

Changes to legislation: Housing and Planning Act 2016, Cross Heading: Specific modifications is up to date with all changes known to be in force on or before 05 August 2023. 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) View outstanding changes

SCHEDULES

SCHEDULE 5

CONDUCT OF HOUSING ADMINISTRATION: COMPANIES

PART 1

MODIFICATIONS OF SCHEDULE B1 TO THE INSOLVENCY ACT 1986

Specific modifications

- 3 Paragraph 1 (administration) is to have effect as if—
- (a) for sub-paragraph (1) there were substituted—
- “(1) In this Schedule “housing administrator”, in relation to a company, means a person appointed by the court for the purposes of a housing administration order to manage its affairs, business and property.”,
- and
- (b) in sub-paragraph (2), for “Act” there were substituted “ Schedule ”.

Commencement Information

I1 Sch. 5 para. 3 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 4 Paragraph 40 (dismissal of pending winding-up petition) is to have effect as if sub-paragraphs (1)(b), (2) and (3) were omitted.

Commencement Information

I2 Sch. 5 para. 4 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 5 Paragraph 42 (moratorium on insolvency proceedings) is to have effect as if sub-paragraphs (4) and (5) were omitted.

Commencement Information

I3 Sch. 5 para. 5 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 6 Paragraph 44 (interim moratorium) is to have effect as if sub-paragraphs (2) to (4), (6) and (7)(a) to (c) were omitted.

Commencement Information

I4 Sch. 5 para. 6 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

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- 7 Paragraph 46(6) (date for notifying administrator's appointment) is to have effect as if for paragraphs (a) to (c) there were substituted “ the date on which the housing administration order comes into force ”.

Commencement Information

I5 Sch. 5 para. 7 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 8 Paragraph 49 (administrator's proposals) is to have effect as if—
- (a) in sub-paragraph (2)(b) for “objective mentioned in paragraph 3(1)(a) or (b) cannot be achieved” there were substituted “ objectives of the housing administration should be achieved by means other than just a rescue of the company as a going concern ”, and
 - (b) in sub-paragraph (4), after paragraph (a) there were inserted—
 - “(aa) to the Secretary of State and the Regulator of Social Housing.”.

Commencement Information

I6 Sch. 5 para. 8 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 9 Paragraph 54 is to have effect as if the following were substituted for it—
- “54 (1) The housing administrator of a company may on one or more occasions revise the proposals included in the statement made under paragraph 49 in relation to the company.
- (2) If the housing administrator thinks that a revision is substantial, the housing administrator must send a copy of the revised proposals—
- (a) to the registrar of companies,
 - (b) to the Secretary of State and the Regulator of Social Housing,
 - (c) to every creditor of the company, other than an opted-out creditor, of whose claim and address the housing administrator is aware, and
 - (d) to every member of the company of whose address the housing administrator is aware.
- (3) A copy sent in accordance with sub-paragraph (2) must be sent within the prescribed period.
- (4) The housing administrator is to be taken to have complied with sub-paragraph (2)(d) if the housing administrator publishes, in the prescribed manner, a notice undertaking to provide a copy of the revised proposals free of charge to any member of the company who applies in writing to a specified address.
- (5) A housing administrator who fails without reasonable excuse to comply with this paragraph commits an offence.”

Commencement Information

I7 Sch. 5 para. 9 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

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- 10 Paragraph 60 (powers of an administrator) has effect as if after that sub-paragraph (2) there were inserted—

“(3) The housing administrator of a company has the power to act on behalf of the company for the purposes of provision contained in any legislation which confers a power on the company or imposes a duty on it.

(4) In sub-paragraph (2) “legislation” has the same meaning as in the Chapter 5 of Part 4 of the Housing and Planning Act 2016.”

Commencement Information

I8 Sch. 5 para. 10 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 11 Paragraph 68 (management duties of an administrator) is to have effect as if—
- (a) in sub-paragraph (1), for paragraphs (a) to (c) there were substituted “the proposals as—
- (a) set out in the statement made under paragraph 49 in relation to the company, and
- (b) from time to time revised under paragraph 54,
- for achieving the objectives of the housing administration.”, and
- (b) in sub-paragraph (3), for paragraphs (a) to (d) there were substituted “the directions are consistent with the achievement of the objectives of the housing administration ”.

Commencement Information

I9 Sch. 5 para. 11 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 12 Paragraph 73(3) (protection for secured or preferential creditor) is to have effect as if for “or modified” there were substituted “ under paragraph 54 ”.

Commencement Information

I10 Sch. 5 para. 12 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 13 Paragraph 74 (challenge to administrator's conduct) is to have effect as if—
- (a) for sub-paragraph (2) there were substituted—
- “(2) If a company is in housing administration, a person mentioned in sub-paragraph (2A) may apply to the court claiming that the housing administrator is acting in a manner preventing the achievement of the objectives of the housing administration as quickly and efficiently as is reasonably practicable.
- (2A) The persons who may apply to the court are—
- (a) the Secretary of State;
- (b) with the consent of the Secretary of State, the Regulator of Social Housing;
- (c) a creditor or member of the company.”,
- (b) in sub-paragraph (6)—

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- (i) at the end of paragraph (b) there were inserted “or”, and
 - (ii) paragraph (c) (and the “or” before it) were omitted, and
- (c) after that sub-paragraph there were inserted—
 - “(7) In the case of a claim made otherwise than by the Secretary of State or the Regulator of Social Housing, the court may grant a remedy or relief or make an order under this paragraph only if it has given the Secretary of State or the Regulator a reasonable opportunity of making representations about the claim and the proposed remedy, relief or order.
 - (8) The court may grant a remedy or relief or make an order on an application under this paragraph only if it is satisfied, in relation to the matters that are the subject of the application, that the housing administrator—
 - (a) is acting,
 - (b) has acted, or
 - (c) is proposing to act,
 in a way that is inconsistent with the achievement of the objectives of the housing administration as quickly and as efficiently as is reasonably practicable.
 - (9) Before the making of an order of the kind mentioned in sub-paragraph (4)(d)—
 - (a) the court must notify the housing administrator of the proposed order and of a period during which the housing administrator is to have the opportunity of taking steps falling within sub-paragraphs (10) to (12), and
 - (b) the period notified must have expired without the taking of such of those steps as the court thinks should have been taken,
 and that period must be a reasonable period.
 - (10) In the case of a claim under sub-paragraph (1)(a), the steps referred to in sub-paragraph (9) are—
 - (a) ceasing to act in a manner that unfairly harms the interests to which the claim relates,
 - (b) remedying any harm unfairly caused to those interests, and
 - (c) steps for ensuring that there is no repetition of conduct unfairly causing harm to those interests.
 - (11) In the case of a claim under sub-paragraph (1)(b), the steps referred to in sub-paragraph (9) are steps for ensuring that the interests to which the claim relates are not unfairly harmed.
 - (12) In the case of a claim under sub-paragraph (2), the steps referred to in sub-paragraph (9) are—
 - (a) ceasing to act in a manner preventing the achievement of the objectives of the housing administration as quickly and as efficiently as is reasonably practicable,
 - (b) remedying the consequences of the housing administrator having acted in such a manner, and

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- (c) steps for ensuring that there is no repetition of conduct preventing the achievement of the objectives of the housing administration as quickly and as efficiently as is reasonably practicable.”

Commencement Information

I11 Sch. 5 para. 13 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 14 Paragraph 75(2) (misfeasance) is to have effect as if after paragraph (b) there were inserted—

“(ba) a person appointed as an administrator of the company under the provisions of this Act, as they have effect in relation to administrators other than housing administrators.”.

Commencement Information

I12 Sch. 5 para. 14 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 15 Paragraph 78 (consent to extension of administrator's term of office) is to have effect as if sub-paragraph (2) were omitted.

Commencement Information

I13 Sch. 5 para. 15 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 16 Paragraph 79 (end of administration) is to have effect as if—

(a) for sub-paragraphs (1) and (2) there were substituted—

“(1) On an application made by a person mentioned in sub-paragraph (2), the court may provide for the appointment of a housing administrator of a company to cease to have effect from a specified time.

(2) An application may be made to the court under this paragraph—

- (a) by the Secretary of State,
(b) with the consent of the Secretary of State, by the Regulator of Social Housing, or
(c) with the consent of the Secretary of State, by the housing administrator.”, and

(b) sub-paragraph (3) were omitted.

Commencement Information

I14 Sch. 5 para. 16 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 17 Paragraph 83(3) (notice to registrar when moving to voluntary liquidation) is to have effect as if after “may” there were inserted “, with the consent of the Secretary of State or of the Regulator of Social Housing, ”.

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Commencement Information

I15 Sch. 5 para. 17 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 18 Paragraph 84 (notice to registrar when moving to dissolution) is to have effect as if—
- (a) in sub-paragraph (1), for “to the registrar of companies” there were substituted—
 - “(a) to the Secretary of State and the Regulator of Social Housing, and
 - (b) if directed to do so by either the Secretary of State or the Regulator of Social Housing, to the registrar of companies.”,
 - (b) sub-paragraph (2) were omitted, and
 - (c) in sub-paragraphs (3) to (6), for “(1)”, in each place, there were substituted “(1)(b)”.

Commencement Information

I16 Sch. 5 para. 18 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 19 Paragraph 87(2) (resignation of administrator) is to have effect as if for paragraphs (a) to (d) there were substituted “ by notice in writing to the court ”.

Commencement Information

I17 Sch. 5 para. 19 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 20 Paragraph 89(2) (administrator ceasing to be qualified) is to have effect as if for paragraphs (a) to (d) there were substituted “ to the court ”.

Commencement Information

I18 Sch. 5 para. 20 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 21 Paragraph 90 (filling vacancy in office of administrator) is to have effect as if for “Paragraphs 91 to 95 apply” there were substituted “ Paragraph 91 applies ”.

Commencement Information

I19 Sch. 5 para. 21 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 22 Paragraph 91 (vacancies in court appointments) is to have effect as if—
- (a) for sub-paragraph (1) there were substituted—
 - “(1) The court may replace the housing administrator on an application made—
 - (a) by the Secretary of State,
 - (b) with the consent of the Secretary of State, by the Regulator of Social Housing, or

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- (c) where more than one person was appointed to act jointly as the housing administrator, by any of those persons who remains in office.”
- (b) sub-paragraph (2) were omitted.

Commencement Information

I20 Sch. 5 para. 22 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 23 Paragraph 98 (discharge from liability on vacation of office) is to have effect as if sub-paragraphs (2)(b) and (ba), (3) and (3A) were omitted.

Commencement Information

I21 Sch. 5 para. 23 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 24 Paragraph 99 (charges and liabilities upon vacation of office by administrator) is to have effect as if—

- (a) in sub-paragraph (4), for the words from the beginning to “cessation”, in the first place, there were substituted “ A sum falling within sub-paragraph (4A) ”,
- (b) after that sub-paragraph there were inserted—

“(4A) A sum falls within this sub-paragraph if it is—

- (a) a sum payable in respect of a debt or other liability arising out of a contract that was entered into before cessation by the former housing administrator or a predecessor,
 - (b) a sum that must be repaid by the company in respect of a grant that was made under section 109 of the Housing and Planning Act 2016 before cessation,
 - (c) a sum that must be repaid by the company in respect of a loan made under that section before cessation or that must be paid by the company in respect of interest payable on such a loan,
 - (d) a sum payable by the company under section 111 of that Act in respect of an agreement to indemnify made before cessation, or
 - (e) a sum payable by the company under section 113 of that Act in respect of a guarantee given before cessation.”, and
- (c) in sub-paragraph (5), for “(4)” there were substituted “ (4A)(a) ”.

Commencement Information

I22 Sch. 5 para. 24 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 25 Paragraph 100 (joint and concurrent administrators) is to have effect as if sub-paragraph (2) were omitted.

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I23 Sch. 5 para. 25 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 26 Paragraph 101(3) (joint administrators) is to have effect as if after “87 to” there were inserted “91, 98 and”.

Commencement Information

I24 Sch. 5 para. 26 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 27 Paragraph 103 (appointment of additional administrators) is to have effect as if—
- (a) in sub-paragraph (2) the words from the beginning to “order” were omitted and for paragraph (a) there were substituted—
 - “(a) the Secretary of State,
 - (aa) the Regulator of Social Housing, or”,
 - (b) after that sub-paragraph there were inserted—
 - “(2A) The consent of the Secretary of State is required for an application by the Regulator of Social Housing for the purposes of sub-paragraph (2).”, and
 - (c) sub-paragraphs (3) to (5) were omitted.

Commencement Information

I25 Sch. 5 para. 27 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 28 Paragraph 106(2) (penalties) is to have effect as if paragraphs (a), (b), (f), (g), (i) and (l) to (n) were omitted.

Commencement Information

I26 Sch. 5 para. 28 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 29 Paragraph 109 (references to extended periods) is to have effect as if “or 108” were omitted.

Commencement Information

I27 Sch. 5 para. 29 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

- 30 Paragraph 111 (interpretation) is to have effect as if—
- (a) in sub-paragraph (1), the definitions of “correspondence”, “holder of a qualifying floating charge”, “the purpose of administration” and “unable to pay its debts” were omitted,
 - (b) in that sub-paragraph, at the appropriate places there were inserted—
 - ““company” and “court” have the same meaning as in Chapter 5 of Part 4 of the Housing and Planning Act 2016,”,

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““housing administration application” means an application to the court for a housing administration order under Chapter 5 of Part 4 of the Housing and Planning Act 2016;”,

““housing administration order” has the same meaning as in Chapter 5 of Part 4 of the Housing and Planning Act 2016;”,

““objectives”, in relation to a housing administration, is to be read in accordance with section 96(4) of the Housing and Planning Act 2016;”, and

““prescribed” means prescribed by housing administration rules within the meaning of Chapter 5 of Part 4 of the Housing and Planning Act 2016.”,

- (c) sub-paragraphs (1A) and (1B) were omitted, and
- (d) after sub-paragraph (3) there were inserted—

“(4) For the purposes of this Schedule a reference to a housing administration order includes a reference to an appointment under paragraph 91 or 103.”

Commencement Information

I28 Sch. 5 para. 30 in force at 5.7.2018 by S.I. 2018/805, reg. 3(b)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 172(1)(a) words renumbered as s. 172(1)(a) by [2017 c. 20 s. 26\(8\)\(a\)\(i\)](#)
- s. 172(1)(b) inserted by [2017 c. 20 s. 26\(8\)\(a\)\(ii\)](#)