

*Changes to legislation:* There are currently no known outstanding effects for the Friendly Societies Act 1992, Part II. (See end of Document for details)

## SCHEDULES

### SCHEDULE 10

#### APPLICATION OF COMPANIES WINDING UP LEGISLATION TO INCORPORATED FRIENDLY SOCIETIES

#### PART II

#### MODIFIED APPLICATION OF INSOLVENCY ACT 1986 PARTS IV <sup>[F1]</sup>, <sup>[F2]</sup>6, 7,] 12 AND 13<sup>[F2]</sup> AND SCHEDULE 10<sup>[F2]</sup>

##### Textual Amendments

- F1** Words in Sch. 10 Pt. II heading substituted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **3(a)**
- F2** Words in Sch. 10 Pt. II heading inserted (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), **3(a)**

##### *Preliminary*

- 6 In this Part of this Schedule, Part IV of the Insolvency Act 1986 is referred to as “Part IV”; and that Act is referred to as “the Act”.
- <sup>[F3]</sup>6A. Parts 4, 6, 7 and 12 of, and Schedule 10 to, the Act, in their application to incorporated friendly societies, have effect without the amendments of those Parts and that Schedule made by—
- (a) section 122 of the Small Business, Enterprise and Employment Act 2015 (abolition of requirements to hold meetings: company insolvency);
  - (b) section 124 of that Act (ability for creditors to opt not to receive certain notices: company insolvency); and
  - (b) Part 1 of Schedule 9 to that Act (sections 122 to 125: further amendments).]

##### Textual Amendments

- F3** Sch. 10 para. 6A inserted (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), **3(b)**

##### *Members of a friendly society as contributories in winding up*

- 7 (1) Section 74 (liability of members) of the Act is modified as follows.

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- (2) In subsection (1), the reference to any past member shall be omitted.
- (3) Paragraphs (a) to (d) of subsection (2) shall be omitted; and so shall subsection (3).
- (4) The extent of the liability of a member of an incorporated friendly society in a winding up shall not exceed the extent of his liability under paragraph 8 of Schedule 3 to this Act.
- 8 Sections 75 to 78 and 83 in Chapter I of Part IV (miscellaneous provisions not relevant to incorporated friendly societies) do not apply.
- 9 (1) Section 79 (meaning of “contributory”) of the Act does not apply.
- (2) In the enactments as applied to an incorporated friendly society, “contributory”—
- (a) means every person liable to contribute to the assets of the society in the event of its being wound up; and
  - (b) for the purposes of all proceedings for determining, and all proceedings prior to the determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory; and
  - (c) includes persons who are liable to pay or contribute to the payment of—
    - (i) any debt or liability of the incorporated friendly society being wound up; or
    - (ii) any sum for the adjustment of rights of members among themselves; or
    - (iii) the expenses of the winding up;
 but does not include persons liable to contribute by virtue of a declaration by the court under section 213 (imputed responsibility for fraudulent trading) or section 214 (wrongful trading) of the Act.

*Voluntary winding up*

- 10 (1) Section 84 of the Act does not apply.
- (2) In the enactments as applied to an incorporated friendly society, the expression “resolution for voluntary winding up” means a resolution passed under section 21(1) above.
- 11 Section 88 shall have effect with the omission of the words from the beginning to “and”.
- 12 (1) Subsection (1) of section 89 shall have effect as if for the words from the beginning to “meeting” there were substituted the words—
- “(1) Where it is proposed to wind up an incorporated friendly society voluntarily, the committee of management (or, in the case of an incorporated friendly society whose committee of management has more than two members, the majority of them) may at a meeting of the committee”.
- (2) The reference to the directors in subsection (2) shall be construed as a reference to members of the committee of management.
- 13 Section 90 shall have effect as if for the words “directors’ statutory declaration under section 89” there were substituted the words “statutory declaration made under section 89 by members of the committee of management”.

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- 14 Sections 95(1) and 96 shall have effect as if the word “directors” were omitted from each of them.
- 15 In subsection (1) of section 101 (appointment of liquidation committee) of the Act, the reference to functions conferred on a liquidation committee by or under that Act shall have effect as a reference to its functions by or under that Act as applied to incorporated friendly societies.
- 16 (1) Section 107 (distribution of property) of the Act does not apply; and the following applies in its place.
  - (2) Subject to the provisions of Part IV relating to preferential payments, an incorporated friendly society’s property in a voluntary winding up shall be applied in satisfaction of the society’s liabilities to creditors *pari passu* and, subject to that application, in accordance with the rules of the society.
- 17 Sections 110 and 111 (liquidator accepting shares, etc. as consideration for sale of company property) of the Act do not apply.

*Winding up by the court*

- 18 In sections 117 (High Court and county court jurisdiction) and 120 (Court of Session and sheriff court jurisdiction) of the Act, each reference to a company’s share capital paid up or credited as paid up shall have effect as a reference to the amount of the contribution or subscription income of an incorporated friendly society as shown by the latest balance sheet.
- 19 Section 122 (circumstances in which company may be wound up by the court) of the Act does not apply.
- 20 Section 124 (application for winding up) of the Act does not apply.
- 21 (1) In section 125 (powers of court on hearing of petition) of the Act, subsection (1) applies with the omission of the words from “but the court” to the end of the subsection.
  - (2) The conditions which the court may impose under section 125 of the Act include conditions for securing—
    - (a) that the incorporated friendly society be dissolved by consent of its members under section 20 above; or
    - (b) that the society amalgamates with, or transfers all or any of its engagements to, another friendly society under section 85 or 86 above, or
    - (c) that the society converts itself into a company under section 91 above,
 and may also include conditions for securing that any default which occasioned the petition be made good and that the costs, or in Scotland the expenses, of the proceedings on that petition be defrayed by the person or persons responsible for the default.

<sup>F4</sup>[22 .....]

**Textual Amendments**

**F4** Sch. 2 para. 22 repealed (N.I.) (7.2.1994) by 1993 c. 49, s. 182(1), Sch. 4 Pt.I; S.R. 1994/17, art. 2

<sup>F5</sup>23 If, before the presentation of a petition for the winding up by the court of an incorporated friendly society, an instrument of dissolution under section 20 above

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is placed in the society’s public file, section 129(1) (commencement of winding up by the court) of the Act shall also apply in relation to the date on which the notice is so placed and to any proceedings in the course of the dissolution as it applies to the commencement date for, and proceedings in, a voluntary winding up.]

**Textual Amendments**

**F5** Sch. 2 para. 23 repealed (N.I.) (7.2.1994) by 1993 c. 49, s. 182(1), Sch. 4 Pt.I; S.R. 1994/17, art. 2

- 24 (1) Section 130 of the Act (consequences of winding-up order) shall have effect with the following modifications.
  - (2) Subsections (1) and (3) shall be omitted.
  - (3) An incorporated friendly society shall, within 15 days of a winding-up order being made in respect of it, give notice of the order to the [<sup>F6</sup>FCA and, if the society is a PRA-authorized person, the PRA]; and the [<sup>F7</sup>FCA] shall keep the notice in the public file of the society.
  - (4) If an incorporated friendly society fails to comply with sub-paragraph (3) above, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Textual Amendments**

- F6** Words in Sch. 10 para. 24(3) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 9 para. 53(4)(a) (with Sch. 12)
- F7** Word in Sch. 10 para. 24(3) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 9 para. 53(4)(b) (with Sch. 12)

- 25 Section 140 (appointment of liquidator by court in certain circumstances) of the Act does not apply.
- 26 In the application of sections 141(1) and 142(1) (liquidation committees), of the Act to incorporated friendly societies, the references to functions conferred on a liquidation committee by or under that Act shall have effect as references to its functions by or under that Act as so applied.
- 27 The conditions which the court may impose under section 147 (power to stay or sist winding up) of the Act shall include those specified in paragraph 21(2) above.
- 28 Section 154 (adjustment of rights of contributories) of the Act shall have effect with the modification that any surplus is to be distributed in accordance with the rules of the society.

<sup>F8</sup>29 .....

**Textual Amendments**

**F8** Sch. 10 para. 29 repealed (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 1(3) (a), Sch. 4 para. 71(1), Sch. 5 (with art. 12, Sch. 4 para. 71(2))

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*Winding up: general*

- 30 Section 187 (power to make over assets to employees) of the Act does not apply.
- 31 (1) In section 201 (dissolution: voluntary winding up) of the Act, subsection (2) applies without the words from “and on the expiration” to the end of the subsection and, in subsection (3), the word “However” shall be omitted.
- (2) Sections 202 to 204 (early dissolution) of the Act do not apply.
- 32 In section 205 (dissolution: winding up by the court) of the Act, subsection (2) applies with the omission of the words from “and, subject” to the end of the subsection; and in subsections (3) and (4) references to the Secretary of State shall have effect as references to the [F9FCA].

**Textual Amendments**

- F9** Word in Sch. 10 para. 32 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 9 para. 53\(5\)](#) (with Sch. 12)

*Penal provisions*

- 33 Sections 216 and 217 of the Act (restriction on re-use of name) do not apply.
- 34 (1) Sections 218 and 219 (prosecution of delinquent officers) of the Act do not apply in relation to offences committed by members of an incorporated friendly society acting in that capacity.
- (2) Sections 218(5) of the Act and subsections (1) and (2) of section 219 of the Act do not apply.
- (3) The references in subsections (3) and (4) of section 219 of the Act to the Secretary of State shall have effect as references to the [F10FCA]; and the reference in subsection (3) to section 218 of the Act shall have effect as a reference to that section as supplemented by paragraph 35 below.

**Textual Amendments**

- F10** Word in Sch. 10 para. 34(3) substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), [Sch. 9 para. 53\(5\)](#) (with Sch. 12)

- 35 (1) Where a report is made to the prosecuting authority (within the meaning of section 218) under section 218(4) of the Act, in relation to an officer of an incorporated friendly society, he may, if he thinks fit, refer the matter to the [F11FCA] for further enquiry.
- (2) On such a reference to it the [F11FCA] shall exercise its power under section 65(1) above to appoint one or more investigators to investigate and report on the matter.
- (3) An answer given by a person to a question put to him, in exercise of the powers conferred by section 65 above on a person so appointed, may be used in evidence against the person giving it.

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**Textual Amendments**

- F11** Word in Sch. 10 para. 35 substituted (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 9 para. 53(5)** (with Sch. 12)

*<sup>F12</sup>Protection of supplies*

**Textual Amendments**

- F12** Sch. 10 para. 35A and cross-heading inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), **Sch. 12 para. 4** (with ss. 2(2), 5(2), 14(4))

- 35A Section 233B of the Act (protection of supplies of goods and services) does not apply.]

*Preferential debts*

- 36 Section 387 (meaning in Schedule 6 of “the relevant date”) of the Act applies with the omission of subsections (2) and (4) to (6).

*<sup>F13</sup>Insolvency practitioners: their qualification and regulation*

**Textual Amendments**

- F13** Sch. 10 paras. 36A, 36B and cross-heading inserted (7.4.2017) by [The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency \(Amendment\) Act \(Northern Ireland\) 2016 \(Consequential Amendments and Transitional Provisions\) Regulations 2017 \(S.I. 2017/400\)](#), regs. 1(2), **3(b)**

- 36A. Section 390 of the Act (persons not qualified to act as insolvency practitioners) has effect as if for subsection (2) there were substituted—

“(2) A person is not qualified to act as an insolvency practitioner in relation to an incorporated friendly society at any time unless at that time the person is fully authorised to act as an insolvency practitioner or partially authorised to act as an insolvency practitioner only in relation to companies.”.

- 36B. (1) In the following provisions of the Act, in a reference to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to) companies the reference to companies has effect without the modification in paragraph 3(1)(a) above—

- (a) sections 390A and 390B(1) and (3) (authorisation of insolvency practitioners); and  
 (b) sections 391O(1)(b) and 391R(3)(b) (court sanction of insolvency practitioners in public interest cases).

- (2) In sections 391Q(2)(b) (direct sanctions order: conditions) and 391S(3)(e) (power for Secretary of State to obtain information) of the Act the reference to a company has effect without the modification in paragraph 3(1)(a) above.]

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