

## SCHEDULE 1

Article 2(1) and (2)

Modified application of Parts 1 and 2 of the Insolvency Act 1986 to relevant societies

### PART 1

#### General modifications

1. Unless the context otherwise requires and subject to any further modification in this Schedule, in Parts 1 and 2 of the 1986 Act—

- (a) a reference to a provision of that Act or to Part 26 of the 2006 Act is a reference to that provision or that Part as applied in relation to a relevant society;
- (b) an expression defined in that Act (but not an expression modified by this paragraph) has the meaning given in the Act with the modification that a reference to a company includes a reference to a relevant society;
- (c) a reference to a company includes a reference to a relevant society;
- (d) a reference to a company registered in England and Wales includes a reference to a relevant society whose registered office is situated in England and Wales;
- (e) a reference to a company registered in Scotland includes a reference to a relevant society whose registered office is situated in Scotland;
- (f) a reference to a company's creditors does not include a reference to a member of a relevant society to whom an amount is owed by the society if, but only in so far as, the amount concerned is owed in respect of the member's shares;
- (g) a reference to the directors of a company is a reference to the members of the committee of a relevant society;
- (h) a reference to a meeting of a company or of the members of a company is a reference to a general meeting of a relevant society and, in relation to a society whose rules allow the members to appoint delegates for meetings of the society or its members, includes a reference to a general meeting for which delegates have been appointed;
- (i) a reference to a member of a company is a reference to a person whose name is entered as a member in the register kept by a relevant society in accordance with section 44(1) of the 1965 Act (register of members and officers)(1);
- (j) a reference to an officer of a company is a reference to an officer of a relevant society; and
- (k) a reference to the registrar of companies is a reference to the FCA in its capacity as the authority responsible for the registration of a relevant society under the 1965 Act.

### PART 2

#### Modified application of Part 1 of the Insolvency Act 1986 to relevant societies (further modifications)

2. Part 1 of the 1986 Act applies in relation to a relevant society with the further modifications set out in this Part and with any other necessary modification.

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(1) Section 44(1) was amended by [S.I. 2011/593](#).

**Part 1 (company voluntary arrangements)**

3. Section 1 of the 1986 Act (those who may propose an arrangement)(2) has effect as if—
- (a) it required any proposal under Part 1 to be so framed as to enable a relevant society to comply with the rules of the society and the provisions of the Industrial and Provident Societies Acts 1965 to 1968(3) and the Credit Unions Act 1979(4); and
  - (b) in subsection (1)(5) the reference to debts included a reference to any amount owed by the society in respect of a member's shares where—
    - (i) the society is an authorised deposit taker; and
    - (ii) the amount concerned is owed in respect of a deposit.
4. Section 3 of the 1986 Act (summoning of meetings) has effect as if subsection (3) provided that the persons required to be summoned to a creditors' meeting included every member of the society to whom an amount is owed in respect of the member's shares where—
- (a) the society is an authorised deposit taker; and
  - (b) the amount concerned is owed in respect of a deposit.
5. Section 7A of the 1986 Act (prosecution of delinquent officers of company)(6) has effect as if—
- (a) in subsection (2), in the definition of “the appropriate authority”—
    - (i) at the end of sub-paragraph (i) there were added “or the Financial Conduct Authority (“the FCA”)”;
    - (ii) at the end of sub-paragraph (ii) there were added “or the FCA”;
  - (b) for subsection (3)(7) there were substituted—
 

“(3) Subsection (3A) applies where a report is made to the Secretary of State or the FCA under subsection (2) in relation to a relevant society (within the meaning given in section 74(1) of the Industrial and Provident Societies Act 1965(8) (“the 1965 Act”)) whose registered office is situated in England and Wales.

(3A) The Secretary of State or the FCA may, for the purpose of investigating the matter reported and such other matters relating to the society's affairs as appear to require investigation, exercise the power to appoint inspectors which would be exercisable by the FCA under section 49 of the 1965 Act upon an application made for that purpose under subsection (1) of that section.”;
  - (c) subsections (4) to (7) were omitted; and
  - (d) in subsection (8), for the definition of “prosecuting authority” there were substituted—
 

““prosecuting authority” means—

    - (a) in the case of a relevant society whose registered office is situated in England and Wales, the Director of Public Prosecutions, the Secretary of State or the FCA; and
    - (b) in the case of a relevant society whose registered office is situated in Scotland, the Lord Advocate.”.

(2) Section 1 was amended by the Insolvency Act 2000, Schedule 2, paragraphs 1 and 2, and by the Enterprise Act 2002 (c. 40), Schedule 17, paragraphs 9 and 10. There are other amendments not relevant to this Order.

(3) For the meaning of this citation see section 23(2) of the Friendly and Industrial and Provident Societies Act 1968 (c. 55).

(4) 1979 c.34.

(5) Subsection 1 was amended by the Enterprise Act 2002, Schedule 17, paragraphs 9 and 10(a).

(6) Section 7A was inserted by the Insolvency Act 2000, Schedule 2, paragraphs 1 and 10.

(7) Subsection (3) was amended by S.I. 2009/1941.

(8) The definition of “relevant society” is inserted by article 17(5) of this Order.

### **Schedule A1 (moratorium where directors propose voluntary arrangement)**

6. In Schedule A1 to the 1986 Act(9) paragraph 1 (interpretation) has effect as if—
- (a) before the definition of “the beginning of the moratorium” there were inserted—
    - ““administrative receiver”, in relation to a relevant society whose registered office is situated in England or Wales, means—
    - (a) a receiver or manager of the whole (or substantially the whole) of the society’s property appointed by or on behalf of the holder of a floating charge, or
    - (b) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the society’s property;”;
  - (b) after the definition of “the nominee” there were inserted—
    - ““relevant society” means a society which is registered under the Industrial and Provident Societies Act 1965 and is not—
    - (a) a private registered provider of social housing; or
    - (b) registered as a social landlord under Part 1 of the Housing Act 1996 or under Part 2 of the Housing (Scotland) Act 2010;”.
7. Schedule A1 to the 1986 Act has effect as if after paragraph 1 there were inserted—
- “**1A.**—(1) In this Schedule a reference to a floating charge, in relation to a relevant society whose registered office is situated in England or Wales, is a reference to a floating charge which is created by the society on or after 6th April 2014 and is either—
- (a) a charge in respect of which an application has been made for the purposes of section 1 of the Industrial and Provident Societies Act 1967; or
  - (b) created by a debenture registered under section 9 of the Agricultural Credits Act 1928 as applied by section 14 of that Act.
- (2) In this Schedule a reference to a floating charge, in relation to a relevant society whose registered office is situated in Scotland, is a reference to a floating charge which is created by the society on or after 6th April 2014 and is either—
- (a) a charge created by an instrument a copy of which has been delivered to the Financial Conduct Authority in pursuance of section 4 of the Industrial and Provident Societies Act 1967(10); or
  - (b) created and registered under Part 2 of the Agricultural Credits (Scotland) Act 1929(11).”.

8. Schedule A1 to the 1986 Act has effect as if—

    - (a) in paragraph 2 (companies eligible for a moratorium) in sub-paragraph (1) the words “if it meets the requirements of paragraph 3,” were omitted;
    - (b) paragraph 3 (requirements for eligibility for a moratorium) were omitted; and
    - (c) paragraph 5 (power to modify qualifications for eligibility) were omitted.

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(9) Schedule A1 was inserted by the Insolvency Act 2000, Schedule 1, paragraphs 1 and 4; and was amended by the Enterprise Act 2002, Schedule 17, paragraphs 9 and 37, by the Financial Services Act 2012 (c. 21), Schedule 18, paragraphs 51 and 54, and by S.I. 2002/1555, 2004/2312, 2008/1897 and 2009/1941. There are other amendments not relevant to this Order.

(10) Section 4 is prospectively repealed by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 49(2). Section 4(3) was amended by S.I. 2001/2617; 2001/3649 and 2013/496.

(11) 1929 c. 13 (19 and 20 Geo. 5).

## PART 3

### Modified application of Part 2 of the Insolvency Act 1986 to relevant societies (further modifications)

9. Part 2 of the 1986 Act applies in relation to a relevant society with the further modifications set out in this Part and with any other necessary modification.

10. In this Part—

- (a) a reference to a numbered paragraph is a reference to the paragraph so numbered in Schedule B1 to the 1986 Act (administration)(12); and
- (b) a reference to a sub-paragraph is a reference to a sub-paragraph of such a paragraph.

#### **Nature of administration**

11. Paragraph 3 (purpose of administration) has effect as if a reference to the company's creditors as a whole included a reference to any member of the society to whom an amount is owed in respect of the member's shares where—

- (a) the society is an authorised deposit taker; and
- (b) the amount concerned is owed in respect of a deposit.

#### **Appointment of administrator by court**

12. Paragraph 12 (administration application) has effect as if—

- (a) in sub-paragraph (1)(c) the reference to the company's creditors included a reference to any member of the society who would be entitled to petition for the winding up of the society;
- (b) sub-paragraph (1) provided that—
  - (i) an application to the court for an administration order may also be made by the FCA in its capacity as the authority responsible for the registration of the society under the 1965 Act; and
  - (ii) in the case of a relevant society which is or has been an authorised person, such power is in addition to the power to make an administration application conferred on the FCA by section 359 of FSMA (administration order); and
- (c) sub-paragraph (2) required the applicant also to notify the FCA (unless the FCA is the applicant).

#### **Appointment of administrator by holder of floating charge**

13. In paragraph 14 (power to appoint) sub-paragraph (2) has effect as if—

- (a) paragraph (a) required the instrument to include the following statement—

“Paragraph 14 of Schedule B1 to the Insolvency Act 1986, as applied in relation to relevant societies by article 2(2) of the Industrial and Provident Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014, applies to this floating charge.”;
- (b) in paragraph (c) the words “within the meaning given by section 29(2)” were omitted; and

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(12) Schedule B1 was inserted by the Enterprise Act 2002, section 248(2) and Schedule 16; and was amended by the Financial Services Act 2012, Schedule 18, paragraphs 51 and 55, and by S.I. 2003/2096, 2008/948 and 2008/1897. There are other amendments not relevant to this Order.

(c) paragraph (d) were omitted.

14. Paragraph 15 (restrictions on power to appoint) has effect as if for sub-paragraph (3) there were substituted—

“(3) In relation to a relevant society whose registered office is situated in Scotland, sub-paragraph (2) has effect as if the following were substituted for paragraph (a)—

“(a) it has priority of ranking in accordance with section 464(4)(b) of the Companies Act 1985 as applied in relation to a relevant society by section 3 of the Industrial and Provident Societies Act 1967(13).”.

### **Effect of administration**

15. In paragraph 41 (dismissal of administrative or other receiver), in sub-paragraph (3) ignore paragraph (b).

16. In paragraph 45 (publicity) sub-paragraph (3) has effect as if after paragraph (b) there were inserted—

“(ba) a statement of account,

(bb) an advertisement.”.

17. Paragraph 46 (announcement of administrator’s appointment) has effect as if sub-paragraph (2) required the administrator to send a notice of appointment also to every member of the society.

### **Process of administration**

18. Paragraph 49 (administrator’s proposals) has effect as if—

(a) after sub-paragraph (3) there were inserted—

“(3A) In the case of a relevant society, proposals under this paragraph may include provision for amending the society’s rules only if the Financial Conduct Authority has issued a statement to the effect that it would register an amendment in the terms proposed if copies were sent to it for registration in accordance with section 10 of the Industrial and Provident Societies Act 1965(14).

(3B) The proposals must not include any measure which would be contrary to the provisions of the Industrial and Provident Societies Acts 1965 to 1968 or the Credit Unions Act 1979.

(3C) Sub-paragraph (3A) does not apply if the intended effect of the proposals is that the society will cease to be registered under the Industrial and Provident Societies Act 1965.”;

(b) in sub-paragraph (4)(c) the words “of whose address he is aware” were omitted; and

(c) sub-paragraph (6) were omitted.

19. Paragraph 51 (requirement for initial creditors’ meeting) has effect as if—

(a) after sub-paragraph (1) there were inserted—

“(1A) Each copy of an administrator’s statement of proposals sent to a member under paragraph 49(4)(c) must be accompanied by an invitation to a members’ meeting.”; and

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(13) Section 3 was substituted by the Companies Consolidation (Consequential Provisions) Act 1985 (c. 9), section 26, was amended by S.I. 2001/2617 and 2009/1941, and is prospectively substituted by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), section 49(1).

(14) Section 10 was amended by S.I. 1996/1738, 2001/2617, 2001/3649 and 2013/496.

*Status: This is the original version (as it was originally made).*

- (b) in sub-paragraphs (2) and (3) the reference to an initial creditors' meeting included a reference to a members' meeting.
- 20.** Paragraph 52 (requirement for initial creditors' meeting) has effect as if—
- (a) in sub-paragraph (1) for “Paragraph 51(1)” there were substituted “Paragraph 51(1) and (1A)”; and
  - (b) where the administrator is required to summon an initial creditors' meeting under sub-paragraph (2), it required the administrator also to summon a members' meeting for a date within the period mentioned in sub-paragraph (3).
- 21.** In paragraph 53 (business and result of initial creditors' meeting), in sub-paragraphs (1) and (2) the reference to an initial creditors' meeting includes a reference to a members' meeting.
- 22.** Paragraph 54 (revision of administrator's proposals) has effect as if—
- (a) in sub-paragraph (1) the reference to an initial creditors' meeting, and in sub-paragraphs (2) and (5) the reference to a creditors' meeting, included a reference to a members' meeting;
  - (b) after sub-paragraph (1) there were inserted—
    - “(1A) Where a revision is proposed in the case of a relevant society, sub-paragraphs (3A) to (3C) of paragraph 49 apply in relation to the revision.”;
  - (c) sub-paragraph (2) required the administrator—
    - (i) to summon a members' meeting (as well as a creditors' meeting); and
    - (ii) to send a statement of the proposed revision in the prescribed form (as well as to each creditor) to every member of the society;
  - (d) sub-paragraphs (2)(c) and (3) were omitted; and
  - (e) sub-paragraph (6) required the administrator to report any decision taken at a creditors' meeting and any decision taken at a members' meeting as soon as is reasonably practicable after the conclusion of both meetings.
- 23.** In paragraph 55 (failure to obtain approval of administrator's proposals) sub-paragraph (1) has effect as if after “an initial creditors' meeting” and “a creditors' meeting” there were inserted “or a members' meeting”.
- 24.** Paragraph 56 (further creditors' meetings) has effect as if—
- (a) in sub-paragraph (1)(a) the reference to creditors of the company whose debts amount to at least 10% of the total debts of the company were a reference to at least 10% of the total number of creditors of the society or to creditors whose debts amount to at least 10% of the total debts of the society;
  - (b) sub-paragraph (1) also required the administrator to summon a meeting of the society's members if—
    - (i) a meeting is requested in the same manner prescribed for a creditors' meeting by at least 10% of the total number of those members; or
    - (ii) the administrator is directed to do so by the court; and
  - (c) in sub-paragraph (2) the reference to a creditors' meeting included a reference to a members' meeting.
- 25.** In paragraph 58 (correspondence instead of creditors' meeting)—
- (a) a reference to a creditors' meeting includes a reference to a members' meeting; and
  - (b) in sub-paragraph (1) the reference to correspondence between the administrator and creditors includes a reference to correspondence between the administrator and members.

### **Functions of administrator**

**26.** Paragraph 59 (general powers) has effect as if it required the administrator to ensure compliance with the rules of the society and the provisions of the Industrial and Provident Societies Acts 1965 to 1968 and the Credit Unions Act 1979.

**27.** Paragraph 61 (removal and appointment of director) has effect as if it required the administrator not to appoint any person to be an officer of the society unless that person is a fit and proper person to hold that position.

**28.** In paragraph 64 (exercise of management power), in sub-paragraph (2)(b) the reference to an instrument includes a reference to the rules of the society.

**29.** In paragraph 65 (distribution) sub-paragraph (1) has effect as if it provided that the administrator may make a distribution to a member of the society in relation to any amount owed by the society in respect of the member's shares where—

- (a) the society is an authorised deposit taker; and
- (b) the amount concerned is owed in respect of a deposit.

### **Ending administration**

**30.** In paragraph 80 (termination of administration where objective achieved)—

- (a) sub-paragraph (4) has effect as if it required the administrator, where the administrator sends a copy of a notice filed under sub-paragraph (2) to creditors, to send a copy also to the members of the society; and
- (b) in sub-paragraph (5) a reference to a creditor includes a reference to a member of the society.

**31.** In paragraph 84 (moving from administration to dissolution) sub-paragraph (5) has effect as if it required the administrator, where the administrator sends a copy of a notice under sub-paragraph (1) to creditors, to send a copy also to the members of the society.

### **Replacing administrator**

**32.** Paragraph 91 (supplying vacancy in office of administrator) has effect as if in sub-paragraph (1) after paragraph (c) there were inserted—

- “(ca) in the case of a relevant society, the Financial Conduct Authority,
- (cb) in the case of a relevant society which is or has been a PRA-authorised person (within the meaning given in section 2B(5) of the Financial Services and Markets Act 2000), the Financial Conduct Authority or the Prudential Regulation Authority.”

**33.** Paragraph 96 (substitution of administrator: competing floating charge-holder) has effect as if for sub-paragraph (4) there were substituted—

“(4) In relation to a relevant society whose registered office is situated in Scotland, sub-paragraph (3) has effect as if the following were substituted for paragraph (a)—

- “(a) it has priority of ranking in accordance with section 464(4)(b) of the Companies Act 1985 as applied in relation to a relevant society by section 3 of the Industrial and Provident Societies Act 1967.”

### **General**

**34.** Paragraph 111 (interpretation) has effect as if—

*Status: This is the original version (as it was originally made).*

- (a) “administrative receiver” and “floating charge” were given the same meaning as in Schedule A1 to the 1986 Act (as applied in relation to a relevant society)(**15**); and
- (b) there were inserted at the appropriate place—
  - ““relevant society” means a society which is registered under the Industrial and Provident Societies Act 1965 and is not—
  - (a) a private registered provider of social housing; or
  - (b) registered as a social landlord under Part 1 of the Housing Act 1996 or under Part 2 of the Housing (Scotland) Act 2010,”.

## PART 4

### Modified application of Schedule 1 to the Insolvency Act 1986 to relevant societies (further modifications)

- 35.** Schedule 1 to the 1986 Act(**16**) applies in relation to a relevant society with the further modifications set out in this Part and with any other necessary modification.
- 36.** This Part has effect without limiting paragraph 26 of this Schedule.
- 37.** In this Part—
- (a) a reference to a numbered paragraph is a reference to the paragraph so numbered in Schedule 1 to the 1986 Act;
  - (b) “the 1979 Act” means the Credit Unions Act 1979(**17**); and
  - (c) “credit union” has the meaning given in section 31(1) of the 1979 Act.
- 38.** Paragraph 3 (power to borrow) has effect as if it provided that power to raise or borrow money and grant security over the property of the society—
- (a) in the case of a credit union, is subject to—
    - (i) the provisions of the 1967 Act;
    - (ii) section 7 (shares)(**18**), section 7A (power to issue interest-bearing shares)(**19**) and section 8 (general prohibition on deposit-taking)(**20**) of the 1979 Act; and
    - (iii) the rules of the society containing provision in respect of the matters mentioned in paragraph 7 of Schedule 1 to the 1979 Act (determination of the maximum amount of the interest in the shares of the society which may be held by any member);
  - (b) in the case of a relevant society which is not a credit union, is subject to—
    - (i) section 6 (maximum shareholding in society)(**21**) and section 7 (carrying on of banking by societies)(**22**) of the 1965 Act;
    - (ii) the provisions of the 1967 Act; and

(15) For the meaning of “administrative receiver” see paragraph 1 of Schedule A1 as modified by paragraph 6(a) of this Schedule; and for the meaning of “floating charge” see the modification of Schedule A1 made by paragraph 7 of this Schedule.

(16) Paragraph 2 of Schedule 1 was amended by the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), section 76(2) and Schedule 13, Part 1.

(17) 1979 c. 34.

(18) Section 7 was amended by S.I. 2011/2687.

(19) Section 7A was inserted by S.I. 2011/2687.

(20) Section 8 was amended by S.I. 2002/1501.

(21) Section 6 was amended by S.I. 1997/627, 2011/2687 and 2014/210.

(22) Section 7 was amended by the Criminal Procedure (Scotland) Act 1975 (c. 21), section 289G, by the Criminal Justice Act 1982 (c. 48), section 46, and by S.I. 1981/394.

- (iii) the rules of the society containing provision in respect of the matters mentioned in paragraph 7 (determination of the maximum amount of a member's interest in shares) and paragraph 8 (determination whether the society may contract loans or receive deposits) of Schedule 1 to the 1965 Act; and
  - (c) in either such case, is subject to such other enactments and such rules of the society as govern or restrict the exercise of that power.
- 39.** Paragraphs 15 (power to establish subsidiaries) and 16 (power to transfer property to subsidiaries) do not apply in relation to credit unions.
- 40.** Paragraph 16 has effect in relation to a relevant society other than a credit union as if—
- (a) the reference to subsidiaries were a reference to subsidiaries within the meaning given in section 15 of the Friendly and Industrial and Provident Societies Act 1968<sup>(23)</sup>; and
  - (b) it provided that power to transfer to subsidiaries of the society the whole or any part of the business or property of the society is only exercisable in accordance with a special resolution under section 51 or 52 of the 1965 Act (as modified in relation to a relevant society by articles 14 and 15).

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(23) 1968 c. 55.