured by those securities in the order of their priorities.

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- (8) Where the court gives leave for a disposal under sub-paragraph (2) or (3), the directors shall, within 14 days after leave is given, send [<sup>F52</sup>a copy] of the order giving leave to the registrar of companies.
- (9) If the directors without reasonable excuse fail to comply with sub-paragraph (8), they are liable to a fine.

#### Textual Amendments

- F51** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)
- F52** Words in Sch. A1 para. 20(8) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 71(4)(b)} (with art. 10, Sch. 1 para. 84)

#### Modifications etc. (not altering text)

- C6** Sch. A1 para. 20 excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226, **reg. 8(5)**)
- C7** Sch. A1 para. 20 excluded by The Financial Market and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), **reg. 19(4)** (as inserted (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 7(c)**)

- <sup>F53</sup>21 (1) Where property is disposed of under paragraph 20 in its application to Scotland, the company shall grant to the donee an appropriate document of transfer or conveyance of the property, and
- (a) that document, or
  - (b) where any recording, intimation or registration of the 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.
- (2) Where goods in the possession of the company under a hire-purchase agreement are disposed of under paragraph 20 in its application to Scotland, the disposal has the effect of extinguishing, as against the donee, all rights of the owner of the goods under the agreement.

#### Textual Amendments

- F53** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

- <sup>F54</sup>22 (1) If the company—
- (a) without any consent or leave under paragraph 20, disposes of any of its property which is subject to a security otherwise than in accordance with the terms of the security,
  - (b) without any consent or leave under paragraph 20, disposes of any goods in the possession of the company under a hire-purchase agreement otherwise than in accordance with the terms of the agreement, or

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(c) fails to comply with any requirement imposed by paragraph 20 or 21, it is liable to a fine.

(2) If any officer of the company, without reasonable excuse, authorises or permits any such disposal or failure to comply, he is liable to imprisonment or a fine, or both.

#### Textual Amendments

**F54** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### *Market contracts, etc.*

- <sup>F55</sup>23 (1) If the company enters into any transaction to which this paragraph applies—
- the company is liable to a fine, and
  - if any officer of the company, without reasonable excuse, authorised or permitted the company to enter into the transaction, he is liable to imprisonment or a fine, or both.
- (2) A company enters into a transaction to which this paragraph applies if it—
- enters into a market contract, <sup>F56</sup> . . .
  - gives a transfer order,
  - grants a market charge <sup>F56</sup> . . . or a system-charge, or
  - provides any collateral security.
- (3) The fact that a company enters into a transaction in contravention of this paragraph does not—
- make the transaction void, or
  - make it to any extent unenforceable by or against the company.
- (4) Where during the moratorium a company enters into a transaction to which this paragraph applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of paragraphs 12(1)(g), 14 or 16 to 22.
- (5) Paragraph 20 does not apply in relation to any property which is subject to a market charge, <sup>F56</sup> . . . a system-charge or a collateral security charge.
- (6) In this paragraph, “transfer order”, “collateral security” and “collateral security charge” have the same meanings as in the settlement finality regulations.

#### Textual Amendments

**F55** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

**F56** Words in Sch. A1 para. 23(2)(a)(c)(5) omitted (3.7.2002) by virtue of S.I. 2002/1555, **art. 28(4)(a)(b)(c)**

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## PART IV

### NOMINEES

#### *Monitoring of company's activities*

- <sup>F57</sup>24 (1) During a moratorium, the nominee shall monitor the company's affairs for the purpose of forming an opinion as to whether—
- (a) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 31(7), the proposed arrangement with those modifications has a reasonable prospect of being approved and implemented, and
  - (b) the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.
- (2) The directors shall submit to the nominee any information necessary to enable him to comply with sub-paragraph (1) which he requests from them.
- (3) In forming his opinion on the matters mentioned in sub-paragraph (1), the nominee is entitled to rely on the information submitted to him under sub-paragraph (2) unless he has reason to doubt its accuracy.
- (4) The reference in sub-paragraph (1)(b) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

#### Textual Amendments

- F57** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### *Withdrawal of consent to act*

- <sup>F58</sup>25 (1) The nominee may only withdraw his consent to act in the circumstances mentioned in this paragraph.
- (2) The nominee must withdraw his consent to act if, at any time during a moratorium—
- (a) he forms the opinion that—
    - (i) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 31(7), the proposed arrangement with those modifications no longer has a reasonable prospect of being approved or implemented, or
    - (ii) the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business,
  - (b) he becomes aware that, on the date of filing, the company was not eligible for a moratorium, or
  - (c) the directors fail to comply with their duty under paragraph 24(2).
- (3) The reference in sub-paragraph (2)(a)(ii) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.
- (4) If the nominee withdraws his consent to act, the moratorium comes to an end.

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- (5) If the nominee withdraws his consent to act he must, in accordance with the rules, notify the court, the registrar of companies, the company and any creditor of the company of whose claim he is aware of his withdrawal and the reason for it.
- (6) If the nominee without reasonable excuse fails to comply with sub-paragraph (5), he is liable to a fine.

#### Textual Amendments

**F58** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### *Challenge of nominee's actions, etc.*

- <sup>F59</sup>26 (1) If any creditor, director or member of the company, or any other person affected by a moratorium, is dissatisfied by any act, omission or decision of the nominee during the moratorium, he may apply to the court.
- (2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.
- (3) On an application under sub-paragraph (1) the court may—
- (a) confirm, reverse or modify any act or decision of the nominee,
  - (b) give him directions, or
  - (c) make such other order as it thinks fit.
- (4) An order under sub-paragraph (3) may (among other things) bring the moratorium to an end and make such consequential provision as the court thinks fit.

#### Textual Amendments

**F59** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

- <sup>F60</sup>27 (1) Where there are reasonable grounds for believing that—
- (a) as a result of any act, omission or decision of the nominee during the moratorium, the company has suffered loss, but
  - (b) the company does not intend to pursue any claim it may have against the nominee,
- any creditor of the company may apply to the court.
- (2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.
- (3) On an application under sub-paragraph (1) the court may—
- (a) order the company to pursue any claim against the nominee,
  - (b) authorise any creditor to pursue such a claim in the name of the company, or
  - (c) make such other order with respect to such a claim as it thinks fit,



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unless the court is satisfied that the act, omission or decision of the nominee was in all the circumstances reasonable.

- (4) An order under sub-paragraph (3) may (among other things)—
- (a) impose conditions on any authority given to pursue a claim,
  - (b) direct the company to assist in the pursuit of a claim,
  - (c) make directions with respect to the distribution of anything received as a result of the pursuit of a claim,
  - (d) bring the moratorium to an end and make such consequential provision as the court thinks fit.
- (5) On an application under sub-paragraph (1) the court shall have regard to the interests of the members and creditors of the company generally.

#### Textual Amendments

**F60** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### *Replacement of nominee by court*

- <sup>F61</sup>28 (1) The court may—
- (a) on an application made by the directors in a case where the nominee has failed to comply with any duty imposed on him under this Schedule or has died, or
  - (b) on an application made by the directors or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,
- direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.
- (2) A person may only be appointed as a replacement nominee under this paragraph if he submits to the court a statement indicating his consent to act.

#### Textual Amendments

**F61** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

## PART V

### CONSIDERATION AND IMPLEMENTATION OF VOLUNTARY ARRANGEMENT

#### *Summoning of meetings*

- <sup>F62</sup>29 (1) Where a moratorium is in force, the nominee shall summon meetings of the company and its creditors for such a time, date (within the period for the time being specified in paragraph 8(3)) and place as he thinks fit.

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- (2) The persons to be summoned to a creditors' meeting under this paragraph are every creditor of the company of whose claim the nominee is aware.

#### Textual Amendments

**F62** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### *Conduct of meetings*

- <sup>F63</sup>30 (1) Subject to the provisions of paragraphs 31 to 35, the meetings summoned under paragraph 29 shall be conducted in accordance with the rules.
- (2) A meeting so summoned may resolve that it be adjourned (or further adjourned).
- (3) After the conclusion of either meeting in accordance with the rules, 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.

#### Textual Amendments

**F63** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### *Approval of voluntary arrangement*

- <sup>F64</sup>31 (1) The meetings summoned under paragraph 29 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).
- (2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.
- (3) The modifications shall not include one by virtue of which the proposal ceases to be a proposal such as is mentioned in section 1.
- (4) A meeting summoned under paragraph 29 shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.
- (5) Subject to sub-paragraph (6), a meeting so summoned shall not approve any proposal or modification under which—
- 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
  - 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.

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- (6) The meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.
- (7) The directors of the company may, before the beginning of the period of seven days which ends with the meetings (or either of them) summoned under paragraph 29 being held, give notice to the nominee of any modifications of the proposal for which the directors intend to seek the approval of those meetings.
- (8) References in this paragraph to preferential debts and preferential creditors are to be read in accordance with section 386 in Part XII of this Act.

#### Textual Amendments

**F64** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### *Extension of moratorium*

- <sup>F65</sup>32 (1) Subject to sub-paragraph (2), a meeting summoned under paragraph 29 which resolves that it be adjourned (or further adjourned) may resolve that the moratorium be extended (or further extended), with or without conditions.
- (2) The moratorium may not be extended (or further extended) to a day later than the end of the period of two months which begins—
- (a) where both meetings summoned under paragraph 29 are first held on the same day, with that day,
  - (b) in any other case, with the day on which the later of those meetings is first held.
- (3) At any meeting where it is proposed to extend (or further extend) the moratorium, before a decision is taken with respect to that proposal, the nominee shall inform the meeting—
- (a) of what he has done in order to comply with his duty under paragraph 24 and the cost of his actions for the company, and
  - (b) of what he intends to do to continue to comply with that duty if the moratorium is extended (or further extended) and the expected cost of his actions for the company.
- (4) Where, in accordance with sub-paragraph (3)(b), the nominee informs a meeting of the expected cost of his intended actions, the meeting shall resolve whether or not to approve that expected cost.
- (5) If a decision not to approve the expected cost of the nominee's intended actions has effect under paragraph 36, the moratorium comes to an end.
- (6) A meeting may resolve that a moratorium which has been extended (or further extended) be brought to an end before the end of the period of the extension (or further extension).
- (7) The Secretary of State may by order increase or reduce the period for the time being specified in sub-paragraph (2).

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#### Textual Amendments

**F65** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

- <sup>F66</sup>33 (1) The conditions which may be imposed when a moratorium is extended (or further extended) include a requirement that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.
- (2) A person may only be appointed as a replacement nominee by virtue of sub-paragraph (1) if he submits to the court a statement indicating his consent to act.
- (3) At any meeting where it is proposed to appoint a replacement nominee as a condition of extending (or further extending) the moratorium—
- (a) the duty imposed by paragraph 32(3)(b) on the nominee shall instead be imposed on the person proposed as the replacement nominee, and
  - (b) paragraphs 32(4) and (5) and 36(1)(e) apply as if the references to the nominee were to that person.

#### Textual Amendments

**F66** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

- <sup>F67</sup>34 (1) If a decision to extend, or further extend, the moratorium takes effect under paragraph 36, the nominee shall, in accordance with the rules, notify the registrar of companies and the court.
- (2) If the moratorium is extended, or further extended, by virtue of an order under paragraph 36(5), the nominee shall, in accordance with the rules, send [<sup>F68</sup>a copy] of the order to the registrar of companies.
- (3) If the nominee without reasonable excuse fails to comply with this paragraph, he is liable to a fine.

#### Textual Amendments

**F67** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

**F68** Words in Sch. A1 para. 34(2) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 71(4)(b)} (with art. 10, Sch. 1 para. 84)

#### *Moratorium committee*

- <sup>F69</sup>35 (1) A meeting summoned under paragraph 29 which resolves that the moratorium be extended (or further extended) may, with the consent of the nominee, resolve that a committee be established to exercise the functions conferred on it by the meeting.

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- (2) The meeting may not so resolve unless it has approved an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.
- (3) Any expenses, not exceeding the amount of the estimate, incurred by the committee in the exercise of its functions shall be reimbursed by the nominee.
- (4) The committee shall cease to exist when the moratorium comes to an end.

#### Textual Amendments

**F69** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

#### *Effectiveness of decisions*

- <sup>F70</sup>36 (1) Sub-paragraph (2) applies to references to one of the following decisions having effect, that is, a decision, under paragraph 31, 32 or 35, with respect to—
- (a) the approval of a proposed voluntary arrangement,
  - (b) the extension (or further extension) of a moratorium,
  - (c) the bringing of a moratorium to an end,
  - (d) the establishment of a committee, or
  - (e) the approval of the expected cost of a nominee's intended actions.
- (2) The decision has effect if, in accordance with the rules—
- (a) it has been taken by both meetings summoned under paragraph 29, or
  - (b) (subject to any order made under sub-paragraph (5)) it has been taken by the creditors' meeting summoned under that paragraph.
- (3) If a decision taken by the creditors' meeting under any of paragraphs 31, 32 or 35 with respect to any of the matters mentioned in sub-paragraph (1) differs from one so taken by the company meeting with respect to that matter, a member of the company may apply to the court.
- (4) An application under sub-paragraph (3) shall not be made after the end of the period of 28 days beginning with—
- (a) the day on which the decision was taken by the creditors' meeting, or
  - (b) where the decision of the company meeting was taken on a later day, that day.
- (5) On an application under sub-paragraph (3), the court may—
- (a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or
  - (b) make such other order as it thinks fit.

#### Textual Amendments

**F70** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (with **arts. 3-5**)

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### *Effect of approval of voluntary arrangement*

- <sup>F71</sup>37 (1) This paragraph applies where a decision approving a voluntary arrangement has effect under paragraph 36.
- (2) The approved voluntary arrangement—
- (a) takes effect as if made by the company at the creditors' meeting, and
  - (b) binds every person who in accordance with the rules—
    - (i) was entitled to vote at that meeting (whether or not he was present or represented at it), or
    - (ii) would have been so entitled if he had had notice of it,
 as if he were a party to the voluntary arrangement.
- (3) If—
- (a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of sub-paragraph (2)(b)(ii) has not been paid, and
  - (b) the arrangement did not come to an end prematurely,
- the company shall at that time become liable to pay to that person the amount payable under the arrangement.
- (4) Where a petition for the winding up of the company, other than an excepted petition within the meaning of paragraph 12, was presented before the beginning of the moratorium, the court shall dismiss the petition.
- (5) The court shall not dismiss a petition under sub-paragraph (4)—
- (a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required by paragraph 30(3) has been made to the court, or
  - (b) at any time when an application under paragraph 38 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.

#### **Textual Amendments**

**F71** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

### *Challenge of decisions*

- <sup>F72</sup>38 (1) Subject to the following provisions of this paragraph, any of the persons mentioned in sub-paragraph (2) may apply to the court on one or both of the following grounds—
- (a) that a voluntary arrangement approved at one or both of the meetings summoned under paragraph 29 and which has taken effect 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 those meetings.
- (2) The persons who may apply under this paragraph are—
- (a) a person entitled, in accordance with the rules, to vote at either of the meetings,

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- (b) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it, and
  - (c) the nominee.
- (3) An application under this paragraph shall not be made—
  - (a) after the end of the period of 28 days beginning with the first day on which each of the reports required by paragraph 30(3) has been made to the court, or
  - (b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,but (subject to that) an application made by a person within sub-paragraph (2)(b) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.
- (4) Where on an application under this paragraph the court is satisfied as to either of the grounds mentioned in sub-paragraph (1), it may do any of the following—
  - (a) revoke or suspend—
    - (i) any decision approving the voluntary arrangement which has effect under paragraph 36, or
    - (ii) in a case falling within sub-paragraph (1)(b), any decision taken by the meeting in question which has effect under that paragraph,
  - (b) give a direction to any person—
    - (i) for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the directors may make, or
    - (ii) in a case falling within sub-paragraph (1)(b), for the summoning of 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 sub-paragraph (4)(b)(i) the court is satisfied that the directors do not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect under paragraph 36.
- (6) Where the court gives a direction under sub-paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect of the moratorium.
- (7) Sub-paragraph (8) applies in a case where the court, on an application under this paragraph—
  - (a) gives a direction under sub-paragraph (4)(b), or
  - (b) revokes or suspends a decision under sub-paragraph (4)(a) or (5).
- (8) In such a case, the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—
  - (a) things done under the voluntary arrangement since it took effect, and
  - (b) such things done since that time as could not have been done if a moratorium had been in force in relation to the company when they were done.
- (9) Except in pursuance of the preceding provisions of this paragraph, a decision taken at a meeting summoned under paragraph 29 is not invalidated by any irregularity at or in relation to the meeting.



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### Textual Amendments

**F72** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 para. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

### *Implementation of voluntary arrangement*

- <sup>F73</sup>39 (1) This paragraph applies where a voluntary arrangement approved by one or both of the meetings summoned under paragraph 29 has taken effect.
- (2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—
- (a) by virtue of the approval of the arrangement, on the nominee, or
  - (b) by virtue of paragraph 31(2), on a person other than the nominee,
- shall be known as the supervisor of the voluntary arrangement.
- (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.
- (4) On an application under sub-paragraph (3) the court may—
- (a) confirm, reverse or modify any act or decision of the supervisor,
  - (b) give him directions, or
  - (c) make such other order as it thinks fit.
- (5) The supervisor—
- (a) may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement, and
  - (b) is 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 it.
- (6) 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, or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.
- (7) The power conferred by sub-paragraph (6) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

### Textual Amendments

**F73** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

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## PART VI

### MISCELLANEOUS

#### *Challenge of directors' actions*

- <sup>F74</sup>40 (1) This paragraph applies in relation to acts or omissions of the directors of a company during a moratorium.
- (2) A creditor or member of the company may apply to the court for an order under this paragraph on the ground—
- (a) that the company's affairs, business and property are being or have been managed by the directors 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 the petitioner), or
  - (b) that any actual or proposed act or omission of the directors is or would be so prejudicial.
- (3) An application for an order under this paragraph may be made during or after the moratorium.
- (4) On an application for an order under this paragraph the court may—
- (a) make such order as it thinks fit for giving relief in respect of the matters complained of,
  - (b) adjourn the hearing conditionally or unconditionally, or
  - (c) make an interim order or any other order that it thinks fit.
- (5) An order under this paragraph may in particular—
- (a) regulate the management by the directors of the company's affairs, business and property during the remainder of the moratorium,
  - (b) require the directors to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained they have 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) bring the moratorium to an end and make such consequential provision as the court thinks fit.
- (6) In making an order under this paragraph the court shall have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- [ Sub-paragraph (8) applies where—
- <sup>F75</sup>(7)[<sup>F76</sup>(a) the appointment of an administrator has effect in relation to the company and that appointment was 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.

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- (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.]

#### Textual Amendments

- F74** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F75** Sch. A1 para. 40(7)(8) substituted (15.9.2003) for Sch. A1 para. 40(7) by 2002 c. 40, ss. 248(3), 279, **Sch. 17 para. 37(4)** (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, **Sch. 1** (subject to arts. 3-8 (as amended by S.I. 2003/2332, **art. 2**))
- F76** Sch. A1 para. 40(7)(a) substituted (15.10.2004) by **The Enterprise Act 2002 (Insolvency) Order 2004** (S.I. 2004/2312), **art. 2**

#### Offences

- <sup>F77</sup>41 (1) This paragraph applies where a moratorium has been obtained for a company.
- (2) If, within the period of 12 months ending with the day on which the moratorium came into force, a person who was at the time an officer of the company—
- did any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
  - was privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,
- he is to be treated as having committed an offence at that time.
- (3) If, at any time during the moratorium, a person who is an officer of the company—
- does any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
  - is privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,
- he commits an offence.
- (4) Those things are—
- concealing any part of the company's property to the value of £500 or more, or concealing any debt due to or from the company, or
  - fraudulently removing any part of the company's property to the value of £500 or more, or
  - concealing, destroying, mutilating or falsifying any book or paper affecting or relating to the company's property or affairs, or
  - making any false entry in any book or paper affecting or relating to the company's property or affairs, or
  - fraudulently parting with, altering or making any omission in any document affecting or relating to the company's property or affairs, or
  - pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).
- (5) For the purposes of this paragraph, "officer" includes a shadow director.

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- (6) It is a defence—
- (a) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (a) or (f) of sub-paragraph (4) to prove that he had no intent to defraud, and
  - (b) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (c) or (d) of sub-paragraph (4) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.
- (7) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under sub-paragraph (2) or (3), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in circumstances which—
- (a) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under sub-paragraph (2), or
  - (b) amount to an offence under sub-paragraph (3),
- commits an offence.
- (8) A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.
- (9) The money sums specified in paragraphs (a) and (b) of sub-paragraph (4) are subject to increase or reduction by order under section 417A in Part XV.

#### Textual Amendments

**F77** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

- <sup>F78</sup>42 (1) If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for a company, a person who is an officer of the company—
- (a) makes any false representation, or
  - (b) fraudulently does, or omits to do, anything,
- he commits an offence.
- (2) Sub-paragraph (1) applies even if no moratorium or extension is obtained.
- (3) For the purposes of this paragraph, “officer” includes a shadow director.
- (4) A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.

#### Textual Amendments

**F78** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

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### *Void provisions in floating charge documents*

- <sup>F79</sup>43 (1) A provision in an instrument creating a floating charge is void if it provides for—
- (a) obtaining a moratorium, or
  - (b) anything done with a view to obtaining a moratorium (including any preliminary decision or investigation),
- to be an event causing the floating charge to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company or a ground for the appointment of a receiver.
- (2) In sub-paragraph (1), “receiver” includes a manager and a person who is appointed both receiver and manager.

#### **Textual Amendments**

**F79** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

### *Functions of the [<sup>F80</sup>Financial Conduct Authority and Prudential Regulation Authority]*

#### **Textual Amendments**

**F80** Words in Sch. A1 para. 44 cross-heading substituted (1.4.2013) by **Financial Services Act 2012 (c. 21)**, s. 122(3), **Sch. 18 para. 54(16)** (with **Sch. 20**); S.I. 2013/423, **art. 3**, **Sch.**

- <sup>F81</sup>44 (1) This Schedule has effect in relation to a moratorium for a regulated company with the modifications in sub-paragraphs (2) to (16) below.
- (2) Any notice or other document required by virtue of this Schedule to be sent to a creditor of a regulated company must also be sent to the [<sup>F82</sup>appropriate regulator].
  - (3) The [<sup>F82</sup>appropriate regulator] is entitled to be heard on any application to the court for leave under paragraph 20(2) or 20(3) (disposal of charged property, etc.).
  - (4) Where paragraph 26(1) (challenge of nominee’s actions, etc.) applies, the persons who may apply to the court include the [<sup>F82</sup>appropriate regulator].
  - (5) If a person other than [<sup>F83</sup>a regulator] applies to the court under that paragraph, [<sup>F84</sup>the appropriate regulator] is entitled to be heard on the application.
  - (6) Where paragraph 27(1) (challenge of nominee’s actions, etc.) applies, the persons who may apply to the court include the [<sup>F85</sup>appropriate regulator].
  - (7) If a person other than [<sup>F86</sup>a regulator] applies to the court under that paragraph, [<sup>F87</sup>the appropriate regulator] is entitled to be heard on the application.
  - (8) The persons to be summoned to a creditors’ meeting under paragraph 29 include the [<sup>F88</sup>appropriate regulator].
  - (9) A person appointed for the purpose by the [<sup>F88</sup>appropriate regulator] is entitled to attend and participate in (but not to vote at)—
    - (a) any creditors’ meeting summoned under that paragraph,

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- (b) any meeting of a committee established under paragraph 35 (moratorium committee).
- (10) The [<sup>F88</sup>appropriate regulator] is entitled to be heard on any application under paragraph 36(3) (effectiveness of decisions).
- (11) Where paragraph 38(1) (challenge of decisions) applies, the persons who may apply to the court include the [<sup>F88</sup>appropriate regulator].
- (12) If a person other than [<sup>F89</sup>a regulator] applies to the court under that paragraph, [<sup>F90</sup>the appropriate regulator] is entitled to be heard on the application.
- (13) Where paragraph 39(3) (implementation of voluntary arrangement) applies, the persons who may apply to the court include the [<sup>F91</sup>appropriate regulator].
- (14) If a person other than [<sup>F92</sup>a regulator] applies to the court under that paragraph, [<sup>F93</sup>the appropriate regulator] is entitled to be heard on the application.
- (15) Where paragraph 40(2) (challenge of directors' actions) applies, the persons who may apply to the court include the [<sup>F94</sup>appropriate regulator].
- (16) If a person other than [<sup>F95</sup>a regulator] applies to the court under that paragraph, [<sup>F96</sup>the appropriate regulator] is entitled to be heard on the application.
- [ If either regulator makes an application to the court under any of the provisions
- <sup>F97</sup>(16A) mentioned in sub-paragraphs (5), (7), (12), (14) or (16) in relation to a PRA-regulated company, the other regulator is entitled to be heard on the application.]
- (17) This paragraph does not prejudice any right the [<sup>F98</sup>appropriate regulator] has (apart from this paragraph) as a creditor of a regulated company.
- [ The appropriate regulator” means—
- <sup>F99</sup>(17A) (a) for the purposes of sub-paragraphs (2) to (8) and (10) to (17)—
- (i) where the regulated company is a PRA-regulated company, each of the Financial Conduct Authority and the Prudential Regulation Authority, and
- (ii) in any other case, the Financial Conduct Authority;
- (b) for the purposes of sub-paragraph (9)—
- (i) where the regulated company is a PRA-regulated company, the Financial Conduct Authority or the Prudential Regulation Authority, and
- (ii) in any other case, the Financial Conduct Authority.]
- (18) In this paragraph—
- [<sup>F100</sup>“PRA-authorised person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000;
- “PRA-regulated company” means a regulated company which—
- (a) is, or has been, a PRA-authorised person,
- (b) is, or has been, an appointed representative within the meaning given by section 39 of the the Financial Services and Markets Act 2000, whose principal (or one of whose principals) is, or was, a PRA-authorised person, or

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- (c) is carrying on, or has carried on, a PRA-regulated activity in contravention of the general prohibition;]
- “regulated company” means a company which—
- (a) is, or has been, an authorised person within the meaning given by section 31 of the <sup>M6</sup>Financial Services and Markets Act 2000,
- (b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or
- (c) is carrying on, or has carried on, a regulated activity, within the meaning given by section 22 of that Act, in contravention of the general prohibition within the meaning given by section 19 of that Act.
- [<sup>F101</sup>“regulator” means the Financial Conduct Authority or the Prudential Regulation Authority.]

#### Textual Amendments

- F81** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F82** Words in Sch. A1 para. 44(2)-(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F83** Words in Sch. A1 para. 44(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(3)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F84** Words in Sch. A1 para. 44(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(3)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F85** Words in Sch. A1 para. 44(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F86** Words in Sch. A1 para. 44(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(5)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F87** Words in Sch. A1 para. 44(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(5)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F88** Words in Sch. A1 para. 44(8)-(11) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(6)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F89** Words in Sch. A1 para. 44(12) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(7)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F90** Words in Sch. A1 para. 44(12) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(7)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F91** Words in Sch. A1 para. 44(13) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(8)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F92** Words in Sch. A1 para. 44(14) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(9)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F93** Words in Sch. A1 para. 44(14) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(9)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F94** Words in Sch. A1 para. 44(15) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(10)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F95** Words in Sch. A1 para. 44(16) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(11)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F96** Words in Sch. A1 para. 44(16) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(11)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F97** Sch. A1 para. 44(16A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 54(12)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.



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- F98** Words in Sch. A1 para. 44(17) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 54\(13\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F99** Sch. A1 para. 44(17A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 54\(14\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F100** Words in Sch. A1 para. 44(18) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 54\(15\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F101** Words in Sch. A1 para. 44(18) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 54\(15\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### Marginal Citations

**M6** [2000 c. 8.](#)

#### Subordinate legislation

- <sup>F102</sup>45 (1) Regulations or an order made by the Secretary of State under this Schedule may make different provision for different cases.
- (2) Regulations so made may make such consequential, incidental, supplemental and transitional provision as may appear to the Secretary of State necessary or expedient.
- (3) Any power of the Secretary of State to make regulations under this Schedule may be exercised by amending or repealing any enactment contained in this Act (including one contained in this Schedule) or contained in the <sup>M7</sup>Company Directors Disqualification Act 1986.
- (4) Regulations (except regulations under paragraph 5) or an order made by the Secretary of State under this Schedule shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Regulations under paragraph 5 of this Schedule are to be made by statutory instrument and shall only be made if a draft containing the regulations has been laid before and approved by resolution of each House of Parliament.]

#### Textual Amendments

**F102** Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by [2000 c. 39, s. 1, Sch. 1 para. 4; S.I. 2001/1751, art. 2; S.I. 2002/2711, art. 2](#) (subject to transitional provisions in [arts. 3-5](#))

#### Marginal Citations

**M7** [1986 c. 46.](#)

## [<sup>F103</sup>SCHEDULE B1

### ADMINISTRATION

#### Textual Amendments

**F103** Sch. B1 inserted (15.9.2003) by [2002 c. 40, ss. 248\(2\), 279, Sch. 16 \(with s. 249\(1\)-\(3\)\(6\)\); S.I. 2003/2093, art. 2\(1\), Sch. 1](#) (subject to [arts. 3-8](#) (as amended by [S.I. 2003/2332, art. 2](#)))

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#### Modifications etc. (not altering text)

- C8** Sch. B1 applied in part (with modifications) (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), ss. 159(1), 198, [Sch. 20 Pts. 1-3](#); [S.I. 2004/2575](#), [art. 2\(1\)](#), [Sch. 1](#)
- C9** Sch. B1 applied (with modifications) (1.7. 2005) by [S.I. 1994/2421](#), [art. 6\(1\)](#), [Sch. 2](#) (as amended (1.7.2005) by [S.I. 2005/1516](#), [arts. 3, 7](#), [Sch. 1](#) (with [art. 2](#)))
- C10** Sch. B1: specified provisions applied (with modifications) (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), ss. 73, 93(2)(3), {Sch. 10 Pts. 1, 2}; [S.I. 2011/2329](#), [art. 3](#) (with [arts. 4, 5](#))
- C11** Sch. B1 amendment to earlier affecting provision [S.I. 1994/2421](#), [Sch. 2](#) (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), [Sch. 2 para. 11\(b\)](#)

### ARRANGEMENT OF SCHEDULE

Nature of administration	Paragraphs 1 to 9
Appointment of administrator by court	Paragraphs 10 to 13
Appointment of administrator by holder of floating charge	Paragraphs 14 to 21
Appointment of administrator by company or directors	Paragraphs 22 to 34
Administration application: special cases	Paragraphs 35 to 39
Effect of administration	Paragraphs 40 to 45
Process of administration	Paragraphs 46 to 58
Functions of administrator	Paragraphs 59 to 75
Ending administration	Paragraphs 76 to 86
Replacing administrator	Paragraphs 87 to 99
General	Paragraphs 100 to 116

### NATURE OF ADMINISTRATION

#### *Administration*

- 1 (1) For the purposes of this Act “administrator” of a company means a person appointed under this Schedule to manage the company’s affairs, business and property.
- (2) For the purposes of this Act—
  - (a) a company is “in administration” while the appointment of an administrator of the company has effect,
  - (b) a company “enters administration” when the appointment of an administrator takes effect,
  - (c) a company ceases to be in administration when the appointment of an administrator of the company ceases to have effect in accordance with this Schedule, and
  - (d) a company does not cease to be in administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office.

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- 2        A person may be appointed as administrator of a company—
- (a)    by administration order of the court under paragraph 10,
  - (b)    by the holder of a floating charge under paragraph 14, or
  - (c)    by the company or its directors under paragraph 22.

*Purpose of administration*

- 3        (1) The administrator of a company must perform his functions with the objective of—
- (a)    rescuing the company as a going concern, or
  - (b)    achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
  - (c)    realising property in order to make a distribution to one or more secured or preferential creditors.
- (2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole.
- (3) The administrator must perform his functions with the objective specified in sub-paragraph (1)(a) unless he thinks either—
- (a)    that it is not reasonably practicable to achieve that objective, or
  - (b)    that the objective specified in sub-paragraph (1)(b) would achieve a better result for the company's creditors as a whole.
- (4) The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if—
- (a)    he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and
  - (b)    he does not unnecessarily harm the interests of the creditors of the company as a whole.
- 4        The administrator of a company must perform his functions as quickly and efficiently as is reasonably practicable.

*Status of administrator*

- 5        An administrator is an officer of the court (whether or not he is appointed by the court).

*General restrictions*

- 6        A person may be appointed as administrator of a company only if he is qualified to act as an insolvency practitioner in relation to the company.
- 7        A person may not be appointed as administrator of a company which is in administration (subject to the provisions of paragraphs 90 to 97 and 100 to 103 about replacement and additional administrators).
- 8        (1) A person may not be appointed as administrator of a company which is in liquidation by virtue of—
- (a)    a resolution for voluntary winding up, or
  - (b)    a winding-up order.
- (2) Sub-paragraph (1)(a) is subject to paragraph 38.

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- (3) Sub-paragraph (1)(b) is subject to paragraphs 37 and 38.
- 9 (1) A person may not be appointed as administrator of a company which—
- (a) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22), but
  - (b) is not an authorised deposit taker.
- (2) A person may not be appointed as administrator of a company which effects or carries out contracts of insurance.
- (3) But sub-paragraph (2) does not apply to a company which—
- (a) is exempt from the general prohibition in relation to effecting or carrying out contracts of insurance, or
  - (b) is an authorised deposit taker effecting or carrying out contracts of insurance in the course of a banking business.
- (4) In this paragraph—
- “authorised deposit taker” means a person with permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, and
  - “the general prohibition” has the meaning given by section 19 of that Act.
- (5) This paragraph 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).

## APPOINTMENT OF ADMINISTRATOR BY COURT

### *Administration order*

- 10 An administration order is an order appointing a person as the administrator of a company.

### *Conditions for making order*

- 11 The court may make an administration order in relation to a company only if satisfied—
- (a) that the company is or is likely to become unable to pay its debts, and
  - (b) that the administration order is reasonably likely to achieve the purpose of administration.

### *Administration application*

- 12 (1) An application to the court for an administration order in respect of a company (an “administration application”) may be made only by—
- (a) the company,
  - (b) the directors of the company,
  - (c) one or more creditors of the company,

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- (d) the [<sup>F104</sup>designated officer] for a magistrates' court in the exercise of the power conferred by section 87A of the Magistrates' Courts Act 1980 (c. 43) (fine imposed on company), or
    - (e) a combination of persons listed in paragraphs (a) to (d).
  - (2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify—
    - (a) any person who has appointed an administrative receiver of the company,
    - (b) any person who is or may be entitled to appoint an administrative receiver of the company,
    - (c) any person who is or may be entitled to appoint an administrator of the company under paragraph 14, and
    - (d) such other persons as may be prescribed.
  - (3) An administration application may not be withdrawn without the permission of the court.
  - (4) In sub-paragraph (1) “creditor” includes a contingent creditor and a prospective creditor.
- [ Sub-paragraph (1) is without prejudice to section 7(4)(b).]
- <sup>F105</sup>(5)

#### Textual Amendments

**F104** Words in Sch. B1 para. 12(1)(d) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), ss. 109(1), 110, [Sch. 8 para. 299](#); [S.I. 2005/910](#), [art. 3\(y\)](#)

**F105** Sch. B1 para. 12(5) added (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 2\(2\)](#)

#### Powers of court

- 13 (1) On hearing an administration application the court may—
- (a) make the administration order sought;
  - (b) dismiss the application;
  - (c) adjourn the hearing conditionally or unconditionally;
  - (d) make an interim order;
  - (e) treat the application as a winding-up petition and make any order which the court could make under section 125;
  - (f) make any other order which the court thinks appropriate.
- (2) An appointment of an administrator by administration order takes effect—
- (a) at a time appointed by the order, or
  - (b) where no time is appointed by the order, when the order is made.
- (3) An interim order under sub-paragraph (1)(d) may, in particular—
- (a) restrict the exercise of a power of the directors or the company;
  - (b) make provision conferring a discretion on the court or on a person qualified to act as an insolvency practitioner in relation to the company.
- (4) This paragraph is subject to paragraph 39.

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**Modifications etc. (not altering text)**

**C12** Sch. B1 para. 13 restricted (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 162(3)**, 198; S.I. 2004/2575, **art. 2(1)**, Sch. 1

## APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE

### *Power to appoint*

- 14 (1) The holder of a qualifying floating charge in respect of a company's property may appoint an administrator of the company.
- (2) For the purposes of sub-paragraph (1) a floating charge qualifies if created by an instrument which—
- (a) states that this paragraph applies to the floating charge,
  - (b) purports to empower the holder of the floating charge to appoint an administrator of the company,
  - (c) purports to empower the holder of the floating charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by section 29(2), or
  - (d) purports to empower the holder of a floating charge in Scotland to appoint a receiver who on appointment would be an administrative receiver.
- (3) For the purposes of sub-paragraph (1) a person is the holder of a qualifying floating charge in respect of a company's property if he holds one or more debentures of the company secured—
- (a) by a qualifying floating charge which relates to the whole or substantially the whole of the company's property,
  - (b) by a number of qualifying floating charges which together relate to the whole or substantially the whole of the company's property, or
  - (c) by charges and other forms of security which together relate to the whole or substantially the whole of the company's property and at least one of which is a qualifying floating charge.

**Modifications etc. (not altering text)**

**C13** Sch. B1 para. 14 restricted (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 163**, 198; S.I. 2004/2575, **art. 2(1)**, Sch. 1

### *Restrictions on power to appoint*

- 15 (1) A person may not appoint an administrator under paragraph 14 unless—
- (a) he has given at least two business days' written notice to the holder of any prior floating charge which satisfies paragraph 14(2), or
  - (b) the holder of any prior floating charge which satisfies paragraph 14(2) has consented in writing to the making of the appointment.
- (2) One floating charge is prior to another for the purposes of this paragraph if—
- (a) it was created first, or

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- (b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.
- (3) Sub-paragraph (2) shall have effect in relation to Scotland as if the following were substituted for paragraph (a)—
  - (“) it has priority of ranking in accordance with section 464(4)(b) of the Companies Act 1985 (c. 6), ”.
- 16 An administrator may not be appointed under paragraph 14 while a floating charge on which the appointment relies is not enforceable.
- 17 An administrator of a company may not be appointed under paragraph 14 if—
  - (a) a provisional liquidator of the company has been appointed under section 135, or
  - (b) an administrative receiver of the company is in office.

#### *Notice of appointment*

- 18 (1) A person who appoints an administrator of a company under paragraph 14 shall file with the court—
  - (a) a notice of appointment, and
  - (b) such other documents as may be prescribed.
- (2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—
  - (a) that the person is the holder of a qualifying floating charge in respect of the company’s property,
  - (b) that each floating charge relied on in making the appointment is (or was) enforceable on the date of the appointment, and
  - (c) that the appointment is in accordance with this Schedule.
- (3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—
  - (a) that he consents to the appointment,
  - (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
  - (c) giving such other information and opinions as may be prescribed.
- (4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).
- (5) The notice of appointment and any document accompanying it must be in the prescribed form.
- (6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.
- (7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
  - (a) which is false, and
  - (b) which he does not reasonably believe to be true.



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### *Commencement of appointment*

- 19 The appointment of an administrator under paragraph 14 takes effect when the requirements of paragraph 18 are satisfied.
- 20 A person who appoints an administrator under paragraph 14—
- (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 18 are satisfied, and
  - (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

### *Invalid appointment: indemnity*

- 21 (1) This paragraph applies where—
- (a) a person purports to appoint an administrator under paragraph 14, and
  - (b) the appointment is discovered to be invalid.
- (2) The court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

## APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS

### *Power to appoint*

- 22 (1) A company may appoint an administrator.
- (2) The directors of a company may appoint an administrator.

#### **Modifications etc. (not altering text)**

**C14** Sch. B1 para. 22 restricted (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 163, 198**; [S.I. 2004/2575](#), **art. 2(1)**, [Sch. 1](#)

### *Restrictions on power to appoint*

- 23 (1) This paragraph applies where an administrator of a company is appointed—
- (a) under paragraph 22, or
  - (b) on an administration application made by the company or its directors.
- (2) An administrator of the company may not be appointed under paragraph 22 during the period of 12 months beginning with the date on which the appointment referred to in sub-paragraph (1) ceases to have effect.
- 24 (1) If a moratorium for a company under Schedule A1 ends on a date when no voluntary arrangement is in force in respect of the company, this paragraph applies for the period of 12 months beginning with that date.
- (2) This paragraph also applies for the period of 12 months beginning with the date on which a voluntary arrangement in respect of a company ends if—
- (a) the arrangement was made during a moratorium for the company under Schedule A1, and

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- (b) the arrangement ends prematurely (within the meaning of section 7B).
- (3) While this paragraph applies, an administrator of the company may not be appointed under paragraph 22.
- 25 An administrator of a company may not be appointed under paragraph 22 if—
  - (a) a petition for the winding up of the company has been presented and is not yet disposed of,
  - (b) an administration application has been made and is not yet disposed of, or
  - (c) an administrative receiver of the company is in office.

*Notice of intention to appoint*

- 26 (1) A person who proposes to make an appointment under paragraph 22 shall give at least five business days' written notice to—
  - (a) any person who is or may be entitled to appoint an administrative receiver of the company, and
  - (b) any person who is or may be entitled to appoint an administrator of the company under paragraph 14.
- (2) A person who proposes to make an appointment under paragraph 22 shall also give such notice as may be prescribed to such other persons as may be prescribed.
- (3) A notice under this paragraph must—
  - (a) identify the proposed administrator, and
  - (b) be in the prescribed form.
- 27 (1) A person who gives notice of intention to appoint under paragraph 26 shall file with the court as soon as is reasonably practicable a copy of—
  - (a) the notice, and
  - (b) any document accompanying it.
- (2) The copy filed under sub-paragraph (1) must be accompanied by a statutory declaration made by or on behalf of the person who proposes to make the appointment—
  - (a) that the company is or is likely to become unable to pay its debts,
  - (b) that the company is not in liquidation, and
  - (c) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by paragraphs 23 to 25, and
  - (d) to such additional effect, and giving such information, as may be prescribed.
- (3) A statutory declaration under sub-paragraph (2) must—
  - (a) be in the prescribed form, and
  - (b) be made during the prescribed period.
- (4) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
  - (a) which is false, and
  - (b) which he does not reasonably believe to be true.
- 28 (1) An appointment may not be made under paragraph 22 unless the person who makes the appointment has complied with any requirement of paragraphs 26 and 27 and—
  - (a) the period of notice specified in paragraph 26(1) has expired, or

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- (b) each person to whom notice has been given under paragraph 26(1) has consented in writing to the making of the appointment.
- (2) An appointment may not be made under paragraph 22 after the period of ten business days beginning with the date on which the notice of intention to appoint is filed under paragraph 27(1).

### *Notice of appointment*

- 29 (1) A person who appoints an administrator of a company under paragraph 22 shall file with the court—
- (a) a notice of appointment, and
  - (b) such other documents as may be prescribed.
- (2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—
- (a) that the person is entitled to make an appointment under paragraph 22,
  - (b) that the appointment is in accordance with this Schedule, and
  - (c) that, so far as the person making the statement is able to ascertain, the statements made and information given in the statutory declaration filed with the notice of intention to appoint remain accurate.
- (3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—
- (a) that he consents to the appointment,
  - (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
  - (c) giving such other information and opinions as may be prescribed.
- (4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).
- (5) The notice of appointment and any document accompanying it must be in the prescribed form.
- (6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.
- (7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
- (a) which is false, and
  - (b) which he does not reasonably believe to be true.
- 30 In a case in which no person is entitled to notice of intention to appoint under paragraph 26(1) (and paragraph 28 therefore does not apply)—
- (a) the statutory declaration accompanying the notice of appointment must include the statements and information required under paragraph 27(2), and
  - (b) paragraph 29(2)(c) shall not apply.

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### *Commencement of appointment*

- 31 The appointment of an administrator under paragraph 22 takes effect when the requirements of paragraph 29 are satisfied.
- 32 A person who appoints an administrator under paragraph 22—
- (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 29 are satisfied, and
  - (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).
- 33 If before the requirements of paragraph 29 are satisfied the company enters administration by virtue of an administration order or an appointment under paragraph 14—
- (a) the appointment under paragraph 22 shall not take effect, and
  - (b) paragraph 32 shall not apply.

### *Invalid appointment: indemnity*

- 34 (1) This paragraph applies where—
- (a) a person purports to appoint an administrator under paragraph 22, and
  - (b) the appointment is discovered to be invalid.
- (2) The court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

## ADMINISTRATION APPLICATION – SPECIAL CASES

### *Application by holder of floating charge*

- 35 (1) This paragraph applies where an administration application in respect of a company—
- (a) is made by the holder of a qualifying floating charge in respect of the company's property, and
  - (b) includes a statement that the application is made in reliance on this paragraph.
- (2) The court may make an administration order—
- (a) whether or not satisfied that the company is or is likely to become unable to pay its debts, but
  - (b) only if satisfied that the applicant could appoint an administrator under paragraph 14.

### *Intervention by holder of floating charge*

- 36 (1) This paragraph applies where—
- (a) an administration application in respect of a company is made by a person who is not the holder of a qualifying floating charge in respect of the company's property, and

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- (b) the holder of a qualifying floating charge in respect of the company's property applies to the court to have a specified person appointed as administrator (and not the person specified by the administration applicant).
- (2) The court shall grant an application under sub-paragraph (1)(b) unless the court thinks it right to refuse the application because of the particular circumstances of the case.

*Application where company in liquidation*

- 37 (1) This paragraph applies where the holder of a qualifying floating charge in respect of a company's property could appoint an administrator under paragraph 14 but for paragraph 8(1)(b).
- (2) The holder of the qualifying floating charge may make an administration application.
- (3) If the court makes an administration order on hearing an application made by virtue of sub-paragraph (2)—
  - (a) the court shall discharge the winding-up order,
  - (b) the court shall make provision for such matters as may be prescribed,
  - (c) the court may make other consequential provision,
  - (d) the court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and
  - (e) this Schedule shall have effect with such modifications as the court may specify.
- 38 (1) The liquidator of a company may make an administration application.
- (2) If the court makes an administration order on hearing an application made by virtue of sub-paragraph (1)—
  - (a) the court shall discharge any winding-up order in respect of the company,
  - (b) the court shall make provision for such matters as may be prescribed,
  - (c) the court may make other consequential provision,
  - (d) the court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and
  - (e) this Schedule shall have effect with such modifications as the court may specify.

*Effect of administrative receivership*

- 39 (1) Where there is an administrative receiver of a company the court must dismiss an administration application in respect of the company unless—
  - (a) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order,
  - (b) the court thinks that the security by virtue of which the receiver was appointed would be liable to be released or discharged under sections 238 to 240 (transaction at undervalue and preference) if an administration order were made,
  - (c) the court thinks that the security by virtue of which the receiver was appointed would be avoided under section 245 (avoidance of floating charge) if an administration order were made, or

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- (d) the court thinks that the security by virtue of which the receiver was appointed would be challengeable under section 242 (gratuitous alienations) or 243 (unfair preferences) or under any rule of law in Scotland.
- (2) Sub-paragraph (1) applies whether the administrative receiver is appointed before or after the making of the administration application.

## EFFECT OF ADMINISTRATION

### *Dismissal of pending winding-up petition*

- 40 (1) A petition for the winding up of a company—
- (a) shall be dismissed on the making of an administration order in respect of the company, and
  - (b) shall be suspended while the company is in administration following an appointment under paragraph 14.
- (2) Sub-paragraph (1)(b) does not apply to a petition presented under—
- (a) section 124A (public interest), or
  - [ section 124B (SEs),]
- <sup>F106</sup>(aa)
- (b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by [<sup>F107</sup>Financial Conduct Authority or Prudential Regulation Authority]).
- (3) Where an administrator becomes aware that a petition was presented under a provision referred to in sub-paragraph (2) before his appointment, he shall apply to the court for directions under paragraph 63.

#### **Textual Amendments**

**F106** Sch. B1 para. 40(2)(aa) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 73(4)(c)**

**F107** Words in Sch. B1 para. 40(2)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 55(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

#### **Modifications etc. (not altering text)**

**C15** Sch. B1 para. 40 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 119, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3, Sch. para. 2**

**C16** Sch. B1 para. 40(1)(a) applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3, Sch. para. 3**

### *Dismissal of administrative or other receiver*

- 41 (1) When an administration order takes effect in respect of a company any administrative receiver of the company shall vacate office.
- (2) Where a company is in administration, any receiver of part of the company's property shall vacate office if the administrator requires him to.
- (3) Where an administrative receiver or receiver vacates office under sub-paragraph (1) or (2)—

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- (a) his remuneration shall be charged on and paid out of any property of the company which was in his custody or under his control immediately before he vacated office, and
  - (b) he need not take any further steps under section 40 or 59.
- (4) In the application of sub-paragraph (3)(a)—
- (a) “remuneration” includes expenses properly incurred and any indemnity to which the administrative receiver or receiver is entitled out of the assets of the company,
  - (b) the charge imposed takes priority over security held by the person by whom or on whose behalf the administrative receiver or receiver was appointed, and
  - (c) the provision for payment is subject to paragraph 43.

**Modifications etc. (not altering text)**

- C17** Sch. B1 para. 41 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)
- C18** Sch. B1 para. 41(2) excluded (26.12.2003) by [The Financial Collateral Arrangements \(No.2\) Regulations 2003 \(S.I. 2003/3226\)](#), [reg. 8\(2\)](#)

*Moratorium on insolvency proceedings*

- 42 (1) This paragraph applies to a company in administration.
- (2) No resolution may be passed for the winding up of the company.
- (3) No order may be made for the winding up of the company.
- (4) Sub-paragraph (3) does not apply to an order made on a petition presented under—
- (a) section 124A (public interest), or
  - [ section 124B (SEs),]
- <sup>F108</sup>(aa)
- (b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by [<sup>F109</sup>Financial Conduct Authority or Prudential Regulation Authority]).
- (5) If a petition presented under a provision referred to in sub-paragraph (4) comes to the attention of the administrator, he shall apply to the court for directions under paragraph 63.

**Textual Amendments**

- F108** Sch. B1 para. 42(4)(aa) inserted (8.10.2004) by [The European Public Limited-Liability Company Regulations 2004 \(S.I. 2004/2326\)](#), [reg. 73\(4\)\(c\)](#)
- F109** Words in Sch. B1 para. 42(4)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), [s. 122\(3\)](#), [Sch. 18 para. 55\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), [art. 3](#), [Sch.](#)

**Modifications etc. (not altering text)**

- C19** Sch. B1 para. 42 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 119, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 2](#)



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**C20** Sch. B1 para. 42 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

*Moratorium on other legal process*

- 43 (1) This paragraph applies to a company in administration.
- (2) No step may be taken to enforce security over the company's property except—
- (a) with the consent of the administrator, or
  - (b) with the permission of the court.
- (3) No step may be taken to repossess goods in the company's possession under a hire-purchase agreement except—
- (a) with the consent of the administrator, or
  - (b) with the permission of the court.
- (4) A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company except—
- (a) with the consent of the administrator, or
  - (b) with the permission of the court.
- (5) In Scotland, a landlord may not exercise a right of irritancy in relation to premises let to the company except—
- (a) with the consent of the administrator, or
  - (b) with the permission of the court.
- (6) No legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the company or property of the company except—
- (a) with the consent of the administrator, or
  - (b) with the permission of the court.
- [ An administrative receiver of the company may not be appointed.]
- <sup>F110</sup>(6A)
- (7) Where the court gives permission for a transaction under this paragraph it may impose a condition on or a requirement in connection with the transaction.
- (8) In this paragraph “landlord” includes a person to whom rent is payable.

**Textual Amendments**

**F110** Sch. B1 para. 43(6A) inserted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), **art. 2(3)**

**Modifications etc. (not altering text)**

**C21** Sch. B1 para. 43 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

**C22** Sch. B1 para. 43(2) excluded (26.12.2003) by [The Financial Collateral Arrangements \(No.2\) Regulations 2003 \(S.I. 2003/3226\)](#), **reg. 8(1)(a)**

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### *Interim moratorium*

- 44 (1) This paragraph applies where an administration application in respect of a company has been made and—
- (a) the application has not yet been granted or dismissed, or
  - (b) the application has been granted but the administration order has not yet taken effect.
- (2) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator under paragraph 14 is filed with the court until—
- (a) the appointment of the administrator takes effect, or
  - (b) the period of five business days beginning with the date of filing expires without an administrator having been appointed.
- (3) Sub-paragraph (2) has effect in relation to a notice of intention to appoint only if it is in the prescribed form.
- (4) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator is filed with the court under paragraph 27(1) until—
- (a) the appointment of the administrator takes effect, or
  - (b) the period specified in paragraph 28(2) expires without an administrator having been appointed.
- (5) The provisions of paragraphs 42 and 43 shall apply (ignoring any reference to the consent of the administrator).
- (6) If there is an administrative receiver of the company when the administration application is made, the provisions of paragraphs 42 and 43 shall not begin to apply by virtue of this paragraph until the person by or on behalf of whom the receiver was appointed consents to the making of the administration order.
- (7) This paragraph does not prevent or require the permission of the court for—
- (a) the presentation of a petition for the winding up of the company under a provision mentioned in paragraph 42(4),
  - (b) the appointment of an administrator under paragraph 14,
  - (c) the appointment of an administrative receiver of the company, or
  - (d) the carrying out by an administrative receiver (whenever appointed) of his functions.

#### **Modifications etc. (not altering text)**

- C23** Sch. B1 para. 44 restricted (5.10.2004) by [Energy Act 2004](#) (c. 20), **ss. 162(4), 163(4)**, 198; S.I. 2004/2575, **art. 2(1)**, Sch. 1
- C24** Sch. B1 para. 44 restricted (1.10.2011) by [Postal Services Act 2011](#) (c. 5), **ss. 76(4)**, 85(8), 93(2)(3); S.I. 2011/2329, **art. 3** (with **arts. 4, 5**)
- C25** Sch. B1 para. 44 restricted (1.10.2011) by [Postal Services Act 2011](#) (c. 5), **ss. 77(5)**, 85(8), 93(2)(3); S.I. 2011/2329, **art. 3** (with **arts. 4, 5**)
- C26** Sch. B1 para. 44(1)(a) applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009](#) (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3
- C27** Sch. B1 para. 44(5) applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009](#) (c. 1), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3

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### *Publicity*

- [<sup>F111</sup>45(1) While a company is in administration, every business document issued by or on behalf of the company or the administrator, and all the company's websites, must state—
- (a) the name of the administrator, and
  - (b) that the affairs, business and property of the company are being managed by the administrator.
- (2) Any of the following persons commits an offence if without reasonable excuse the person authorises or permits a contravention of sub-paragraph (1)—
- (a) the administrator,
  - (b) an officer of the company, and
  - (c) the company.
- (3) In sub-paragraph (1) “business document” means—
- (a) an invoice,
  - (b) an order for goods or services,
  - (c) a business letter, and
  - (d) an order form,
- whether in hard copy, electronic or any other form.]

#### **Textual Amendments**

**F111** Sch. B1 para. 45 substituted (1.10.2008) by [The Companies \(Trading Disclosures\) \(Insolvency\) Regulations 2008 \(S.I. 2008/1897\)](#), **reg. 4(1)**

## PROCESS OF ADMINISTRATION

### *Announcement of administrator's appointment*

- 46 (1) This paragraph applies where a person becomes the administrator of a company.
- (2) As soon as is reasonably practicable the administrator shall—
- (a) send a notice of his appointment to the company, and
  - (b) publish a notice of his appointment in the prescribed manner.
- (3) As soon as is reasonably practicable the administrator shall—
- (a) obtain a list of the company's creditors, and
  - (b) send a notice of his appointment to each creditor of whose claim and address he is aware.
- (4) The administrator shall send a notice of his appointment to the registrar of companies before the end of the period of 7 days beginning with the date specified in sub-paragraph (6).
- (5) The administrator shall send a notice of his appointment to such persons as may be prescribed before the end of the prescribed period beginning with the date specified in sub-paragraph (6).
- (6) The date for the purpose of sub-paragraphs (4) and (5) is—

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- (a) in the case of an administrator appointed by administration order, the date of the order,
  - (b) in the case of an administrator appointed under paragraph 14, the date on which he receives notice under paragraph 20, and
  - (c) in the case of an administrator appointed under paragraph 22, the date on which he receives notice under paragraph 32.
- (7) The court may direct that sub-paragraph (3)(b) or (5)—
- (a) shall not apply, or
  - (b) shall apply with the substitution of a different period.
- (8) A notice under this paragraph must—
- (a) contain the prescribed information, and
  - (b) be in the prescribed form.
- (9) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

**Modifications etc. (not altering text)**

**C28** Sch. B1 para. 46 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

*Statement of company's affairs*

- 47 (1) As soon as is reasonably practicable after appointment the administrator of a company shall by notice in the prescribed form require one or more relevant persons to provide the administrator with a statement of the affairs of the company.
- (2) The statement must—
- (a) be verified by a statement of truth in accordance with Civil Procedure Rules,
  - (b) be in the prescribed form,
  - (c) give particulars of the company's property, debts and liabilities,
  - (d) give the names and addresses of the company's creditors,
  - (e) specify the security held by each creditor,
  - (f) give the date on which each security was granted, and
  - (g) contain such other information as may be prescribed.
- (3) In sub-paragraph (1) "relevant person" means—
- (a) a person who is or has been an officer of the company,
  - (b) a person who took part in the formation of the company during the period of one year ending with the date on which the company enters administration,
  - (c) a person employed by the company during that period, and
  - (d) a person who is or has been during that period an officer or employee of a company which is or has been during that year an officer of the company.
- (4) For the purpose of sub-paragraph (3) a reference to employment is a reference to employment through a contract of employment or a contract for services.

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- (5) In Scotland, a statement of affairs under sub-paragraph (1) must be a statutory declaration made in accordance with the Statutory Declarations Act 1835 (c. 62) (and sub-paragraph (2)(a) shall not apply).

**Modifications etc. (not altering text)**

**C29** Sch. B1 para. 47 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296, arts. 2, 3, Sch. para. 3](#)

- 48 (1) A person required to submit a statement of affairs must do so before the end of the period of 11 days beginning with the day on which he receives notice of the requirement.
- (2) The administrator may—
- (a) revoke a requirement under paragraph 47(1), or
  - (b) extend the period specified in sub-paragraph (1) (whether before or after expiry).
- (3) If the administrator refuses a request to act under sub-paragraph (2)—
- (a) the person whose request is refused may apply to the court, and
  - (b) the court may take action of a kind specified in sub-paragraph (2).
- (4) A person commits an offence if he fails without reasonable excuse to comply with a requirement under paragraph 47(1).

**Modifications etc. (not altering text)**

**C30** Sch. B1 para. 48 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296, arts. 2, 3, Sch. para. 3](#)

*Administrator's proposals*

- 49 (1) The administrator of a company shall make a statement setting out proposals for achieving the purpose of administration.
- (2) A statement under sub-paragraph (1) must, in particular—
- (a) deal with such matters as may be prescribed, and
  - (b) where applicable, explain why the administrator thinks that the objective mentioned in paragraph 3(1)(a) or (b) cannot be achieved.
- (3) Proposals under this paragraph may include—
- (a) a proposal for a voluntary arrangement under Part I of this Act (although this paragraph is without prejudice to section 4(3));
  - (b) a proposal for a compromise or arrangement to be sanctioned under <sup>F112</sup>Part 26 of the Companies Act 2006 (arrangements and reconstructions)] .
- (4) The administrator shall send a copy of the statement of his proposals—
- (a) to the registrar of companies,
  - (b) to every creditor of the company of whose claim and address he is aware, and
  - (c) to every member of the company of whose address he is aware.

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- (5) The administrator shall comply with sub-paragraph (4)—
  - (a) as soon as is reasonably practicable after the company enters administration, and
  - (b) in any event, before the end of the period of eight weeks beginning with the day on which the company enters administration.
- (6) The administrator shall be taken to comply with sub-paragraph (4)(c) if he publishes in the prescribed manner a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.
- (7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).
- (8) A period specified in this paragraph may be varied in accordance with paragraph 107.

#### Textual Amendments

**F112** Words in Sch. B1 para. 49(3)(b) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 3(1), **Sch. 1 para. 100(a)** (with arts. 6, 11, 12)

#### Modifications etc. (not altering text)

- C31** Sch. B1 para. 49 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3 (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **5(5)**)
- C32** Sch. B1 para. 49 modified (E.W.) (7.6.2013) by [The Energy Supply Company Administration Rules 2013 \(S.I. 2013/1046\)](#), rules 1, **20(2)** (with rules 3, 208)

#### Creditors' meeting

- 50 (1) In this Schedule “creditors’ meeting” means a meeting of creditors of a company summoned by the administrator—
- (a) in the prescribed manner, and
  - (b) giving the prescribed period of notice to every creditor of the company of whose claim and address he is aware.
- (2) A period prescribed under sub-paragraph (1)(b) may be varied in accordance with paragraph 107.
- (3) A creditors’ meeting shall be conducted in accordance with the rules.

#### Modifications etc. (not altering text)

**C33** Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3

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*Requirement for initial creditors' meeting*

- 51 (1) Each copy of an administrator's statement of proposals sent to a creditor under paragraph 49(4)(b) must be accompanied by an invitation to a creditors' meeting (an "initial creditors' meeting").
- (2) The date set for an initial creditors' meeting must be—
- (a) as soon as is reasonably practicable after the company enters administration, and
  - (b) in any event, within the period of ten weeks beginning with the date on which the company enters administration.
- (3) An administrator shall present a copy of his statement of proposals to an initial creditors' meeting.
- (4) A period specified in this paragraph may be varied in accordance with paragraph 107.
- (5) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

**Modifications etc. (not altering text)**

**C34** Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3 (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **5(5)**)

- 52 (1) Paragraph 51(1) shall not apply where the statement of proposals states that the administrator thinks—
- (a) that the company has sufficient property to enable each creditor of the company to be paid in full,
  - (b) that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a), or
  - (c) that neither of the objectives specified in paragraph 3(1)(a) and (b) can be achieved.
- (2) But the administrator shall summon an initial creditors' meeting if it is requested—
- (a) by creditors of the company whose debts amount to at least 10% of the total debts of the company,
  - (b) in the prescribed manner, and
  - (c) in the prescribed period.
- (3) A meeting requested under sub-paragraph (2) must be summoned for a date in the prescribed period.
- (4) The period prescribed under sub-paragraph (3) may be varied in accordance with paragraph 107.

**Modifications etc. (not altering text)**

**C35** Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3



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(as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **5(5)**)

### *Business and result of initial creditors' meeting*

- 53 (1) An initial creditors' meeting to which an administrator's proposals are presented shall consider them and may—
- (a) approve them without modification, or
  - (b) approve them with modification to which the administrator consents.
- (2) After the conclusion of an initial creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—
- (a) the court,
  - (b) the registrar of companies, and
  - (c) such other persons as may be prescribed.
- (3) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (2).

#### **Modifications etc. (not altering text)**

**C36** Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#) (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), 5(5))

### *Revision of administrator's proposals*

- 54 (1) This paragraph applies where—
- (a) an administrator's proposals have been approved (with or without modification) at an initial creditors' meeting,
  - (b) the administrator proposes a revision to the proposals, and
  - (c) the administrator thinks that the proposed revision is substantial.
- (2) The administrator shall—
- (a) summon a creditors' meeting,
  - (b) send a statement in the prescribed form of the proposed revision with the notice of the meeting sent to each creditor,
  - (c) send a copy of the statement, within the prescribed period, to each member of the company of whose address he is aware, and
  - (d) present a copy of the statement to the meeting.
- (3) The administrator shall be taken to have complied with sub-paragraph (2)(c) if he publishes a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to a specified address.
- (4) A notice under sub-paragraph (3) must be published—
- (a) in the prescribed manner, and
  - (b) within the prescribed period.

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- (5) A creditors' meeting to which a proposed revision is presented shall consider it and may—
  - (a) approve it without modification, or
  - (b) approve it with modification to which the administrator consents.
- (6) After the conclusion of a creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—
  - (a) the court,
  - (b) the registrar of companies, and
  - (c) such other persons as may be prescribed.
- (7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (6).

**Modifications etc. (not altering text)**

**C37** Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#) (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), 5(5))

*Failure to obtain approval of administrator's proposals*

- 55 (1) This paragraph applies where an administrator reports to the court that—
- (a) an initial creditors' meeting has failed to approve the administrator's proposals presented to it, or
  - (b) a creditors' meeting has failed to approve a revision of the administrator's proposals presented to it.
- (2) The court may—
- (a) provide that the appointment of an administrator shall cease to have effect from a specified time;
  - (b) adjourn the hearing conditionally or unconditionally;
  - (c) make an interim order;
  - (d) make an order on a petition for winding up suspended by virtue of paragraph 40(1)(b);
  - (e) make any other order (including an order making consequential provision) that the court thinks appropriate.

**Modifications etc. (not altering text)**

**C38** Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#) (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **5(5)**)

*Further creditors' meetings*

- 56 (1) The administrator of a company shall summon a creditors' meeting if—

*Status: Point in time view as at 01/04/2014.*

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- (a) it is requested in the prescribed manner by creditors of the company whose debts amount to at least 10% of the total debts of the company, or
  - (b) he is directed by the court to summon a creditors' meeting.
- (2) An administrator commits an offence if he fails without reasonable excuse to summon a creditors' meeting as required by this paragraph.

**Modifications etc. (not altering text)**

**C39** Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3 (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **5(5)**)

*Creditors' committee*

- 57 (1) A creditors' meeting may establish a creditors' committee.
- (2) A creditors' committee shall carry out functions conferred on it by or under this Act.
- (3) A creditors' committee may require the administrator—
- (a) to attend on the committee at any reasonable time of which he is given at least seven days' notice, and
  - (b) to provide the committee with information about the exercise of his functions.

**Modifications etc. (not altering text)**

**C40** Sch. B1 paras. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3 (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **5(5)**)

*Correspondence instead of creditors' meeting*

- 58 (1) Anything which is required or permitted by or under this Schedule to be done at a creditors' meeting may be done by correspondence between the administrator and creditors—
- (a) in accordance with the rules, and
  - (b) subject to any prescribed condition.
- (2) A reference in this Schedule to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in reliance on sub-paragraph (1).
- (3) A requirement to hold a creditors' meeting is satisfied by conducting correspondence in accordance with this paragraph.

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**Modifications etc. (not altering text)**

**C41** Sch. B1 para. 50-58 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

## FUNCTIONS OF ADMINISTRATOR

### *General powers*

- 59 (1) The administrator of a company may do anything necessary or expedient for the management of the affairs, business and property of the company.
- (2) A provision of this Schedule which expressly permits the administrator to do a specified thing is without prejudice to the generality of sub-paragraph (1).
- (3) A person who deals with the administrator of a company in good faith and for value need not inquire whether the administrator is acting within his powers.

**Modifications etc. (not altering text)**

**C42** Sch. B1 para. 59 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

- 60 The administrator of a company has the powers specified in Schedule 1 to this Act.

**Modifications etc. (not altering text)**

**C43** Sch. B1 para. 60 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

- 61 The administrator of a company—
- (a) may remove a director of the company, and
  - (b) may appoint a director of the company (whether or not to fill a vacancy).

**Modifications etc. (not altering text)**

**C44** Sch. B1 para. 61 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

- 62 The administrator of a company may call a meeting of members or creditors of the company.

**Modifications etc. (not altering text)**

**C45** Sch. B1 para. 62 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#) (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **5(5)**)

- 63 The administrator of a company may apply to the court for directions in connection with his functions.

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**Modifications etc. (not altering text)**

**C46** Sch. B1 para. 63 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

- 64 (1) A company in administration or an officer of a company in administration may not exercise a management power without the consent of the administrator.
- (2) For the purpose of sub-paragraph (1)—
- (a) “management power” means a power which could be exercised so as to interfere with the exercise of the administrator’s powers,
  - (b) it is immaterial whether the power is conferred by an enactment or an instrument, and
  - (c) consent may be general or specific.

**Modifications etc. (not altering text)**

**C47** Sch. B1 para. 64 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

*Distribution*

- 65 (1) The administrator of a company may make a distribution to a creditor of the company.
- (2) Section 175 shall apply in relation to a distribution under this paragraph as it applies in relation to a winding up.
- (3) A payment may not be made by way of distribution under this paragraph to a creditor of the company who is neither secured nor preferential unless the court gives permission.

**Modifications etc. (not altering text)**

**C48** Sch. B1 para. 65 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

**C49** Sch. B1 para. 65(1) restricted (6.3.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), [reg. 46](#), **Sch. para. 2(5)**

**C50** Sch. B1 para. 65(2) applied by [The Financial Market and Insolvency \(Settlement Finality\) Regulations 1999 \(S.I. 1999/2979\)](#), [reg. 14\(5\)\(a\)\(i\)](#) (as substituted (1.10.2009) by [The Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009 \(S.I. 2009/1972\)](#), **reg. 4(d)(ii)**)

- 66 The administrator of a company may make a payment otherwise than in accordance with paragraph 65 or paragraph 13 of Schedule 1 if he thinks it likely to assist achievement of the purpose of administration.

**Modifications etc. (not altering text)**

**C51** Sch. B1 para. 66 restricted (6.3.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), [reg. 46](#), **Sch. para. 2(5)**

**C52** Sch. B1 para. 66 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

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### *General duties*

- 67 The administrator of a company shall on his appointment take custody or control of all the property to which he thinks the company is entitled.

#### **Modifications etc. (not altering text)**

**C53** Sch. B1 para. 67 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145](#), 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

- 68 (1) Subject to sub-paragraph (2), the administrator of a company shall manage its affairs, business and property in accordance with—
- (a) any proposals approved under paragraph 53,
  - (b) any revision of those proposals which is made by him and which he does not consider substantial, and
  - (c) any revision of those proposals approved under paragraph 54.
- (2) If the court gives directions to the administrator of a company in connection with any aspect of his management of the company's affairs, business or property, the administrator shall comply with the directions.
- (3) The court may give directions under sub-paragraph (2) only if—
- (a) no proposals have been approved under paragraph 53,
  - (b) the directions are consistent with any proposals or revision approved under paragraph 53 or 54,
  - (c) the court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under paragraph 53 or 54, or
  - (d) the court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under paragraph 53 or 54.

#### **Modifications etc. (not altering text)**

**C54** Sch. B1 para. 68 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145](#), 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

### *Administrator as agent of company*

- 69 In exercising his functions under this Schedule the administrator of a company acts as its agent.

#### **Modifications etc. (not altering text)**

**C55** Sch. B1 para. 69 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145](#), 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

### *Charged property: floating charge*

- 70 (1) The administrator of a company may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge.

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- (2) Where property is disposed of in reliance on sub-paragraph (1) the holder of the floating charge shall have the same priority in respect of acquired property as he had in respect of the property disposed of.
- (3) In sub-paragraph (2) “acquired property” means property of the company which directly or indirectly represents the property disposed of.

**Modifications etc. (not altering text)**

- C56** Sch. B1 para. 70 excluded (26.12.2003) by [The Financial Collateral Arrangements \(No.2\) Regulations 2003 \(S.I. 2003/3226\)](#), [reg. 8\(1\)\(b\)](#)
- C57** Sch. B1 para. 70 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

*Charged property: non-floating charge*

- 71 (1) The court may by order enable the administrator of a company to dispose of property which is subject to a security (other than a floating charge) as if it were not subject to the security.
- (2) An order under sub-paragraph (1) may be made only—
- (a) on the application of the administrator, and
  - (b) where the court thinks that disposal of the property would be likely to promote the purpose of administration in respect of the company.
- (3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums secured by the security—
- (a) the net proceeds of disposal of the property, and
  - (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property at market value.
- (4) If an order under this paragraph relates to more than one security, application of money under sub-paragraph (3) shall be in the order of the priorities of the securities.
- (5) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar of companies before the end of the period of 14 days starting with the date of the order.
- (6) An administrator commits an offence if he fails to comply with sub-paragraph (5) without reasonable excuse.

**Modifications etc. (not altering text)**

- C58** Sch. B1 para. 71 excluded (26.12.2003) by [The Financial Collateral Arrangements \(No.2\) Regulations 2003 \(S.I. 2003/3226\)](#), [reg. 8\(1\)\(b\)](#)
- C59** Sch. B1 para. 71 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)



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### *Hire-purchase property*

- 72 (1) The court may by order enable the administrator of a company to dispose of goods which are in the possession of the company under a hire-purchase agreement as if all the rights of the owner under the agreement were vested in the company.
- (2) An order under sub-paragraph (1) may be made only—
- (a) on the application of the administrator, and
  - (b) where the court thinks that disposal of the goods would be likely to promote the purpose of administration in respect of the company.
- (3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums payable under the hire-purchase agreement—
- (a) the net proceeds of disposal of the goods, and
  - (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the goods at market value.
- (4) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar of companies before the end of the period of 14 days starting with the date of the order.
- (5) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (4).

#### **Modifications etc. (not altering text)**

**C60** Sch. B1 para. 72 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

### *Protection for secured or preferential creditor*

- 73 (1) An administrator's statement of proposals under paragraph 49 may not include any action which—
- (a) affects the right of a secured creditor of the company to enforce his security,
  - (b) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts, or
  - (c) would result in one preferential creditor of the company being paid a smaller proportion of his debt than another.
- (2) Sub-paragraph (1) does not apply to—
- (a) action to which the relevant creditor consents,
  - (b) a proposal for a voluntary arrangement under Part I of this Act (although this sub-paragraph is without prejudice to section 4(3)), <sup>F113</sup> . . .
  - (c) a proposal for a compromise or arrangement to be sanctioned under [<sup>F114</sup>Part 26 of the Companies Act 2006 (arrangements and reconstructions)] [<sup>F115</sup> or
  - (d) a proposal for a cross-border merger within the meaning of regulation 2 of the Companies (Cross-Border Mergers) Regulations 2007.]
- (3) The reference to a statement of proposals in sub-paragraph (1) includes a reference to a statement as revised or modified.

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### Textual Amendments

- F113** Word in Sch. B1 para. 73(2)(b) repealed (15.12.2007) by [The Companies \(Cross-Border Mergers\) Regulations 2007 \(S.I. 2007/2974\)](#), **reg. 65(2)**
- F114** Words in Sch. B1 para. 73(2)(c) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 3(1), **Sch. 1 para. 100(a)** (with arts. 6, 11, 12)
- F115** Sch. B1 para. 73(2)(d) and preceding word inserted (15.12.2007) by [The Companies \(Cross-Border Mergers\) Regulations 2007 \(S.I. 2007/2974\)](#), **reg. 65(3)**

### Modifications etc. (not altering text)

- C61** Sch. B1 para. 73 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, **Sch. para. 3**

### Challenge to administrator's conduct of company

- 74 (1) A creditor or member of a company in administration may apply to the court claiming that—
- (a) the administrator is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors), or
  - (b) the administrator proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors).
- (2) A creditor or member of a company in administration may apply to the court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.
- (3) The court may—
- (a) grant relief;
  - (b) dismiss the application;
  - (c) adjourn the hearing conditionally or unconditionally;
  - (d) make an interim order;
  - (e) make any other order it thinks appropriate.
- (4) In particular, an order under this paragraph may—
- (a) regulate the administrator's exercise of his functions;
  - (b) require the administrator to do or not do a specified thing;
  - (c) require a creditors' meeting to be held for a specified purpose;
  - (d) provide for the appointment of an administrator to cease to have effect;
  - (e) make consequential provision.
- (5) An order may be made on a claim under sub-paragraph (1) whether or not the action complained of—
- (a) is within the administrator's powers under this Schedule;
  - (b) was taken in reliance on an order under paragraph 71 or 72.
- (6) An order may not be made under this paragraph if it would impede or prevent the implementation of—
- (a) a voluntary arrangement approved under Part I,

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- (b) a compromise or arrangement sanctioned under [<sup>F116</sup>Part 26 of the Companies Act 2006 (arrangements and reconstructions)] , <sup>F117</sup> . . .
- [<sup>F118</sup>(ba) a cross-border merger within the meaning of regulation 2 of the Companies (Cross-Border Mergers) Regulations 2007, or]
- (c) proposals or a revision approved under paragraph 53 or 54 more than 28 days before the day on which the application for the order under this paragraph is made.

#### Textual Amendments

- F116** Words in Sch. B1 para. 74(6)(b) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 3(1), [Sch. 1 para. 100\(b\)](#) (with arts. 6, 11, 12)
- F117** Word in Sch. B1 para. 74(6)(b) repealed (15.12.2007) by [The Companies \(Cross-Border Mergers\) Regulations 2007 \(S.I. 2007/2974\)](#), [reg. 65\(4\)](#)
- F118** Sch. B1 para. 74(6)(ba) inserted (15.12.2007) by [The Companies \(Cross-Border Mergers\) Regulations 2007 \(S.I. 2007/2974\)](#), [reg. 65\(5\)](#)

#### Modifications etc. (not altering text)

- C62** Sch. B1 para. 74 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145](#), 263(1)(2) (with s. 247); [S.I. 2009/296](#), [arts. 2](#), 3, [Sch. para. 3](#) (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), [regs. 1\(3\)](#), [5\(5\)](#))

#### Misfeasance

- 75 (1) The court may examine the conduct of a person who—
- (a) is or purports to be the administrator of a company, or
  - (b) has been or has purported to be the administrator of a company.
- (2) An examination under this paragraph may be held only on the application of—
- (a) the official receiver,
  - (b) the administrator of the company,
  - (c) the liquidator of the company,
  - (d) a creditor of the company, or
  - (e) a contributory of the company.
- (3) An application under sub-paragraph (2) must allege that the administrator—
- (a) has misapplied or retained money or other property of the company,
  - (b) has become accountable for money or other property of the company,
  - (c) has breached a fiduciary or other duty in relation to the company, or
  - (d) has been guilty of misfeasance.
- (4) On an examination under this paragraph into a person's conduct the court may order him—
- (a) to repay, restore or account for money or property;
  - (b) to pay interest;
  - (c) to contribute a sum to the company's property by way of compensation for breach of duty or misfeasance.

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- (5) In sub-paragraph (3) “administrator” includes a person who purports or has purported to be a company’s administrator.
- (6) An application under sub-paragraph (2) may be made in respect of an administrator who has been discharged under paragraph 98 only with the permission of the court.

**Modifications etc. (not altering text)**

**C63** Sch. B1 para. 75 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

## ENDING ADMINISTRATION

### *Automatic end of administration*

- 76 (1) The appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.
- (2) But—
  - (a) on the application of an administrator the court may by order extend his term of office for a specified period, and
  - (b) an administrator’s term of office may be extended for a specified period not exceeding six months by consent.
- 77 (1) An order of the court under paragraph 76—
  - (a) may be made in respect of an administrator whose term of office has already been extended by order or by consent, but
  - (b) may not be made after the expiry of the administrator’s term of office.
- (2) Where an order is made under paragraph 76 the administrator shall as soon as is reasonably practicable notify the registrar of companies.
- (3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.
- 78 (1) In paragraph 76(2)(b) “consent” means consent of—
  - (a) each secured creditor of the company, and
  - (b) if the company has unsecured debts, creditors whose debts amount to more than 50% of the company’s unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (2) But where the administrator has made a statement under paragraph 52(1)(b) “consent” means—
  - (a) consent of each secured creditor of the company, or
  - (b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—
    - (i) each secured creditor of the company, and
    - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (3) Consent for the purposes of paragraph 76(2)(b) may be—

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- (a) written, or
  - (b) signified at a creditors' meeting.
- (4) An administrator's term of office—
- (a) may be extended by consent only once,
  - (b) may not be extended by consent after extension by order of the court, and
  - (c) may not be extended by consent after expiry.
- (5) Where an administrator's term of office is extended by consent he shall as soon as is reasonably practicable—
- (a) file notice of the extension with the court, and
  - (b) notify the registrar of companies.
- (6) An administrator who fails without reasonable excuse to comply with sub-paragraph (5) commits an offence.

*Court ending administration on application of administrator*

- 79 (1) On the application of the administrator of a company the court may provide for the appointment of an administrator of the company to cease to have effect from a specified time.
- (2) The administrator of a company shall make an application under this paragraph if—
- (a) he thinks the purpose of administration cannot be achieved in relation to the company,
  - (b) he thinks the company should not have entered administration, or
  - (c) a creditors' meeting requires him to make an application under this paragraph.
- (3) The administrator of a company shall make an application under this paragraph if—
- (a) the administration is pursuant to an administration order, and
  - (b) the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company.
- (4) On an application under this paragraph the court may—
- (a) adjourn the hearing conditionally or unconditionally;
  - (b) dismiss the application;
  - (c) make an interim order;
  - (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

*Termination of administration where objective achieved*

- 80 (1) This paragraph applies where an administrator of a company is appointed under paragraph 14 or 22.
- (2) If the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company he may file a notice in the prescribed form—
- (a) with the court, and
  - (b) with the registrar of companies.

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- (3) The administrator's appointment shall cease to have effect when the requirements of sub-paragraph (2) are satisfied.
- (4) Where the administrator files a notice he shall within the prescribed period send a copy to every creditor of the company of whose claim and address he is aware.
- (5) The rules may provide that the administrator is taken to have complied with sub-paragraph (4) if before the end of the prescribed period he publishes in the prescribed manner a notice undertaking to provide a copy of the notice under sub-paragraph (2) to any creditor of the company who applies in writing to a specified address.
- (6) An administrator who fails without reasonable excuse to comply with sub-paragraph (4) commits an offence.

**Modifications etc. (not altering text)**

**C64** Sch. B1 para. 80 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

*Court ending administration on application of creditor*

- 81 (1) On the application of a creditor of a company the court may provide for the appointment of an administrator of the company to cease to have effect at a specified time.
- (2) An application under this paragraph must allege an improper motive—
  - (a) in the case of an administrator appointed by administration order, on the part of the applicant for the order, or
  - (b) in any other case, on the part of the person who appointed the administrator.
- (3) On an application under this paragraph the court may—
  - (a) adjourn the hearing conditionally or unconditionally;
  - (b) dismiss the application;
  - (c) make an interim order;
  - (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

*Public interest winding-up*

- 82 (1) This paragraph applies where a winding-up order is made for the winding up of a company in administration on a petition presented under—
  - (a) section 124A (public interest), or
  - [ section 124B (SEs),]<sup>F119</sup>(aa)
  - (b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by [<sup>F120</sup>Financial Conduct Authority or Prudential Regulation Authority]).
- (2) This paragraph also applies where a provisional liquidator of a company in administration is appointed following the presentation of a petition under any of the provisions listed in sub-paragraph (1).
- (3) The court shall order—

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- (a) that the appointment of the administrator shall cease to have effect, or
  - (b) that the appointment of the administrator shall continue to have effect.
- (4) If the court makes an order under sub-paragraph (3)(b) it may also—
- (a) specify which of the powers under this Schedule are to be exercisable by the administrator, and
  - (b) order that this Schedule shall have effect in relation to the administrator with specified modifications.

#### Textual Amendments

**F119** Sch. B1 para. 82(1)(aa) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), reg. 73(4)(c)

**F120** Words in Sch. B1 para. 82(1)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 55(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

#### *Moving from administration to creditors' voluntary liquidation*

- 83 (1) This paragraph applies in England and Wales where the administrator of a company thinks—
- (a) that the total amount which each secured creditor of the company is likely to receive has been paid to him or set aside for him, and
  - (b) that a distribution will be made to unsecured creditors of the company (if there are any).
- (2) This paragraph applies in Scotland where the administrator of a company thinks—
- (a) that each secured creditor of the company will receive payment in respect of his debt, and
  - (b) that a distribution will be made to unsecured creditors (if there are any).
- (3) The administrator may send to the registrar of companies a notice that this paragraph applies.
- (4) On receipt of a notice under sub-paragraph (3) the registrar shall register it.
- (5) If an administrator sends a notice under sub-paragraph (3) he shall as soon as is reasonably practicable—
- (a) file a copy of the notice with the court, and
  - (b) send a copy of the notice to each creditor of whose claim and address he is aware.
- (6) On the registration of a notice under sub-paragraph (3)—
- (a) the appointment of an administrator in respect of the company shall cease to have effect, and
  - (b) the company shall be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the notice is registered.
- (7) The liquidator for the purposes of the winding up shall be—
- (a) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period, or
  - (b) if no person is nominated under paragraph (a), the administrator.



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- (8) In the application of Part IV to a winding up by virtue of this paragraph—
- (a) section 85 shall not apply,
  - (b) section 86 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (3),
  - (c) section 89 does not apply,
  - (d) sections 98, 99 and 100 shall not apply,
  - (e) section 129 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (3), and
  - (f) any creditors' committee which is in existence immediately before the company ceases to be in administration shall continue in existence after that time as if appointed as a liquidation committee under section 101.

*Moving from administration to dissolution*

- 84 (1) If the administrator of a company thinks that the company has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the registrar of companies.
- (2) The court may on the application of the administrator of a company disapply sub-paragraph (1) in respect of the company.
- (3) On receipt of a notice under sub-paragraph (1) the registrar shall register it.
- (4) On the registration of a notice in respect of a company under sub-paragraph (1) the appointment of an administrator of the company shall cease to have effect.
- (5) If an administrator sends a notice under sub-paragraph (1) he shall as soon as is reasonably practicable—
- (a) file a copy of the notice with the court, and
  - (b) send a copy of the notice to each creditor of whose claim and address he is aware.
- (6) At the end of the period of three months beginning with the date of registration of a notice in respect of a company under sub-paragraph (1) the company is deemed to be dissolved.
- (7) On an application in respect of a company by the administrator or another interested person the court may—
- (a) extend the period specified in sub-paragraph (6),
  - (b) suspend that period, or
  - (c) disapply sub-paragraph (6).
- (8) Where an order is made under sub-paragraph (7) in respect of a company the administrator shall as soon as is reasonably practicable notify the registrar of companies.
- (9) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

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**Modifications etc. (not altering text)**

**C65** Sch. B1 para. 84 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145](#), 263(1)(2) (with s. 247); [S.I. 2009/296](#), [arts. 2](#), 3, [Sch. para. 3](#) (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), [5\(6\)\(a\)](#))

*Discharge of administration order where administration ends*

- 85 (1) This paragraph applies where—
- (a) the court makes an order under this Schedule providing for the appointment of an administrator of a company to cease to have effect, and
  - (b) the administrator was appointed by administration order.
- (2) The court shall discharge the administration order.

**Modifications etc. (not altering text)**

**C66** Sch. B1 para. 85 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145](#), 263(1)(2) (with s. 247); [S.I. 2009/296](#), [arts. 2](#), 3, [Sch. para. 3](#)

*Notice to Companies Registrar where administration ends*

- 86 (1) This paragraph applies where the court makes an order under this Schedule providing for the appointment of an administrator to cease to have effect.
- (2) The administrator shall send a copy of the order to the registrar of companies within the period of 14 days beginning with the date of the order.
- (3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

**Modifications etc. (not altering text)**

**C67** Sch. B1 para. 86 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145](#), 263(1)(2) (with s. 247); [S.I. 2009/296](#), [arts. 2](#), 3, [Sch. para. 3](#)

REPLACING ADMINISTRATOR

*Resignation of administrator*

- 87 (1) An administrator may resign only in prescribed circumstances.
- (2) Where an administrator may resign he may do so only—
- (a) in the case of an administrator appointed by administration order, by notice in writing to the court,
  - (b) in the case of an administrator appointed under paragraph 14, by notice in writing to the [<sup>F121</sup>holder of the floating charge by virtue of which the appointment was made],

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- (c) in the case of an administrator appointed under paragraph 22(1), by notice in writing to the company, or
- (d) in the case of an administrator appointed under paragraph 22(2), by notice in writing to the directors of the company.

#### Textual Amendments

**F121** Words in Sch. B1 para. 87(2)(b) substituted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 2\(4\)](#)

#### Modifications etc. (not altering text)

**C68** Sch. B1 para. 87 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145](#), [263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

#### *Removal of administrator from office*

88 The court may by order remove an administrator from office.

#### Modifications etc. (not altering text)

**C69** Sch. B1 para. 88 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145](#), [263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

#### *Administrator ceasing to be qualified*

- 89 (1) The administrator of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.
- (2) Where an administrator vacates office by virtue of sub-paragraph (1) he shall give notice in writing—
- (a) in the case of an administrator appointed by administration order, to the court,
  - (b) in the case of an administrator appointed under paragraph 14, to the <sup>[F122]</sup>holder of the floating charge by virtue of which the appointment was made],
  - (c) in the case of an administrator appointed under paragraph 22(1), to the company, or
  - (d) in the case of an administrator appointed under paragraph 22(2), to the directors of the company.
- (3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

#### Textual Amendments

**F122** Words in Sch. B1 para. 89(2)(b) substituted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 2\(5\)](#)

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**Modifications etc. (not altering text)**

**C70** Sch. B1 para. 89 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

*Supplying vacancy in office of administrator*

- 90 Paragraphs 91 to 95 apply where an administrator—
- (a) dies,
  - (b) resigns,
  - (c) is removed from office under paragraph 88, or
  - (d) vacates office under paragraph 89.

**Modifications etc. (not altering text)**

**C71** Sch. B1 para. 90 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

- 91 (1) Where the administrator was appointed by administration order, the court may replace the administrator on an application under this sub-paragraph made by—
- (a) a creditors' committee of the company,
  - (b) the company,
  - (c) the directors of the company,
  - (d) one or more creditors of the company, or
  - (e) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remains in office.
- (2) But an application may be made in reliance on sub-paragraph (1)(b) to (d) only where—
- (a) there is no creditors' committee of the company,
  - (b) the court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement, or
  - (c) the court is satisfied that for another reason it is right for the application to be made.

**Modifications etc. (not altering text)**

**C72** Sch. B1 para. 91 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

- 92 Where the administrator was appointed under paragraph 14 the holder of the floating charge by virtue of which the appointment was made may replace the administrator.
- 93 (1) Where the administrator was appointed under paragraph 22(1) by the company it may replace the administrator.
- (2) A replacement under this paragraph may be made only—
- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
  - (b) where consent is withheld, with the permission of the court.

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- 94 (1) Where the administrator was appointed under paragraph 22(2) the directors of the company may replace the administrator.
- (2) A replacement under this paragraph may be made only—
- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
  - (b) where consent is withheld, with the permission of the court.
- 95 The court may replace an administrator on the application of a person listed in paragraph 91(1) if the court—
- (a) is satisfied that a person who is entitled to replace the administrator under any of paragraphs 92 to 94 is not taking reasonable steps to make a replacement, or
  - (b) that for another reason it is right for the court to make the replacement.

*Substitution of administrator: competing floating charge-holder*

- 96 (1) This paragraph applies where an administrator of a company is appointed under paragraph 14 by the holder of a qualifying floating charge in respect of the company's property.
- (2) The holder of a prior qualifying floating charge in respect of the company's property may apply to the court for the administrator to be replaced by an administrator nominated by the holder of the prior floating charge.
- (3) One floating charge is prior to another for the purposes of this paragraph if—
- (a) it was created first, or
  - (b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.
- (4) Sub-paragraph (3) shall have effect in relation to Scotland as if the following were substituted for paragraph (a)—
- (“ it has priority of ranking in accordance with section 464(4)(b) of the Companies Act 1985 (c. 6), ”.

**Modifications etc. (not altering text)**

**C73** Sch. B1 para. 96 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

*Substitution of administrator appointed by company or directors: creditors' meeting*

- 97 (1) This paragraph applies where—
- (a) an administrator of a company is appointed by a company or directors under paragraph 22, and
  - (b) there is no holder of a qualifying floating charge in respect of the company's property.
- (2) A creditors' meeting may replace the administrator.
- (3) A creditors' meeting may act under sub-paragraph (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.

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*Vacation of office: discharge from liability*

- 98 (1) Where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.
- (2) The discharge provided by sub-paragraph (1) takes effect—
- (a) in the case of an administrator who dies, on the filing with the court of notice of his death,
  - (b) in the case of an administrator appointed under paragraph 14 or 22, at a time appointed by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors, or
  - (c) in any case, at a time specified by the court.
- (3) For the purpose of the application of sub-paragraph (2)(b) in a case where the administrator has made a statement under paragraph 52(1)(b), a resolution shall be taken as passed if (and only if) passed with the approval of—
- (a) each secured creditor of the company, or
  - (b) if the administrator has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors—
    - (i) each secured creditor of the company, and
    - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.
- (4) Discharge—
- (a) applies to liability accrued before the discharge takes effect, and
  - (b) does not prevent the exercise of the court's powers under paragraph 75.

**Modifications etc. (not altering text)**

**C74** Sch. B1 para. 98 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#) (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), [regs. 1\(3\), 5\(5\)](#))

*Vacation of office: charges and liabilities*

- 99 (1) This paragraph applies where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect).
- (2) In this paragraph—
- “the former administrator” means the person referred to in sub-paragraph (1), and
  - “cessation” means the time when he ceases to be the company's administrator.
- (3) The former administrator's remuneration and expenses shall be—
- (a) charged on and payable out of property of which he had custody or control immediately before cessation, and

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- (b) payable in priority to any security to which paragraph 70 applies.
- (4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—
  - (a) charged on and payable out of property of which the former administrator had custody or control immediately before cessation, and
  - (b) payable in priority to any charge arising under sub-paragraph (3).
- (5) Sub-paragraph (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—
  - (a) action taken within the period of 14 days after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract,
  - (b) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment, and
  - (c) no account shall be taken of a liability to make a payment other than wages or salary.
- (6) In sub-paragraph (5)(c) “wages or salary” includes—
  - (a) a sum payable in respect of a period of holiday (for which purpose the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued),
  - (b) a sum payable in respect of a period of absence through illness or other good cause,
  - (c) a sum payable in lieu of holiday,
  - (d) in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security, and
  - (e) a contribution to an occupational pension scheme.

**Modifications etc. (not altering text)**

- C75** Sch. B1 para. 99 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), ss. **145**, 263(1)(2) (with s. 247); [S.I. 2009/296](#), arts. **2**, 3, Sch. para. 3
- C76** Sch. B1 para. 99(3) applied by [The Financial Market and Insolvency \(Settlement Finality\) Regulations 1999 \(S.I. 1999/2979\)](#), reg. 14(5)(a)(iii) (as substituted (1.10.2009) by [The Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009 \(S.I. 2009/1972\)](#), reg. **4(d)(iii)**)

## GENERAL

### *Joint and concurrent administrators*

100 (1) In this Schedule—

- (a) a reference to the appointment of an administrator of a company includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator of a company, and
- (b) a reference to the appointment of a person as administrator of a company includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator of a company.



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- (2) The appointment of a number of persons to act as administrator of a company must specify—
- (a) which functions (if any) are to be exercised by the persons appointed acting jointly, and
  - (b) which functions (if any) are to be exercised by any or all of the persons appointed.

**Modifications etc. (not altering text)**

**C77** Sch. B1 paras. 100-103 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

- 101 (1) This paragraph applies where two or more persons are appointed to act jointly as the administrator of a company.
- (2) A reference to the administrator of the company is a reference to those persons acting jointly.
- (3) But a reference to the administrator of a company in paragraphs 87 to 99 of this Schedule is a reference to any or all of the persons appointed to act jointly.
- (4) Where an offence of omission is committed by the administrator, each of the persons appointed to act jointly—
- (a) commits the offence, and
  - (b) may be proceeded against and punished individually.
- (5) The reference in paragraph 45(1)(a) to the name of the administrator is a reference to the name of each of the persons appointed to act jointly.
- (6) Where persons are appointed to act jointly in respect of only some of the functions of the administrator of a company, this paragraph applies only in relation to those functions.

**Modifications etc. (not altering text)**

**C78** Sch. B1 paras. 100-103 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

- 102 (1) This paragraph applies where two or more persons are appointed to act concurrently as the administrator of a company.
- (2) A reference to the administrator of a company in this Schedule is a reference to any of the persons appointed (or any combination of them).

**Modifications etc. (not altering text)**

**C79** Sch. B1 paras. 100-103 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

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- 103 (1) Where a company is in administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the company.
- (2) Where a company entered administration by administration order, an appointment under sub-paragraph (1) must be made by the court on the application of—
- (a) a person or group listed in paragraph 12(1)(a) to (e), or
  - (b) the person or persons acting as the administrator of the company.
- (3) Where a company entered administration by virtue of an appointment under paragraph 14, an appointment under sub-paragraph (1) must be made by—
- (a) the holder of the floating charge by virtue of which the appointment was made, or
  - (b) the court on the application of the person or persons acting as the administrator of the company.
- (4) Where a company entered administration by virtue of an appointment under paragraph 22(1), an appointment under sub-paragraph (1) above must be made either by the court on the application of the person or persons acting as the administrator of the company or—
- (a) by the company, and
  - (b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the court.
- (5) Where a company entered administration by virtue of an appointment under paragraph 22(2), an appointment under sub-paragraph (1) must be made either by the court on the application of the person or persons acting as the administrator of the company or—
- (a) by the directors of the company, and
  - (b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the court.
- (6) An appointment under sub-paragraph (1) may be made only with the consent of the person or persons acting as the administrator of the company.

**Modifications etc. (not altering text)**

**C80** Sch. B1 paras. 100-103 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

*Presumption of validity*

- 104 An act of the administrator of a company is valid in spite of a defect in his appointment or qualification.

*Status: Point in time view as at 01/04/2014.*

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**Modifications etc. (not altering text)**

- C81** Sch. B1 para. 104 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145](#), 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

*Majority decision of directors*

- 105 A reference in this Schedule to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company.

*Penalties*

- 106 (1) A person who is guilty of an offence under this Schedule is liable to a fine (in accordance with section 430 and Schedule 10).
- (2) A person who is guilty of an offence under any of the following paragraphs of this Schedule is liable to a daily default fine (in accordance with section 430 and Schedule 10)—
- (a) paragraph 20,
  - (b) paragraph 32,
  - (c) paragraph 46,
  - (d) paragraph 48,
  - (e) paragraph 49,
  - (f) paragraph 51,
  - (g) paragraph 53,
  - (h) paragraph 54,
  - (i) paragraph 56,
  - (j) paragraph 71,
  - (k) paragraph 72,
  - (l) paragraph 77,
  - (m) paragraph 78,
  - (n) paragraph 80,
  - (o) paragraph 84,
  - (p) paragraph 86, and
  - (q) paragraph 89.

**Modifications etc. (not altering text)**

- C82** Sch. B1 para. 106 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145](#), 263(1)(2) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#) (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), [regs. 1\(3\)](#), [5\(5\)](#))

*Extension of time limit*

- 107 (1) Where a provision of this Schedule provides that a period may be varied in accordance with this paragraph, the period may be varied in respect of a company—

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- (a) by the court, and
  - (b) on the application of the administrator.
- (2) A time period may be extended in respect of a company under this paragraph—
- (a) more than once, and
  - (b) after expiry.

**Modifications etc. (not altering text)**

**C83** Sch. B1 paras. 107-109 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, [Sch. para. 3](#) (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **5(5)**)

- 108 (1) A period specified in paragraph 49(5), 50(1)(b) or 51(2) may be varied in respect of a company by the administrator with consent.
- (2) In sub-paragraph (1) “consent” means consent of—
- (a) each secured creditor of the company, and
  - (b) if the company has unsecured debts, creditors whose debts amount to more than 50% of the company’s unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (3) But where the administrator has made a statement under paragraph 52(1)(b) “consent” means—
- (a) consent of each secured creditor of the company, or
  - (b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—
    - (i) each secured creditor of the company, and
    - (ii) preferential creditors whose debts amount to more than 50% of the total preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (4) Consent for the purposes of sub-paragraph (1) may be—
- (a) written, or
  - (b) signified at a creditors’ meeting.
- (5) The power to extend under sub-paragraph (1)—
- (a) may be exercised in respect of a period only once,
  - (b) may not be used to extend a period by more than 28 days,
  - (c) may not be used to extend a period which has been extended by the court, and
  - (d) may not be used to extend a period after expiry.

**Modifications etc. (not altering text)**

**C84** Sch. B1 paras. 107-109 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, [Sch. para. 3](#) (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015](#)

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(Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)**

- 109 Where a period is extended under paragraph 107 or 108, a reference to the period shall be taken as a reference to the period as extended.

**Modifications etc. (not altering text)**

**C85** Sch. B1 paras. 107-109 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3 (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **5(5)**)

*Amendment of provision about time*

- 110 (1) The Secretary of State may by order amend a provision of this Schedule which—
- (a) requires anything to be done within a specified period of time,
  - (b) prevents anything from being done after a specified time, or
  - (c) requires a specified minimum period of notice to be given.
- (2) An order under this paragraph—
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Modifications etc. (not altering text)**

**C86** Sch. B1 para. 110 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3

*Interpretation*

- 111 (1) In this Schedule—
- “administrative receiver” has the meaning given by section 251,
  - “administrator” has the meaning given by paragraph 1 and, where the context requires, includes a reference to a former administrator,
  - F123**  
.....
  - “correspondence” includes correspondence by telephonic or other electronic means,
  - “creditors’ meeting” has the meaning given by paragraph 50,
  - “enters administration” has the meaning given by paragraph 1,
  - “floating charge” means a charge which is a floating charge on its creation,
  - “in administration” has the meaning given by paragraph 1,
  - “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,
  - “holder of a qualifying floating charge” in respect of a company’s property has the meaning given by paragraph 14,

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“market value” means the amount which would be realised on a sale of property in the open market by a willing vendor,

“the purpose of administration” means an objective specified in paragraph 3, and

“unable to pay its debts” has the meaning given by section 123.

[ In this Schedule, “company” means—

- <sup>F124</sup>(1A)<sup>F125</sup>(a) a company registered under the Companies Act 2006 in England and Wales or Scotland,]
- (b) a company incorporated in an EEA State other than the United Kingdom, or
- (c) a company not incorporated in an EEA State but having its centre of main interests in a member State other than Denmark.

(1B) In sub-paragraph (1A), in relation to a company, “centre of main interests” has the same meaning as in the EC Regulation and, in the absence of proof to the contrary, is presumed to be the place of its registered office (within the meaning of that Regulation).]

(2) <sup>F126</sup>.....

(3) In this Schedule a reference to action includes a reference to inaction.

#### Textual Amendments

**F123** In Sch. B1 para. 111(1) definition of "company" omitted (13.4.2005) by virtue of [The Insolvency Act 1986 \(Amendment\) Regulations 2005 \(S.I. 2005/879\)](#), [reg. 2\(4\)\(a\)](#) (with [reg. 3](#))

**F124** Sch. B1 para. 111(1A)(1B) inserted (13.4.2005) by [The Insolvency Act 1986 \(Amendment\) Regulations 2005 \(S.I. 2005/879\)](#), [reg. 2\(4\)\(b\)](#) (with [reg. 3](#))

**F125** Sch. B1 para. 111(1A)(a) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, ([S.I. 2009/1941](#)) arts. 2(1), 8, {Sch. 1 para. 72} (with art. 10, Sch. 1 para. 84)

**F126** Sch. B1 para. 111(2) repealed (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), [art. 4\(2\)](#)

#### Modifications etc. (not altering text)

**C87** Sch. B1 para. 111 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), Sch. para. 3

#### Non-UK companies

[<sup>F127</sup>111A A company incorporated outside the United Kingdom that has a principal place of business in Northern Ireland may not enter administration under this Schedule unless it also has a principal place of business in England and Wales or Scotland (or both in England and Wales and in Scotland).]

#### Textual Amendments

**F127** Sch. B1 para. 111A inserted (13.4.2005) by [The Insolvency Act 1986 \(Amendment\) Regulations 2005 \(S.I. 2005/879\)](#), [reg. 2\(4\)\(c\)](#) (with [reg. 3](#))

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## Scotland

- 112 In the application of this Schedule to Scotland—
- (a) a reference to filing with the court is a reference to lodging in court, and
  - (b) a reference to a charge is a reference to a right in security.

### Modifications etc. (not altering text)

**C88** Sch. B1 paras. 112-116 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

- 113 Where property in Scotland is disposed of under paragraph 70 or 71, the administrator shall grant to the donee an appropriate document of transfer or conveyance of the property, and—
- (a) that document, or
  - (b) recording, intimation or registration of that document (where recording, intimation or registration of the document is a legal requirement for completion of title to the property),
- has the effect of disencumbering the property of or, as the case may be, freeing the property from, the security.

### Modifications etc. (not altering text)

**C89** Sch. B1 paras. 112-116 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

- 114 In Scotland, where goods in the possession of a company under a hire-purchase agreement are disposed of under paragraph 72, the disposal has the effect of extinguishing as against the donee all rights of the owner of the goods under the agreement.

### Modifications etc. (not altering text)

**C90** Sch. B1 paras. 112-116 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

- 115 (1) In Scotland, the administrator of a company may make, in or towards the satisfaction of the debt secured by the floating charge, a payment to the holder of a floating charge which has attached to the property subject to the charge.
- (2) In Scotland, where the administrator thinks that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a), he may file a notice to that effect with the registrar of companies.
- (3) On delivery of the notice to the registrar of companies, any floating charge granted by the company shall, unless it has already so attached, attach to the property which is subject to the charge and that attachment shall have effect as if each floating charge is a fixed security over the property to which it has attached.



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**Modifications etc. (not altering text)**

**C91** Sch. B1 paras. 112-116 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

- 116 In Scotland, the administrator in making any payment in accordance with paragraph 115 shall make such payment subject to the rights of any of the following categories of persons (which rights shall, except to the extent provided in any instrument, have the following order of priority)—
- (a) the holder of any fixed security which is over property subject to the floating charge and which ranks prior to, or *pari passu* with, the floating charge,
  - (b) creditors in respect of all liabilities and expenses incurred by or on behalf of the administrator,
  - (c) the administrator in respect of his liabilities, expenses and remuneration and any indemnity to which he is entitled out of the property of the company,
  - (d) the preferential creditors entitled to payment in accordance with paragraph 65,
  - (e) the holder of the floating charge in accordance with the priority of that charge in relation to any other floating charge which has attached, and
  - (f) the holder of a fixed security, other than one referred to in paragraph (a), which is over property subject to the floating charge.]

**Modifications etc. (not altering text)**

**C92** Sch. B1 paras. 112-116 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

## SCHEDULE 1

Sections 14, 42.

### POWERS OF ADMINISTRATOR OR ADMINISTRATIVE RECEIVER

**Modifications etc. (not altering text)**

- C93** Sch. 1 modified (15.7.2003) by [Greater London Authority Act 1999 \(c. 29\)](#), **ss. 220(3), 425**, [Sch. 14 paras. 11, 19](#) (with [Sch. 12 para. 9\(1\)](#)); [S.I. 2003/1920](#), **art. 2(b)**
- C94** Sch. 1 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145, 263(1)(2)** (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

- 1 Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.
- 2 Power to sell or otherwise dispose of the property of the company by public auction or private contract or, in Scotland, to sell, [<sup>F128</sup>feu,] hire out or otherwise dispose of the property of the company by public roup or private bargain.

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### Textual Amendments

**F128** Word in Sch. 1 para. 2 repealed (S.) (28.11.2004) by 2000 asp 5, ss. 71, 76(2), 77(2), Sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

- 3 Power to raise or borrow money and grant security therefor over the property of the company.
- 4 Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.
- 5 Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.
- 6 Power to refer to arbitration any question affecting the company.
- 7 Power to effect and maintain insurances in respect of the business and property of the company.
- 8 Power to use the company's seal.
- 9 Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.
- 10 Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.
- 11 Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
- 12 Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.
- 13 Power to make any payment which is necessary or incidental to the performance of his functions.
- 14 Power to carry on the business of the company.
- 15 Power to establish subsidiaries of the company.
- 16 Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.
- 17 Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.
- 18 Power to make any arrangement or compromise on behalf of the company.
- 19 Power to call up any uncalled capital of the company.
- 20 Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.
- 21 Power to present or defend a petition for the winding up of the company.
- 22 Power to change the situation of the company's registered office.
- 23 Power to do all other things incidental to the exercise of the foregoing powers.

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## SCHEDULE 2

Section 55.

### POWERS OF A SCOTTISH RECEIVER (ADDITIONAL TO THOSE CONFERRED ON HIM BY THE INSTRUMENT OF CHARGE)

#### Modifications etc. (not altering text)

**C95** [Sch. 2](#) applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), [reg. 4\(1\)](#), [Sch. 2](#)

**C96** [Sch. 10](#) modified (S.) (6.4.2001) by [S.S.I. 2001/128](#), [reg. 4\(2\)](#), [Sch. 3](#)

- 1 Power to take possession of, collect and get in the property from the company or a liquidator thereof or any other person, and for that purpose, to take such proceedings as may seem to him expedient.
- 2 Power to sell, [<sup>F129</sup>feu,] hire out or otherwise dispose of the property by public roup or private bargain and with or without advertisement.

#### Textual Amendments

**F129** Word in [Sch. 2 para. 2](#) repealed (S.) (28.11.2004) by [2000 asp 5](#), [ss. 71, 76\(2\), 77\(2\)](#), [Sch. 13 Pt. 1](#) (with [ss. 58, 62, 75](#)); [S.S.I. 2003/456](#), [art. 2](#)

- 3 Power to raise or borrow money and grant security therefor over the property.
- 4 Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.
- 5 Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.
- 6 Power to refer to arbitration all questions affecting the company.
- 7 Power to effect and maintain insurances in respect of the business and property of the company.
- 8 Power to use the company's seal.
- 9 Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.
- 10 Power to to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.
- 11 Power to to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent, and power to employ and dismiss employees.
- 12 Power to do all such things (including the carrying out of works), as may be necessary for the realisation of the property.
- 13 Power to make any payment which is necessary or incidental to the performance of his functions.
- 14 Power to carry on the business of the company or any part of it.
- 15 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.

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16 Power to make any arrangement or compromise on behalf of the company.

17 Power to call up any uncalled capital of the company.

**Modifications etc. (not altering text)**

**C97** Sch. 2 para. 17 modified (S.) (6.4.2001) by S.I. 2001/128, reg. 4(2), Sch. 3

18 Power to to establish subsidiaries of the company.

19 Power to to transfer to subsidiaries of the company the business of the company or any part of it and any of the property.

20 Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person or company indebted to the company and to receive dividends, and to accede to trust deeds for creditors of any such person.

21 Power to present or defend a petition for the winding up of the company.

22 Power to change the situation of the company's registered office.

23 Power to do all other things incidental to the exercise of the powers mentioned in section 55(1) of this Act or above in this Schedule.

[<sup>F130</sup>SCHEDULE 2A

EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF  
ADMINISTRATIVE RECEIVER: SUPPLEMENTARY PROVISIONS

**Textual Amendments**

**F130** Sch. 2A inserted (15.9.2003) by 2002 c. 40, s. 250(2), 279, Sch. 18 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

**Modifications etc. (not altering text)**

**C98** Sch. 2A extended (24.6.2003) by The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003 (S.I. 2003/1633), regs. 1, 15, Sch. 2 para. 7

*Capital market arrangement*

1 (1) For the purposes of section 72B an arrangement is a capital market arrangement if—

(a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or

[ it involves a grant of security to—  
<sup>F131</sup>(aa) (i) a party to the arrangement who issues a capital market investment, or  
(ii) a person who holds the security as trustee for a party to the arrangement in connection with the issue of a capital market investment, or

(ab) it involves a grant of security to a person who holds the security as trustee for a party to the arrangement who agrees to provide finance to another party, or]

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- (b) at least one party guarantees the performance of obligations of another party, or
  - (c) at least one party provides security in respect of the performance of obligations of another party, or
  - (d) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (options, futures and contracts for differences).
- (2) For the purposes of sub-paragraph (1)—
- (a) a reference to holding as trustee includes a reference to holding as nominee or agent,
  - (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
  - (c) a person holds a capital market investment if he has a legal or beneficial interest in it<sup>F132</sup>; and
  - (d) the reference to the provision of finance includes the provision of an indemnity]
- (3) In section 72B(1) and this paragraph “party” to an arrangement includes a party to an agreement which—
- (a) forms part of the arrangement,
  - (b) provides for the raising of finance as part of the arrangement, or
  - (c) is necessary for the purposes of implementing the arrangement.

#### Textual Amendments

- F131** Sch. 2A para. 1(1)(aa)(ab) inserted (15.9.2003) by [The Insolvency Act 1986 \(Amendment\) \(Administrative Receivership and Capital Market Arrangements\) Order 2003](#) (S.I. 2003/1468), arts. 1, 2; S.I. 2003/2093, art. 2(1), Sch. 1
- F132** Sch. 2A para. 1(2)(d) and word inserted (15.9.2003) by [The Insolvency Act 1986 \(Amendment\) \(Administrative Receivership and Capital Market Arrangements\) Order 2003](#) (S.I. 2003/1468), arts. 1, 3; S.I. 2003/2093, art. 2(1), Sch. 1

#### Capital market investment

- 2 (1) For the purposes of section 72B an investment is a capital market investment if it—
- (a) is within article 77 <sup>F133</sup>or 77A] of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (debt instruments), and
  - (b) is rated, listed or traded or designed to be rated, listed or traded.
- (2) In sub-paragraph (1)—
- “rated” means rated for the purposes of investment by an internationally recognised rating agency,
- “listed” means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation), and
- “traded” means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

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(3) In sub-paragraph (2)—

“recognised investment exchange” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange), and

“foreign market” has the same meaning as “relevant market” in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335) (foreign markets).

#### Textual Amendments

**F133** Words in [Sch. 2A para. 2\(1\)\(a\)](#) inserted (24.2.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2010](#) (S.I. 2010/86), art. 4, [Sch. para. 2\(a\)](#)

3 (1) An investment is also a capital market investment for the purposes of section 72B if it consists of a bond or commercial paper issued to one or more of the following—

- (a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,
- (b) a person who is, when the agreement mentioned in section 72B(1) is entered into, a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that order,
- (c) a person to whom article 49(2) of that order applies (high net worth company, &c.),
- (d) a person who is, when the agreement mentioned in section 72B(1) is entered into, a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that order, and
- (e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(2) In sub-paragraph (1)—

“bond” shall be construed in accordance with article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 [<sup>F134</sup>, and includes any instrument falling within article 77A of that Order] (S.I. 2001/544), and

“commercial paper” has the meaning given by article 9(3) of that order.

(3) For the purposes of sub-paragraph (1)—

- (a) in applying article 19(5) of the Financial Promotion Order for the purposes of sub-paragraph (1)(a)—
  - (i) in article 19(5)(b), ignore the words after “exempt person”,
  - (ii) in article 19(5)(c)(i), for the words from “the controlled activity” to the end substitute “a controlled activity”, and
  - (iii) in article 19(5)(e) ignore the words from “where the communication” to the end, and
- (b) in applying article 49(2) of that order for the purposes of sub-paragraph (1)(c), ignore article 49(2)(e).

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### Textual Amendments

**F134** Words in [Sch. 2A para. 3\(2\)](#) inserted (24.2.2010) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) Order 2010 \(S.I. 2010/86\)](#), arts. 1(2), 4, [Sch.](#)

### “Agreement”

- 4 For the purposes of sections 72B and 72E and this Schedule “agreement” includes an agreement or undertaking effected by—
- (a) contract,
  - (b) deed, or
  - (c) any other instrument intended to have effect in accordance with the law of England and Wales, Scotland or another jurisdiction.

### Debt

- 5 The debt of at least £50 million referred to in section 72B(1)(a) or 72E(2)(a)—
- (a) may be incurred at any time during the life of the capital market arrangement or financed project, and
  - (b) may be expressed wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into or the project begins).

### Step-in rights

- 6 (1) For the purposes of sections 72C to 72E a project has “step-in rights” if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—
- (a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or
  - (b) make arrangements for carrying out all or part of the project.
- (2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

### Project company

- 7 (1) For the purposes of sections 72C to 72E a company is a “project company” of a project if—
- (a) it holds property for the purpose of the project,
  - (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,
  - (c) it is one of a number of companies which together carry out the project,
  - (d) it has the purpose of supplying finance to enable the project to be carried out, or
  - (e) it is the holding company of a company within any of paragraphs (a) to (d).
- (2) But a company is not a “project company” of a project if—
- (a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but



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- (b) it also performs a function which is not—
  - (i) within sub-paragraph (1)(a) to (d),
  - (ii) related to a function within sub-paragraph (1)(a) to (d), or
  - (iii) related to the project.

- (3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

#### “Resources”

- 8 In section 72C “resources” includes—
- (a) funds (including payment for the provision of services or facilities),
  - (b) assets,
  - (c) professional skill,
  - (d) the grant of a concession or franchise, and
  - (e) any other commercial resource.

#### “Public body”

- 9 (1) In section 72C “public body” means—
- (a) a body which exercises public functions,
  - (b) a body specified for the purposes of this paragraph by the Secretary of State, and
  - (c) a body within a class specified for the purposes of this paragraph by the Secretary of State.
- (2) A specification under sub-paragraph (1) may be—
- (a) general, or
  - (b) for the purpose of the application of section 72C to a specified case.

#### Regulated business

- 10 (1) For the purposes of section 72D a business is regulated if it is carried on—
- (a) [<sup>F135</sup>in reliance on a licence granted to a person under section 7 of the Telecommunications Act 1984 (c. 12) (telecommunications service),]
  - (b) in reliance on a licence under section 7 [<sup>F136</sup>, 7A or 7B] of the Gas Act 1986 (c. 44) (transport and supply of gas),
  - (c) in reliance on a licence granted by virtue of section 41C of that Act (power to prescribe additional licensable activity),
  - (d) in reliance on a licence under section 6 of the Electricity Act 1989 (c. 29) (supply of electricity),
  - (e) by a water undertaker,
  - (f) by a sewerage undertaker,
  - (g) by a universal service provider within the meaning [<sup>F137</sup>of Part 3 of the Postal Services Act 2011],
  - [<sup>F138</sup>(h) by a Post Office company within the meaning of Part 1 of that Act,]
  - (i) <sup>F139</sup> .....
  - (j) in reliance on a licence under section 8 of the Railways Act 1993 (c. 43) (railway services),

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- (k) in reliance on a licence exemption under section 7 of that Act (subject to sub-paragraph (2) below),
- (l) by the operator of a system of transport which is deemed to be a railway for a purpose of Part I of that Act by virtue of section 81(2) of that Act (tramways, &c.), <sup>F140</sup> . . .
- (m) by the operator of a vehicle carried on flanged wheels along a system within paragraph (l) <sup>F141</sup> or
- (n) in reliance on a European licence granted pursuant to a provision contained in any instrument made for the purpose of implementing Council Directive [1995/18/EC](#) dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive [2001/13/EC](#) dated 26th February 2001 and Directive [2004/49/EC](#) dated 29th April 2004, both of the European Parliament and of the Council, or pursuant to any action taken by an EEA State for that purpose.]

- (2) Sub-paragraph (1)(k) does not apply to the operator of a railway asset on a railway unless on some part of the railway there is a permitted line speed exceeding 40 kilometres per hour.

[ For the purposes of section 72D a business is also regulated to the extent that <sup>F142</sup>(2A) it consists in the provision of a public electronic communications network or a publicelectronic communications service.]

[ In sub-paragraph (1)(n), an “EEA State” means a member State, Norway, Iceland or <sup>F143</sup>(2B) Liechtenstein.]

#### Textual Amendments

- F135** Sch. 2A para. 10(1)(a) repealed (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003](#) (c. 21), ss. 406, 408, 411, **Sch. 19(1)**, Note 1 (with Sch. 18); [S.I. 2003/1900](#), arts. 1(2), **2(1)**, 3(1) (with art. 3(2) (as amended (8.12.2003) by 2003/3142, art. 1(3))); [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)
- F136** Words in Sch. 2A para. 10(1)(b) substituted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012](#) (S.I. 2012/2400), arts. 1, **29**
- F137** Words in Sch. 2A para. 10(1)(g) substituted (1.10.2011) by [Postal Services Act 2011](#) (c. 5), ss. 91, 93(2) (3), **Sch. 12 para. 126(a)**; [S.I. 2011/2329](#), **art. 3** (with arts. 4, 5)
- F138** Sch. 2A para. 10(1)(h) substituted (1.10.2011) by [Postal Services Act 2011](#) (c. 5), ss. 91, 93(2)(3), **Sch. 12 para. 126(b)**; [S.I. 2011/2329](#), **art. 3** (with arts. 4, 5)
- F139** Sch. 2A para. 10(1)(i) omitted (1.10.2011) by virtue of [Postal Services Act 2011](#) (c. 5), ss. 91, 93(2)(3), **Sch. 12 para. 126(c)**; [S.I. 2011/2329](#), **art. 3** (with arts. 4, 5)
- F140** Word in Sch. 2A para. 10(1)(l) omitted (28.11.2005) by virtue of [The Railway \(Licensing of Railway Undertakings\) Regulations 2005](#) (S.I. 2005/3050), regs. 3, 4, 20, **Sch. 1 para. 2(a)** (with Sch. 4)
- F141** Sch. 2A para. 10(1)(n) and preceding word added (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005](#) (S.I. 2005/3050), regs. 3, 4, 20, **Sch. 1 para. 2(b)** (with Sch. 4)
- F142** Sch. 2A para. 10(2A) inserted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by [Communications Act 2003](#) (c. 21), ss. 406, 408, 411, **Sch. 17 para. 82(b)** (with Sch. 18); [S.I. 2003/1900](#), arts. 1(2), **2(1)**, 3(1) (with art. 3(2) (as amended (8.12.2003) by 2003/3142, art. 1(3))); [S.I. 2003/3142](#), **art. 3(2)** (with art. 11)
- F143** Sch. 2A para. 10(2B) added (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005](#) (S.I. 2005/3050), regs. 3, 4, 20, **Sch. 1 para. 2(c)** (with Sch. 4)

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“Person”

- 11 A reference to a person in this Schedule includes a reference to a partnership or another unincorporated group of persons.]

SCHEDULE 3

Section 162.

ORDERS IN COURSE OF WINDING UP PRONOUNCED IN VACATION (SCOTLAND)

**Modifications etc. (not altering text)**

**C99** [Sch. 3](#) applied (with modifications) (S.) (6.4.2002) by [S.S.I. 2001/128](#), [reg. 4\(1\)](#), [Sch. 2](#)

**PART I**

ORDERS WHICH ARE TO BE FINAL

Orders under section 153, as to the time for proving debts and claims.

Orders under section 195 as to meetings for ascertaining wishes of creditors or contributories.

Orders under section 198, as to the examination of witnesses in regard to the property or affairs of a company.

**PART II**

ORDERS WHICH ARE TO TAKE EFFECT UNTIL MATTER DISPOSED OF BY INNER HOUSE

Orders under section 126(1), 130(2) or (3), 147, 227 or 228, restraining or permitting the commencement or the continuance of legal proceedings.

Orders under section 135(5), limiting the powers of provisional liquidators.

Orders under section 108, appointing a liquidator to fill a vacancy.

Orders under section 167 or 169, sanctioning the exercise of any powers by a liquidator, other than the powers specified in paragraphs 1, 2 and 3 of Schedule 4 to this Act.

Orders under section 158, as to the arrest and detention of an absconding contributory and his property.

SCHEDULE 4

Sections 165, 167.

POWERS OF LIQUIDATOR IN A WINDING UP

**Modifications etc. (not altering text)**

**C100** [Sch. 4](#) applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), [reg. 4\(1\)](#), [Sch. 2](#)

**C101** [Sch. 4](#) excluded (1.12.2001) by [2000 c. 8, s. 376\(12\)](#); [S.I. 2001/3538](#), [art. 2](#)

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- C102** Sch. 4 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2
- C103** Sch. 4 applied (with modifications) (S.) (29.3.2009 at 4.00 p.m.) by [The Building Society Special Administration \(Scotland\) Rules 2009 \(S.I. 2009/806\)](#), **rules 2**, 38-41
- C104** Sch. 4 applied (with modifications) (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), Pt. 3 reg. 1, Sch. 2 paras. 3, **5** (with reg. 24)

## PART I

### POWERS EXERCISABLE WITH SANCTION

#### Modifications etc. (not altering text)

- C105** Sch. 4, Pt. I (paras. 1–3), Pt. II (paras. 4, 5), Pt. III (paras. 6–13) extended by [S.I. 1990/1338](#), **art. 2**, [Sch. 1 para. 2\(7\)](#)

- 1 Power to pay any class of creditors in full.
- 2 Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.
- 3 <sup>[F144]</sup>In the case of a winding up in Scotland,] power to compromise, on such terms as may be agreed—
  - (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and
  - (b) all questions in any way relating to or affecting the assets or the winding up of the company,
 and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

#### Textual Amendments

- F144** Words in Sch. 4 para. 3 inserted (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), **art. 10(1)** (with **art. 12(5)**)

- <sup>[F145]</sup>3A Power to bring legal proceedings under section 213, 214, 238, 239, 242, 243 or 423.]

#### Textual Amendments

- F145** Sch. 4 Pt. I para. 3A inserted (15.9.2003) by [2002 c. 40](#), **ss. 253, 279** (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, [Sch. 1](#) (subject to **arts. 3-8** (as amended by S.I. 2003/2332, **art. 2**))

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## PART II

### POWERS EXERCISABLE WITHOUT SANCTION IN VOLUNTARY WINDING UP, WITH SANCTION IN WINDING UP BY THE COURT

#### Modifications etc. (not altering text)

**C106** Sch. 4, Pt. I (paras. 1–3), Pt. II (paras. 4, 5), Pt. III (paras. 6–13) extended by [S.I. 1990/1338, art. 2, Sch. 1 para. 2\(7\)](#)

- 4 Power to bring or defend any action or other legal proceeding in the name annd on behalf of the company.
- 5 Power to carry on the business of the company so far as may be necessary for its beneficial winding up.

## PART III

### POWERS EXERCISABLE WITHOUT SANCTION IN ANY WINDING UP

#### Modifications etc. (not altering text)

**C107** Sch. 4, Pt. I (paras. 1–3), Pt. II (paras. 4, 5), Pt. III (paras. 6–13) extended by [S.I. 1990/1338, art. 2, Sch. 1 para. 2\(7\)](#)

- 6 Power to sell any of the company’s property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.
- [<sup>F146</sup>6A In the case of a winding up in England and Wales, power to compromise, on such terms as may be agreed—
- (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and
  - (b) subject to paragraph 2 in Part 1 of this Schedule, all questions in any way relating to or affecting the assets or the winding up of the company,
- and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.]

#### Textual Amendments

**F146** Sch. 4 para. 6A inserted (E.W.) (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\), art. 10\(2\)](#) (with art. 12(5))

- 7 Power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company’s seal.
- 8 Power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the

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- bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.
- 9 Power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.
- 10 Power to raise on the security of the assets of the company any money requisite.
- 11 Power to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the company.
- In all such cases the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.
- 12 Power to appoint an agent to do any business which the liquidator is unable to do himself.
- 13 Power to do all such other things as may be necessary for winding up the company's affairs and distributing its assets.

**Modifications etc. (not altering text)**

**C108** Sch. 4 para. 13 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), ss. [145](#), [263\(1\)\(2\)](#) (with s. [247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), Sch. para. [3](#)

## [<sup>F147</sup>SCHEDULE 4ZA

### CONDITIONS FOR MAKING A DEBT RELIEF ORDER

**Textual Amendments**

**F147** [Sch. 4ZA](#) inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. [108\(2\)](#), [148\(5\)](#), [Sch. 18](#); [S.I. 2009/382](#), [art. 2](#)

## PART 1

### CONDITIONS WHICH MUST BE MET

#### *Connection with England and Wales*

- 1 (1) The debtor—
- (a) is domiciled in England and Wales on the application date; or
  - (b) at any time during the period of three years ending with that date—
    - (i) was ordinarily resident, or had a place of residence, in England and Wales; or

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(ii) carried on business in England and Wales.

- (2) The reference in sub-paragraph (1)(b)(ii) to the debtor carrying on business includes—
- (a) the carrying on of business by a firm or partnership of which he is a member;
  - (b) the carrying on of business by an agent or manager for him or for such a firm or partnership.

*Debtor's previous insolvency history*

- 2 The debtor is not, on the determination date—
- (a) an undischarged bankrupt;
  - (b) subject to an interim order or voluntary arrangement under Part 8; or
  - (c) subject to a bankruptcy restrictions order or a debt relief restrictions order.
- 3 A debtor's petition for the debtor's bankruptcy under Part 9—
- (a) has not been presented by the debtor before the determination date;
  - (b) has been so presented, but proceedings on the petition have been finally disposed of before that date; or
  - (c) has been so presented and proceedings in relation to the petition remain before the court at that date, but the court has referred the debtor under section 274A(2) for the purposes of making an application for a debt relief order.
- 4 A creditor's petition for the debtor's bankruptcy under Part 9—
- (a) has not been presented against the debtor at any time before the determination date;
  - (b) has been so presented, but proceedings on the petition have been finally disposed of before that date; or
  - (c) has been so presented and proceedings in relation to the petition remain before the court at that date, but the person who presented the petition has consented to the making of an application for a debt relief order.
- 5 A debt relief order has not been made in relation to the debtor in the period of six years ending with the determination date.

*Limit on debtor's overall indebtedness*

- 6 (1) The total amount of the debtor's debts on the determination date, other than unliquidated debts and excluded debts, does not exceed the prescribed amount.
- (2) For this purpose an unliquidated debt is a debt that is not for a liquidated sum payable to a creditor either immediately or at some future certain time.

*Limit on debtor's monthly surplus income*

- 7 (1) The debtor's monthly surplus income (if any) on the determination date does not exceed the prescribed amount.
- (2) For this purpose “monthly surplus income” is the amount by which a person's monthly income exceeds the amount necessary for the reasonable domestic needs of himself and his family.
- (3) The rules may—



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- (a) make provision as to how the debtor's monthly surplus income is to be determined;
- (b) provide that particular descriptions of income are to be excluded for the purposes of this paragraph.

*Limit on value of debtor's property*

- 8 (1) The total value of the debtor's property on the determination date does not exceed the prescribed amount.
- (2) The rules may—
- (a) make provision as to how the value of a person's property is to be determined;
  - (b) provide that particular descriptions of property are to be excluded for the purposes of this paragraph.

## PART 2

### OTHER CONDITIONS

- 9 (1) The debtor has not entered into a transaction with any person at an undervalue during the period between—
- (a) the start of the period of two years ending with the application date; and
  - (b) the determination date.
- (2) For this purpose a debtor enters into a transaction with a person at an undervalue if—
- (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration;
  - (b) he enters into a transaction with that person in consideration of marriage or the formation of a civil partnership; or
  - (c) he 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 individual.
- 10 (1) The debtor has not given a preference to any person during the period between—
- (a) the start of the period of two years ending with the application date; and
  - (b) the determination date.
- (2) For this purpose a debtor gives a preference to a person if—
- (a) that person is one of the debtor's creditors to whom a qualifying debt is owed or is a surety or guarantor for any such debt, and
  - (b) the debtor 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 that a debt relief order is made in relation to the debtor, will be better than the position he would have been in if that thing had not been done.]

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## <sup>F148</sup>SCHEDULE 4ZB

### DEBT RELIEF RESTRICTIONS ORDERS AND UNDERTAKINGS

#### Textual Amendments

**F148** Sch. 4ZB inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 108(2), 148(5), **Sch. 19**; S.I. 2009/382, **art. 2**

#### *Debt relief restrictions order*

- 1 (1) A debt relief restrictions order may be made by the court in relation to a person in respect of whom a debt relief order has been made.
- (2) An order may be made only on the application of—
  - (a) the Secretary of State, or
  - (b) the official receiver acting on a direction of the Secretary of State.

#### *Grounds for making order*

- 2 (1) The court shall grant an application for a debt relief restrictions order if it thinks it appropriate to do so having regard to the conduct of the debtor (whether before or after the making of the debt relief order).
- (2) The court shall, in particular, take into account any of the following kinds of behaviour on the part of the debtor—
  - (a) failing to keep records which account for a loss of property by the debtor, or by a business carried on by him, where the loss occurred in the period beginning two years before the application date for the debt relief order and ending with the date of the application for the debt relief restrictions order;
  - (b) failing to produce records of that kind on demand by the official receiver;
  - (c) entering into a transaction at an undervalue in the period beginning two years before the application date for the debt relief order and ending with the date of the determination of that application;
  - (d) giving a preference in the period beginning two years before the application date for the debt relief order and ending with the date of the determination of that application;
  - (e) making an excessive pension contribution;
  - (f) a failure to supply goods or services that were wholly or partly paid for;
  - (g) trading at a time, before the date of the determination of the application for the debt relief order, when the debtor knew or ought to have known that he was himself to be unable to pay his debts;
  - (h) incurring, before the date of the determination of the application for the debt relief order, a debt which the debtor had no reasonable expectation of being able to pay;
  - (i) failing to account satisfactorily to the court or the official receiver for a loss of property or for an insufficiency of property to meet his debts;
  - (j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of his inability to pay his debts before the application date for the

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- debt relief order or which took place between that date and the date of the determination of the application for the debt relief order;
  - (k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of his inability to pay his debts;
  - (l) fraud or fraudulent breach of trust;
  - (m) failing to co-operate with the official receiver.
- (3) The court shall also, in particular, consider whether the debtor was an undischarged bankrupt at some time during the period of six years ending with the date of the application for the debt relief order.
- (4) For the purposes of sub-paragraph (2)—
- “excessive pension contribution” shall be construed in accordance with section 342A;
  - “preference” shall be construed in accordance with paragraph 10(2) of Schedule 4ZA;
  - “undervalue” shall be construed in accordance with paragraph 9(2) of that Schedule.

#### *Timing of application for order*

- 3 An application for a debt relief restrictions order in respect of a debtor may be made—
- (a) at any time during the moratorium period relating to the debt relief order in question, or
  - (b) after the end of that period, but only with the permission of the court.

#### *Duration of order*

- 4 (1) A debt relief restrictions order—
- (a) comes into force when it is made, and
  - (b) ceases to have effect at the end of a date specified in the order.
- (2) The date specified in a debt relief restrictions order under sub-paragraph (1)(b) must not be—
- (a) before the end of the period of two years beginning with the date on which the order is made, or
  - (b) after the end of the period of 15 years beginning with that date.

#### *Interim debt relief restrictions order*

- 5 (1) This paragraph applies at any time between—
- (a) the institution of an application for a debt relief restrictions order, and
  - (b) the determination of the application.
- (2) The court may make an interim debt relief restrictions order if the court thinks that—
- (a) there are prima facie grounds to suggest that the application for the debt relief restrictions order will be successful, and
  - (b) it is in the public interest to make an interim debt relief restrictions order.
- (3) An interim debt relief restrictions order may only be made on the application of—
- (a) the Secretary of State, or

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- (b) the official receiver acting on a direction of the Secretary of State.
- (4) An interim debt relief restrictions order—
  - (a) has the same effect as a debt relief restrictions order, and
  - (b) comes into force when it is made.
- (5) An interim debt relief restrictions order ceases to have effect—
  - (a) on the determination of the application for the debt relief restrictions order,
  - (b) on the acceptance of a debt relief restrictions undertaking made by the debtor, or
  - (c) if the court discharges the interim debt relief restrictions order on the application of the person who applied for it or of the debtor.
- 6 (1) This paragraph applies to a case in which both an interim debt relief restrictions order and a debt relief restrictions order are made.
- (2) Paragraph 4(2) has effect in relation to the debt relief restrictions order as if a reference to the date of that order were a reference to the date of the interim debt relief restrictions order.

#### *Debt relief restrictions undertaking*

- 7 (1) A debtor may offer a debt relief restrictions undertaking to the Secretary of State.
- (2) In determining whether to accept a debt relief restrictions undertaking the Secretary of State shall have regard to the matters specified in paragraph 2(2) and (3).
- 8 A reference in an enactment to a person in respect of whom a debt relief restrictions order has effect (or who is “the subject of” a debt relief restrictions order) includes a reference to a person in respect of whom a debt relief restrictions undertaking has effect.
- 9 (1) A debt relief restrictions undertaking—
  - (a) comes into force on being accepted by the Secretary of State, and
  - (b) ceases to have effect at the end of a date specified in the undertaking.
- (2) The date specified under sub-paragraph (1)(b) must not be—
  - (a) before the end of the period of two years beginning with the date on which the undertaking is accepted, or
  - (b) after the end of the period of 15 years beginning with that date.
- (3) On an application by the debtor the court may—
  - (a) annul a debt relief restrictions undertaking;
  - (b) provide for a debt relief restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

#### *Effect of revocation of debt relief order*

- 10 Unless the court directs otherwise, the revocation at any time of a debt relief order does not —
  - (a) affect the validity of any debt relief restrictions order, interim debt relief restrictions order or debt relief restrictions undertaking which is in force in respect of the debtor;

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- (b) prevent the determination of any application for a debt relief restrictions order, or an interim debt relief restrictions order, in relation to the debtor that was instituted before that time;
- (c) prevent the acceptance of a debt relief restrictions undertaking that was offered before that time; or
- (d) prevent the institution of an application for a debt relief restrictions order or interim debt relief restrictions order in respect of the debtor, or the offer or acceptance of a debt relief restrictions undertaking by the debtor, after that time.]

## [<sup>F149</sup>SCHEDULE 4A

### Textual Amendments

**F149** Sch. 4A inserted (1.4.2004) by 2002 c. 40, ss. 257(2), 279, Sch. 20 (with s. 249(6)); S.I. 2003/2093, art. 2(2), Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

## BANKRUPTCY RESTRICTIONS ORDER AND UNDERTAKING

### *Bankruptcy restrictions order*

- 1 (1) A bankruptcy restrictions order may be made by the court.
- (2) An order may be made only on the application of—
  - (a) the Secretary of State, or
  - (b) the official receiver acting on a direction of the Secretary of State.

### *Grounds for making order*

- 2 (1) The court shall grant an application for a bankruptcy restrictions order if it thinks it appropriate having regard to the conduct of the bankrupt (whether before or after the making of the bankruptcy order).
- (2) The court shall, in particular, take into account any of the following kinds of behaviour on the part of the bankrupt—
  - (a) failing to keep records which account for a loss of property by the bankrupt, or by a business carried on by him, where the loss occurred in the period beginning 2 years before petition and ending with the date of the application;
  - (b) failing to produce records of that kind on demand by the official receiver or the trustee;
  - (c) entering into a transaction at an undervalue;
  - (d) giving a preference;
  - (e) making an excessive pension contribution;
  - (f) a failure to supply goods or services which were wholly or partly paid for which gave rise to a claim provable in the bankruptcy;
  - (g) trading at a time before commencement of the bankruptcy when the bankrupt knew or ought to have known that he was himself to be unable to pay his debts;

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- (h) incurring, before commencement of the bankruptcy, a debt which the bankrupt had no reasonable expectation of being able to pay;
  - (i) failing to account satisfactorily to the court, the official receiver or the trustee for a loss of property or for an insufficiency of property to meet bankruptcy debts;
  - (j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of the bankruptcy or which took place between presentation of the petition and commencement of the bankruptcy;
  - (k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of the bankruptcy;
  - (l) fraud or fraudulent breach of trust;
  - (m) failing to cooperate with the official receiver or the trustee.
- (3) The court shall also, in particular, consider whether the bankrupt was an undischarged bankrupt at some time during the period of six years ending with the date of the bankruptcy to which the application relates.
- (4) For the purpose of sub-paragraph (2)—
- “before petition” shall be construed in accordance with section 351(c),
  - “excessive pension contribution” shall be construed in accordance with section 342A,
  - “preference” shall be construed in accordance with section 340, and
  - “undervalue” shall be construed in accordance with section 339.

#### *Timing of application for order*

- 3 (1) An application for a bankruptcy restrictions order in respect of a bankrupt must be made—
- (a) before the end of the period of one year beginning with the date on which the bankruptcy commences, or
  - (b) with the permission of the court.
- (2) The period specified in sub-paragraph (1)(a) shall cease to run in respect of a bankrupt while the period set for his discharge is suspended under section 279(3).

#### *Duration of order*

- 4 (1) A bankruptcy restrictions order—
- (a) shall come into force when it is made, and
  - (b) shall cease to have effect at the end of a date specified in the order.
- (2) The date specified in a bankruptcy restrictions order under sub-paragraph (1)(b) must not be—
- (a) before the end of the period of two years beginning with the date on which the order is made, or
  - (b) after the end of the period of 15 years beginning with that date.

#### *Interim bankruptcy restrictions order*

- 5 (1) This paragraph applies at any time between—

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- (a) the institution of an application for a bankruptcy restrictions order, and
  - (b) the determination of the application.
- (2) The court may make an interim bankruptcy restrictions order if the court thinks that—
  - (a) there are prima facie grounds to suggest that the application for the bankruptcy restrictions order will be successful, and
  - (b) it is in the public interest to make an interim order.
- (3) An interim order may be made only on the application of—
  - (a) the Secretary of State, or
  - (b) the official receiver acting on a direction of the Secretary of State.
- (4) An interim order—
  - (a) shall have the same effect as a bankruptcy restrictions order, and
  - (b) shall come into force when it is made.
- (5) An interim order shall cease to have effect—
  - (a) on the determination of the application for the bankruptcy restrictions order,
  - (b) on the acceptance of a bankruptcy restrictions undertaking made by the bankrupt, or
  - (c) if the court discharges the interim order on the application of the person who applied for it or of the bankrupt.
- 6 (1) This paragraph applies to a case in which both an interim bankruptcy restrictions order and a bankruptcy restrictions order are made.
- (2) Paragraph 4(2) shall have effect in relation to the bankruptcy restrictions order as if a reference to the date of that order were a reference to the date of the interim order.

#### *Bankruptcy restrictions undertaking*

- 7 (1) A bankrupt may offer a bankruptcy restrictions undertaking to the Secretary of State.
- (2) In determining whether to accept a bankruptcy restrictions undertaking the Secretary of State shall have regard to the matters specified in paragraph 2(2) and (3).
- 8 A reference in an enactment to a person in respect of whom a bankruptcy restrictions order has effect (or who is “the subject of” a bankruptcy restrictions order) includes a reference to a person in respect of whom a bankruptcy restrictions undertaking has effect.
- 9 (1) A bankruptcy restrictions undertaking—
  - (a) shall come into force on being accepted by the Secretary of State, and
  - (b) shall cease to have effect at the end of a date specified in the undertaking.
- (2) The date specified under sub-paragraph (1)(b) must not be—
  - (a) before the end of the period of two years beginning with the date on which the undertaking is accepted, or
  - (b) after the end of the period of 15 years beginning with that date.
- (3) On an application by the bankrupt the court may—
  - (a) annul a bankruptcy restrictions undertaking;
  - (b) provide for a bankruptcy restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).



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### *Effect of annulment of bankruptcy order*

- 10 Where a bankruptcy order is annulled under section 282(1)(a) or (2)—
- (a) any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt shall be annulled,
  - (b) no new bankruptcy restrictions order or interim order may be made in respect of the bankrupt, and
  - (c) no new bankruptcy restrictions undertaking by the bankrupt may be accepted.
- 11 Where a bankruptcy order is annulled under section 261, 263D or 282(1)(b)—
- (a) the annulment shall not affect any bankruptcy restrictions order, interim order or undertaking in respect of the bankrupt,
  - (b) the court may make a bankruptcy restrictions order in relation to the bankrupt on an application instituted before the annulment,
  - (c) the Secretary of State may accept a bankruptcy restrictions undertaking offered before the annulment, and
  - (d) an application for a bankruptcy restrictions order or interim order in respect of the bankrupt may not be instituted after the annulment.

### *Registration*

- 12 The Secretary of State shall maintain a register of—
- (a) bankruptcy restrictions orders,
  - (b) interim bankruptcy restrictions orders, and
  - (c) bankruptcy restrictions undertakings.]

## SCHEDULE 5

Section 314.

### POWERS OF TRUSTEE IN BANKRUPTCY

#### PART I

##### POWERS EXERCISABLE WITH SANCTION

- 1 Power to carry on any business of the bankrupt so far as may be necessary for winding it up beneficially and so far as the trustee is able to do so without contravening any requirement imposed by or under any enactment.
- 2 Power to bring, institute or defend any action or legal proceedings relating to the property comprised in the bankrupt's estate.
- [<sup>F150</sup>2A Power to bring legal proceedings under section 339, 340 or 423.]

#### Textual Amendments

**F150** Sch. 5 Pt. I para. 2A inserted (15.9.2003) by 2002 c. 40, ss. 262, 279 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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- 3 Power to accept as the consideration for the sale of any property comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditors' committee or the court thinks fit.
- 4 Power to mortgage or pledge any part of the property comprised in the bankrupt's estate for the purpose of raising money for the payment of his debts.
- 5 Power, where any right, option or other power forms part of the bankrupt's estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power.
- 6 <sup>[F151]</sup>Power to refer to arbitration, or compromise on such terms as may be agreed on, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.]

#### Textual Amendments

**F151** Sch. 5 para. 6 omitted (E.W.) (6.4.2010) by virtue of [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), [art. 11\(1\)\(a\)](#) (with [art. 12\(5\)](#))

- 7 Power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of bankruptcy debts.
- 8 Power to make such compromise or other arrangement as ay be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the trustee by any person <sup>[F152]</sup>or by the trustee on any person].

#### Textual Amendments

**F152** Words in Sch. 5 para. 8 omitted (E.W.) (6.4.2010) by virtue of [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), [art. 11\(1\)\(b\)](#) (with [art. 12\(5\)](#))

## PART II

### GENERAL POWERS

- 9 Power to sell any part of the property for the time being comprised in the bankrupt's estate, including the goodwill and book debts of any business.
- <sup>[F153]</sup>9A Power to refer to arbitration, or compromise on such terms as may be agreed, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

#### Textual Amendments

**F153** Sch. 5 paras. 9A 9B inserted (E.W.) (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), [art. 11\(2\)](#) (with [art. 12\(5\)](#))

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- 9B Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made by the trustee on any person.]

**Textual Amendments**

**F153** Sch. 5 paras. 9A 9B inserted (E.W.) (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), **art. 11(2)** (with [art. 12\(5\)](#))

- 10 Power to give receipts for any money received by him, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application.
- 11 Power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate.
- 12 Power to exercise in relation to any property comprised in the bankrupt's estate any powers the capacity to exercise which is vested in him under Parts VIII to XI of this Act.
- 13 Power to deal with any property comprised in the estate to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

**PART III**

**ANCILLARY POWERS**

- 14 For the purposes of, or in connection with, the exercise of any of his powers under Parts VIII to XI of this Act, the trustee may, by his official name—
- (a) hold property of every description,
  - (b) make contracts,
  - (c) sue and be sued,
  - (d) enter into engagements binding on himself and, in respect of the bankrupt's estate, on his successors in office,
  - (e) employ an agent,
  - (f) execute any power of attorney, deed or other instrument;
- and he may do any other act which is necessary or expedient for the purposes of or in connection with the exercise of those powers.

**SCHEDULE 6**

Section 386.

**THE CATEGORIES OF PREFERENTIAL DEBTS**

**Modifications etc. (not altering text)**

**C109** Sch. 6 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

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**C110** Sch. 6 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3

### *Category 1: Debts due to Inland Revenue*

- 1 <sup>[F154]</sup>Sums due at the relevant date from the debtor on account of deductions of income tax from <sup>[F155]</sup>taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003)] paid during the period of 12 months next before that date.

The deductions here referred to are those which the debtor was liable to make under <sup>[F156]</sup>PAYE regulations], less the amount of the repayments of income tax which the debtor was liable to make during that period.]

#### **Textual Amendments**

- F154** Sch. 6 para. 1 ceased to have effect (15.9.2003) and repealed (prosp.) by [2002 c. 40](#), **ss. 251(1)(a)**, 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to **arts. 3-8** (as amended by S.I. 2003/2332, art. 2))
- F155** Words in Sch. 6 para. 1 substituted (6.4.2003 with effect as mentioned in s. 723(1)(a)(b)) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), **ss. 722, 723**, **Sch. 6 Pt. 2 para. 154(a)** (subject to transitional provisions and savings in Sch. 7)
- F156** Words in Sch. 6 para. 1 substituted (6.4.2003 with effect as mentioned in s. 723(1)(a)(b)) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), **ss. 722, 723**, **Sch. 6 Pt. 2 para. 154(b)** (subject to transitional provisions and savings in Sch. 7)

- 2 <sup>[F157]</sup>Sums due to the relevant date from the debtor in respect of such deductions as are required to be made by the debtor for that period under section <sup>[F158]</sup>559 of the Income and Corporation Taxes Act 1988] (sub-contractors in the construction industry).]

#### **Textual Amendments**

- F157** Sch. 6 para. 2 ceased to have effect (15.9.2003) and repealed (prosp.) by [2002 c. 40](#), **ss. 251(1)(a)**, 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to **arts. 3-8** (as amended by S.I. 2003/2332, art. 2))
- F158** Words substituted by [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#), s. 844, Sch. 29 para. 32, **Sch. 30 para. 6(1)**

### *Category 2: Debts due to Customs and Excise*

- 3 <sup>[F159]</sup>Any value added tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6-month period”).

For the purposes of this paragraph—

- (a) where the whole of the prescribed accounting period to which any value added tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and

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- (b) in any other case the amount of any value added tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting reference period in question as falls within the 6-month period;

and in sub-paragraph (a) “prescribed” means prescribed by regulations under the <sup>M8</sup>Value Added Tax Act [<sup>F160</sup>1994].]

#### Textual Amendments

**F159** Sch. 6 para. 3 ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

**F160** Words in Sch. 6 para. 3 substituted (1.9.1994) by 1994 c. 23, ss. 100(1), 101(1), Sch. 14 para. 8 (with Sch. 13 para. 9)

#### Marginal Citations

**M8** 1983 c. 55.

[<sup>F161</sup>  
<sup>F162</sup>3A Any insurance premium tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6-month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any insurance premium tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any insurance premium tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1994.]]

#### Textual Amendments

**F161** Sch. 6 para. 3A ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

**F162** Sch. 6 para. 3A inserted (3.5.1994) by 1994 c. 9, s. 64, Sch. 7 Pt. III para. 7(2)

[<sup>F163</sup>  
<sup>F164</sup>3B Any landfill tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6-month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any landfill tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any landfill tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

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and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1996.]]

#### Textual Amendments

**F163** Sch. 6 para. 3B ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

**F164** Sch. 6 para. 3B inserted (29.4.1996) by 1996 c. 8, s. 60, Sch. 5 Pt. III para. 12(1)

<sup>F165</sup>  
<sup>F166</sup>3C Any climate change levy which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6-month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any climate change levy is attributable falls within the 6-month period, the whole amount of that levy is referable to that period; and
- (b) in any other case the amount of any climate change levy which is referable to the 6-month period is the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Schedule 6 to the Finance Act 2000.]]

#### Textual Amendments

**F165** Sch. 6 para. 3C ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

**F166** Sch. 6 para. 3C inserted (28.7.2000) by 2000 c. 17, s. 30, Sch. 7 para. 3(1)(b)(2)

<sup>F167</sup>  
<sup>F168</sup>3D Any aggregates levy which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6-month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any aggregates levy is attributable falls within the 6-month period, the whole amount of that levy is referable to that period; and
- (b) in any other case the amount of any aggregates levy which is referable to the 6-month period is the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Part 2 of the Finance Act 2001.]]

#### Textual Amendments

**F167** Sch. 6 para. 3D ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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**F168** Sch. 6 para. 3D inserted (11.5.2001) by 2001 c. 9, s. 27, **Sch. 5 para. 17(b)(2)**

4

[<sup>F169</sup>The amount of any car tax which is due at the relevant date from the debtor and which became due within a period of 12 months next before that date.]

#### Textual Amendments

**F169** Sch. 6 para. 4 ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, **Sch. 26** (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, **Sch. 1** (subject to **arts. 3-8** (as amended by S.I. 2003/2332, **art. 2**))

5

[<sup>F170</sup>Any amount which is due—

- (a) by way of general betting duty [<sup>F171</sup>, bingo duty or gaming duty], or
- (b) under section 12(1) of the <sup>M9</sup>Betting and Gaming Duties Act 1981 (general betting duty and pool betting duty recoverable from agent collecting stakes), <sup>F172</sup> . . .

<sup>F172</sup>(c) . . . . .

from the debtor at the relevant date and which became due within the period of 12 months next before that date.]

#### Textual Amendments

**F170** Sch. 6 para. 5 ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, **Sch. 26** (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, **Sch. 1** (subject to **arts. 3-8** (as amended by S.I. 2003/2332, **art. 2**))

**F171** Words in Sch. 6 para. 5(a) substituted (19.3.1997) by 1997 c. 16, ss. 13(2), 15, **Sch. 2 Pt. II para. 6**

**F172** Sch. 6 para. 5(c) and word preceding it repealed (19.3.1997 but without application in relation to any amount due in respect of duty chargeable for a period beginning before 1.10.1997) by 1997 c. 16, s. 113, **Sch. 18 Pt. II** Notes 1, 2

#### Marginal Citations

**M9** 1981 c. 63.

[<sup>F173</sup>  
<sup>F174</sup>5A The amount of any excise duty on beer which is due at the relevant date from the debtor and which became due within a period of 6 months next before that date.]]

#### Textual Amendments

**F173** Sch. 6 para. 5A ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, **Sch. 26** (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, **Sch. 1** (subject to **arts. 3-8** (as amended by S.I. 2003/2332, **art. 2**))

**F174** Sch. 6 para. 5A inserted (1.6.1993) by **Finance Act 1991** (c. 31), s. 7, **Sch. 2 para. 22**; S.I. 1993/1152, **art. 3**, **Sch. 1 Pt. II**

[<sup>F175</sup>  
<sup>F176</sup>5B Any amount which is due by way of lottery duty from the debtor at the relevant date and which became due within the period of 12 months next before that date.]]



*Status: Point in time view as at 01/04/2014.*

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#### Textual Amendments

**F175** Sch. 6 para. 5B ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

**F176** Sch. 6 para. 5B inserted (1.12.1993) by 1993 c. 34, ss. 36(2), 40(2)(3); S.I. 1993/2842, art. 3(1)

[<sup>F177</sup>  
<sup>F178</sup>5C Any amount which is due by way of air passenger duty from the debtor at the relevant date and which became due within the period of six months next before that date.]]

#### Textual Amendments

**F177** Sch. 6 para. 5C ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

**F178** Sch. 6 para. 5C inserted (3.5.1994 with application to any carriage of a passenger on an aircraft which begins after 31.10.1994) by 1994 c. 9, ss. 40(2), 44, Sch. 6 para. 13(1)

### Category 3: Social security contributions

6

[<sup>F179</sup>All sums which on the relevant date are due from the debtor on account of Class 1 or Class 2 contributions under the [<sup>F180</sup>Social Security Contributions and Benefits Act 1992] or the <sup>M10</sup> Social Security (Northern Ireland) Act 1975 and which became due from the debtor in the 12 months next before the relevant date.]

#### Textual Amendments

**F179** Sch. 6 para. 6 ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(c), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

**F180** Words in Sch. 6 para. 6 substituted (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 4, 7(2), Sch. 2 para. 73

#### Marginal Citations

**M10** 1975 c. 15

7

[<sup>F181</sup>All sums which on the relevant date have been assessed on and are due from the debtor on account of Class 4 contributions under either of those Acts of 1975, being sums which—

- (a) are due to the Commissioners of Inland Revenue (rather than to the Secretary of State or a Northern Ireland department), and
- (b) are assessed on the debtor up to 5th April next before the relevant date, but not exceeding, in the whole, any one year's assessment.]

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#### Textual Amendments

**F181** Sch. 6 para. 7 ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(c), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

#### *Category 4: Contributions to occupational pension schemes, etc.*

- 8 Any sum which is owed by the debtor and is a sum to which [<sup>F182</sup>Schedule 4 to the Pension Schemes Act 1993] applies (contributions to occupational pension schemes and state scheme premiums).

#### Textual Amendments

**F182** Words in Sch. 6 para. 8 substituted (7.2.1994) by 1993 c. 48, s. 190, Sch. 8 para.18 (with s. 6(8)); S.I. 1994/86, art. 2

#### *Category 5: Remuneration, etc., of employees*

- 9 So much of any amount which—
- (a) is owed by the debtor to a person who is or has been an employee of the debtor, and
  - (b) is payable by way of remuneration in respect of the whole or any part of the period of 4 months next before the relevant date,
- as does not exceed so much as may be prescribed by order made by the Secretary of State.
- 10 An amount owed by way of accrued holiday remuneration, in respect of any period of employment before the relevant date, to a person whose employment by the debtor has been terminated, whether before, on or after that date.
- 11 So much of any sum owed in respect of money advanced for the purpose as has been applied for the payment of a debt which, if it had not been paid, would have been a debt falling within paragraph 9 or 10.
- 12 So much of any amount which—
- (a) is ordered (whether before or after the relevant date) to be paid by the debtor under the <sup>M11</sup>Reserve Forces (Safeguard of Employment) Act 1985, and
  - (b) is so ordered in respect of a default made by the debtor before that date in the discharge of his obligations under that Act,
- as does not exceed such amount as may be prescribed by order made by the Secretary of State.

#### Marginal Citations

**M11** 1985 c. 17.

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### *Interpretation for Category 5*

- 13 (1) For the purposes of paragraphs 9 to 12, a sum is payable by the debtor to a person by way of remuneration in respect of any period if—
- (a) it is paid as wages or salary (whether payable for time or for piece work or earned wholly or partly by way of commission) in respect of services rendered to the debtor in that period, or
  - (b) it is an amount falling within the following sub-paragraph and is payable by the debtor in respect of that period.
- [<sup>F183</sup>(2) An amount falls within this sub-paragraph if it is—
- (a) a guarantee payment under Part III of the Employment Rights Act 1996 (employee without work to do);
  - (b) any payment for time off under section 53 (time off to look for work or arrange training) or section 56 (time off for ante-natal care) of that Act or under section 169 of the Trade Union and Labour Relations (Consolidation) Act 1992 (time off for carrying out trade union duties etc.);
  - (c) remuneration on suspension on medical grounds, or on maternity grounds, under Part VII of the Employment Rights Act 1996; or
  - (d) remuneration under a protective award under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancy dismissal with compensation).]

#### **Textual Amendments**

**F183** Sch. 6 para. 13(2) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 29** (with ss. 191-195, 202)

- 14 (1) This paragraph relates to a case in which a person's employment has been terminated by or in consequence of his employer going into liquidation or being adjudged bankrupt or (his employer being a company not in liquidation) by or in consequence of—
- (a) a receiver being appointed as mentioned in section 40 of this Act (debenture-holders secured by floating charge), or
  - (b) the appointment of a receiver under section 53(6) or 54(5) of this Act (Scottish company with property subject to floating charge), or
  - (c) the taking of possession by debenture-holders (so secured), as mentioned in [<sup>F184</sup>section 754 of the Companies Act 2006] .
- (2) For the purposes of paragraphs 9 to 12, holiday remuneration is deemed to have accrued to that person in respect of any period of employment if, by virtue of his contract of employment or of any enactment that remuneration would have accrued in respect of that period if his employment had continued until he became entitled to be allowed the holiday.
- (3) The reference in sub-paragraph (2) to any enactment includes an order or direction made under an enactment.

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#### Textual Amendments

**F184** Words in Sch. 6 para. 14(1)(c) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 3(1), **Sch. 1 para. 104** (with arts. 6, 11, 12)

- 15 Without prejudice to paragraphs 13 and 14—
- (a) any remuneration payable by the debtor to a person in respect of a period of holiday or of absence from work through sickness or other good cause is deemed to be wages or (as the case may be) salary in respect of services rendered to the debtor in that period, and
  - (b) references here and in those paragraphs to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.

#### *[<sup>F185</sup>Category 6: Levies on coal and steel production*

#### Textual Amendments

**F185** Sch. 6 para. 15A inserted by [S.I. 1987/2093](#), reg. 2(1)(3)

- 15A Any sums due at the relevant date from the debtor in respect of—
- (a) the levies on the production of coal and steel referred to in Articles 49 and 50 of the E.C.S.C. Treaty, or
  - (b) any surcharge for delay provided for in Article 50(3) of that Treaty and Article 6 of Decision 3/52 of the High Authority of the Coal and Steel Community.]

#### *Orders*

- 16 An order under paragraph 9 or 12—
- (a) may contain such transitional provisions as may appear to the Secretary of State necessary or expedient;
  - (b) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## SCHEDULE 7

Section 396.

### INSOLVENCY PRACTITIONERS TRIBUNAL

#### *Panels of members*

- 1 (1) The Secretary of State shall draw up and from time to time revise—
- (a) a panel of persons who
    - [<sup>F186</sup>[<sup>F187</sup>(i) satisfy the judicial-appointment eligibility condition on a 5-year basis;]

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- (ii) are advocates or solicitors in Scotland of at least [<sup>F188</sup>5] years' standing,], and are nominated for the purpose by the Lord Chancellor or the Lord President of the Court of Session, and
  - (b) a panel of persons who are experienced in insolvency matters;
- and the members of the Tribunal shall be selected from those panels in accordance with this Schedule.
- (2) The power to revise the panels includes power to terminate a person's membership of either of them, and is accordingly to that extent subject to [<sup>F189</sup>section 7 of the Tribunals and Inquiries Act 1992](which makes it necessary to obtain the concurrence of the Lord Chancellor and the Lord President of the Court of Session to dismissals in certain cases).

#### Textual Amendments

- F186** Sch. 7 para. 1(1)(a)(i)(ii) substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 71(2), Sch. 10 para. 67
- F187** Sch. 7 para. 1(1)(a)(i) substituted (21.7.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 50(6), 148(5), Sch. 10 para. 19(2); S.I. 2008/1653, art. 2(b)(d) (with arts. 3, 4)
- F188** Word in Sch. 7 para. 1(1)(a)(ii) substituted (21.7.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 50(6), 148(5), Sch. 10 para. 19(3); S.I. 2008/1653, art. 2(b)(d) (with arts. 3, 4)
- F189** Words in Sch. 7 para. 1(2) substituted (1.10.1992) by Tribunals and Enquiries Act 1992 (c. 53), ss. 18(1), 19(2), Sch. 3 para. 19

#### *Remuneration of members*

- 2 The Secretary of State may out of money provided by Parliament pay to members of the Tribunal such remuneration as he may with the approval of the Treasury determine; and such expenses of the Tribunal as the Secretary of State and the Treasury may approve shall be defrayed by the Secretary of State out of money so provided.

#### *Sittings of Tribunal*

- 3 (1) For the purposes of carrying out their functions in relation to any cases referred to them, the Tribunal may sit either as a single tribunal or in two or more divisions.
- (2) The functions of the Tribunal in relation to any case referred to them shall be exercised by three members consisting of—
- (a) a chairman selected by the Secretary of State from the panel drawn up under paragraph 1(1)(a) above, and
  - (b) two other members selected by the Secretary of State from the panel drawn up under paragraph 1(1)(b).

#### *Procedure of Tribunal*

- 4 (1) Any investigation by the Tribunal shall be so conducted as to afford a reasonable opportunity for representations to be made to the Tribunal by or on behalf of the person whose case is the subject of the investigation.
- (2) For the purposes of any such investigation, the Tribunal—

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- (a) may be summons require any person to attend, at such time and place as is specified in the summons, to give evidence or to produce any books, papers and other records in his possession or under his control which the Tribunal consider it necessary for the purposes of the investigation to examine, and
- (b) may take evidence on oath, and for the purpose administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined;

but no person shall be required, in obedience to such a summons, to go more than ten miles from his place of residence, unless the necessary expenses of his attendance are paid or tendered to him.

- (3) Every person who—
  - (a) without reasonable excuse fails to attend in obedience to a summons issued under this paragraph, or refuses to give evidence, or
  - (b) intentionally alters, suppresses, conceals or destroys or refuses to produce any document which he may be required to produce for the purpose of an investigation by the Tribunal,is liable to a fine.
- (4) Subject to the provisions of this paragraph, the Secretary of State may make rules for regulating the procedure on any investigation by the Tribunal.
- (5) In their application to Scotland, sub-paragraphs (2) and (3) above have effect as if for any reference to a summons there were substituted a reference to a notice in writing.

## SCHEDULE 8

Section 411.

### PROVISIONS CAPABLE OF INCLUSION IN COMPANY INSOLVENCY RULES

#### **Modifications etc. (not altering text)**

**C111** [Sch. 8](#) applied (with modifications) (S.) (6.4.2001 to the extent that that Sch. does not apply to voluntary arrangements or administrations within the meaning of Pts. I, II of the Act) by [S.S.I. 2001/128](#), [reg. 4\(1\)](#), [Sch. 2](#)

#### *Courts*

- 1 Provision for supplementing, in relation to the insolvency or winding up of companies, any provision made by or under section 117 of this Act (jurisdiction in relation to winding up).
- 2 (1) Provision for regulating the practice and procedure of any court exercising jurisdiction for the purposes of Parts I to VII of this Act or [<sup>F190</sup>the Companies Acts] so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies, being any provision that could be made by rules of court.  
  
[<sup>F191</sup>(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.]

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### Textual Amendments

- F190** Words in [Sch. 8 para. 2\(1\)](#) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), [Sch. 4 para. 44](#) (with art. 12)
- F191** [Sch. 8 para. 2](#) renumbered as [Sch. 8 para. 2\(1\)](#) and [Sch. 8 para. 2\(2\)](#) inserted (15.9.2003) by [2002 c. 40](#), ss. 248(3), 279, [Sch. 17 para. 38\(2\)](#) (with s. 249(1)-(3)(6)); [S.I. 2003/2093](#), [art. 2\(1\)](#), [Sch. 1](#) (subject to arts. 3-8 (as amended by [S.I. 2003/2332](#), art. 2))

### *Notices, etc.*

- 3 Provision requiring notice of any proceedings in connection with or arising out of the insolvency or winding up of a company to be given or published in the manner prescribed by the rules.
- 4 Provision with respect to the form, manner of serving, contents and proof of any petition, application, order, notice, statement or other document required to be presented, made, given, published or prepared under any enactment or subordinate legislation relating to, or to matters connected with or arising out of, the insolvency or winding up of companies.
- 5 Provision specifying the persons to whom notice is to be given.

### *Registration of voluntary arrangements*

- 6 Provision for the registration of voluntary arrangements approved under Part I of this Act, including provision for the keeping and inspection of a register.

### *Provisional liquidator*

- 7 Provision as to the manner in which a provisional liquidator appointed under section 135 is to carry out his functions.

### *Conduct of insolvency*

- 8 Provision with respect to the certification of any person as, and as to the proof that a person is, the liquidator, administrator or administrative receiver of a company.
- 9 The following provision with respect to meetings of a company's creditors, contributories or members—
  - (a) provision as to the manner of summoning a meeting (including provision as to how any power to require a meeting is to be exercised, provision as to the manner of determining the value of any debt or contribution for the purposes of any such power and provision making the exercise of any such power subject to the deposit of a sum sufficient to cover the expenses likely to be incurred in summoning and holding a meeting);
  - (b) provision specifying the time and place at which a meeting may be held and the period of notice required for a meeting;
  - (c) provision as to the procedure to be followed at a meeting (including the manner in which decisions may be reached by a meeting and the manner in which the value of any vote at a meeting is to be determined);



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- (d) provision for requiring a person who is or has been an officer of the company to attend a meeting;
  - (e) provision creating, in the prescribed circumstances, a presumption that a meeting has been duly summoned and held;
  - (f) provision as to the manner of proving the decisions of a meeting.
- 10 (1) Provision as to the functions, membership and proceedings of a committee established under [<sup>F192</sup>section 49, 68, 101, 141 or 142 of, or paragraph 57 of Schedule B1 to, this Act].
- (2) The following provision with respect to the establishment of a committee under section 101, 141 or 142 of this Act, that is to say—
- (a) provision for resolving differences between a meeting of the company's creditors and a meeting of its contributories or members;
  - (b) provision authorising the establishment of the committee without a meeting of contributories in a case where a company is being wound up on grounds including its inability to pay its debts; and
  - (c) provision modifying the requirements of this Act with respect to the establishment of the committee in a case where a winding-up order has been made immediately upon the discharge of an administration order.

#### Textual Amendments

**F192** Words in Sch. 8 para. 10 substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 38(3) (with s. 249(1)-(3)(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

- 11 Provision as to the manner in which any requirement that may be imposed on a person under any of Parts I to VII of this Act by the official receiver, the liquidator, administrator or administrative receiver of a company or a special manager appointed under section 177 is to be so imposed.
- 12 Provision as to the debts that may be proved in a winding up, as to the manner and conditions of proving a debt and as to the manner and expenses of establishing the value of any debt or security.
- 13 Provision with respect to the manner of the distribution of the property of a company that is being wound up, including provision with respect to unclaimed funds and dividends.
- 14 Provision which, with or without modifications, applies in relation to the winding up of companies any enactment contained in Parts VIII to XI of this Act or in the <sup>M12</sup>Bankruptcy (Scotland) Act 1985.

#### Marginal Citations

**M12** 1985 c. 66.

- [<sup>F193</sup>14A Provision about the application of section 176A of this Act 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.]

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#### Textual Amendments

**F193** Sch. 8 para. 14A inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 38(4) (with s. 249(1)-(3)(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

#### Administration

[<sup>F194</sup>14B Provision which—

- (a) applies in relation to administration, with or without modifications, a provision of Parts IV to VII of this Act, 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.]

#### Textual Amendments

**F194** Sch. 8 para. 14B inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 38(5) (with s. 249(1)-(3)(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

#### Financial provisions

- 15 Provision as to the amount, or manner of determining the amount, payable to the liquidator, administrator or administrative receiver of a company or a special manager appointed under section 177, by way of remuneration for the carrying out of functions in connection with or arising out of the insolvency or winding up of a company.
- 16 Provision with respect to the manner in which moneys received by the liquidator of a company in the course of carrying out his functions as such are to be invested or otherwise handled and with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Services Account.
- [<sup>F195</sup>16A Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.]

#### Textual Amendments

**F195** S. 16A inserted (18.12.2003) by 2002 c. 40, ss. 271(1), 279 (with s. 249(6)); S.I. 2003/3340, art. 3

- 17 Provision as to the fees, costs, charges and other expenses that may be treated as the expenses of a winding up.
- 18 Provision as to the fees, costs, charges and other expenses that may be treated as properly incurred by the administrator or administrative receiver of a company.
- 19 Provision as to the fees, costs, charges and other expenses that may be incurred for any of the purposes of Part I of this Act or in the administration of any voluntary arrangement approved under that Part.

*Status: Point in time view as at 01/04/2014.*

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### *Information and records*

- 20 Provision requiring registrars and other officers of courts having jurisdiction in England and Wales in relation to, or to matters connected with or arising out of, the insolvency or winding up of companies—
- (a) to keep books and other records with respect to the exercise of that jurisdiction, and
  - (b) to make returns to the Secretary of State of the business of those courts.
- 21 Provision requiring a creditor, member or contributory, or such a committee as is mentioned in paragraph 10 above, to be supplied (on payment in prescribed cases of the prescribed fee) with such information and with copies of such documents as may be prescribed.
- 22 Provision as to the manner in which public examinations under section 133 and 134 of this Act and proceedings under sections 236 and 237 are to be conducted, as to the circumstances in which records of such examinations or proceedings are to be made available to prescribed persons and as to the costs of such examinations and proceedings.
- 23 Provision imposing requirements with respect to—
- (a) the preparation and keeping by the liquidator, administrator or administrative receiver of a company, or by the supervisor of a voluntary arrangement approved under Part I of this Act, of prescribed books, accounts and other records;
  - (b) the production of those books, accounts and records for inspection by prescribed persons;
  - (c) the auditing of accounts kept by the liquidator, administrator or administrative receiver of a company, or the supervisor of such a voluntary arrangement; and
  - (d) the issue by the administrator or administrative receiver of a company of such a certificate as is mentioned in section 22(3)(b) of the <sup>M13</sup>Value Added Tax Act 1983 (refund of tax in cases of bad debts) and the supply of copies of the certificate to creditors of the company.

#### **Marginal Citations**

**M13** 1983 c. 55.

- 24 Provision requiring the person who is the supervisor of a voluntary arrangement approved under Part I, when it appears to him that the voluntary arrangement has been fully implemented and that nothing remains to be done by him under the arrangement—
- (a) to give notice of that fact to persons bound by the voluntary arrangement, and
  - (b) to report to those persons on the carrying out of the functions conferred on the supervisor of the arrangement.
- 25 Provision as to the manner in which the liquidator of a company is to act in relation to the books, papers and other records of the company, including provision authorising their disposal.
- 26 Provision imposing requirements in connection with the carrying out of functions under section 7(3) of the <sup>M14</sup>Company Directors Disqualification Act 1986

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(including, in particular, requirements with respect to the making of periodic returns).

**Marginal Citations**  
**M14** 1986 c. 46.

*General*

- 27      Provision conferring power on the Secretary of State [<sup>F196</sup>or the Treasury] to make regulations with respect to so much of any matter that may be provided for in the rules as relates to the carrying out of the functions of the liquidator, administrator or administrative receiver of a company.

**Textual Amendments**  
**F196** Words in Sch. 8 para. 27 substituted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 125(7), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 2

- 28      Provision conferring a discretion on the court.
- 29      Provision conferring power on the court to make orders for the purpose of securing compliance with obligations imposed by or under [<sup>F197</sup>section 47, 66, 131, 143(2) or 235 of, or paragraph 47 of Schedule B1 to, this Act] or section 7(4) of the Company Directors Disqualification Act 1986.

**Textual Amendments**  
**F197** Words in Sch. 8 para. 29 substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 38(6) (with s. 249(1)-(3)(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

- 30      Provision making non-compliance with any of the rules a criminal offence.
- 31      Provision making different provision for different cases or descriptions of cases, including different provisions for different areas.

PROVISIONS CAPABLE OF INCLUSION IN INDIVIDUAL INSOLVENCY RULES

*Courts*

- 1      Provision with respect to the arrangement and disposition of the business under [<sup>F198</sup>Parts 7A to 11] of this Act of courts having jurisdiction for the purpose of those Parts, including provision for the allocation of proceedings under those Parts to particular courts and for the transfer of such proceedings from one court to another.

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#### Textual Amendments

**F198** Words in Sch. 9 para. 1 substituted (24.2.2009 for certain purposes otherwise 6.4.2009) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 108(3), 148(5), [Sch. 20 para. 14\(2\)](#); S.I. 2009/382, [art. 2](#)

- 2 Provision for enabling a registrar in bankruptcy of the High Court or a registrar of a county court having jurisdiction for the purposes of those Parts to exercise such of the jurisdiction conferred for those purposes on the High Court or, as the case may be, that county court as may be prescribed.
- 3 Provision for regulating the practice and procedure of any court exercising jurisdiction for the purposes of those Parts, being any provision that could be made by rules of court.
- 4 Provision conferring rights of audience, in courts exercising jurisdiction for the purposes of those Parts, on the official receiver and on solicitors.

#### *[<sup>F199</sup>Adjudicators*

#### Textual Amendments

**F199** Sch. 9 paras. 4A, 4B and cross-heading inserted (E.W.) (25.4.2013 for specified purposes) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 19 para. 65\(2\)](#)

- 4A Provision for regulating the practice and procedure of adjudicators in the discharge of functions for the purposes of Part 9 of this Act.
- 4B Provision about the form and content of a bankruptcy application (including an application for a review of an adjudicator's determination).]

#### *[<sup>F200</sup>Appeals against determinations by adjudicators*

#### Textual Amendments

**F200** Sch. 9 para. 4C and cross-heading inserted (E.W.) (25.4.2013 for specified purposes) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 19 para. 65\(3\)](#)

- 4C Provision about the making and determining of appeals to the court against a determination by an adjudicator, including provision—
  - (a) enabling the court to make a bankruptcy order on such an appeal, and
  - (b) about where such appeals lie.]

#### *Notices, etc.*

- 5 Provision requiring notice of any proceedings under [<sup>F201</sup>Parts 7A to 11] of this Act or of any matter relating to or arising out of a proposal under Part VIII or a bankruptcy to be given or published in the prescribed manner.

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#### Textual Amendments

**F201** Words in Sch. 9 para. 5 substituted (24.2.2009 for certain purposes otherwise 6.4.2009) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 108(3), 148(5), [Sch. 20 para. 14\(3\)](#); S.I. 2009/382, [art. 2](#)

- 6 Provision with respect to the form, manner of serving, contents and proof of any petition, application, order, notice, statement or other document required to be presented, made, given, published or prepared under any enactment contained in [<sup>F202</sup>Parts 7A to 11] or subordinate legislation under those Parts or Part XV (including provision requiring prescribed matters to be verified by affidavit).

#### Textual Amendments

**F202** Words in Sch. 9 para. 6 substituted (24.2.2009 for certain purposes otherwise 6.4.2009) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 108(3), 148(5), [Sch. 20 para. 14\(4\)](#); S.I. 2009/382, [art. 2](#)

- 7 Provision specifying the persons to whom any notice under Parts VIII to XI is to be given.

#### *[<sup>F203</sup>Debt relief orders*

#### Textual Amendments

**F203** Sch. 9 paras. 7A-7E and cross-headings inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. 108(3), 148(5), [Sch. 20 para. 14\(5\)](#); S.I. 2009/382, [art. 2](#)

- 7A Provision as to the manner in which the official receiver is to carry out his functions under Part 7A.
- 7B Provision as to the manner in which any requirement that may be imposed by the official receiver on a person under Part 7A is to take effect.
- 7C Provision modifying the application of Part 7A in relation to an individual who has died at a time when a moratorium period under a debt relief order applies in relation to him.

#### *Debt relief restrictions orders and undertakings*

- 7D Provision about debt relief restrictions orders, interim orders and undertakings, including provision about evidence.

#### *Register of debt relief orders and debt relief restrictions orders etc*

- 7E Provision about the register required to be maintained by section 251W and the information to be contained in it, including provision—
- (a) enabling the amalgamation of the register with another register;
  - (b) enabling inspection of the register by the public.]

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### *Registration of voluntary arrangements*

- 8 Provision for the registration of voluntary arrangements approved under Part VIII of this Act, including provision for the keeping and inspection of a register.

### *Official receiver acting on voluntary arrangement*

- [<sup>F204</sup>8A Provision about the official receiver acting as nominee or supervisor in relation to a voluntary arrangement under Part VIII of this Act, including—
- (a) provision requiring the official receiver to act in specified circumstances;
  - (b) provision about remuneration;
  - (c) provision prescribing terms or conditions to be treated as forming part of a voluntary arrangement in relation to which the official receiver acts as nominee or supervisor;
  - (d) provision enabling those terms or conditions to be varied or excluded, in specified circumstances or subject to specified conditions, by express provision in an arrangement.]

#### **Textual Amendments**

**F204** Sch. 9 para. 8A inserted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 16(2) (with s. 249(6)); S.I. 2003/2093, art. 2(2), Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

### *Interim receiver*

- 9 Provision as to the manner in which an interim receiver appointed under section 286 is to carry out his functions, including any such provision as is specified in relation to the trustee of a bankrupt's estate in paragraph 21 or 27 below.

### *Receiver or manager*

- 10 Provision as to the manner in which the official receiver is to carry out his functions as receiver or manager of a bankrupt's estate under section 287, including any such provision as is specified in relation to the trustee of a bankrupt's estate in paragraph 21 or 27 below.

### *Administration of individual insolvency*

- 11 Provision with respect to the certification of the appointment of any person as trustee of a bankrupt's estate and as to the proof of that appointment.
- 12 The following provision with respect to meetings of creditors—
- (a) provision as to the manner of summoning a meeting (including provision as to how any power to require a meeting is to be exercised, provision as to the manner of determining the value of any debt for the purposes of any such power and provision making the exercise of any such power subject to the deposit of a sum sufficient to cover the expenses likely to be incurred in summoning and holding a meeting);
  - (b) provision specifying the time and place at which a meeting may be held and the period of notice required for a meeting;



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- (c) provision as to the procedure to be followed at such a meeting (including the manner in which decisions may be reached by a meeting and the manner in which the value of any vote at a meeting is to be determined);
  - (d) provision for requiring a bankrupt or debtor to attend a meeting;
  - (e) provision creating, in the prescribed circumstances, a presumption that a meeting has been duly summoned and held; and
  - (f) provision as to the manner of proving the decisions of a meeting.
- 13 Provision as to the functions, membership and proceedings of a creditors' committee established under section 301.
- 14 Provision as to the manner in which any requirement that may be imposed on a person under Parts VIII to XI of this Act by the official receiver, the trustee of a bankrupt's estate or a special manager appointed under section 370 is to be so imposed and, in the case of any requirement imposed under section 305(3) (information etc. to be given by the trustee to the official receiver), provision conferring power on the court to make orders for the purpose of securing compliance with that requirement.
- 15 Provision as to the manner in which any requirement imposed by virtue of section 310(3) (compliance with income payments order) is to take effect.
- 16 Provision as to the terms and conditions that may be included in a charge under section 313 (dwelling house forming part of bankrupt's estate).
- 17 Provision as to the debts that may be proved in any bankruptcy, as to the manner and conditions of proving a debt and as to the manner and expenses of establishing the value of any debt or security.
- 18 Provision with respect to the manner of the distribution of a bankrupt's estate, including provision with respect to unclaimed funds and dividends.
- 19 Provision modifying the application of Parts VIII to XI of this Act in relation to a debtor or bankrupt who has died.

#### *Financial provisions*

- 20 Provision as to the amount, or manner of determining the amount, payable to an interim receiver, the trustee of a bankrupt's estate or a special manager appointed under section 370 by way of remuneration for the performance of functions in connection with or arising out of the bankruptcy of any person.
- 21 Provision with respect to the manner in which moneys received by the trustee of a bankrupt's estate in the course of carrying out his functions as such are to be <sup>[F205]</sup>invested or otherwise handled and with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Services Account].

#### **Textual Amendments**

**F205** Words in Sch. 9 para. 21 substituted (2.4.2001) by 2000 c. 39, s. 13(1); S.I. 2001/766, art. 2(b) (subject to transitional provisions in art. 3)

- <sup>[F206]</sup>21A Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.]



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#### Textual Amendments

**F206** Sch. 9 para. 21A inserted (18.12.2003) by [2002 c. 40, ss. 271\(2\), 279](#) (with [s. 249\(6\)](#)); [S.I. 2003/3340, art. 3](#)

- 22 Provision as to the fees, costs, charges and other expenses that may be treated as the expenses of a bankruptcy.
- 23 Provision as to the fees, costs, charges and other expenses that may be incurred for any of the purposes of Part VIII of this Act or in the administration of any voluntary arrangement approved under that Part.

#### *Information and records*

- 24 Provision requiring registrars and other officers of courts having jurisdiction for the purposes of Parts VIII to XI—
- (a) to keep books and other records with respect to the exercise of that jurisdiction and of jurisdiction under the <sup>M15</sup>Deeds of Arrangement Act 1914, and
  - (b) to make returns to the Secretary of State of the business of those courts.

#### Marginal Citations

**M15** [1914 c. 47](#).

- [<sup>F207</sup>24A Provision requiring adjudicators—
- (a) to keep files and other records relating to bankruptcy applications and bankruptcies resulting from bankruptcy applications,
  - (b) to make files and records available for inspection by persons of a prescribed description, and
  - (c) to provide files and records, or copies of them, to persons of a prescribed description.

#### Textual Amendments

**F207** Sch. 9 paras. 24A-24D inserted (E.W) (25.4.2013 for specified purposes, 6.4.2016 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [s. 103\(1\)\(i\)\(3\)](#), [Sch. 19 para. 65\(4\)](#); [S.I. 2016/191, art. 2](#) (with [art. 3](#))

- 24B Provision requiring an adjudicator to make returns to the Secretary of State of the adjudicator's business under Part 9 of this Act.

#### Textual Amendments

**F207** Sch. 9 paras. 24A-24D inserted (E.W) (25.4.2013 for specified purposes, 6.4.2016 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [s. 103\(1\)\(i\)\(3\)](#), [Sch. 19 para. 65\(4\)](#); [S.I. 2016/191, art. 2](#) (with [art. 3](#))

- 24C Provision requiring official receivers—

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- (a) to keep files and other records relating to bankruptcy applications and bankruptcies resulting from bankruptcy applications, and
- (b) to make files and records available for inspection by persons of a prescribed description.

#### Textual Amendments

**F207** Sch. 9 paras. 24A-24D inserted (E.W) (25.4.2013 for specified purposes, 6.4.2016 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), **Sch. 19 para. 65(4)**; [S.I. 2016/191](#), art. 2 (with art. 3)

- 24D Provision requiring a person to whom notice is given under section 293(2), 295(3), 298(7) or (8) or section 299(1)(a) or (3)(a)—
- (a) to keep files and other records of notices given under the section in question, and
  - (b) to make files and records available for inspection by persons of a prescribed description.]

#### Textual Amendments

**F207** Sch. 9 paras. 24A-24D inserted (E.W) (25.4.2013 for specified purposes, 6.4.2016 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), **Sch. 19 para. 65(4)**; [S.I. 2016/191](#), art. 2 (with art. 3)

- 25 Provision requiring a creditor or a committee established under section 301 to be supplied (on payment in prescribed cases of the prescribed fee) with such information and with copies of such documents as may be prescribed.
- 26 Provision as to the manner in which public examinations under section 290 and proceedings under sections 366 to 368 are to be conducted, as to the circumstances in which records of such examinations and proceedings are to be made available to prescribed persons and as to the costs of such examinations and proceedings.
- 27 Provision imposing requirements with respect to—
- (a) the preparation and keeping by the trustee of a bankrupt's estate, or the supervisor of a voluntary arrangement approved under Part VIII, of prescribed books, accounts and other records;
  - (b) the production of those books, accounts and records for inspection by prescribed persons; and
  - (c) the auditing of accounts kept by the trustee of a bankrupt's estate or the supervisor of such a voluntary arrangement.
- 28 Provision requiring the person who is the supervisor of a voluntary arrangement approved under Part VIII, when it appears to him that the voluntary arrangement has been fully implemented and that nothing remains to be done by him under it—
- (a) to give notice of that fact to persons bound by the voluntary arrangement, and
  - (b) to report to those persons on the carrying out of the functions conferred on the supervisor of it.
- 29 Provision as to the manner in which the trustee of a bankrupt's estate is to act in relation to the books, papers and other records of the bankrupt, including provision authorising their disposal.

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### Bankruptcy restrictions orders and undertakings

- [<sup>F208</sup>29A Provision about bankruptcy restrictions orders, interim orders and undertakings, including—
- (a) provision about evidence;
  - (b) provision enabling the amalgamation of the register mentioned in paragraph 12 of Schedule 4A with another register;
  - (c) provision enabling inspection of that register by the public.]

#### Textual Amendments

**F208** Sch. 9 para. 29A inserted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 16(3) (with s. 249(6)); S.I. 2003/2093, art. 2(2), Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

### General

- 30 Provision conferring power on the Secretary of State to make regulations with respect to so much of any matter that may be provided for in the rules as relates to the carrying out of the functions of an interim receiver appointed under section 286, of the official receiver while acting as a receiver or manager under section 287 or of a trustee of a bankrupt's estate.
- 31 Provision conferring a discretion on the court.
- 32 Provision making non-compliance with any of the rule a criminal offence.
- 33 Provision making different provision for different cases including different provision for different areas.

## SCHEDULE 10

Section 430.

### PUNISHMENT OF OFFENCES UNDER THIS ACT

#### Modifications etc. (not altering text)

- C112** Sch. 10 modified by Building Societies Act 1986 (c. 53, SIF 16), ss. 54(3)(a)(5)(a), 90, 126(3), Sch. 15 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), 2(2)) Sch. 10 modified (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, Sch. 10, Pt. I para.1 (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, Sch.3
- Sch. 10 applied (1.2.1993) by Friendly Societies Act 1992 (c. 40), ss. 21(1), 22, 23, Sch. 10, Pt. I para.1 (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, Sch.3
- C113** Sch. 10 applied (with modifications) (1.12.1997) by 1986 c. 53, Sch. 15A, para. 1(2) (as inserted by 1997 c. 32, s. 39(2), Sch. 6); S.I. 1997/2668, art. 2, Sch. Pt. I)
- Sch. 10 applied (with modifications) (S.) (6.4.2001 to the extent as mentioned) by S.S.I. 2001/128, reg. 4, Sch. 2, Sch. 3
- C114** Sch. 10 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 103, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 2
- C115** Sch. 10 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 145, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 3 (as amended

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	(13.3.2018) by <a href="#">The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208)</a> , regs. 1(3), <b>5(5)</b> )
<b>C116</b>	Sch. 10 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by <a href="#">Banking Act 2009 (c. 1)</a> , {ss. 145 table 2}, 263(1)(2) (with s. 247); <a href="#">S.I. 2009/296</a> , <b>arts. 2, 3</b> , Sch. para. 3
<b>C117</b>	Sch. 10 applied (with modifications) (6.6.2013) by <a href="#">The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388)</a> , Pt. 3reg. 1, Sch. 2 paras. 3, <b>5</b> Table (with reg. 24)

*F209* Note:.....

Section of Act creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
[ <sup>F210</sup> 6A(1).	False representation or fraud for purpose of obtaining members' or creditors' approval of proposed voluntary arrangement.	1. On indictment. 2. Summary. 7 years or a fine, or both. 6 months or the statutory maximum, or both.]		
F211	F211	F211	F211	
...	...	...	...	
F211	F211	F211	F211	F211
...	...	...	...	...
F211	F211	F211	F211	F211
...	...	...	...	...
F211	F211	F211	F211	F211
...	...	...	...	...
F211	F211	F211	F211	F211
...	...	...	...	...
F211	F211	F211	F211	F211
...	...	...	...	...
F211	F211	F211	F211	F211
...	...	...	...	...
30	Body corporate acting as receiver.	1.On indictment 2.Summary.	A fine. The statutory maximum.	
31	<sup>F212</sup> ... bankrupt [ <sup>F213</sup> or person in	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	

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	respect of whom a debt relief order is made] acting as receiver or manager.			
38(5)	Receiver failing to deliver accounts to registrar.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
39(2)	Company and others failing to state in correspondence that receiver appointed.	Summary.	One-fifth of the statutory maximum.	
43(6)	Administrative receiver failing to file [ <sup>F214</sup> copy] of order permitting disposal of charged property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
45(5)	Administrative receiver failing to file notice of vacation of office.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
46(4)	Administrative receiver failing to give notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
47(6)	Failure to comply with provisions relating to statement of affairs, where administrative receiver appointed.	1.On indictment 2.Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
48(8)	Administrative receiver failing to comply with requirements as to his report.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
51(4)	Body corporate or Scottish	1.On indictment 2.Summary.	A fine. The statutory maximum.	

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	firm acting as receiver.			
51(5)	Undischarged bankrupt acting as receiver (Scotland).	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
53(2)	Failing to deliver to registrar copy of instrument of appointment of receiver.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
54(3)	Failing to deliver to registrar the court's interlocutor appointing receiver.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
61(7)	Receiver failing to send to registrar certified copy of court order authorising disposal of charged property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
62(5)	Failing to give notice to registrar of cessation or removal of receiver.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
64(2)	Company and others failing to state on correspondence etc. that receiver appointed.	Summary.	One-fifth of the statutory maximum.	
65(4)	Receiver failing to send or publish notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
66(6)	Failing to comply with provisions concerning statement of affairs, where receiver appointed.	1.On indictment 2.Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.

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67(8)	Receiver failing to comply with requirements as to his report.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
85(2)	Company failing to give notice in Gazette of resolution for voluntary winding up.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
89(4)	Director making statutory declaration of company's solvency without reasonable grounds for his opinion.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum.	
89(6)	Declaration under section 89 not delivered to registrar within prescribed time.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
[ <sup>F215</sup> 92A(2)]	Liquidator failing to send progress report to members at year's end	Summary	Level 3 on the standard scale]	
93(3)	Liquidator failing to summon general meeting of company at each year's end.	Summary.	One-fifth of the statutory maximum.	
94(4)	Liquidator failing to send a registrar a copy of account of winding up and return of final meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
94(6)	Liquidator failing to call final meeting.	Summary.	One-fifth of the statutory maximum.	
95(8)	Liquidator failing to comply with s. 95,	Summary.	The statutory maximum.	

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	where company insolvent.			
98(6)	Company failing to comply with s. 98 in respect of summoning and giving notice of creditors' meeting.	1.On indictment 2.Summary.	A fine. The statutory maximum.	
99(3)	Directors failing to attend and lay statement in prescribed form before creditors' meeting.	1.On indictment 2.Summary.	A fine. The statutory maximum.	
[ <sup>F216</sup> 104A(2)]	Liquidator failing to send progress report to members and creditors at year's end	Summary	Level 3 on the standard scale]	
105(3)	Liquidator failing to summon company general meeting and creditors' meeting at each year's end.	Summary.	One-fifth of the statutory maximum.	
106(4)	Liquidator failing to send to registrar account of winding up and return of final meetings.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
106(6)	Liquidator failing to call final meeting of company or creditors.	Summary.	One-fifth of the statutory maximum.	
109(2)	Liquidator failing to publish notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
114(4)	Directors exercising powers in breach of s. 114, where no liquidator.	Summary.	The statutory maximum.	



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131(7)	Failing to comply with requirements as to statement of affairs, where liquidator appointed.	1.On indictment 2.Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
164	Giving, offering etc. corrupt inducement affecting appointment of liquidator.	1.On indictment 2.Summary.	A fine. The statutory maximum.	
166(7)	Liquidator failing to comply with requirements of s. 166 in creditors' voluntary winding up.	Summary.	The statutory maximum.	
188(2)	Default in compliance with s. 188 as to notification that company being wound up.	Summary.	One-fifth of the statutory maximum.	
192(2)	Liquidator failing to notify registrar as to progress of winding up.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
201(4)	Failing to deliver to registrar [F214 copy] of court order deferring dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
203(6)	Failing to deliver to registrar copy of directions or result of appeal under s. 203.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
204(7)	Liquidator failing to deliver to registrar copy of court order for early dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

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204(8)	Failing to deliver to registrar copy of court order deferring early dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
205(7)	Failing to deliver to registrar copy of Secretary of State's directions or court order deferring dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
206(1)	Fraud etc. in anticipation of winding up.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
206(2)	Privity to fraud in anticipation of winding up; fraud, or privity to fraud, after commencement of winding up.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
206(5)	Knowingly taking in pawn or pledge, or otherwise receiving, company property.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
207	Officer of company entering into transaction in fraud of company's creditors.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
208	Officer of company misconducting himself in course of winding up.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
209	Officer or contributory destroying, falsifying, etc. company's books.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
210	Officer of company	1.On indictment 2.Summary.	7 years or a fine, or both.	

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	making material omission from statement relating to company's affairs.		6 months or the statutory maximum, or both.	
211	False representation or fraud for purpose of obtaining creditors' consent to an agreement in connection with winding up.	1. On indictment 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
216(4)	Contravening restrictions on re-use of name of company in insolvent liquidation.	1. On indictment 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
235(5)	Failing to co-operate with office-holder.	1. On indictment 2. Summary.	A fine. The statutory maximum	One-tenth of the statutory maximum.
[ <sup>F217</sup> 251O(1)]	False representations or omissions in making an application for a debt relief order.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.	
251O(2)(a)	Failing to comply with duty in connection with an application for a debt relief order.	1. On indictment 2. Summary	2 years or a fine, or both. 12 months or the statutory maximum, or both.	
251O(2)(b)	False representations or omissions in connection with duty in relation to an application for a debt relief order.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.	
251O(4)(a)	Failing to comply with duty in connection with	1. On indictment 2. Summary	2 years or a fine, or both. 12 months or the statutory	

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	a debt relief order.		maximum, or both.
251O(4)(b)	False representations or omissions in connection with a duty in relation to a debt relief order.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.
251P(1)	Failing to deliver books, records and papers to official receiver, concealing or destroying them or making false entries in them by person in respect of whom a debt relief order is made.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.
251P(2)	Person in respect of whom debt relief order is made doing anything falling within paragraphs (c) to (e) of section 251P(1) during the period of 12 months ending with the application date or doing anything falling within paragraphs (b) to (e) of section 251P(1) after that date but before the effective date.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.
251Q(1)	Fraudulent disposal of property by person in respect of whom a debt relief order is made.	1. On indictment 2. Summary	2 years or a fine, or both. 12 months or the statutory maximum, or both.

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251R(1)	Disposal of property that is not paid for by person in respect of whom a debt relief order is made.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.
251R(2)	Obtaining property in respect of which money is owed by a person in respect of whom a debt relief order is made.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.
251S(1)	Person in respect of whom a debt relief order is made obtaining credit or engaging in business without disclosing his status or name.	1. On indictment 2. Summary	2 years or a fine, or both. 12 months or the statutory maximum, or both.]
[ <sup>F218</sup> 262A(1).	False representation or fraud for purpose of obtaining creditors' approval of proposed voluntary arrangement.	1. On indictment 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.]
353(1)	Bankrupt failing to disclose property or disposals to official receiver or trustee.	1. On indictment 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
354(1)	Bankrupt failing to deliver property to, or concealing property from, official receiver or trustee.	1. On indictment 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
354(2)	Bankrupt removing property which he is required	1. On indictment 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.

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	to deliver to official receiver or trustee.		
354(3)	Bankrupt failing to account for loss of substantial part of property.	1.On indictment 2.Summary.	2years or a fine, or both. 6 months or the statutory maximum, or both.
355(1)	Bankrupt failing to deliver books, papers and records to official receiver or trustee.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
355(2)	Bankrupt concealing, destroying etc. books, papers or records, or making false entries in them.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
355(3)	Bankrupt disposing of, or altering, books, papers or records relating to his estate or affairs.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
356(1)	Bankrupt making material omission in statement relating to his affairs.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
356(2)	Bankrupt making false statement, or failing to inform trustee, where false debt proved.	1.On indictment 2.Summary.	7 ears or a fine, or both. 6 months or the statutory maximum, or both.
357	Bankrupt fraudulently disposing of property.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
358	Bankrupt absconding with property he is required to deliver to	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.

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	official receiver or trustee.		
359(1)	Bankrupt disposing of property obtained on credit and not paid for.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
359(2)	Obtaining property in respect of which money is owed by a bankrupt.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
360(1)	Bankrupt obtaining credit or engaging in business without disclosing his status or name in which he was made bankrupt.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
360(3)	Person made bankrupt in Scotland or Northern Ireland obtaining credit, etc. in England and Wales.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
F219	F219	F219	F219
...	...	...	...
F219	F219	F219	F219
...	...	...	...
389	Acting as insolvency practitioner when not qualified.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
429(5)	Contravening s. 429 in respect of disabilities imposed by county court on revocation of administration order.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
[ <sup>F220</sup> Sch. A1, para. 9(2) .	Directors failing to notify nominee of	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.]



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	beginning of moratorium.		
[ <sup>F220</sup> Sch. A1, para. 10(3).	Nominee failing to advertise or notify beginning of moratorium.	Summary.	One-fifth of the statutory maximum.]
[ <sup>F220</sup> Sch. A1, para. 11(2).	Nominee failing to advertise or notify end of moratorium.	Summary.	One-fifth of the statutory maximum.]
[ <sup>F220</sup> Sch. A1, para. 16(2).	Company and officers failing to state in correspondence etc. that moratorium in force.	Summary.	One-fifth of the statutory maximum.]
[ <sup>F220</sup> Sch. A1, para. 17(3)(a).	Company obtaining credit without disclosing existence of moratorium.	1.On indictment 2.Summary.	A fine. The statutory maximum.]
[ <sup>F220</sup> Sch. A1, para. 17(3)(b).	Obtaining credit for company without disclosing existence of moratorium.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.]
[ <sup>F220</sup> Sch. A1, para. 18(3)(a).	Company disposing of property otherwise than in ordinary way of business.	1.On indictment 2.Summary.	A fine. The statutory maximum.]
[ <sup>F220</sup> Sch. A1, para. 18(3)(b).	Authorising or permitting disposal of company property.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.]
[ <sup>F220</sup> Sch. A1, para. 19(3)(a).	Company making payments in respect of liabilities existing before beginning of moratorium.	1.On indictment 2.Summary.	A fine. The statutory maximum.]

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[ <sup>F220</sup> Sch. A1, para. 19(3)(b).	Authorising or permitting such a payment.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.]
[ <sup>F220</sup> Sch. A1, para. 20(9).	Directors failing to send to registrar [ <sup>F214</sup> copy] of court order permitting disposal of charged property.	Summary.	One-fifth of the statutory maximum.]
[ <sup>F220</sup> Sch. A1, para. 22(1).	Company disposing of charged property.	1.On indictment 2.Summary.	A fine. The statutory maximum.]
[ <sup>F220</sup> Sch. A1, para. 22(2).	Authorising or permitting such a disposal.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.]
[ <sup>F220</sup> Sch. A1, para. 23(1)(a).	Company entering into market contract, etc.	1.On indictment 2.Summary.	A fine. The statutory maximum.]
[ <sup>F220</sup> Sch. A1, para. 23(1)(b).	Authorising or permitting company to do so.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.]
[ <sup>F220</sup> Sch. A1, para. 25(6).	Nominee failing to give notice of withdrawal of consent to act.	Summary.	One-fifth of the statutory maximum.]
[ <sup>F220</sup> Sch. A1, para. 34(3).	Nominee failing to give notice of extension of moratorium.	Summary.	One-fifth of the statutory maximum.]
[ <sup>F220</sup> Sch. A1, para. 41(2).	Fraud or privity to fraud in anticipation of moratorium.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.]
[ <sup>F220</sup> Sch. A1, para. 41(3).	Fraud or privity to fraud in anticipation of moratorium.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.]
[ <sup>F220</sup> Sch. A1, para. 41(7).	Knowingly taking in pawn or pledge, or otherwise receiving,	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.]

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	company property.			
[ <sup>F220</sup> Sch. A1, para. 42(1).	False representation or fraud for purpose of obtaining or extending moratorium.	1. On indictment 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.]	
[ <sup>F221</sup> Sch. B1, para. 18(7).	Making false statement in statutory declaration where administrator appointed by holder of floating charge.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.]	
[ <sup>F221</sup> Sch. B1, para. 20.	Holder of floating charge 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.
[ <sup>F221</sup> Sch. B1, para. 27(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.]	
[ <sup>F221</sup> Sch. B1, para. 29(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.]	
[ <sup>F221</sup> Sch. B1, para. 32.	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.]

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[ <sup>F221</sup> Sch. B1, para. 45(2).	Administrator, company or officer failing to state in business document that administrator appointed.	Summary.	One-fifth of the statutory maximum.]	
[ <sup>F221</sup> Sch. B1, para. 46(9).	Administrator failing to give notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[ <sup>F221</sup> Sch. B1, para. 48(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.]
[ <sup>F221</sup> Sch. B1, para. 49(7).	Administrator failing to send out statement of his proposals.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[ <sup>F221</sup> Sch. B1, para. 51(5).	Administrator failing to arrange initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[ <sup>F221</sup> Sch. B1, para. 53(3).	Administrator failing to report decision taken at initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[ <sup>F221</sup> Sch. B1, para. 54(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.]
[ <sup>F221</sup> Sch. B1, para. 56(2).	Administrator failing to summon creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[ <sup>F221</sup> Sch. B1, para. 71(6).	Administrator failing to file court order enabling disposal	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]

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	of charged property.			
[ <sup>F221</sup> Sch. B1, para. 72(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.]
[ <sup>F221</sup> Sch. B1, para. 77(3).	Administrator failing to notify Registrar of Companies of automatic end of administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[ <sup>F221</sup> Sch. B1, para. 78(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.]
[ <sup>F221</sup> Sch. B1, para. 80(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.]
[ <sup>F221</sup> Sch. B1, para. 84(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.]
[ <sup>F221</sup> Sch. B1, para. 86(3).	Administrator failing to notify Registrar of Companies where court terminates administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[ <sup>F221</sup> Sch. B1, para. 89(3).	Administrator failing to give notice on ceasing to be qualified.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
Sch. 7, para. 4(3)..	Failure to attend and give evidence to Insolvency Practitioners	Summary.	Level 3 on the standardscale withinthe meaning given by section 75 of the Criminal Justice Act 1982.	

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Tribunal;  
suppressing,  
concealing,  
etc. relevant  
documents..

### Textual Amendments

- F209** Note in Sch. 10 repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. XIV** Group 2
- F210** Entry in Sch. 10 inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 12**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)
- F211** Entries in Sch. 10 repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 39(3)(a)-(h), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to **arts. 3-8** (as amended by S.I. 2003/2332, **art. 2**))
- F212** Word in entry in Sch. 10 repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 17(a), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to **arts. 3-8** (as amended by S.I. 2003/2332, **art. 2**))
- F213** Words in Table in Sch. 10 inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by **Tribunals, Courts and Enforcement Act 2007** (c. 15), ss. 108(3), 148(5), **Sch. 20 para. 15(2)** (with Sch. 20 para. 15(4)); S.I. 2009/382, **art. 2**
- F214** Words in Sch. 10 substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) **arts. 2(1), 8**, {Sch. 1 para. 80} (with art. 10, Sch. 1 para. 84)
- F215** Entry in Sch. 10 inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 6(5)(a)**
- F216** Entry in Sch. 10 inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 6(5)(b)**
- F217** Entries in Sch. 10 inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by **Tribunals, Courts and Enforcement Act 2007** (c. 15), ss. 108(3), 148(5), **Sch. 20 para. 15(3)** (with Sch. 20 para. 15(4)); S.I. 2009/382, **art. 2**
- F218** Entry in Sch. 10 inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 16**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)
- F219** Entry in Sch. 10 repealed (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 17(b), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to **arts. 3-8** (as amended by S.I. 2003/2332, **art. 2**))
- F220** Entries in Sch. 10 inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 12**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)
- F221** Entries in Sch. 10 inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 39(2) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to **arts. 3-8** (as amended by S.I. 2003/2332, **art. 2**))

### Modifications etc. (not altering text)

- C118** Sch. 10: entry relating to s. 93(3) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**
- C119** Sch. 10: entry relating to s. 105(3) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**
- C120** Sch. 10: entry relating to s. 106(6) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

### Textual Amendments

- F209** Note in Sch. 10 repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. XIV** Group 2
- F210** Entry in Sch. 10 inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 12**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)

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- F211** Entries in Sch. 10 repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 39(3)(a)-(h), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F212** Word in entry in Sch. 10 repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 17(a), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F213** Words in Table in Sch. 10 inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 108(3), 148(5), **Sch. 20 para. 15(2)** (with Sch. 20 para. 15(4)); S.I. 2009/382, **art. 2**
- F214** Words in Sch. 10 substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 80} (with art. 10, Sch. 1 para. 84)
- F215** Entry in Sch. 10 inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 6(5)(a)**
- F216** Entry in Sch. 10 inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 6(5)(b)**
- F217** Entries in Sch. 10 inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 108(3), 148(5), **Sch. 20 para. 15(3)** (with Sch. 20 para. 15(4)); S.I. 2009/382, **art. 2**
- F218** Entry in Sch. 10 inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 16**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F219** Entry in Sch. 10 repealed (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 17(b), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F220** Entries in Sch. 10 inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 12**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F221** Entries in Sch. 10 inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 39(2) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

**Modifications etc. (not altering text)**

- C118** Sch. 10: entry relating to s. 93(3) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**
- C119** Sch. 10: entry relating to s. 105(3) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**
- C120** Sch. 10: entry relating to s. 106(6) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

## SCHEDULE 11

Section 437.

### TRANSITIONAL PROVISIONS AND SAVINGS

#### PART I

#### COMPANY INSOLVENCY AND WINDING UP

##### *Administration orders*

- 1 (1) Where any right to appoint an administrative receiver of a company is conferred by any debentures or floating charge created before the appointed day, the conditions precedent to the exercise of that right are deemed to include the presentation of a petition applying for an administration order to be made in relation to the company.
- (2) “Administrative receiver” here has the meaning assigned by section 251.



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*Receivers and managers (England and Wales)*

- 2 (1) In relation to any receiver or manager of a company's property who was appointed before the appointed day, the new law does not apply; and the relevant provisions of the former law continue to have effect.
- (2) "The new law" here means Chapter I of Part III, and Part VI, of this Act; and "the former law" means [<sup>F222</sup>the Companies Act 1985] and so much of this Act as replaces provisions of that Act (without the amendments in paragraphs 15 to 17 of Schedule 6 to the <sup>M16</sup>Insolvency Act 1985, or the associated repeals by that Act), and any provision of the Insolvency Act 1985 which was in force before the appointed day.
- (3) This paragraph is without prejudice to the power conferred by this Act under which rules under section 411 may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to the receiver or manager of a company's property notwithstanding that he was appointed before the coming into force of the rules or section 411.

**Textual Amendments**

**F222** Words in [Sch. 11 para. 2\(2\)](#) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, ([S.I. 2009/1941](#)) arts. 2(1), 8, {Sch. 1 para. 83} (with art. 10, Sch. 1 para. 84)

**Marginal Citations**

**M16** [1985 c. 65](#).

*Receivers (Scotland)*

- 3 (1) In relation to any receiver appointed under section 467 of the Companies Act before the appointed day, the new law does not apply and the relevant provisions of the former law continue to have effect.
- (2) "The new law" here means Chapter II of Part III, and Part VI, of this Act; and "the former law" means [<sup>F223</sup>the Companies Act 1985] and so much of this Act as replaces provisions of that Act (without the amendments in paragraphs 18 to 22 of Schedule 6 to the Insolvency Act 1985 or the associated repeals made by the Act), and any provision of the Insolvency Act 1985 which was in force before the appointed day.
- (3) This paragraph is without prejudice to the power conferred by this Act under which rules under section 411 may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to a receiver appointed under section 467 notwithstanding that he was appointed before the coming into force of the rules or section 411.

**Textual Amendments**

**F223** Words in [Sch. 11 para. 3\(2\)](#) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, ([S.I. 2009/1941](#)) arts. 2(1), 8, {Sch. 1 para. 83} (with art. 10, Sch. 1 para. 84)

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### *Winding up already in progress*

- 4 (1) In relation to any winding up which has commenced, or is treated as having commenced, before the appointed day, the new law does not apply, and the former law continues to have effect, subject to the following paragraphs.
- (2) “The new law” here means any provisions in the first Group of Parts of this Act which replace sections 66 to 87 and 89 to 105 of the <sup>M17</sup>Insolvency Act 1985; and “the former law” means Parts XX and XXI of the [<sup>F224</sup>the Companies Act 1985](without the amendments in paragraphs 23 to 52 of Schedule 6 to the Insolvency Act 1985, or the associated repeals made by the Act).

#### **Textual Amendments**

**F224** Words in [Sch. 11 para. 4\(2\)](#) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, ([S.I. 2009/1941](#)) arts. 2(1), 8, {Sch. 1 para. 83} (with art. 10, Sch. 1 para. 84)

#### **Marginal Citations**

**M17** [1985 c. 65](#).

### *Statement of affairs*

- 5 (1) Where a winding up by the court in England and Wales has commenced, or is treated as having commenced, before the appointed day, the official receiver or (on appeal from a refusal by him) the court may, at any time on or after that day—
- (a) release a person from an obligation imposed on him by or under section 528 of [<sup>F225</sup>the Companies Act 1985] (statement of affairs), or
  - (b) extend the period specified in subsection (6) of that section.
- (2) Accordingly, on and after the appointed day, section 528(6) has effect in relation to a winding up to which this paragraph applies with the omission of the words from “or within” onwards.

#### **Textual Amendments**

**F225** Words in [Sch. 11 para. 5\(1\)](#) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, ([S.I. 2009/1941](#)) arts. 2(1), 8, {Sch. 1 para. 83} (with art. 10, Sch. 1 para. 84)

### *Provisions relating to liquidator*

- 6 (1) This paragraph applies as regards the liquidator in the case of winding up by the court in England and Wales commenced, or treated as having commenced, before the appointed day.
- (2) The official receiver may, at any time when he is liquidator of the company, apply to the Secretary of State for the appointment of a liquidator in his (the official receiver’s) place; and on any such application the Secretary of State shall either make an appointment or decline to make one.

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- (3) Where immediately before the appointed day the liquidator of the company has not made an application under section 545 of [<sup>F226</sup>the Companies Act 1985] (release of liquidators), then—
- (a) except where the Secretary of State otherwise directs, sections 146(1) and (2) and 172(8) of this Act apply, and section 545 does not apply, in relation to any liquidator of that company who holds office on or at any time after the appointed day and is not the official receiver;
  - (b) section 146(3) applies in relation to the carrying out at any time after that day by any liquidator of the company of any of his functions; and
  - (c) a liquidator in relation to whom section 172(8) has effect by virtue of this paragraph has his release with effect from the time specified in section 174(4)(d) of this Act.
- (4) Subsection (6) of section 174 of this Act has effect for the purposes of subparagraph (3)(c) above as it has for the purposes of that section, but as if the reference to section 212 were to section 631 of [<sup>F227</sup>the Companies Act 1985].
- (5) The liquidator may employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection; but if he does so employ a solicitor he shall inform the committee of inspection that he has done so.

#### Textual Amendments

- F226** Words in [Sch. 11 para. 6\(3\)](#) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, ([S.I. 2009/1941](#)) arts. 2(1), 8, {Sch. 1 para. 83} (with art. 10, Sch. 1 para. 84)
- F227** Words in [Sch. 11 para. 6\(4\)](#) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, ([S.I. 2009/1941](#)) arts. 2(1), 8, {Sch. 1 para. 83} (with art. 10, Sch. 1 para. 84)

#### *Winding up under supervision of the court*

- 7 The repeals in Part II of Schedule 10 the <sup>M18</sup>Insolvency Act 1985 of references (in [<sup>F228</sup>the Companies Act 1985] and elsewhere) to a winding up under the supervision of the court do not affect the operation of the enactments in which the references are contained in relation to any case in which an order under section 606 of [<sup>F228</sup>the Companies Act 1985] (power to order winding up under supervision) was made before the appointed day.

#### Textual Amendments

- F228** Words in [Sch. 11 para. 7](#) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, ([S.I. 2009/1941](#)) arts. 2(1), 8, {Sch. 1 para. 83} (with art. 10, Sch. 1 para. 84)

#### Marginal Citations

- M18** [1985 c. 65.](#)

*Status: Point in time view as at 01/04/2014.*

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*Saving for power to make rules*

- 8 (1) Paragraphs 4 to 7 are without prejudice to the power conferred by this Act under which rules made under section 411 may make transitional provision in connection with the coming into force of those rules.
- (2) Such provision may apply those rules in relation to a winding up notwithstanding that the winding up commenced, or is treated as having commenced, before the coming into force of the rules or section 411.

*Setting aside of preferences and other transactions*

- 9 (1) Where a provision in Part VI of this Act applies in relation to a winding up or in relation to a case in which an administration order has been made, a preference given, floating charge created or other transaction entered into before the appointed day shall not be set aside under the provision except to the extent that it could have been set aside under the law in force immediately before that day, assuming for this purpose that any relevant administration order had been winding-up order.
- (2) The references above to setting aside a preference, floating charge or other transaction include the making of an order which varies or reverses any effect of a preference, floating charge or other transaction.

## PART II

### INDIVIDUAL INSOLVENCY

*Bankruptcy (general)*

- 10 (1) Subject to the following provisions of this Part of this Schedule, so much of this Act as replaces Part III of the <sup>M19</sup>Insolvency Act 1985 does not apply in relation to any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before the appointed day.
- (2) In relation to any such case as is mentioned above, the enactments specified in Schedule 8 to that Act, so far as they relate to bankruptcy, and those specified in Parts III and IV of Schedule 10 to that Act, so far as they so relate, have effect without the amendments and repeals specified in those Schedules.
- (3) Where any subordinate legislation made under an enactment referred to in sub-paragraph (2) is in force immediately before the appointed day, that subordinate legislation continues to have effect on and after that day in relation to any such case as is mentioned in sub-paragraph (1).

#### **Marginal Citations**

**M19** 1985 c. 65.

- 11 (1) In relation to any such case as is mentioned in paragraph 10(1) the references in any enactment or subordinate legislation to a petition, order or other matter which is provided for under the <sup>M20</sup>Bankruptcy Act 1914 and corresponds to a petition, order or other matter provided for under provisions of this Act replacing Part III of the Insolvency Act 1985 continue on and after the appointed day to have effect

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as references to the petition, order or matter provided for by the Act of 1914; but otherwise those references have effect on and after that day as references to the petition, order or matter provided for by those provisions of this Act.

- (2) Without prejudice to sub-paragraph (1), in determining for the purposes of section 279 of this Act (period of bankruptcy) or paragraph 13 below whether any person was an undischarged bankrupt at a time before the appointed day, an adjudication in bankruptcy and an annulment of a bankruptcy under the Act of 1914 are to be taken into account in the same way, respectively, as a bankruptcy order under the provisions of this Act replacing Part III of the Insolvency Act 1985 and the annulment under section 282 of this Act of such an order.

#### Marginal Citations

**M20** 1914 c. 59.

- 12 Transactions entered into before the appointed day have effect on and after that day as if references to acts of bankruptcy in the provisions for giving effect to those transactions continued to be references to acts of bankruptcy within the meaning of the Bankruptcy Act 1914, but as if such acts included failure to comply with a statutory demand served under section 268 of this Act.

#### *Discharge from old bankruptcy*

- 13 (1) Where a person—
- (a) was adjudged bankrupt before the appointed day or is adjudged bankrupt on or after that day on a petition presented before that day, and
  - (b) that person was not an undischarged bankrupt at any time in the period of 15 years ending with the adjudication,
- that person is deemed (if not previously discharged) to be discharged from his bankruptcy for the purposes of the <sup>M21</sup>Bankruptcy Act 1914 at the end of the discharge period.
- (2) Subject to sub-paragraph (3) below, the discharge period for the purposes of this paragraph is—
- (a) in the case of a person adjudged bankrupt before the appointed day, the period of 3 years beginning with that day, and
  - (b) in the case of a person who is adjudged bankrupt on or after that day on a petition presented before that day, the period of 3 years beginning with the date of the adjudication.
- (3) Where the court exercising jurisdiction in relation to a bankruptcy to which this paragraph applies is satisfied, on the application of the official receiver, that the bankrupt has failed, or is failing, to comply with any of his obligations under the Bankruptcy Act 1914, any rules made under that Act or any such rules as are mentioned in paragraph 19(1) below, the court may order that the discharge period shall cease to run for such period, or until the fulfilment of such conditions (including a condition requiring the court to be satisfied as to any matter) as may be specified in the order.

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#### Marginal Citations

**M21** 1914 c. 59.

#### *Provisions relating to trustee*

- 14 (1) This paragraph applies as regards the trustee in the case of a person adjudged bankrupt before the appointed day, or adjudged bankrupt on or after that day on a petition presented before that day.
- (2) The official receiver may at any time when he is the trustee of the bankrupt's estate apply to the Secretary of State for the appointment of a person as trustee instead of the official receiver; and on any such application the Secretary of State shall either make an appointment or decline to make one.
- (3) Where on the appointed day the trustee of a bankrupt's estate has not made an application under section 93 of the Bankruptcy Act 1914 (release of trustee), then—
- (a) except where the Secretary of State otherwise directs, sections 298(8), 304 and 331(1) to (3) of this Act apply, and section 93 of the Act of 1914 does not apply, in relation to any trustee of the bankrupt's estate who holds office on or at any time after the appointed day and is not the official receiver;
  - (b) section 331(4) of this Act applies in relation to the carrying out at any time on or after the appointed day by the trustee of the bankrupt's estate of any of his functions; and
  - (c) a trustee in relation to whom section 298(8) of this Act has effect by virtue of this paragraph has his release with effect from the time specified in section 299(3)(d).
- (4) Subsection (5) of this section 299 has effect for the purposes of sub-paragraph (3)(c) as it has for the purposes of that section 8.
- (5) In the application of subsection (3) of section 331 in relation to a case by virtue of this paragraph, the reference in that subsection to section 330(1) has effect as a reference to section 67 of the <sup>M22</sup>Bankruptcy Act 1914.
- (6) The trustee of the bankrupt's estate may employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection; but if he does so employ a solicitor, he shall inform the committee of inspection that he has done so.

#### Marginal Citations

**M22** 1914 c. 59.

#### *Copyright*

- 15 (1) Where a person who is adjudged bankrupt on a petition presented on or after the appointed day is liable, by virtue of a transaction entered into before that day, to pay royalties or a share of the profits to any person in respect of any copyright or interest in copyright comprised in the bankrupt's estate, section 60 of the Bankruptcy Act 1914 (limitation on trustee's powers in relation to copyright) applies in relation to

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the trustee of that estate as it applies in relation to a trustee in bankruptcy under the Act of 1914.

#### *Second bankruptcy*

- 16 (1) Sections 334 and 335 of this Act apply with the following modifications where the earlier bankruptcy (within the meaning of section 334) is a bankruptcy in relation to which the Act of 1914 applies instead of the second Group of Parts in this Act, that is to say—
- (a) references to property vested in the existing trustee under section 307(3) of this Act have effect as references to such property vested in that trustee as was acquired by or devolved on the bankrupt after the commencement (within the meaning of the Act of 1914) of the earlier bankruptcy; and
  - (b) references to an order under section 310 of this Act have effect as references to an order under section 51 of the Act of 1914.
- (2) Section 39 of the Act of 1914 (second bankruptcy) does not apply where a person is an undischarged bankrupt under that Act is adjudged bankrupt under this Act.

#### *Setting aside of preferences and other transactions*

- 17 (1) A performance given, assignment made or other transaction entered into before the appointed day shall not be set aside under any of sections 339 to 344 of this Act except to the extent that it could have been set aside under the law in force immediately before that day.
- (2) References in sub-paragraph (1) to setting aside a preference, assignment or other transaction include the making of any order which varies or reverses any effect of a preference, assignment or other transaction.

#### *Bankruptcy offences*

- 18 (1) Where a bankruptcy order is made under this Act on or after the appointed day, a person is not guilty of an offence under Chapter VI of Part IX in respect of anything done before that day; but, notwithstanding the repeal by the <sup>M23</sup>Insolvency Act 1985 of the <sup>M24</sup>Bankruptcy Act 1914, is guilty of an offence under the Act of 1914 in respect of anything done before the appointed day which would have been an offence under that Act if the making of the bankruptcy order had been the making of a receiving order under that Act.
- (2) Subsection (5) of section 350 of this Act applies (instead of sections 157(2), 158(2), 161 and 165 of the Act of 1914) in relation to proceedings for an offence under that Act which are instituted (whether by virtue of sub-paragraph (1) or otherwise) after the appointed day.

#### **Marginal Citations**

**M23** 1985 c. 65.

**M24** 1914 c. 59.



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### *Power to make rules*

- 19 (1) The preceding provisions of this Part of this Schedule are without prejudice to the power conferred by this Act under which rules under section 412 may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to a bankruptcy notwithstanding that it arose from a petition presented before either the coming into force of the rules or the appointed day.
- (2) Rules under section 412 may provide for such notices served before the appointed day as may be prescribed to be treated for the purposes of this Act as statutory demands served under section 268.

## PART III

### TRANSITIONAL EFFECT OF PART XVI

- 20 (1) A transaction entered into before the appointed day shall not be set aside under Part XVI of this Act except to the extent that it could have been set aside under the law in force immediately before that day.
- (2) References above to setting aside a transaction include the making of any order which varies or reverses any effect of a transaction.

## PART IV

### INSOLVENCY PRACTITIONERS

- 21 Where an individual began to act as an insolvency practitioner in relation to any person before the appointed day, nothing in section 390(2) or (3) prevents that individual from being qualified to act as an insolvency practitioner in relation to that person.

## PART V

### GENERAL TRANSITIONAL PROVISIONS AND SAVINGS

#### *Interpretation for this Part*

- 22 In this Part of this Schedule, “the former enactments” means so much of [F229 the Companies Act 1985] as is repealed and replaced by this Act, the M25 Insolvency Act 1985 and the other enactments repealed by this Act.

#### **Textual Amendments**

**F229** Words in [Sch. 11 para. 22](#) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, ([S.I. 2009/1941](#)) arts. 2(1), 8, {Sch. 1 para. 83} (with art. 10, Sch. 1 para. 84)

#### **Marginal Citations**

**M25** 1985 c. 65.



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### *General saving for past acts and events*

- 23 So far as anything done or treated as done under or for the purposes of any provision of the former enactments could have been done under or for the purposes of the corresponding provision of this Act, it is not invalidated by the repeal of that provision by has effect as if done under or for the purposes of the corresponding provision; and any order, regulation, rule or other instrument made or having effect under any provision of the former enactments shall, insofar as its effect is preserved by this paragraph, be treated for all purposes as made and having effect under the corresponding provision.

### *Periods of time*

- 24 Where any period of time specified in a provision of the former enactments is current immediately before the appointed day, this Act has effect as if the corresponding provision had been in force when the period began to run; and (without prejudice to the foregoing) any period of time so specified and current is deemed for the purposes of this Act—
- (a) to run from the date or event from which it was running immediately before the appointed day, and
  - (b) to expire (subject to any provision of this Act for its extension) whenever it would have expired if this Act had not been passed;
- and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of such period as above mentioned shall be under this Act as they were or would have been under the former enactments.

### *Internal cross-references in this Act*

- 25 Where in any provision of this Act there is a reference to another such provision, and the first-mentioned provision operates, or is capable of operating, in relation to things done or omitted, or events occurring or not occurring, in the past (including in particular past act of compliance with any enactment, failures of compliance, contraventions, offences and convictions of offences), the reference to the other provision is to be read as including a reference to the corresponding provision of the former enactments.

### *Punishment of offences*

- 26 (1) Offences committed before the appointed day under any provision of the former enactments may, notwithstanding any repeal by this Act, be prosecuted and punished after that day as if this Act had not passed.
- (2) A contravention of any provision of the former enactments committed before the appointed day shall not be visited with any severer punishment under or by virtue of this Act than would have been applicable under that provision at the time of the contravention; but where an offence for the continuance of which a penalty was provided has been committed under any provision of the former enactments, proceedings may be taken under this Act in respect of the continuance of the offence on and after the appointed day in the like manner as if the offence had been committed under the corresponding provision of this Act.

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*References elsewhere to the former enactments*

- 27 (1) A reference in any enactment, instrument or document (whether express or implied, and in whatever phraseology) to a provision of the former enactments (including the corresponding provision of any yet earlier enactment) is to be read, where necessary to retain for the enactment, instrument or document the same force and effect as it would have had but for the passing of this Act, as, or as including, a reference to the corresponding provision by which it is replaced in this Act.
- (2) The generality of the preceding sub-paragraph is not affected by any specific conversion of references made by this Act, nor by the inclusion in any provision of this Act of a reference (whether express or implied, and in whatever phraseology) to the provision of the former enactments corresponding to that provision, or to a provision of the former enactments which is replaced by a corresponding provision of this Act.

*Saving for power to repeal provisions in section 51*

- 28 The Secretary of State may by order in a statutory instrument repeal subsections (3) to (5) of section 51 of this Act and the entries in Schedule 10 relating to subsections (4) and (5) of that section.

*Saving for Interpretation Act 1978 ss. 16, 17*

- 29 Nothing in this Schedule is to be taken as prejudicing sections 16 and 17 of the <sup>M26</sup>Interpretation Act 1978 (savings from, and effect of, repeals); and for the purposes of section 17(2) of that Act (construction of references to enactments repealed and replaced, etc.), so much of section 18 of the <sup>M27</sup>Insolvency Act 1985 as is replaced by a provision of this Act is deemed to have been repealed by this Act and not by the <sup>M28</sup>Company Directors Disqualification Act 1986.

**Marginal Citations**

- M26** 1978 c. 30.  
**M27** 1985 c. 65.  
**M28** 1986 c. 46.

SCHEDULE 12

Section 438

ENACTMENTS REPEALED

Chapter	Short title	Extent of repeal
1970 c. 8.	The Insolvency Services (Accounting and Investment) Act 1970.	The whole Act.
1976 c. 60	The Insolvency Act 1976.	Section 3.
1985 c. 6.	The Companies Act 1985.	In section 463(4), the words “Subject to section 617”.

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Sections 467 to 485.

In section 486, in the definition of “company” the words “other than in Chapter II of this Part”; and the definitions of “instrument of appointment”, “prescribed”, “receiver” and “register of charges”.

Sections 488 to 650.

Sections 659 to 664.

Sections 665 to 674.

Section 709(4).

Section 710(4).

Section 724.

Schedule 16.

In Schedule 24, the entries relating to section 467; all entries thereafter up to and including section 641(2); and the entry relating to section 710(4).

1985 c. 65.

The Insolvency Act 1985.

Sections 1 to 11.

Section 15.

Section 17.

Section 19.

Sections 20 to 107.

Section 108(1) and (3) to (7).

Sections 109 to 211.

Sections 212 to 214.

Section 216.

Section 217(1) to (3).

Sections 221 to 234.

In section 235, subsections (2) to (5).

In section 236, subsections (3) to (5).

In Schedule 1, paragraphs 1 to 4, and sub-paragraph (4) of paragraph 5.

		Schedules 3 to 5.
		In Schedule 6, paragraphs 5, 6, 9, 15 to 17, 20 to 22, 25 to 44 and 48 to 52.
		Schedule 7.
		In Schedule 9, paragraphs 1 and 4 to 24.
		Schedule 10.
1985 c. 66.	The Bankruptcy (Scotland) Act 1985.	In Schedule 7, paragraphs 19 to 22.
1986 c. 44.	The Gas Act 1986.	In Schedule 7, paragraph 31.

SCHEDULE 13

Section 439(1)

CONSEQUENTIAL AMENDMENTS OF COMPANIES ACT 1985

PART I

INTERNAL AND OTHER SECTION REFERENCES AMENDED OR RE-AMENDED

Section of Act	Consequential amendment or re-amendment
F230	F230
. . .	. . .
F231	F231
. . .	. . .
F232	F232
. . .	. . .
F233	F233
. . .	. . .
F234	F234
. . .	. . .
Section 153(3)	In paragraph (f), for “section 582” substitute “section 110 of the Insolvency Act”.
	In paragraph (g), for “Chapter II of Part II of the Insolvency Act 1985” substitute “Part I of the Insolvency Act”.
Section 156(3)	For “section 517” substitute “section 122 of the Insolvency Act”.
F235	F235

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...	...
Section 196	For this section substitute—“196.—(1) The following applies in the case of a company registered in England and Wales, where debentures of the company are secured by a charge which, as created, was a floating charge.(2) If possession is taken, by or on behalf of the holders of any of the debentures, of any property comprised in or subject to charge, and the company is not at that time in course of being wound up, the company’s preferential debts shall be paid out of assets coming to the hands of the person taking possession in priority to any claims for principal or interest in respect of the debentures.(3) “Preferential debts” means the categories of debts listed in Schedule 6 to the Insolvency Act; and for the purposes of that Schedule “the relevant date” is the date of possession being taken as above mentioned.(4) Payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.”
F236	F236
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F236	F236
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F237	F237
...	...
Section 441(1)	For “section 13 of the Insolvency Act 1985” substitute “section 8 of the Company Directors Disqualification Act 1986”.
F238	F238
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F237	F237
...	...
Section 462(5)	After “this Part” insert “and Part III of the Insolvency Act 1986”.
Section 463(2)	For “Part XX (except section 623(4))” substitute “Part IV of the Insolvency Act (except section 185)”.
Section 463(3)	For this subsection substitute—“(3) Nothing in this section derogates from the provisions of sections 53(7) and 54(6) of the Insolvency Act (attachment of floating charge on appointment of receiver), or prejudices the

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	operation of sections 175 and 176 of that Act (payment of preferential debts in winding up)".
Section 464(6)	For "section 89 of the Insolvency Act 1985" substitute "sections 175 and 176 of the Insolvency Act".
F239	F239
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F240	F240
. . .	. . .
Section 711(2)	In paragraph (b), for "section 600" substitute "section 109 of the Insolvency Act".
Section 733	In subsection (1), omit "295(7)".
	F236
	. . .

<b>Textual Amendments</b>	
<b>F230</b>	Sch. 13 Pt. 1: entry repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), <b>Sch. 16</b> ; S.I. 2008/2860, <b>art. 4</b> , Sch. 1 Pt. 1
<b>F231</b>	Sch. 13 Pt. 1: entry repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), <b>Sch. 16</b> ; S.I. 2008/2860, <b>art. 4</b> , Sch. 1 Pt. 1
<b>F232</b>	Sch. 13 Pt. 1: entry repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), <b>Sch. 16</b> ; S.I. 2008/2860, <b>art. 4</b> , Sch. 1 Pt. 1
<b>F233</b>	Sch. 13 Pt. 1: entry repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), <b>Sch. 16</b> ; S.I. 2008/2860, <b>art. 4</b> , Sch. 1 Pt. 1
<b>F234</b>	Sch. 13 Pt. 1: entry repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), <b>Sch. 16</b> ; S.I. 2008/2860, <b>art. 4</b> , Sch. 1 Pt. 1
<b>F235</b>	Sch. 13 Pt. 1: entry repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), <b>Sch. 16</b> ; S.I. 2008/2860, <b>art. 4</b> , Sch. 1 Pt. 1
<b>F236</b>	Entries in Pt. I of Sch. 13, relating to sections 222(4), 225 and 733(3) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), <b>Sch. 24</b>
<b>F237</b>	Sch. 13 Pt. 1: entries repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), <b>Sch. 16</b> ; S.I. 2007/2194, arts. 1(3)(a), <b>8</b> , Sch 2 Pt. 1
<b>F238</b>	Sch. 13 Pt. 1: entry repealed (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 64, 65, <b>Sch. 8</b> ; S.I. 2004/3322, <b>art. 2(2)</b> , Sch. 2 (subject to arts. 3-13)
<b>F239</b>	Sch. 13 Pt. 1: entry repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), <b>Sch. 16</b> ; S.I. 2008/2860, <b>art. 4</b> , Sch. 1 Pt. 1
<b>F240</b>	Sch. 13 Pt. 1: entry repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), <b>Sch. 16</b> ; S.I. 2008/2860, <b>art. 4</b> , Sch. 1 Pt. 1

PART II

AMENDEMENT OF PART XXVI (INTERPRETATION)

In Part XXVI of the Companies Act, after section 735, insert the following section—

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**“735A Relationship of this Act to Insolvency Act.**

- (1) In this Act “the Insolvency Act” means the Insolvency Act 1986; and in the following provisions of this Act, namely, sections 375(1)(b), 425(6)(a), 440, 449(1)(a) and (d), 460(2), 675, 676, 677, 699(1), 728 and Schedule 21, paragraph 6(1), the words “this Act” are to be read as including Part I to VII of that Act, sections 411, 413, 414, 416 and 417 in Part XV of that Act, and also the Company Directors Disqualification Act 1986.
- (2) In sections 704(5), 706(1), 707(1), 708(1)(a) and (4), 710(5), 713(1), 729 and 732(3) references to the Companies Acts include Parts I to VII of the Insolvency Act, sections 411, 413, 414, 416 and 417 in Part XV of that Act, and also the Company Directors Disqualification Act 1986.
- (3) Subsections (1) and (2) apply unless the contrary intention appears.”

SCHEDULE 14

Section 439(2)

CONSEQUENTIAL AMENDMENTS OF OTHER ENACTMENTS

Enactment	Amendment
Deeds of Arrangement Act 1914 (c. 47):	
Section 3(1)	For “Part III of the Insolvency Act 1985” substitute “Parts VIII to XI of the Insolvency Act 1986”.
Section 3(4)	The same amendment.
Section 11(1) and (2)	In each subsection, the same amendment.
Section 15(1)	For “section 207 of the Insolvency Act 1985” substitute “section 412 of the Insolvency Act 1986”.
Section 16	The same amendment as of section 3(1).
Section 23	The same amendment.
Section 30(1)	For the definition of “property” substitute —“‘property’ has the meaning given by section 436 of the Insolvency Act 1986”.
Law of Property Act 1925 (c. 20):	
Section 52(2)(b)	For “section 91 or 161 of the Insolvency Act 1985” substitute “sections 178 to 180 or sections 315 to 319 of the Insolvency Act 1986”.
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F241	F241
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F241	F241
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<div> <div>Status: Point in time view as at 01/04/2014.</div> <div> <b>Changes to legislation:</b> Insolvency Act 1986 is up to date with all changes known to be in force on or before 10 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) </div> </div>	
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Third Parties (Rights against Insurers) Act 1930 (c. 25):

Section 1	<p>In subsection (1)(b), for the words from “a composition” to “that Chapter” substitute “a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 being approved under that Part”. In subsection (2), for “228 of the Insolvency Act 1985” substitute “421 of the Insolvency Act 1986”. In subsection (3), the same amendment.</p>
Section 2	<p>In subsection (1), the same amendment as of section 1(2). In subsection (1A), for the words from “composition or scheme” to the end of the subsection substitute “voluntary arrangement proposed for the purposes of, and approved under Part I or Part VIII of the Insolvency Act 1986”.</p>
Section 4	<p>In paragraph (b), the same amendment as of section 1(2).</p>
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F242	F242
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Agricultural Marketing Act 1958 (c. 47):

Schedule 2	<p>For paragraph 4 substitute—“4.—(1) A scheme shall provide for the winding up of the board, and for that purpose may apply Part V of the Insolvency Act 1986 (winding up of unregistered companies), subject to the following modifications. (2) For the purpose of sections 221, 222 and 224 of the Act of 1986, the principal place of business of the board is deemed to be the office of the board the address of which is registered by the Minister under paragraph 3 above. (3) Section 223 does not apply. (4) Section 224 applies as if the words “or any member of it as such” were omitted. (5) A petition for winding up the board may be presented by the Minister as well as by any person authorised under Part IV of the Insolvency Act 1986 to present a petition for winding up a company”.</p>
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Charities Act 1960 (c. 58):

Section 30(1)

For “Companies Act 1985” substitute  
“Insolvency Act 1986”.

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Industrial and Provident Societies Act 1965 (c. 12):

Section 55

For “Companies Act 1985” substitute  
“Insolvency Act 1986”.

Medicines Act 1968 (c. 67):

Section 72(4)

For the words from “composition or scheme”  
to the end of the subsection substitute  
“voluntary arrangement proposed for the  
purposes of, and approved under, Part VIII of  
the Insolvency Act 1986”.

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Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35):

Schedule 3

In Standard Condition 9(2)(b), for “228 of  
the Insolvency Act 1985” substitute “421 of  
the Insolvency Act 1986”.

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Superannuation Act 1972 (c. 11):

Section 5(2)

For “156 of the Insolvency Act 1985”  
substitute “310 of the Insolvency Act 1986”;  
and for “the said section 156” substitute “the  
said section 310”.

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Land Charges Act 1972 (c. 61):

Section 16(2)

Matrimonial Causes Act 1973 (c. 18):

Section 39

Powers of Criminal Courts Act 1973 (c. 62):

Section 39(3)

Friendly Societies Act 1974 (c. 46):

Section 87(2)

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Recess Elections Act 1975 (c. 66):

Section 1(2)

Policyholders Protection Act 1975 (c. 75):

Section 5(1)(a)

Section 15(1)

Section 16(1)(b)

Development Land Tax Act 1976 (c. 24):

Section 33(1)

Restrictive Trade Practices Act 1976 (c. 34):

Schedule 1

F248

...

For “207 of the Insolvency Act 1985” substitute “412 of the Insolvency Act 1986”; and for “Part III” substitute “Parts VIII to XI”.

For “section 174 of the Insolvency Act 1985” substitute “section 339 or 340 of the Insolvency Act 1986”.

In paragraph (d), for “174(10) of the Insolvency Act 1985” substitute “341(4) of the Insolvency Act 1986”.

For “Companies Act 1985” substitute “Insolvency Act 1986”.

In the definition of “certificate of vacancy”, for “214(6)(a) of the Insolvency Act 1985” substitute “427(6)(a) of the Insolvency Act 1986”.

For “Companies Act 1985” substitute “Insolvency Act 1986”.

For “532 of the Companies Act 1985” substitute “Insolvency Act 1986”.

The same amendment as of section 5(1)(a).

For “538 of the Companies Act 1985” substitute “145 of the Insolvency Act 1986”.

For paragraph 9A (inserted by Insolvency Act 1985, section 217(4)) substitute—“9A. Insolvency services within the meaning of section 428 of the Insolvency Act 1986”.

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Credit Unions Act 1979 (c. 34):

Section 6(1)

Banking Act 1979 (c. 37):

Section 6(3)

Section 18

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For “517(1)(e) of the Companies Act 1985” substitute “122(1)(e) of the Insolvency Act 1986”; and for “517(1)(e) of the Act of 1985” substitute “122(1)(e) of the Act of 1986”.

In paragraph (b), for “Part XXI of the Companies Act 1985” substitute “Part V of the Insolvency Act 1986”.

In subsection (1), for “Companies Act 1985” substitute “Insolvency Act 1986”; and in paragraph (a) of the subsection for “518” substitute “123”.

In subsection (2), for “Companies Act 1985” substitute “Insolvency Act 1986”; and for “Part XXI” substitute “Part V”.

In subsection (4)—in paragraph (a), for “Companies Act 1985” substitute “Insolvency Act 1986”; in paragraph (b), for “518 of the said Act of 1985” substitute “123

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	of the said Act 1986”; and in paragraph (c), for “Part XXI of the said Act of 1985” substitute “Part V of the said Act 1986”.
Enactment	Amendment
Section 19	<p>In subsection (2), for paragraph (ba) substitute—</p> <p>“(ba) in connection with any proceedings under any provision of—</p> <p>(i) Part XVIII or XX of the Companies Act 1985, or</p> <p>(ii) Parts I to VII of the Insolvency Act 1986 (other than sections 236 and 237)”.</p> <p>In subsection (8), for paragraphs (a) and (aa) substitute—</p> <p>“(a) for the references in subsection (2) to Part XVIII or XX of the Companies Act 1985 and Parts I to VII of the Insolvency Act 1986, there shall be substituted references to Parts V, VI and IX of the Companies Act (Northern Ireland) 1960 (the reference to sections 236 and 237 of the Act of 1986 being disregarded)”.</p>
Section 28	<p>In subsection (3), in paragraph (c), for “83 of the Insolvency Act 1985” substitute “95 of the Insolvency Act 1986”.</p> <p>In subsection (4), in paragraph (a), for “Part XXI of the Companies Act 1985” substitute “Part V of the Insolvency Act 1986”.</p> <p>In subsection (6)(b), for sub-paragraphs (ii) to (iv) substitute—</p> <p>“(ii) to be a member of a liquidation committee established under Part IV or V of the Insolvency Act 1986;</p> <p>(iii) to be a member of a creditors committee appointed under section 301 of that Act; and</p> <p>(iv) to be a commissioner under section 30 of the Bankruptcy (Scotland) Act 1985”;</p> <p>(v) to be a member of a committee of inspection appointed for the purposes of Part V or Part IX of the Companies Act (Northern Ireland) 1960;</p> <p>and (in the passage following sub-paragraph (iv)) for “such a committee as is mentioned in paragraph (b)(ii) or (iv) above” substitute “a liquidation committee, creditors’ committee or committee of inspection”.</p>

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	In subsection (7), in paragraph (b), for the words from “section 116(4)” to the end of the paragraph substitute “section 261(1) of the Insolvency Act 1986 to any person in whom the property of the firm is vested under section 282(4) of that Act”.
Section 31(7)	For paragraph (a) substitute - “(a) for England and Wales, under sections 411 and 412 of the Insolvency Act 1986”; and in paragraph (b) for “the said section 106” substitute “section 411 of that Act”.
British Aerospace Act 1980 (c. 26):	
Section 9(1)	In paragraph (a), for “Companies Act 1985” substitute “Insolvency Act 1986”.
Public Passenger Vehicles Act 1981 (c. 14):	
Section 19(3)	In paragraph (a), for “Chapter III of Part II of the Insolvency Act 1985” substitute “Part II of the Insolvency Act 1986”.
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Supreme Court Act 1981 (c. 54):	
Section 40A(2)	For “section 179 of the Insolvency Act 1985” substitute “section 346 of the Insolvency Act 1986”; and for “621 of the Companies Act 1985” substitute “183 of the Insolvency Act 1986”.
Trustee Savings Banks Act 1981 (c. 65):	
Section 31	In paragraph (b), for “666 to 669 of the Companies Act 1985” substitute “221 to 224 of the Insolvency Act 1986”.
Section 54(2)	For “666(6) of the Companies Act 1985” substitute “221(6) of the Insolvency Act 1986”.
Iron and Steel Act 1982 (c. 25):	
Schedule 4	In paragraph 3(3) after “Companies Act 1985” insert “or the Insolvency Act 1986”.
Civil Jurisdiction and Judgments Act 1982 (c. 27):	
Section 18(3)	In paragraph (ba), for “213 of the Insolvency Act 1985” substitute “426 of the Insolvency Act 1986”.

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Schedule 5	In paragraph (1), for “Companies Act 1985” substitute “Insolvency Act 1986”.
Insurance Companies Act 1982 (c. 50):	
Section 53	For “Companies Act” (the first time) substitute “Insolvency Act 1986”; and for “Companies Act” (the second time) substitute “that Act of 1986”.
Section 54	In subsection (1), for “the Companies Act” (the first time) substitute “Part IV or V of the Insolvency Act 1986”; and in paragraph (a), for “518 or sections 667 to 669” substitute “123 or sections 222 to 224”. In subsection (4) for “Companies Act” (the first time) substitute “Insolvency Act 1986”.
Section 55	In subsection (5) for “subsection (3) of section 540 of the Companies Act” substitute “section 168(2) of the Insolvency Act 1986”.  In subsection (6), for “631 of the Companies Act” substitute “212 of the Insolvency Act 1986”.
Section 56	In subsection (4), for “Section 90(5) of the Insolvency Act 1985” substitute “Section 177(5) of the Insolvency Act 1986”; and for “section 90 of the said Act of 1985” substitute “section 177 of the said Act of 1986”.  In subsection (7), for “section 539(1) of the Companies Act” substitute “section 167 of, and Schedule 4 to, the Insolvency Act 1986”.
Section 59	In subsection (1), for “106 of the Insolvency Act 1985” substitute “411 of the Insolvency Act 1986”.  In subsection (2), for “106 of the Insolvency Act 1985” substitute “411 of the Insolvency Act 1986”; and for “section 89 of, and Schedule 4 to, the Insolvency Act 1985” substitute “sections 175 and 176 of, and Schedule 6 to, the Insolvency Act 1986”.
Section 96(1)	In the definition of “insolvent”, for “517 and 518 or section 666 of the Companies Act” substitute “122 and 123 or section 221 of the Insolvency Act 1986”.
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Telecommunications Act 1984 (c. 12):

Section 68(1) In paragraph (a), for “Companies Act 1985” substitute “Insolvency Act 1986”.

County Courts Act 1984 (c. 28):

Section 98 For subsection (3) substitute—  
“(3) The provisions of this section have effect subject to those of sections 183, 184 and 346 of the Insolvency Act 1986”.

Section 102 For subsection (8) substitute—  
“(8) Nothing in this section affects section 346 of the Insolvency Act 1986”.

Section 109(2) For “179 of the Insolvency Act 1985” substitute “346 of the Insolvency Act 1986”

Finance Act 1985 (c. 54):

Section 79 Omit the word “altogether”; and after “Companies Act 1985” insert “sections 110 and 111 of the Insolvency Act 1986”.

Housing Act 1985 (c. 68):

Schedule 18 In paragraphs 3(4) and 5(3), for “228 of the Insolvency Act 1985” substitute “421 of the Insolvency Act 1986”.

**Textual Amendments**

- F241** Sch. 14: entries relating to Land Registration Act 1925 repealed (13.10.2003) by 2002 c. 9, ss. 135, 136, Sch. 13 (with s. 129, Sch. 12 para. 1); S.I. 2003/1725, art. 2
- F242** Sch. 14 the entry relating to the Exchange Control Act 1947 repealed by Finance Act 1987 (c. 16, SIF 99:6), s. 72, Sch. 16 Pt. XI
- F243** Sch. 14: the entries relating to the Arbitration Act 1950 repealed (31.1.1997) by 1996 c. 23, s. 107(2), Sch. 4 (with s. 81(2)); S.I. 1996/3146, arts. 3, 4, Sch. 2
- F244** Sch. 14: entries relating to Licensing Act 1964 repealed (24.11.2005) by Licensing Act 2003 (c. 17), ss. 199, 201, Sch. 7 (with ss. 2(3), 15(2), 195); S.I. 2005/3056, arts. 1(2), 2(2) (with saving in art. 4)
- F245** Sch. 14 the entries relating to the Income and Corporation Taxes Act 1970 repealed by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844, Sch. 31
- F246** Sch. 14: the entry relating to the Tribunals and Inquiries Act 1971 repealed (1.10.1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(2), 19(2), Sch. 4 Pt. I
- F247** Sch. 14 the entry relating to the Road Traffic Act 1972 repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 3, 5, Sch. 1 Pt. I, Sch. 4 paras. 1, 2
- F248** Sch. 14 the entry relating to the Finance Act 1972 repealed by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844, Sch. 31
- F249** Sch. 14: the entries relating to the Social Security Pensions Act 1975 repealed (7.2.1994) by 1993 c. 48, ss. 188, 193(2), Sch. 5 Pt. I; S.I. 1994/86, art. 2
- F250** Sch. 14: the entries relating to the Employment Protection (Consolidation) Act 1998 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, Sch. 3 Pt. I (with ss. 191-195, 202)
- F251** Sch. 14 the entry relating to s.125(2) of the Employment Protection (Consolidation) Act 1978 repealed by Employment Act 1989 (c.38, SIF 43:1), s. 29(4) Sch.7 Pt.II

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<b>F252</b> <a href="#">Sch. 14</a> the entries relating to the Finance Act 1981 and the Finance Act 1983 repealed by <a href="#">Income and Corporation Taxes Act 1988 (c. 1, SIF 63: 1)</a> , s. 844, <a href="#">Sch. 31</a>
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