

# DEREGULATION ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 6: Insolvency and company law*

#### **Part 2: Administration of companies**

#### **Release of administrator where no distribution to unsecured creditors other than by virtue of section 176A(2)(a)**

566. *Paragraph 7* amends paragraph 98 of Schedule B1 to the Insolvency Act 1986 and like that Schedule forms part of the law of England and Wales and Scotland. The amendment makes it clear that where an administrator of a company has been appointed by a floating charge holder or by the company or its directors and there are insufficient assets to enable a distribution to be made to the unsecured creditors (other than under section 176A(2)(a) of the Insolvency Act 1986 - the “prescribed part”), there is no requirement for all of the creditors to resolve to give the administrator his/her release. Release is the release of an office-holder from liability in respect of his or her acts and omissions as an office-holder. (The “prescribed part” is a proportion of a company’s assets over which a floating charge holder has security which can nonetheless be applied in certain circumstances to unsecured creditors.)
567. Currently paragraph 98(2)(b) of Schedule B1 to the Insolvency Act 1986 provides that such an administrator obtains his release by a resolution of a creditors’ committee or by a resolution of the creditors. Paragraph 98(3) of Schedule B1 to that Act goes on to provide that where such an administrator makes a statement under paragraph 52(1)(b) of Schedule B1 (company has insufficient property to make a distribution to unsecured creditors), a resolution requires the approval of every secured creditor and (where distributions to preferential creditors have been or may be made) the approval of at least 50% of the preferential creditors by value. This implies that a normal resolution of all the creditors is required plus a resolution of all of the secured creditors.
568. The amendments made by paragraph 7 distinguish paragraph 52(1)(b) cases from non-paragraph 52(1)(b) cases. Thus, where the unsecured creditors have no interest in the administration (other than by virtue of the “prescribed part”), it will be clear that the unsecured creditors are not involved in the administrator’s release - the release only needs to be given by (all of) the secured creditors (together with at least 50% of the preferential creditors where relevant) and is effective from the time they decide. It will not be necessary for the secured creditors to hold a meeting.
569. *Paragraph 7* will come into force on a day to be appointed by the Secretary of State in a commencement order. Paragraph 7 is deregulatory because it will avoid the calling of unnecessary creditors’ meetings at which the creditors formally resolve to give administrators their release.