

STATUTORY INSTRUMENTS

2021 No. 716

**The Payment and Electronic Money
Institution Insolvency Regulations 2021**

Application of the IA 1986

37.—(1) The provisions of the IA 1986 mentioned in the first column of the Table apply to special administration as they apply to any other insolvency proceedings, with any modifications shown in the third column.

(2) This regulation is subject to—

- (a) Schedule 1 (which makes provision about how special administration applies to limited liability partnerships), and
- (b) Schedule 2 (which makes provision about how special administration applies to partnerships).

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| Generally (for the provisions of this part of the table mentioned below) | | To be read as if— <ul style="list-style-type: none">(a) references to a provision of the IA 1986 which is applied and modified by these Regulations were to the provision as applied and modified by these Regulations,(b) references to the liquidator were to the administrator,(c) references to winding up were to special administration,(d) references to winding up by the court were to the imposition of special administration by order of the court,(e) references to being wound up under Part 4 or 5 of the IA 1986 were to being in special administration,(f) references to the commencement of winding up were to the commencement of special administration,(g) references to going into liquidation were to entering special administration,(h) references to liquidation or to insolvent liquidation were to special administration, |

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| | | (i) references to a winding-up order were to a special administration order, and (j) references to a company were to an institution. Those general modifications are subject to any specific modifications below. |
| Sections 74 and 76–83 | Contributories | |
| Section 167 (and Schedule 4) | Powers of the liquidator | To be read as if— (a) in subsection (2) the references to a liquidation committee were to a creditors’ committee; (b) a user or holder may also apply to the court under subsection (3); (c) in Schedule 4, paragraphs 4 to 10 and 12 were omitted and in paragraph 13, the reference to winding up the company’s affairs and distributing its assets were to pursuing the special administration objectives. |
| Section 168(4) | Discretion in managing and distributing assets | |
| Section 176 | Preferential charges on goods distrained | |
| Section 176ZB | Application of proceeds of office-holder claims | |
| Section 176A | Unsecured creditors | |
| Section 178 | Disclaimer of onerous property | |
| Section 179 | Disclaimer of leaseholds | |
| Section 180 | Land subject to rent charge | |

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| Sections | | |
| Section 181 | Disclaimer: powers of court | |
| Section 182 | Powers of court (leaseholds) | |
| Section 183 | Effect of execution or attachment (England and Wales) | To be read as if subsection (2)(a) were omitted. |
| Section 184 | Duties of officers | To be read as if, in subsection (1), there were no reference to a resolution having been passed for voluntary winding up. |
| Section 185 | Effect of diligence (Scotland) | To be read as if, in the application of subsections (3) to (10) of section 23A of the Bankruptcy (Scotland) Act 2016 (asp 21), the reference to an order of the court awarding winding up were to the making of the special administration order. |
| Section 186 | Rescission of contracts by the court | |
| Section 187 | Power to make over assets to employees | |
| Section 193 | Unclaimed dividends (Scotland) | |
| Section 194 | Resolutions passed at adjourned meetings | To be read as it applied immediately before its repeal by paragraph 46 of Schedule 9 to the SBEEA 2015. |
| Section 196 | Judicial notice of court documents | |
| Section 197 | Commission for receiving evidence | |
| Section 198 | Court order for examination of persons in Scotland | |

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| Sections | | |
| Section 199 | Costs of application for leave to proceed (Scottish companies) | |
| Section 206 | Fraud in anticipation of winding up | To be read as if, in subsection (1), there were no reference to passing a resolution for voluntary winding up. |
| Section 207 | Transactions in fraud of creditors | To be read as if, in subsection (1), there were no reference to passing a resolution for voluntary winding up. |
| Section 208 | Misconduct in course of winding up | To be read as if— (a) in subsection (1), “whether by the court or voluntarily” were omitted; (b) there were no amendment made by paragraph 52 of Schedule 9 to the SBEEA 2015. |
| Section 209 | Falsification of company’s books | |
| Section 210 | Material omissions from statement | To be read as if— (a) in subsection (1), “whether by the court or voluntarily” were omitted; (b) in subsection (2), “or has passed a resolution for voluntary winding up” were omitted. |
| Section 211 | False representation to creditors | To be read as if in subsection (1)— (a) “whether by the court or voluntarily” were omitted; (b) the reference to the company’s creditors included users or holders. |
| Section 212 | Summary remedy | |
| Section 213 | Fraudulent trading | |
| Section 214 | Wrongful trading | To be read as if subsection (6) were omitted. |
| Section 215 | Proceedings under section 213 or 214 | |

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| Sections | | |
| Section 216 | Restriction on re-use of company names | To be read as if— (a) the reference to a liquidating company were to a company in special administration; (b) subsections (7) and (8) were omitted. |
| Section 217 | Personal liability for debts following contravention of section 216 | To be read as if subsection (6) were omitted. |
| Section 218 | Prosecution of delinquent officers and members of company | To be read as if — (a) in subsection (3), the first reference to the official receiver were omitted and the second reference were to the Secretary of State; (b) in subsection (5) the reference to subsection (4) were to subsection (3); (c) subsections (4) and (6) were omitted. |
| Section 219 | Obligations arising under section 218 | To be read as if, in subsection (1), the reference to section 218(4) were to section 218(3). |
| Section 233 | Utilities | |
| Section 233A | Further protection of utilities | |
| Section 234 | Getting in the company's property | To be read as if — (a) for subsection (1) there were substituted— “(1) This section applies where a company enters special administration.”; (b) the references to the office-holder were references to the administrator. |
| Section 235 | Co-operation with the administrator | To be read as if — (a) subsections (1) and (4)(b) to (d) were omitted; (b) the references to the office-holder were references to the administrator. |

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| Section 236 | Inquiry into company's dealings | To be read as if — (a) for subsection (1) there were substituted— “(1) This section applies where a company enters special administration.”; (b) the references to the office-holder were references to the administrator. |
| Section 237 | Enforcement by the court | |
| Section 238 | Transactions at an undervalue (England and Wales) | |
| Section 239 | Preferences (England and Wales) | |
| Section 240 | Sections 238 and 239: relevant time | To be read as if — (a) in subsection (2)(a), the reference to being unable to pay debts were to be read in accordance with section 93(4) of the BA 2009 (as applied and modified by the EMR 2011 and the PSR 2017); (b) sub-paragraphs (1)(d) and (3)(a) to (d) were omitted. |
| Section 241 | Orders under sections 238 and 239 | To be read as if subsections (3A) and (3B) were omitted. |
| Section 242 | Gratuitous alienations (Scotland) | |
| Section 243 | Unfair preferences (Scotland) | |
| Section 244 | Extortionate credit transactions | |
| Section 245 | Avoidance of floating charges | To be read as if — (a) in subsection (3)(c), the references to administration application and administration order were references to an application for special administration and special administration order respectively; |

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| | | (b) in subsection (4)(a) and (b), the reference to being unable to pay debts were to be read in accordance with section 93(4) of the BA 2009 (as applied and modified by the EMR 2011 and the PSR 2017); (c) subsections (3)(d) and (5)(a) to (c) were omitted. |
| Section 246 | Unenforceability of liens | To be read as if — (a) for subsection (1) there were substituted— “(1) This section applies where a company enters special administration.”; (b) the references to the office-holder were references to the administrator. |
| Section 246ZD | Power to assign certain causes of action | To be read as if— (a) for subsection (1) there were substituted— “(1) This section applies where a company enters special administration.”; (b) the references to the office holder were references to the administrator. |
| Section 246A | Remote attendance at meetings | To be read as if — (a) there were no amendments made by paragraph 54 of Schedule 9 to the SBEEA 2015; (b) references to creditors included users or holders. |
| Section 246B | Use of websites | |
| Section 386 (and Schedule 6 as read with Schedule 4 to the Pensions Schemes Act 1993) | Preferential debts | |
| Section 387, subsections (1) and (3A) | “The relevant date” | To be read as if the reference to “administration” were to special administration. |
| Section 389 | Offence of acting without | To be read as if— |

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| | being qualified | (a) the reference to acting as an insolvency practitioner were to acting as the administrator; (b) subsection (2) were omitted. |
| Sections 390 to 391T | Authorisation and regulation of insolvency practitioners | To be read as if— (a) in section 390, references to acting as an insolvency practitioner were to acting as the administrator; (b) in subsection (2) of that section, after “authorised” there were inserted “to act as an insolvency practitioner”; (c) an order under section 391 had effect in relation to any provision applied for the purposes of special administration; (d) in sections 390A, 390B(1) and (3), 391O(1)(b) and 391R(3)(b), references to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to) companies, the reference to companies had effect as a reference to companies without modification by this Table. (e) in sections 391Q(2)(b) and 391S(3)(e) the references to a company had effect a references to a company without modification by this Table. |
| Section 411 | Insolvency rules | To be read as if, in subsections (1A), (2C) and (3), the reference to Part 2 of the BA 2009 were to a reference to these Regulations. |
| Section 414 | Fees orders | To be read as if — (a) in subsection (1), the reference to Parts I to VII of this Act were to these Regulations; (b) there were no reference to the official receiver. |
| Section 423 | Transactions defrauding creditors | To be read as if subsection (4) were omitted. |
| Sections 424 and 425 | Transactions defrauding creditors | |
| Section 426 | Co-operation between courts | To be read as if references to insolvency law included provisions made by or under these Regulations. |
| Sections 430 and 431 | Offences | |

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| (and Schedule 10) | | |
| Section 432 | Offences by bodies corporate | To be read as if, in subsection (4), there were no provisions of the IA 1986 listed there except for sections 206 to 211. |
| Section 433 | Statements: admissibility | |
| Sections 434B–434D | Supplementary provisions | To be read as if there were no amendments of section 434B made by paragraph 57 of Schedule 9 to the SBEEA 2015. |
| Schedule B1 | | |
| Generally (for the provisions of this part of the table mentioned below) | | <p>To be read as if—</p> <p>(a) references to a provision of the IA 1986 which is applied and modified by these Regulations were to the provision as applied and modified by these Regulations,</p> <p>(b) references to the administrator were to the administrator appointed under regulation 7,</p> <p>(c) references to administration were to special administration,</p> <p>(d) references to an administration order were to a special administration order,</p> <p>(e) references to a company were to an institution, and</p> <p>(f) references to the purpose of administration were to the special administration objectives.</p> <p>Those general modifications are subject to any specific modifications below.</p> |
| Paragraph 40(1)(a) | Dismissal of pending winding up petition | |
| Paragraph 42 | Moratorium on insolvency proceedings | To be read as if sub-paragraphs (4)(a) and (4)(aa) were omitted. |
| Paragraph 43 | Moratorium on other legal processes | |
| Paragraph 44(1), (5) and (7) | Interim moratorium | To be read as if— |

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| | | (a) sub-paragraph (7) also included a reference to paragraph 44 not preventing or requiring the permission of the court for an application by the FCA for a special administration order; (b) sub-paragraph (7)(b) to (d) were omitted. |
| Paragraph 45 | Publicity | |
| Paragraph 46 | Announcement of administrator's appointment | To be read as if — (a) in sub-paragraph (3)(a), in addition to obtaining the list of creditors, the administrator were also required to obtain as complete a list as possible of the users or holders of the institution; (b) in sub-paragraph (3)(b), the administrator were also required to send a notice of their appointment to each user or holder of whose claim and address the administrator is aware; (c) where the special administration application has not been made by the FCA, notice of the administrator's appointment were also required to be sent under sub-paragraph (5) to the FCA; (d) sub-paragraphs (6)(b) and (c) were omitted. |
| Paragraph 47 | Statement of company's affairs | To be read as if, in sub-paragraph (2), there were also a reference to including particulars of the relevant funds held by the institution. |
| Paragraph 48 | Statement of company's affairs | |
| Paragraph 49 | Administrator's proposals | To be read as if — (a) sub-paragraph (2)(b) were omitted; (b) there were no amendment made by paragraph 10(2) of Schedule 9 to the SBEEA 2015; (c) in sub-paragraph (4), the administrator were also required to send a copy of the statement of proposals to every user or holder of whose claim the administrator is aware and who the administrator has a means of contacting, and to the FCA; (d) the administrator were also required to give notice that the statement of proposals is to be provided free |

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| | | <p>of charge to a payment system operator who applies in writing to a specified address.</p> <p>The application of paragraph 49(1) to (3) is subject to regulation 38(6).</p> |
| Paragraph 50 | Creditors' meeting | <p>To be read as if —</p> <p>(a) there were no repeal by paragraph 10(3) of Schedule 9 to the SBEEA 2015;</p> <p>(b) in sub-paragraph (1), the administrator were also required to summon the users or holders referred to in paragraph 49(4) to the meeting of creditors and to give such users or holders notice under sub-paragraph (1)(b);</p> <p>(c) the FCA were empowered to appoint a person to attend a meeting of creditors and make representations as to any matter for decision.</p> |
| Paragraph 51 | Requirement for initial creditors' meeting | <p>To be read as if —</p> <p>(a) there were no amendments made by paragraph 10(4) and (5) of Schedule 9 to the SBEEA 2015;</p> <p>(b) there were a requirement that each copy of an administrator's proposals sent to a user or holder or the FCA under paragraph 49 be accompanied by an invitation to the initial creditors' meeting.</p> <p>The application of paragraph 51 is subject to regulation 38(6).</p> |
| Paragraph 53 | Business and result of initial creditors' meeting | <p>To be read as if —</p> <p>(a) there were no amendments made by paragraph 10(8) to (10) of Schedule 9 to the SBEEA 2015;</p> <p>(b) there were a requirement that special administration insolvency rules prescribe how users or holders are to vote at meetings of creditors;</p> <p>(c) in sub-paragraph (2), if the FCA has not appointed a person to attend the meeting, the administrator were also required to report any decision taken to the FCA.</p> <p>The application of paragraph 53 is subject to regulation 38(6).</p> |
| Paragraph 54 | Revision of administrator's proposals | <p>To be read as if —</p> <p>(a) there were no amendments made by paragraph 10(11) to (16) of Schedule 9 to the SBEEA 2015;</p> |

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| | | <p>(b) if the revision proposed by the administrator affects both creditors and users or holders, every reference to creditors included users or holders;</p> <p>(c) if the administrator thinks that the revision proposed only affects either creditors or users or holders, it only applied to the affected party and required the party not affected to be informed of the revision;</p> <p>(d) the FCA were required to be invited to the creditors' meeting mentioned in sub-paragraph (2)(a);</p> <p>(e) the statement of the proposed revision mentioned in sub-paragraph (2)(b) were also required to be sent to the FCA.</p> <p>The application of paragraph 54 is subject to regulation 38(6).</p> |
| Paragraph 55 | Failure to obtain approval of administrator's proposals | <p>To be read as if —</p> <p>(a) there were no amendment made by paragraph 10(17) of Schedule 9 to the SBEEA 2015;</p> <p>(b) in making an order under sub-paragraph (2) the court were required to have regard to the special administration objectives;</p> <p>(c) sub-paragraph (2)(d) were omitted.</p> <p>The application of paragraph 55 is subject to regulation 38(6).</p> |
| Paragraph 56 | Further creditors' meetings | <p>To be read as if —</p> <p>(a) there were no amendments made by paragraph 10(18) to (20) of Schedule 9 to the SBEEA 2015;</p> <p>(b) the administrator were required to invite the FCA to any meeting summoned.</p> |
| Paragraph 57 | Creditors' committee | <p>To be read as if —</p> <p>(a) there were no amendment made by paragraph 10(21) of Schedule 9 to the SBEEA 2015;</p> <p>(b) a creditors' committee were only able to be established by a creditors' meeting to which creditors and users or holders have both been given notice;</p> |

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| | | <p>(c) the FCA were empowered to appoint a person to attend a meeting of the creditors' committee and make representations as to any matter for decision;</p> <p>(d) there were a requirement that special administration insolvency rules prescribe that, where a meeting of creditors resolves to establish a creditors' committee, the makeup of the creditors' committee is a reflection of all parties with an interest in the achievement of the special administration objectives.</p> |
| Paragraph 58 | Correspondence instead of creditors' meeting | To be read as it applied immediately before its repeal by paragraph 10(22) of Schedule 9 to the SBEEA 2015. |
| Paragraph 59 | Functions of an administrator | <p>To be read as if—</p> <p>(a) in sub-paragraph (1) the administrator's power were to do anything necessary or expedient in pursuit of Objectives 1 to 3;</p> <p>(b) in sub-paragraph (2) the reference to a provision of the Schedule expressly permitting the administrator to do a specified thing included a provision of these Regulations expressly permitting the administrator to do a specified thing;</p> <p>(c) at the end there were inserted—</p> <p>“(4) The administrator is an officer of the court.”</p> |
| Paragraph 60 (and Schedule 1 to the IA 1986) | General powers | |
| Paragraph 61 | Directors | |
| Paragraph 62 | Power to call meetings | <p>To be read as if —</p> <p>(a) there were no amendment made by paragraph 10(23) of Schedule 9 to the SBEEA 2015;</p> <p>(b) the administrator were also empowered to call a meeting of users or holders or contributories.</p> |
| Paragraph 63 | Application to court for directions | |

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| Paragraph 64 | Management powers | |
| Paragraph 65 | Distribution to creditors | To be read as if sub-paragraph (3) were omitted in respect of England and Wales. |
| Paragraph 66 | Payments | |
| Paragraph 67 | Property | |
| Paragraph 68 | Management | To be read as if references to proposals approved under paragraphs 53 or 54 included, without need for approval— (a) proposals agreed with the FCA under 39 or 40; or (b) proposals in respect of which the court has made an order dispensing with the need for agreement in accordance with those regulations. |
| Paragraph 69 | Agency | |
| Paragraph 70 | Floating charge | |
| Paragraph 71 | Non-floating charge | |
| Paragraph 72 | Hire purchase property | |
| Paragraph 73 | Protection for secured or preferential creditors | To be read as if sub-paragraph (2)(d) were omitted. |
| Paragraph 74 | Challenge to administrator's conduct | To be read as if — (a) there were no amendment made by paragraph 10(24) of Schedule 9 to the SBEEA 2015; (b) the FCA were also empowered to make an application to the court, on the grounds that— (i) the administrator is acting or has acted so as unfairly to harm the interests of some or all of the members, creditors or users or holders; (ii) the administrator is proposing to act in a way which would unfairly harm the interests of some or all of the members, creditors or users or holders; |

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| | | <p>(iii) the administrator has failed to carry out a reconciliation in accordance with regulation 13;</p> <p>(c) a user or holder were also empowered to make an application to the court under sub-paragraph (1) or (2);</p> <p>(d) any of the following persons were also empowered to make an application on the grounds that the administrator is not taking any action in response to a request from that person under regulation 35(3) and that the person is of the opinion that the action requested would not lead to a material reduction in the value of the property of the institution—</p> <p>(i) the Bank of England;</p> <p>(ii) the Treasury;</p> <p>(iii) the FCA;</p> <p>(iv) the Payment Systems Regulator;</p> <p>(e) the following persons were also empowered to make an application on the grounds that the administrator has made, or proposes to make, a PPTA in contravention of 32 or 34—</p> <p>(i) the Bank of England;</p> <p>(ii) the FCA;</p> <p>(f) any person, other than the institution, who is party to an arrangement of a kind referred to in regulation 31(1) were also empowered to make an application on the grounds that the administrator has made, or proposes to make, a relevant transfer in contravention of that regulation;</p> <p>(g) where an application is made on the grounds that the administrator has made a relevant transfer in contravention of regulation 34—</p> <p>(i) sub-paragraphs (3)(a), (d) and (e) and (4) were omitted;</p> <p>(ii) the court were also empowered to make an order declaring that the transfer was made in contravention of the regulation concerned;</p> |

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| | | <p>(h) where an application is made on the grounds that the administrator has made a relevant transfer in contravention of regulation 32 or 33, the court were also empowered to make such order as it thinks fit for restoring the position to what it would have been if the transfer had not been made in contravention of the regulation concerned;</p> <p>(i) where the FCA has given a direction under regulation 38 which has not been withdrawn, the court did not have power to make an order if it would impede or prevent compliance with the direction.</p> |
| Paragraph 75 | Misfeasance | To be read as if a user or holder and the FCA were included in the list of persons who may make an application under sub-paragraph (2). |
| Paragraph 79 | Court ending administration on application of administrator | To be read as if sub-paragraph (2) were omitted. |
| Paragraph 81 | Court ending administration on application of a creditor | To be read as if it did not apply where the administrator was appointed by the court on the application of the FCA or the Secretary of State. |
| Paragraph 84 | Termination: no more relevant funds for distribution | <p>To be read as if—</p> <p>(a) the administrator were only empowered to send a notice under sub-paragraph (1) if the institution no longer holds relevant funds;</p> <p>(b) there were no amendment made by paragraph 10(33) of Schedule 9 to the SBEEA 2015;</p> |
| | | (c) in sub-paragraph (5)(b), a copy of the notice were also required to be sent be sent to every user or holder of the institution of whom the administrator is aware and the FCA. |
| Paragraph 85 | Discharge of administration order | |
| Paragraph 86 | Notice to Companies Registrar at the end of administration | |

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| Paragraph 87 | Resignation | To be read as if — (a) where the administrator was appointed by the court on the application of the FCA or the Secretary of State, the notice of the resignation given in accordance with sub-paragraph (2)(a) were also required to be given to the applicant; (b) sub-paragraphs (2)(b) to (d) were omitted. |
| Paragraph 88 | Removal | |
| Paragraph 89 | Disqualification | To be read as if — (a) where the administrator was appointed by the court on the application of the FCA or the Secretary of State, the notice given in accordance with sub-paragraph (2) (a) were also required to be given to the applicant; (b) sub-paragraphs (2)(b) to (d) were omitted. |
| Paragraph 90 | Replacement | To be read as if reference to paragraphs 91 to 95 were to paragraph 91 only. |
| Paragraph 91 | Replacement | To be read as if the FCA were included in the list of persons who may make an application to appoint an administrator in sub-paragraph (1) but to whom the restrictions in sub-paragraph (2) apply. |
| Paragraph 98 | Discharge | To be read as if — (a) there were no amendment made by paragraph 10(38) of Schedule 9 to the SBEEA 2015; (b) sub-paragraphs (2)(b) and (ba) and (3) were omitted. |
| Paragraph 99 | Vacation of office: charges and liabilities | To be read as if — (a) in sub-paragraph (3), the former administrator's remuneration and expenses incurred in respect of the pursuit of Objective 1 are to be charged on and payable out of relevant funds; (b) in sub-paragraph (4)(b), the reference to any charge arising under sub-paragraph (3) did not include a charge on relevant funds. |
| Paragraph 100 | Joint and concurrent administrators | |

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| Paragraph 101 | Joint and concurrent administrators | To be read as if in sub-paragraph (3), the reference to paragraphs 87 to 99 were to paragraphs 87 to 91 and 98 to 99. |
| Paragraph 102 | Joint and concurrent administrators | |
| Paragraph 103 | Joint and concurrent administrators | To be read as if — (a) in sub-paragraph (2), the reference to paragraph 12(1)(a) to (e) were to regulation 8(1); (b) sub-paragraphs (3) to (5) were omitted. |
| Paragraph 104 | Presumption of validity | |
| Paragraph 105 | Majority decision of directors | |
| Paragraph 106 (and section 430 of and Schedule 10 to the IA 1986) | Fines | To be read as if — (a) there were no amendments made by paragraph 11 of Schedule 9 to the SBEEA 2015; (b) sub-paragraph (2)(a), (b) and (l) to (n) was omitted. |
| Paragraph 107 | Extension of time limit | To be read as if, in considering an application under paragraph 107, the court were required to have regard to the special administration objectives. |
| Paragraph 108 | Extension of time limit | To be read as if — (a) there were no amendments made by paragraph 10(39), (40), (42) and (43) of Schedule 9 to the SBEEA 2015; (b) the administrator were also required to obtain consent of those users or holders whose claims amount to more than 50% of the total amount of claims for relevant funds, disregarding the claims of those users or holders who were sent a copy of the statement of proposals but who did not respond to an invitation to give or withhold consent; (c) sub-paragraph (3) were omitted. |
| Paragraph 109 | Extension of time limit | |

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| Paragraph 111 | Interpretation | To be read as if — (a) there were no amendment made by paragraph 10(44) of Schedule 9 to the SBEEA 2015; (b) the definition of “administrator” and sub-paragraph (1A)(b) and (c) and sub-paragraph (1B) were omitted. |
| Paras 112–116 | Scotland | |