

Insolvency Act 1986

1986 CHAPTER 45

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An Act to consolidate the enactments relating to company insolvency and winding up (including the winding up of companies that are not insolvent, and of unregistered companies); enactments relating to the insolvency and bankruptcy of individuals; and other enactments bearing on those two subject matters, including the functions and qualification of insolvency practitioners, the public administration of insolvency, the penalisation and redress of malpractice and wrongdoing, and the avoidance of certain transactions at an undervalue

[25th July 1986]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

COMPANY VOLUNTARY ARRANGEMENTS

The proposal

1.— Those who may propose an arrangement.

(1) The directors of a company [(other than one which is in administration or being wound up)]¹ may make a proposal under this Part to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affair (from here on referred to, in either case, as a “voluntary arrangement”).

(2) A proposal under this Part is one which provides for some person (“the nominee”) to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation; and the nominee must be a person who is qualified to act as an insolvency practitioner [or authorised to act as nominee, in relation to the voluntary arrangement]² .

(3) Such a proposal may also be made—

[(a) where the company is in administration, by the administrator,]³

¹ Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.10(a) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

² Words substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.2 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

(b) where the company is being wound up, by the liquidator.

[(4) In this Part “company” means—

[(a) a company registered under the Companies Act 2006 in England and Wales or Scotland;]⁴

(b) a company incorporated in an EEA State other than the United Kingdom; or

(c) a company not incorporated in an EEA State but having its centre of main interests in a member State other than Denmark.

(5) In subsection (4), in relation to a company, “centre of main interests” has the same meaning as in the EC Regulation and, in the absence of proof to the contrary, is presumed to be the place of its registered office (within the meaning of that Regulation).

(6) If a company incorporated outside the United Kingdom has a principal place of business in Northern Ireland, no proposal under this Part shall be made in relation to it unless it also has a principal place of business in England and Wales or Scotland (or both in England and Wales or Scotland).]⁵

[1A.— Moratorium.

(1) Where the directors of an eligible company intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the company.

(2) The provisions of Schedule A1 to this Act have effect with respect to—

(a) companies eligible for a moratorium under this section,

(b) the procedure for obtaining such a moratorium,

(c) the effects of such a moratorium, and

(d) the procedure applicable (in place of sections 2 to 6 and 7) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.

] ⁶

2.— Procedure where nominee is not the liquidator or administrator.

(1) This section applies where the nominee under section 1 is not the liquidator or administrator of the company [and the directors do not propose to take steps to obtain a moratorium under section 1A for the company]⁷ .

³ Substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.10(b) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

⁴ Substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.71(2) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁵ S.1(4)-(6) substituted for s.1(4) by Insolvency Act 1986 (Amendment) Regulations 2005/879 reg.2(2) (April 13, 2005)

⁶ Added by Insolvency Act 2000 c. 39 Sch.1 para.2 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

⁷ Words inserted by Insolvency Act 2000 c. 39 Sch.1 para.3 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

- (2) The nominee shall, within 28 days (or such longer period as the court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the court stating—
- (a) [whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,]⁸
 - [(aa) whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal, and]⁸
 - (b) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.
- (3) For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee—
- (a) a document setting out the terms of the proposed voluntary arrangement, and
 - (b) a statement of the company's affairs containing—
 - (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and
 - (ii) such other information as may be prescribed.
- [(4) The court may—
- (a) on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this section or has died, or
 - (b) on an application made by that person or the nominee, in a case where it is impracticable or inappropriate for the nominee to continue to act as such,
- direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.
-]⁹

Commencement

Pt I s. 2(1)-(4): June 1, 1991

3.— Summoning of meetings.

- (1) Where the nominee under section 1 is not the liquidator or administrator, and it has been reported to the court that such meetings as are mentioned in section 2(2) should be summoned, the person making the report shall (unless the court otherwise directs) summon those meetings for the time, date and place proposed in the report.
- (2) Where the nominee is the liquidator or administrator, he shall summon meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit.
- (3) The persons to be summoned to a creditors' meeting under this section are every creditor of the company of whose claim and address the person summoning the meeting is aware.

⁸ Existing s.2(2)(a) renumbered as s.2(2)(aa) and words inserted by Insolvency Act 2000 c. 39 Sch.2(I) para.3(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

⁹ Substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.3(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

Commencement

Pt I s. 3(1)-(3): June 1, 1991

Consideration and implementation of proposal

4.— Decisions of meetings.

(1) The meetings summoned under section 3 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner [or authorised to act as nominee, in relation to the voluntary arrangement]¹⁰.

But they shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 1.

(3) A meeting so summoned shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(4) Subject as follows, a meeting so summoned shall not approve any proposal or modification under which—

(a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, or

(b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

However, the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(5) Subject as above, each of the meetings shall be conducted in accordance with the rules.

(6) After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.

(7) References in this section to preferential debts and preferential creditors are to be read in accordance with section 386 in Part XII of this Act.

Commencement

Pt I s. 4(1)-(7): June 1, 1991

¹⁰ Words substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.4 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

[4A.— Approval of arrangement.

- (1) This section applies to a decision, under section 4, with respect to the approval of a proposed voluntary arrangement.
- (2) The decision has effect if, in accordance with the rules—
- (a) it has been taken by both meetings summoned under section 3, or
 - (b) (subject to any order made under subsection (4)) it has been taken by the creditors' meeting summoned under that section.
- (3) If the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company may apply to the court.
- (4) An application under subsection (3) shall not be made after the end of the period of 28 days beginning with—
- (a) the day on which the decision was taken by the creditors' meeting, or
 - (b) where the decision of the company meeting was taken on a later day, that day.
- (5) Where a member of a regulated company, within the meaning given by paragraph 44 of Schedule A1, applies to the court under subsection (3), the Financial Services Authority is entitled to be heard on the application.
- (6) On an application under subsection (3), the court may—
- (a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or
 - (b) make such other order as it thinks fit.

] ¹¹**5.— Effect of approval.**

[(1) This section applies where a decision approving a voluntary arrangement has effect under section 4A.] ¹²

- (2) The [...] ¹³ voluntary arrangement—
- (a) takes effect as if made by the company at the creditors' meeting, and
 - [(b) binds every person who in accordance with the rules—
 - (i) was entitled to vote at that meeting (whether or not he was present or represented at it), or
 - (ii) would have been so entitled if he had had notice of it,
- as if he were a party to the voluntary arrangement.

] ¹⁴

[(2A) If—

¹¹ Added by Insolvency Act 2000 c. 39 Sch.2(I) para.5 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

¹² Substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.6(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

¹³ Word repealed by Insolvency Act 2000 c. 39 Sch.5 para.1 (January 1, 2003 as SI 2002/2711)

¹⁴ Substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.6(c) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of subsection (2)(b)(ii) has not been paid, and
 (b) the arrangement did not come to an end prematurely,
 the company shall at that time become liable to pay to that person the amount payable under the arrangement.

]¹⁴

(3) Subject as follows, if the company is being wound up or [is in administration]¹⁵, the court may do one or both of the following, namely—

- (a) by order stay or sist all proceedings in the winding up or [provide for the appointment of the administrator to cease to have effect]¹⁶ ;
- (b) give such directions with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the [...] ¹³ voluntary arrangement.

(4) The court shall not make an order under subsection (3)(a)—

- (a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court, or
- (b) at any time when an application under the next section or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

Commencement

Pt I s. 5(1)-(4)(b): June 1, 1991

6.— Challenge of decisions.

(1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—

- (a) that a voluntary arrangement [which has effect under section 4A]¹⁷ unfairly prejudices the interests of a creditor, member or contributory of the company;
- (b) that there has been some material irregularity at or in relation to either of the meetings.

(2) The persons who may apply under this section are—

- (a) a person entitled, in accordance with the rules, to vote at either of the meetings;
 [(aa) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it;]¹⁸
- (b) the nominee or any person who has replaced him under section 2(4) or 4(2); and

¹⁵ Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.11(a) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

¹⁶ Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.11(b) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

¹⁷ Words substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.7(2) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

¹⁸ Added by Insolvency Act 2000 c. 39 Sch.2(I) para.7(3) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

- (c) if the company is being wound up or [is in administration] ¹⁹, the liquidator or administrator.
- (3) An application under this section shall not be made [...] ²⁰.
- [(a) after the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court or
- (b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,
- but (subject to that) an application made by a person within subsection (2)(aa) on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.] ²⁰
- (4) Where on such an application the court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following, namely—
- (a) revoke or suspend [any decision approving the voluntary arrangement which has effect under section 4A] ²¹ or, in a case falling within subsection (1)(b), any [decision taken by the meeting in question which has effect under that section] ²² ;
- (b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in a case falling within subsection (1)(b), a further company or (as the case may be) creditors' meeting to reconsider the original proposal.
- (5) Where at any time after giving a direction under subsection (4)(b) for the summoning of meetings to consider a revised proposal the court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any [decision approving the voluntary arrangement which has effect under section 4A] ²³.
- (6) In a case where the court, on an application under this section with respect to any meeting—
- (a) gives a direction under subsection (4)(b), or
- (b) revokes or suspends an approval under subsection (4)(a) or (5),
- the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done [under the voluntary arrangement since it took effect] ²⁴.

¹⁹ Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.12 (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

²⁰ S.6(3) renumbered as s.6(3)(a), (b) and words inserted by Insolvency Act 2000 c. 39 Sch.2(I) para.7(4) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

²¹ Words substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.7(5)(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

²² Words substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.7(5)(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

²³ Words substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.7(6) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

²⁴ Words substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.7(7) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

(7) Except in pursuance of the preceding provisions of this section, [a decision taken]²⁵ at a meeting summoned under section 3 is not invalidated by any irregularity at or in relation to the meeting.

Commencement

Pt I s. 6(1)-(7): June 1, 1991

[6A.— False representations, etc.

(1) If, for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement, a person who is an officer of the company—

- (a) makes any false representation, or
- (b) fraudulently does, or omits to do, anything,

he commits an offence.

(2) Subsection (1) applies even if the proposal is not approved.

(3) For purposes of this section “officer” includes a shadow director.

(4) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

]²⁶

7.— Implementation of proposal.

(1) This section applies where a voluntary arrangement [has effect under section 4A]²⁷.

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—

[(a) on the nominee by virtue of the approval given at one or both of the meetings summoned under section 3,]²⁸

(b) by virtue of section 2(4) or 4(2) on a person other than the nominee,
shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on the application the court may—

- (a) confirm, reverse or modify any act or decision of the supervisor,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(4) The supervisor—

²⁵ Words substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.7(8) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

²⁶ Added by Insolvency Act 2000 c. 39 Sch.2(I) para.8 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

²⁷ Words substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.9(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

²⁸ Substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.9(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

- (a) may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement, and
 - (b) is included among the persons who may apply to the court for the winding up of the company or for an administration order to be made in relation to it.
- (5) The court may, whenever—
- (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
 - (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,
- make an order appointing a person who is qualified to act as an insolvency practitioner [or authorised to act as supervisor, in relation to the voluntary arrangement]²⁹ , either in substitution for the existing supervisor or to fill a vacancy.
- (6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

Commencement

Pt I s. 7(1)-(6): June 1, 1991

[7A.— Prosecution of delinquent officers of company.

- (1) This section applies where a moratorium under section 1A has been obtained for a company or the approval of a voluntary arrangement in relation to a company has taken effect under section 4A or paragraph 36 of Schedule A1.
- (2) If it appears to the nominee or supervisor that any past or present officer of the company has been guilty of any offence in connection with the moratorium or, as the case may be, voluntary arrangement for which he is criminally liable, the nominee or supervisor shall forthwith—
- (a) report the matter to the appropriate authority, and
 - (b) provide the appropriate authority with such information and give the authority such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the nominee or supervisor and relating to the matter in question) as the authority requires.
- In this subsection, “the appropriate authority” means—
- (i) in the case of a company registered in England and Wales, the Secretary of State, and
 - (ii) in the case of a company registered in Scotland, the Lord Advocate.
- (3) Where a report is made to the Secretary of State under subsection (2), he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of [the Companies Act 1985]³⁰ to investigate a company's affairs.

²⁹ Words substituted by Insolvency Act 2000 c. 39 Sch.2(I) para.9(c) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³⁰ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.71(3)(a) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

(4) For the purpose of such an investigation any obligation imposed on a person by any provision of [the Companies Acts]³¹ to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Secretary of State in his investigation.

(5) An answer given by a person to a question put to him in exercise of the powers conferred by subsection (3) may be used in evidence against him.

(6) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

- (a) no evidence relating to the answer may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(7) Subsection (6) applies to any offence other than—

- (a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or
- (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).

(8) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the nominee or supervisor, and every officer and agent of the company past and present (other than the defendant or defender), shall give the authority all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose—

- “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company,
- “prosecuting authority” means the Director of Public Prosecutions, the Lord Advocate or the Secretary of State.

(9) The court may, on the application of the prosecuting authority, direct any person referred to in subsection (8) to comply with that subsection if he has failed to do so.

]

[7B. Arrangements coming to an end prematurely.

For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under section 4A or paragraph 36 of Schedule A1 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of section 5(2)(b)(i) or, as the case may be, paragraph 37(2)(b)(i) of Schedule A1.]³³

³¹ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.71(3)(b) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

³² Added by Insolvency Act 2000 c. 39 Sch.2(I) para.10 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³³ Added by Insolvency Act 2000 c. 39 Sch.2(I) para.10 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

PART II
[ADMINISTRATION]³⁴

Making etc. of administration order

8.—

[Existing Part II is not repealed but has been substituted for a new Part II consisting of s.8.]³⁵

9.— Application for order.

(1) [³⁶]³⁷ An application to the court for an administration order shall be by petition presented either by the company or the directors, or by a creditor or creditors (including any contingent or prospective creditor or creditors), or by all or any of those parties, together or separately.

(2) Where a petition is presented to the court—

- (a) notice of the petition shall be given forthwith to any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company, and to such other persons as may be prescribed, and
- (b) the petition shall not be withdrawn except with the leave of the court.

(3) Where the court is satisfied that there is an administrative receiver of the company, the court shall dismiss the petition unless it is also satisfied either—

- (a) that the person by whom or on whose behalf the receiver was appointed has consented to the making of the order, or
- (b) that, if an administration order were made, any security by virtue of which the receiver was appointed would—
 - (i) be liable to be released or discharged under sections 238 to 240 in Part VI (transactions at an undervalue and preferences),
 - (ii) be avoided under section 245 in that Part (avoidance of floating charges), or
 - (iii) be challengeable under section 242 (gratuitous alienations) or 243 (unfair preferences) in that Part, or under any rule of law in Scotland.

(4) Subject to subsection (3), on hearing a petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

(5) Without prejudice to the generality of subsection (4), an interim order under that subsection may restrict the exercise of any powers of the directors or of the company (whether by reference

³⁴ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

³⁵ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

³⁶ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

³⁷ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

to the consent of the court or of a person qualified to act as an insolvency practitioner in relation to the company, or otherwise).³⁸

10.— Effect of application.

(1) During the period beginning with the presentation of a petition for an administration order and ending with the making of such an order or the dismissal of the petition—

- (a) no resolution may be passed or order made for the winding up of the company;
[(aa) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose,]³⁹
- (b) no steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the court and subject to such terms as the court may impose; and
- (c) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the court and subject to such terms as aforesaid.

(2) Nothing in subsection (1) requires the leave of the court—

- (a) for the presentation of a petition for the winding up of the company,
- (b) for the appointment of an administrative receiver of the company, or
- (c) for the carrying out by such a receiver (whenever appointed) of any of his functions.

(3) Where—

- (a) a petition for an administration order is presented at a time when there is an administrative receiver of the company, and
- (b) the person by or on whose behalf the receiver was appointed has not consented to the making of the order,

the period mentioned in subsection (1) is deemed not to begin unless and until that person so consents.

(4) References in this section and the next to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

(5) In the application of this section and the next to Scotland, references to execution being commenced or continued include references to diligence being carried out or continued, and references to distress being levied shall be omitted.[⁴⁰]⁴¹

³⁸ In relation to England and Wales: s. 9 is modified: [See Westlaw UK].

³⁹ Inserted subject to transitional provisions in SI 2001/766, art.3(1) by Insolvency Act 2000 c. 39 s.9(2) (April 2, 2001)

⁴⁰ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁴¹ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

11.— Effect of order.

- (1) On the making of an administration order—
- (a) any petition for the winding up of the company shall be dismissed, and
 - (b) any administrative receiver of the company shall vacate office.
- (2) Where an administration order has been made, any receiver of part of the company's property shall vacate office on being required to do so by the administrator.
- (3) During the period for which an administration order is in force—
- (a) no resolution may be passed or order made for the winding up of the company;
 - (b) no administrative receiver of the company may be appointed;
 - [(ba) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as the court may impose;]⁴²
 - (c) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as the court may impose; and
 - (d) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as aforesaid.
- (4) Where at any time an administrative receiver of the company has vacated office under subsection (1)(b), or a receiver of part of the company's property has vacated office under subsection (2)—
- (a) his remuneration and any expenses properly incurred by him, and
 - (b) any indemnity to which he is entitled out of the assets of the company,
- shall be charged on and (subject to subsection (3) above) paid out of any property of the company which was in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.
- (5) Neither an administrative receiver who vacates office under subsection (1)(b) nor a receiver who vacates office under subsection (2) is required on or after so vacating office to take any steps for the purpose of complying with any duty imposed on him by section 40 or 59 of this Act (duty to pay preferential creditors).[⁴³]⁴⁴

12.— Notification of order.

- (1) Every invoice, order for goods or business letter which, at a time when an administration order is in force in relation to a company, is issued by or on behalf of the company or the administrator,

⁴² Inserted subject to transitional provisions in SI 2001/766, art.3(1) by Insolvency Act 2000 c. 39 s.9(3) (April 2, 2001)

⁴³ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁴⁴ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

being a document on or in which the company's name appears, shall also contain the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator.

(2) If default is made in complying with this section, the company and any of the following persons who without reasonable excuse authorises or permits the default, namely, the administrator and any officer of the company, is liable to a fine.[⁴⁵]⁴⁶

Administrators

13.— Appointment of administrator.

(1) The administrator of a company shall be appointed either by the administration order or by an order under the next subsection.

(2) If a vacancy occurs by death, resignation or otherwise in the office of the administrator, the court may by order fill the vacancy.

(3) An application for an order under subsection (2) may be made—

- (a) by any continuing administrator of the company; or
- (b) where there is no such administrator, by a creditors' committee established under section 26 below; or
- (c) where there is no such administrator and no such committee, by the company or the directors or by any creditor or creditors of the company.[⁴⁷]⁴⁸

14.— General powers.

(1) The administrator of a company—

- (a) may do all such things as may be necessary for the management of the affairs, business and property of the company, and
- (b) without prejudice to the generality of paragraph (a), has the powers specified in Schedule 1 to this Act;

and in the application of that Schedule to the administrator of a company the words “he” and “him” refer to the administrator.

(2) The administrator also has power—

- (a) to remove any director of the company and to appoint any person to be a director of it, whether to fill a vacancy or otherwise, and
- (b) to call any meeting of the members or creditors of the company.

⁴⁵ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁴⁶ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁴⁷ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁴⁸ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (3) The administrator may apply to the court for directions in relation to any particular matter arising in connection with the carrying out of his functions.
- (4) Any power conferred on the company or its officers, whether by this Act or [the Companies Acts]⁴⁹ or by [the company's articles]⁵⁰, which could be exercised in such a way as to interfere with the exercise by the administrator of his powers is not exercisable except with the consent of the administrator, which may be given either generally or in relation to particular cases.
- (5) In exercising his powers the administrator is deemed to act as the company's agent.
- (6) A person dealing with the administrator in good faith and for value is not concerned to inquire whether the administrator is acting within his powers.[⁵¹]⁵²

15.— Power to deal with charged property, etc.

- (1) The administrator of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this subsection applies as if the property were not subject to the security.
- (2) Where, on an application by the administrator, the court is satisfied that the disposal (with or without other assets) of—
- (a) any property of the company subject to a security to which this subsection applies, or
 - (b) any goods in the possession of the company under a hire-purchase agreement,
- would be likely to promote the purpose or one or more of the purposes specified in the administration order, the court may by order authorise the administrator to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.
- (3) Subsection (1) applies to any security which, as created, was a floating charge; and subsection (2) applies to any other security.
- (4) Where property is disposed of under subsection (1), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.
- (5) It shall be a condition of an order under subsection (2) that—
- (a) the net proceeds of the disposal, and
 - (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

⁴⁹ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.73(2)(a) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁵⁰ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.73(2)(b) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁵¹ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁵² Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(6) Where a condition imposed in pursuance of subsection (5) relates to two or more securities, that condition requires the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(7) [A copy]⁵³ of an order under subsection (2) shall, within 14 days after the making of the order, be sent by the administrator to the registrar of companies.

(8) If the administrator without reasonable excuse fails to comply with subsection (7), he is liable to a fine and, for continued contravention, to a daily default fine.

(9) References in this section to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.[⁵⁴]⁵⁵

16.— Operation of s. 15 in Scotland.

(1) Where property is disposed of under section 15 in its application to Scotland, the administrator shall grant to the donee an appropriate document of transfer or conveyance of the property, and—

(a) that document, or

(b) where any recording, intimation or registration of the document is a legal requirement for completion of title to the property, that recording, intimation or registration,

has the effect of disencumbering the property of or, as the case may be, freeing the property from the security.

(2) Where goods in the possession of the company under a hire-purchase agreement, conditional sale agreement, chattel leasing agreement or retention of title agreement are disposed of under section 15 in its application to Scotland, the disposal has the effect of extinguishing, as against the donee, all rights of the owner of the goods under the agreement.[⁵⁶]⁵⁷

⁵³ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.73(3) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁵⁴ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁵⁵ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁵⁶ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁵⁷ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

17.— General duties

- (1) [⁵⁸]⁵⁹ The administrator of a company shall, on his appointment, take into his custody or under his control all the property to which the company is or appears to be entitled.
- (2) The administrator shall manage the affairs, business and property of the company—
- (a) at any time before proposals have been approved (with or without modifications) under section 24 below, in accordance with any directions given by the court, and
 - (b) at any time after proposals have been so approved, in accordance with those proposals as from time to time revised, whether by him or a predecessor of his.
- (3) The administrator shall summon a meeting of the company's creditors if—
- (a) he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors, or
 - (b) he is directed to do so by the court.

18.— Discharge or variation of administration order.

- (1) The administrator of a company may at any time apply to the court for the administration order to be discharged, or to be varied so as to specify an additional purpose.
- (2) The administrator shall make an application under this section if—
- (a) it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement, or
 - (b) he is required to do so by a meeting of the company's creditors summoned for the purpose in accordance with the rules.
- (3) On the hearing of an application under this section, the court may by order discharge or vary the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it thinks fit.
- (4) Where the administration order is discharged or varied the administrator shall, within 14 days after the making of the order effecting the discharge or variation, send [a copy]⁶⁰ of that order to the registrar of companies.
- (5) If the administrator without reasonable excuse fails to comply with subsection (4), he is liable to a fine and, for continued contravention, to a daily default fine.[⁶¹]⁶²

⁵⁸ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁵⁹ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁶⁰ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.73(3) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁶¹ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁶² Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

19.— Vacation of office.

(1) The administrator of a company may at any time be removed from office by order of the court and may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.

(2) The administrator shall vacate office if—

- (a) he ceases to be qualified to act as an insolvency practitioner in relation to the company, or
- (b) the administration order is discharged.

(3) Where at any time a person ceases to be administrator, the [following]⁶³ subsections apply.

(4) His remuneration and any expenses properly incurred by him shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security to which section 15(1) then applies.

(5) Any sums payable in respect of debts or liabilities incurred, while he was administrator, under contracts entered into [...] ⁶⁴ by him or a predecessor of his in the carrying out of his or the predecessor's functions shall be charged on and paid out of any such property as is mentioned in subsection (4) in priority to any charge arising under that subsection. [...] ⁶⁵

[(6) Any sums payable in respect of liabilities incurred, while he was administrator, under contracts of employment adopted by him or a predecessor of his in the carrying out of his or the predecessor's functions shall, to the extent that the liabilities are qualifying liabilities, be charged on and paid out of any such property as is mentioned in subsection (4) and enjoy the same priority as any sums to which subsection (5) applies. [For this purpose, the administrator is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment.] ⁶⁵] ⁶⁶

[(7) For the purposes of subsection (6), a liability under a contract of employment is a qualifying liability if—

- (a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme, and
- (b) it is in respect of services rendered wholly or partly after the adoption of the contract.

(8) There shall be disregarded for the purposes of subsection (6) so much of any qualifying liability as represents payment in respect of services rendered before the adoption of the contract.

(9) For the purposes of subsections (7) and (8)—

- (a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and

⁶³ Words substituted by Insolvency Act 1994 c. 7 s.1(2) (March 24, 1994: Section has effect in relation to contracts of employment adopted on or after March 15, 1994)

⁶⁴ Words repealed by Insolvency Act 1994 c. 7 Sch.2 para.1 (March 24, 1994)

⁶⁵ Words in s.19(5) moved to inserted s.19(6) by Insolvency Act 1994 c. 7 s.1(5) (March 24, 1994: Section has effect in relation to contracts of employment adopted on or after March 15, 1994)

⁶⁶ Added by Insolvency Act 1994 c. 7 s.1(4) (March 24, 1994: Section has effect in relation to contracts of employment adopted on or after March 15, 1994)

(b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(10) In subsection (9)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.[⁶⁷]⁶⁸]⁶⁹

20.— Release of administrator.

(1) A person who has ceased to be the administrator of a company has his release with effect from the following time, that is to say—

- (a) in the case of a person who has died, the time at which notice is given to the court in accordance with the rules that he has ceased to hold office;
- (b) in any other case, such time as the court may determine.

(2) Where a person has his release under this section, he is, with effect from the time specified above, discharged from all liability both in respect of acts or omissions of his in the administration and otherwise in relation to his conduct as administrator.

(3) However, nothing in this section prevents the exercise, in relation to a person who has had his release as above, of the court's powers under section 212 in Chapter X of Part IV (summary remedy against delinquent directors, liquidators, etc.).[⁷⁰]⁷¹

Ascertainment and investigation of company's affairs

21.— Information to be given by administrator.

(1) Where an administration order has been made, the administrator shall—

- (a) forthwith send to the company and publish in the prescribed manner a notice of the order, and
- (b) within 28 days after the making of the order, unless the court otherwise directs, send such a notice to all creditors of the company (so far as he is aware of their addresses).

⁶⁷ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁶⁸ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁶⁹ Added by Insolvency Act 1994 c. 7 s.1(6) (March 24, 1994: Section has effect in relation to contracts of employment adopted on or after March 15, 1994)

⁷⁰ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁷¹ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

(2) Where an administration order has been made, the administrator shall also, within 14 days after the making of the order, send [a copy]⁷² of the order to the registrar of companies and to such other persons as may be prescribed.

(3) If the administrator without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.[⁷³]⁷⁴

22.— Statement of affairs to be submitted to administrator.

(1) Where an administration order has been made, the administrator shall forthwith require some or all of the persons mentioned below to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) The statement shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

(3) The persons referred to in subsection (1) are—

- (a) those who are or have been officers of the company;
- (b) those who have taken part in the company's formation at any time within one year before the date of the administration order;
- (c) those who are in the company's employment or have been in its employment within that year, and are in the administrator's opinion capable of giving the information required;
- (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company.

In this subsection “employment” includes employment under a contract for services.

(4) Where any persons are required under this section to submit a statement of affairs to the administrator, they shall do so (subject to the next subsection, before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrator.

(5) The administrator, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or
- (b) either when giving notice under subsection (4) or subsequently, extend the period so mentioned;

and where the administrator has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

⁷² Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.73(3) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁷³ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁷⁴ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

(6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine.[⁷⁵]⁷⁶

Administrator's proposals

23.— Statement of proposals.

(1) Where an administration order has been made, the administrator shall, within 3 months (or such longer period as the court may allow) after the making of the order—

- (a) send to the registrar of companies and (so far as he is aware of their addresses) to all creditors a statement of his proposals for achieving the purpose or purposes specified in the order, and
- (b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice.

(2) The administrator shall also, within 3 months (or such longer period as the court may allow) after the making of the order, either—

- (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company, or
- (b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

(3) If the administrator without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.[⁷⁷]⁷⁸

24.— Consideration of proposals by creditors' meeting.

(1) A meeting of creditors summoned under section 23 shall decide whether to approve the administrator's proposals.

(2) The meeting may approve the proposals with modifications, but shall not do so unless the administrator consents to each modification.

(3) Subject as above, the meeting shall be conducted in accordance with the rules.

(4) After the conclusion of the meeting in accordance with the rules, the administrator shall report the result of the meeting to the court and shall give notice of that result to the registrar of companies and to such persons as may be prescribed.

(5) If a report is given to the court under subsection (4) that the meeting has declined to approve the administrator's proposals (with or without modifications), the court may by order discharge the

⁷⁵ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁷⁶ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁷⁷ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁷⁸ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

(6) Where the administration order is discharged, the administrator shall, within 14 days after the making of the order effecting the discharge, send [a copy]⁷⁹ of that order to the registrar of companies.

(7) If the administrator without reasonable excuse fails to comply with subsection (6), he is liable to a fine and, for continued contravention, to a daily default fine.[⁸⁰]⁸¹

25.— Approval of substantial revisions.

(1) This section applies where—

- (a) proposals have been approved (with or without modifications) under section 24, and
- (b) the administrator proposes to make revisions of those proposals which appear to him substantial.

(2) The administrator shall—

- (a) send to all creditors of the company (so far as he is aware of their addresses) a statement in the prescribed form of his proposed revisions, and
- (b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice;

and he shall not make the proposed revisions unless they are approved by the meeting.

(3) The administrator shall also either—

- (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company, or
- (b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

(4) The meeting of creditors may approve the proposed revisions with modifications, but shall not do so unless the administrator consents to each modification.

(5) Subject as above, the meeting shall be conducted in accordance with the rules.

(6) After the conclusion of the meeting in accordance with the rules, the administrator shall give notice of the result of the meeting to the registrar of companies and to such persons as may be prescribed.[⁸²]⁸³

⁷⁹ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.73(3) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁸⁰ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁸¹ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸² Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁸³ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

*Miscellaneous***26.— Creditors' committee.**

- (1) Where a meeting of creditors summoned under section 23 has approved the administrator's proposals (with or without modifications), the meeting may, if it thinks fit, establish a committee ("the creditors' committee") to exercise the functions conferred on it by or under this Act.
- (2) If such a committee is established, the committee may, on giving not less than 7 days' notice, require the administrator to attend before it at any reasonable time and furnish it with such information relating to the carrying out of his functions as it may reasonably require.^[84]⁸⁵

27.— Protection of interests of creditors and members.

- (1) At any time when an administration order is in force, a creditor or member of the company may apply to the court by petition for an order under this section on the ground—
- (a) that the company's affairs, business and property are being or have been managed by the administrator in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including at least himself), or
 - (b) that any actual or proposed act or omission of the administrator is or would be so prejudicial.
- (2) On an application for an order under this section the court may, subject as follows, make such order as it thinks fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
- (3) An order under this section shall not prejudice or prevent—
- (a) the implementation of a voluntary arrangement approved under [Part I]⁸⁶, or any compromise or arrangement sanctioned under section 425 of the Companies Act; or
 - (b) where the application for the order was made more than 28 days after the approval of any proposals or revised proposals under section 24 or 25, the implementation of those proposals or revised proposals.
- (4) Subject as above, an order under this section may in particular—
- (a) regulate the future management by the administrator of the company's affairs, business and property;
 - (b) require the administrator to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained he has omitted to do;
 - (c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the court may direct;
 - (d) discharge the administration order and make such consequential provision as the court thinks fit.

⁸⁴ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁸⁵ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁶ Words repealed by Insolvency Act 2000 c. 39 Sch.5 para.1 (January 1, 2003 as SI 2002/2711)

(5) Nothing in section 15 or 16 is to be taken as prejudicing applications to the court under this section.

(6) Where the administration order is discharged, the administrator shall, within 14 days after the making of the order effecting the discharge, send [a copy]⁸⁷ of that order to the registrar of companies; and if without reasonable excuse he fails to comply with this subsection, he is liable to a fine and, for continued contravention, to a daily default fine. [⁸⁸]⁸⁹

[8 Administration

Schedule B1 to this Act (which makes provision about the administration of companies) shall have effect.]⁹⁰

PART III

RECEIVERSHIP

CHAPTER I

RECEIVERS AND MANAGERS (ENGLAND AND WALES)

Preliminary and general provisions

[28.— Extent of this Chapter

(1) In this Chapter “company” means a company registered under the Companies Act 2006 in England and Wales or Scotland.

(2) This Chapter does not apply to receivers appointed under Chapter 2 of this Part (Scotland).]⁹¹

Commencement

Pt III c. I s. 28: June 1, 1991

⁸⁷ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.73(3) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁸⁸ Except where a petition for an administration order has been presented before September 15, 2003: Pt II is substituted for a new Pt II consisting only of s.8

⁸⁹ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁰ Existing Part II is substituted for a new Part II consisting of s.8 by Enterprise Act 2002 c. 40 Pt 10 s.248(1) (September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹¹ Substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.74(2) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

29.— Definitions.

- (1) It is hereby declared that, except where the context otherwise requires—
- (a) any reference in [...] ⁹² this Act to a receiver or manager of the property of a company, or to a receiver of it, includes a receiver or manager, or (as the case may be) a receiver of part only of that property and a receiver only of the income arising from the property or from part of it; and
 - (b) any reference in [...] ⁹² this Act to the appointment of a receiver or manager under powers contained in an instrument includes an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.
- (2) In this Chapter “administrative receiver” means—
- (a) a receiver or manager of the whole (or substantially the whole) of a company's property appointed by or on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; 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 company's property.

Commencement

Pt III c. I s. 29(1)-(2)(b): June 1, 1991

30. Disqualification of body corporate from acting as receiver.

A body corporate is not qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver is liable to a fine.

Commencement

Pt III c. I s. 30: June 1, 1991

[31 Disqualification of bankrupt[or person in respect of whom a debt relief order is made]]⁹³

- (1) A person commits an offence if he acts as receiver or manager of the property of a company on behalf of debenture holders while—
- (a) he is an undischarged bankrupt, [...] ⁹⁴
[(aa) a moratorium period under a debt relief order applies in relation to him, or] ⁹⁴
 - (b) a bankruptcy restrictions order [or a debt relief restrictions order] ⁹⁵ is in force in respect of him.

⁹² Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.74(3) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁹³ Words inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.2(2) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁹⁴ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.2(1)(a) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁹⁵ Words inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.2(1)(b) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

(2) A person guilty of an offence under subsection (1) shall be liable to imprisonment, a fine or both.

(3) This section does not apply to a receiver or manager acting under an appointment made by the court.

]⁹⁶

Commencement

Pt III c. I s. 31: June 1, 1991

32. Power for court to appoint official receiver.

Where application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be appointed.

Commencement

Pt III c. I s. 32: June 1, 1991

Receivers and managers appointed out of court

33.— Time from which appointment is effective.

(1) The appointment of a person as a receiver or manager of a company's property under powers contained in an instrument—

(a) is of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf, and

(b) subject to this, is deemed to be made at the time at which the instrument of appointment is so received.

(2) This section applies to the appointment of two or more persons as joint receivers or managers of a company's property under powers contained in an instrument, subject to such modifications as may be prescribed by the rules.

Commencement

Pt III c. I s. 33(1)-(2): June 1, 1991

34. Liability for invalid appointment.

Where the appointment of a person as the receiver or manager of a company's property under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the court may order the person by whom or on whose behalf the

⁹⁶ Substituted by Enterprise Act 2002 c. 40 Sch.21 para.1 (April 1, 2004)

appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

Commencement

Pt III c. I s. 34: June 1, 1991

35.— Application to court for directions.

(1) A receiver or manager of the property of a company appointed under powers contained in an instrument, or the persons by whom or on whose behalf a receiver or manager has been so appointed, may apply to the court for directions in relation to any particular matter arising in connection with the performance of the functions of the receiver or manager.

(2) On such an application, the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as it thinks just.

Commencement

Pt III c. I s. 35(1)-(2): June 1, 1991

36.— Court's power to fix remuneration.

(1) The court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to a person who, under powers contained in an instrument, has been appointed receiver or manager of the company's property.

(2) The court's power under subsection (1), where no previous order has been made with respect thereto under the subsection—

- (a) extends to fixing the remuneration for any period before the making of the order or the application for it,
- (b) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application, and
- (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.

But the power conferred by paragraph (c) shall not be exercised as respects any period before the making of the application for the order under this section, unless in the court's opinion there are special circumstances making it proper for the power to be exercised.

(3) The court may from time to time on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1).

Commencement

Pt III c. I s. 36(1)-(3): June 1, 1991

37.— Liability for contracts, etc.

- (1) A receiver or manager appointed under powers contained in an instrument (other than an administrative receiver) is, to the same extent as if he had been appointed by order of the court—
- (a) personally liable on any contract entered into by him in the performance of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the performance of those functions, and
 - (b) entitled in respect of that liability to indemnity out of the assets.
- (2) For the purposes of subsection (1)(a), the receiver or manager is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment.
- (3) Subsection (1) does not limit any right to indemnity which the receiver or manager would have apart from it, nor limit his liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.
- (4) Where at any time the receiver or manager so appointed vacates office—
- (a) his remuneration and any expenses properly incurred by him, and
 - (b) any indemnity to which he is entitled out of the assets of the company,
- shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any charge or other security held by the person by or on whose behalf he was appointed.

Commencement

Pt III c. I s. 37(1)-(4)(b): June 1, 1991

38.— Receivership accounts to be delivered to registrar.

- (1) Except in the case of an administrative receiver, every receiver or manager of a company's property who has been appointed under powers contained in an instrument shall deliver to the registrar of companies for registration the requisite accounts of his receipts and payments.
- (2) The accounts shall be delivered within one month (or such longer period as the registrar may allow) after the expiration of 12 months from the date of his appointment and of every subsequent period of 6 months, and also within one month after he ceases to act as receiver or manager.
- (3) The requisite accounts shall be an abstract in the prescribed form showing—
- (a) receipts and payments during the relevant period of 12 or 6 months, or
 - (b) where the receiver or manager ceases to act, receipts and payments during the period from the end of the period of 12 or 6 months to which the last preceding abstract related (or, if no preceding abstract has been delivered under this section, from the date of his appointment) up to the date of his so ceasing, and the aggregate amount of receipts and payments during all preceding periods since his appointment.
- (4) In this section “prescribed” means prescribed by regulations made by statutory instrument by the Secretary of State.
- (5) A receiver or manager who makes default in complying with this section is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt III c. I s. 38(1)-(5): June 1, 1991

Provisions applicable to every receivership

39.— Notification that receiver or manager appointed.

[(1) Where a receiver or manager of the property of a company has been appointed—
 (a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company or the receiver or manager or the liquidator of the company; and
 (b) all the company's websites,
must contain a statement that a receiver or manager has been appointed.

] ⁹⁷

(2) If default is made in complying with this section, the company and any of the following persons, who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, is liable to a fine.

Commencement

Pt III c. I s. 39(1)-(2): June 1, 1991

40.— Payment of debts out of assets subject to floating charge.

(1) The following applies, in the case of a company, where a receiver is appointed on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge.

(2) If the company is not at the time in course of being wound up, its preferential debts (within the meaning given to that expression by section 386 in Part XII) shall be paid out of the assets coming to the hands of the receiver in priority to any claims for principal or interest in respect of the debentures.

(3) Payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

Commencement

Pt III c. I s. 40(1)-(3): June 1, 1991

41.— Enforcement of duty to make returns.

(1) If a receiver or manager of a company's property—

⁹⁷ Substituted by Companies (Trading Disclosures) (Insolvency) Regulations 2008/1897 reg.2(1) (October 1, 2008)

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, or

(b) having been appointed under powers contained in an instrument, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch them and pay over to the liquidator the amount properly payable to him,

the court may, on an application made for the purpose, make an order directing the receiver or manager (as the case may be) to make good the default within such time as may be specified in the order.

(2) In the case of the default mentioned in subsection (1)(a), application to the court may be made by any member or creditor of the company or by the registrar of companies; and in the case of the default mentioned in subsection (1)(b), the application shall be made by the liquidator.

In either case the court's order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section prejudices the operation of any enactment imposing penalties on receivers in respect of any such default as is mentioned in subsection (1).

Commencement

Pt III c. I s. 41(1)-(3): June 1, 1991

Administrative receivers: general

42.— General powers.

(1) The powers conferred on the administrative receiver of a company by the debentures by virtue of which he was appointed are deemed to include (except in so far as they are inconsistent with any of the provisions of those debentures) the powers specified in Schedule 1 to this Act.

(2) In the application of Schedule 1 to the administrative receiver of a company—

(a) the words “he” and “him” refer to the administrative receiver, and

(b) references to the property of the company are to the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

(3) A person dealing with the administrative receiver in good faith and for value is not concerned to inquire whether the receiver is acting within his powers.

Commencement

Pt III c. I s. 42(1)-(3): June 1, 1991

43.— Power to dispose of charged property, etc.

(1) Where, on an application by the administrative receiver, the court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security would be likely to promote a more advantageous realisation of the company's assets than would otherwise be effected, the court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.

(2) Subsection (1) does not apply in the case of any security held by the person by or on whose behalf the administrative receiver was appointed, or of any security to which a security so held has priority.

(3) It shall be a condition of an order under this section that—

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security.

(4) Where a condition imposed in pursuance of subsection (3) relates to two or more securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(5) [A copy]⁹⁸ of an order under this section shall, within 14 days of the making of the order, be sent by the administrative receiver to the registrar of companies.

(6) If the administrative receiver without reasonable excuse fails to comply with subsection (5), he is liable to a fine and, for continued contravention, to a daily default fine.

(7) In this section “relevant property”, in relation to the administrative receiver, means the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

Commencement

Pt III c. I s. 43(1)-(7): June 1, 1991

44.— Agency and liability for contracts.

(1) The administrative receiver of a company—

(a) is deemed to be the company's agent, unless and until the company goes into liquidation;

(b) is personally liable on any contract entered into by him in the carrying out of his functions (except in so far as the contract otherwise provides) and [, to the extent of any qualifying liability,]⁹⁹ on any contract of employment adopted by him in the carrying out of those functions; and

⁹⁸ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.74(4) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁹⁹ Words inserted by Insolvency Act 1994 c. 7 s.2(2) (March 24, 1994: Section has effect in relation to contracts of employment adopted on or after March 15, 1994)

- (c) is entitled in respect of that liability to an indemnity out of the assets of the company.
- (2) For the purposes of subsection (1)(b) the administrative receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment.
- [(2A) For the purposes of subsection (1)(b), a liability under a contract of employment is a qualifying liability if—
- (a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme,
 - (b) it is incurred while the administrative receiver is in office, and
 - (c) it is in respect of services rendered wholly or partly after the adoption of the contract.
- (2B) Where a sum payable in respect of a liability which is a qualifying liability for the purposes of subsection (1)(b) is payable in respect of services rendered partly before and partly after the adoption of the contract, liability under subsection (1)(b) shall only extend to so much of the sum as is payable in respect of services rendered after the adoption of the contract.
- (2C) For the purposes of subsections (2A) and (2B)—
- (a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and
 - (b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.
- (2D) In subsection (2C)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.]¹⁰⁰
- (3) This section does not limit any right to indemnity which the administrative receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

Commencement

Pt III c. I s. 44(1)-(3): June 1, 1991

45.— Vacation of office.

- (1) An administrative receiver of a company may at any time be removed from office by order of the court (but not otherwise) and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.
- (2) An administrative receiver shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.
- (3) Where at any time an administrative receiver vacates office—
- (a) his remuneration and any expenses properly incurred by him, and

¹⁰⁰ Added by Insolvency Act 1994 c. 7 s.2(3) (March 24, 1994: Section has effect in relation to contracts of employment adopted on or after March 15, 1994)

(b) any indemnity to which he is entitled out of the assets of the company, shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.

(4) Where an administrative receiver vacates office otherwise than by death, he shall, within 14 days after his vacation of office, send a notice to that effect to the registrar of companies.

(5) If an administrative receiver without reasonable excuse fails to comply with subsection (4), he is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt III c. I s. 45(1)-(5): June 1, 1991

Amendments Pending

Pt III c. I s. 45(5): words repealed by Companies Act 1989 c. 40 Sch. 24 para. 1 (date to be appointed: commencement order)

Administrative receivers: ascertainment and investigation of company's affairs

46.— Information to be given by administrative receiver.

(1) Where an administrative receiver is appointed, he shall—

- (a) forthwith send to the company and publish in the prescribed manner a notice of his appointment, and
- (b) within 28 days after his appointment, unless the court otherwise directs, send such a notice to all the creditors of the company (so far as he is aware of their addresses).

(2) This section and the next do not apply in relation to the appointment of an administrative receiver to act—

- (a) with an existing administrative receiver, or
- (b) in place of an administrative receiver dying or ceasing to act,

except that, where they apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in this section and the next to the administrative receiver include (subject to the next subsection) his successor and any continuing administrative receiver.

(3) If the company is being wound up, this section and the next apply notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If the administrative receiver without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt III c. I s. 46(1)-(4): June 1, 1991

47.— Statement of affairs to be submitted.

(1) Where an administrative receiver is appointed, he shall forthwith require some or all of the persons mentioned below to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

(3) The persons referred to in subsection (1) are—

- (a) those who are or have been officers of the company;
- (b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver;
- (c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;
- (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company.

In this subsection “employment” includes employment under a contract for services.

(4) Where any persons are required under this section to submit a statement of affairs to the administrative receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrative receiver.

(5) The administrative receiver, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or
- (b) either when giving notice under subsection (4) or subsequently, extend the period so mentioned;

and where the administrative receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt III c. I s. 47(1)-(6): June 1, 1991

Amendments Pending

Pt III c. I s. 47(2): word substituted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 5(1) (April 6, 2010: substitution has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

48.— Report by administrative receiver.

(1) Where an administrative receiver is appointed, he shall, within 3 months (or such longer period as the court may allow) after his appointment, send to the registrar of companies, to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—

- (a) the events leading up to his appointment, so far as he is aware of them;
- (b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;
- (c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors; and
- (d) the amount (if any) likely to be available for the payment of other creditors.

(2) The administrative receiver shall also, within 3 months (or such longer period as the court may allow) after his appointment, either—

- (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company; or
- (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,

and (in either case), unless the court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than 14 days' notice.

(3) The court shall not give a direction under subsection (2) unless—

- (a) the report states the intention of the administrative receiver to apply for the direction, and
- (b) a copy of the report is sent to the persons mentioned in paragraph (a) of that subsection, or a notice is published as mentioned in paragraph (b) of that subsection, not less than 14 days before the hearing of the application.

(4) Where the company has gone or goes into liquidation, the administrative receiver—

- (a) shall, within 7 days after his compliance with subsection (1) or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator, and
- (b) where he does so within the time limited for compliance with subsection (2), is not required to comply with that subsection.

(5) A report under this section shall include a summary of the statement of affairs made out and submitted to the administrative receiver under section 47 and of his comments (if any) upon it.

(6) Nothing in this section is to be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his functions.

(7) Section 46(2) applies for the purposes of this section also.

(8) If the administrative receiver without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt III c. I s. 48(1)-(8): June 1, 1991

49.— Committee of creditors.

(1) Where a meeting of creditors is summoned under section 48, the meeting may, if it thinks fit, establish a committee (“the creditors’ committee”) to exercise the functions conferred on it by or under this Act.

(2) If such a committee is established, the committee may, on giving not less than 7 days’ notice, require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

Commencement

Pt III c. I s. 49(1)-(2): June 1, 1991

CHAPTER II

RECEIVERS (SCOTLAND)

50. Extent of this Chapter.

This Chapter extends to Scotland only.

51.— Power to appoint receiver.

(1) It is competent under the law of Scotland for the holder of a floating charge over all or any part of the property (including uncalled capital), which may from time to time be comprised in the property and undertaking of an incorporated company (whether [a company registered under the Companies Act 2006]¹⁰¹ or not) which the Court of Session has jurisdiction to wind up, to appoint a receiver of such part of the property of the company as is subject to the charge.

(2) It is competent under the law of Scotland for the court, on the application of the holder of such a floating charge, to appoint a receiver of such part of the property of the company as is subject to the charge.

[(2A) Subsections (1) and (2) are subject to section 72A.]¹⁰²

(3) The following are disqualified from being appointed as receiver—
 (a) a body corporate;

¹⁰¹ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.74(5) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹⁰² Added subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.13 (September 15, 2003: addition has effect subject to transitional provisions specified in SI 2003/2093 art.3)

- (b) an undischarged bankrupt; and
 - [(ba) a person subject to a bankruptcy restrictions order;]¹⁰³
 - (c) a firm according to the law of Scotland.
- (4) A body corporate or a firm according to the law of Scotland which acts as a receiver is liable to a fine.
- (5) An undischarged bankrupt [or a person subject to a bankruptcy restrictions order]¹⁰⁴ who so acts is liable to imprisonment or a fine, or both.
- (6) [In this section,
- “receiver” includes joint receivers; and
 - “bankruptcy restrictions order” means—
- (a) a bankruptcy restrictions order made under section 56A of the Bankruptcy (Scotland) Act 1985 (c.66);
 - (b) a bankruptcy restrictions undertaking entered into under section 56G of that Act;
 - (c) a bankruptcy restrictions order made under paragraph 1 of Schedule 4A to this Act; or
 - (d) a bankruptcy restrictions undertaking entered into under paragraph 7 of that Schedule.
-]¹⁰⁵

52.— Circumstances justifying appointment.

- (1) A receiver may be appointed under section 51(1) by the holder of the floating charge on the occurrence of any event which, by the provisions of the instrument creating the charge, entitles the holder of the charge to make that appointment and, in so far as not otherwise provided for by the instrument, on the occurrence of any of the following events, namely—
- (a) the expiry of a period of 21 days after the making of a demand for payment of the whole or any part of the principal sum secured by the charge, without payment having been made;
 - (b) the expiry of a period of 2 months during the whole of which interest due and payable under the charge has been in arrears;
 - (c) the making of an order or the passing of a resolution to wind up the company;
 - (d) the appointment of a receiver by virtue of any other floating charge created by the company.
- (2) A receiver may be appointed by the court under section 51(2) on the occurrence of any event which, by the provisions of the instrument creating the floating charge, entitles the holder of the charge to make that appointment and, in so far as not otherwise provided for by the instrument, on the occurrence of any of the following events, namely—

¹⁰³ Added by Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3 (Scottish Act) Pt 1 s.3(2) (April 1, 2008)

¹⁰⁴ Words inserted by Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3 (Scottish Act) Pt 1 s.3(3) (April 1, 2008)

¹⁰⁵ Words and s.51(6)(a)-(d) inserted by Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3 (Scottish Act) Pt 1 s.3(4) (April 1, 2008)

- (a) where the court, on the application of the holder of the charge, pronounces itself satisfied that the position of the holder of the charge is likely to be prejudiced if no such appointment is made;
- (b) any of the events referred to in paragraphs (a) to (c) of subsection (1).

53.— Mode of appointment by holder of charge.

(1) The appointment of a receiver by the holder of the floating charge under section 51(1) shall be by means of [an instrument subscribed in accordance with the Requirements of Writing (Scotland) Act 1995]¹⁰⁶ (“the instrument of appointment”), a copy (certified in the prescribed manner to be a correct copy) whereof shall be delivered by or on behalf of the person making the appointment to the registrar of companies for registration within 7 days of its execution and shall be accompanied by a notice in the prescribed form.

(2) If any person without reasonable excuse makes default in complying with the requirements of subsection (1), he is liable to a fine and, for continued contravention, to a daily default fine.

(3) [...] ¹⁰⁷

[(4) If the receiver is to be appointed by the holders of a series of secured debentures, the instrument of appointment may be executed on behalf of the holders of the floating charge by any person authorised by resolution of the debenture-holders to execute the instrument.] ¹⁰⁸

(5) On receipt of the certified copy of the instrument of appointment in accordance with subsection (1), the registrar shall, on payment of the prescribed fee, enter the particulars of the appointment in the register of charges.

(6) The appointment of a person as a receiver by an instrument of appointment in accordance with subsection (1)—

- (a) is of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf, and

- (b) subject to paragraph (a), is deemed to be made on the day on and at the time at which the instrument of appointment is so received, as evidenced by a written docquet by that person or on his behalf;

and this subsection applies to the appointment of joint receivers subject to such modifications as may be prescribed.

(7) On the appointment of a receiver under this section, the floating charge by virtue of which he was appointed attaches to the property then subject to the charge; and such attachment has effect as if the charge was a fixed security over the property to which it has attached.

¹⁰⁶ Words substituted subject to savings specified in s.14(3) by Requirements of Writing (Scotland) Act 1995 c. 7 Sch.4(2) para.58(a) (August 1, 1995)

¹⁰⁷ S. 53(3) repealed by Law Reform (Miscellaneous Provisions)(Scotland) Act 1990 (c.40), s. 74, Sch. 8 Pt. II para. 35, Sch. 9

¹⁰⁸ Substituted subject to savings specified in s.14(3) by Requirements of Writing (Scotland) Act 1995 c. 7 Sch.4(2) para.58(b) (August 1, 1995)

Amendments Pending

Pt III c. II s. 53(2): words repealed by Companies Act 1989 c. 40 Sch. 24 para. 1 (date to be appointed: commencement order)

54.— Appointment by court.

(1) Application for the appointment of a receiver by the court under section 51(2) shall be by petition to the court, which shall be served on the company.

(2) On such an application, the court shall, if it thinks fit, issue an interlocutor making the appointment of the receiver.

(3) A copy (certified by the clerk of the court to be a correct copy) of the court's interlocutor making the appointment shall be delivered by or on behalf of the petitioner to the registrar of companies for registration, accompanied by a notice in the prescribed form, within 7 days of the date of the interlocutor or such longer period as the court may allow.

If any person without reasonable excuse makes default in complying with the requirements of this subsection, he is liable to a fine and, for continued contravention, to a daily default fine.

(4) On receipt of the certified copy interlocutor in accordance with subsection (3), the registrar shall, on payment of the prescribed fee, enter the particulars of the appointment in the register of charges.

(5) The receiver is to be regarded as having been appointed on the date of his being appointed by the court.

(6) On the appointment of a receiver under this section, the floating charge by virtue of which he was appointed attaches to the property then subject to the charge; and such attachment has effect as if the charge were a fixed security over the property to which it has attached.

(7) In making rules of court for the purposes of this section, the Court of Session shall have regard to the need for special provision for cases which appear to the court to require to be dealt with as a matter of urgency.

Amendments Pending

Pt III c. II s. 54(3): words repealed by Companies Act 1989 c. 40 Sch. 24 para. 1 (date to be appointed: commencement order)

55.— Powers of receiver.

(1) Subject to the next subsection, a receiver has in relation to such part of the property of the company as is attached by the floating charge by virtue of which he was appointed, the powers, if any, given to him by the instrument creating that charge.

(2) In addition, the receiver has under this Chapter the powers as respects that property (in so far as these are not inconsistent with any provision contained in that instrument) which are specified in Schedule 2 to this Act.

(3) Subsection (1) and (2) apply—

- (a) subject to the rights of any person who has effectually executed diligence on all or any part of the property of the company prior to the appointment of the receiver, and
- (b) subject to the rights of any person who holds over all or any part of the property of the company a fixed security or floating charge having priority over, or ranking *pari passu* with, the floating charge by virtue of which the receiver was appointed.

(4) A person dealing with a receiver in good faith and for value is not concerned to enquire whether the receiver is acting within his powers.

56.— Precedence among receivers.

(1) Where there are two or more floating charges subsisting over all or any part of the property of the company, a receiver may be appointed under this Chapter by virtue of each such charge; but a receiver appointed by, or on the application of, the holder of a floating charge having priority of ranking over any other floating charge by virtue of which a receiver has been appointed has the powers given to a receiver by section 55 and Schedule 2 to the exclusion of any other receiver.

(2) Where two or more floating charges rank with one another equally, and two or more receivers have been appointed by virtue of such charges, the receivers so appointed are deemed to have been appointed as joint receivers.

(3) Receivers appointed, or deemed to have been appointed, as joint receivers shall act jointly unless the instruments of appointment or respective instrument of appointment otherwise provide.

(4) Subject to subsection (5) below, the powers of a receiver appointed by, or on the application of, the holder of a floating charge are suspended by, and as from the date of, the appointment of a receiver by, or on the application of, the holder of a floating charge having priority of ranking over that charge to such extent as may be necessary to enable the receiver second mentioned to exercise his powers under section 55 and Schedule 2; and any powers so suspended take effect again when the floating charge having priority of ranking ceases to attach to the property then subject to the charge, whether such cessation is by virtue of section 62(6) or otherwise.

(5) The suspension of the powers of a receiver under subsection (4) does not have the effect of requiring him to release any part of the property (including any letters or documents) of the company from his control until he receives from the receiver superseding him a valid indemnity (subject to the limit of the value of such part of the property of the company as is subject to the charge by virtue of which he was appointed) in respect of any expenses, charges and liabilities he may have incurred in the performance of his functions as receiver.

(6) The suspension of the powers of a receiver under subsection (4) does not cause the floating charge by virtue of which he was appointed to cease to attach to the property to which it attached by virtue of section 53(7) or 54(6).

(7) Nothing in this section prevents the same receiver being appointed by virtue of two or more floating charges.

57.— Agency and liability of receiver for contracts.

(1) A receiver is deemed to be the agent of the company in relation to such property of the company as is attached by the floating charge by virtue of which he was appointed.

[(1A) Without prejudice to subsection (1), a receiver is deemed to be the agent of the company in relation to any contract of employment adopted by him in the carrying out of his functions.]¹⁰⁹

(2) A receiver (including a receiver whose powers are subsequently suspended under section 56) is personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and [, to the extent of any qualifying liability,]¹¹⁰ on any contract of employment adopted by him in the carrying out of those functions.

[(2A) For the purposes of subsection (2), a liability under a contract of employment is a qualifying liability if—

- (a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme,
- (b) it is incurred while the receiver is in office, and
- (c) it is in respect of services rendered wholly or partly after the adoption of the contract.

(2B) Where a sum payable in respect of a liability which is a qualifying liability for the purposes of subsection (2) is payable in respect of services rendered partly before and partly after the adoption of the contract, liability under that subsection shall only extend to so much of the sum as is payable in respect of services rendered after the adoption of the contract.

(2C) For the purposes of subsections (2A) and (2B)—

- (a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and
- (b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(2D) In subsection (2C)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.]¹¹¹

(3) A receiver who is personally liable by virtue of subsection (2) is entitled to be indemnified out of the property in respect of which he was appointed.

(4) Any contract entered into by or on behalf of the company prior to the appointment of a receiver continues in force (subject to its terms) notwithstanding that appointment, but the receiver does not by virtue only of his appointment incur any personal liability on any such contract.

(5) For the purposes of subsection (2), a receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment.

(6) This section does not limit any right to indemnity which the receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

¹⁰⁹ Added by Insolvency Act 1994 c. 7 s.3(2) (March 24, 1994: Section has effect in relation to contracts of employment adopted on or after March 15, 1994)

¹¹⁰ Words inserted by Insolvency Act 1994 c. 7 s.3(3) (March 24, 1994: Section has effect in relation to contracts of employment adopted on or after March 15, 1994)

¹¹¹ Added by Insolvency Act 1994 c. 7 s.3(4) (March 24, 1994: Section has effect in relation to contracts of employment adopted on or after March 15, 1994)

(7) Any contract entered into by a receiver in the performance of his functions continues in force (subject to its terms) although the powers of the receiver are subsequently suspended under section 56.

58.— Remuneration of receiver.

(1) The remuneration to be paid to a receiver is to be determined by agreement between the receiver and the holder of the floating charge by virtue of which he was appointed.

(2) Where the remuneration to be paid to the receiver has not been determined under subsection (1), or where it has been so determined but is disputed by any of the persons mentioned in paragraphs (a) to (d) below, it may be fixed instead by the Auditor of the Court of Session on application made to him by—

- (a) the receiver;
- (b) the holder of any floating charge or fixed security over all or any part of the property of the company;
- (c) the company; or
- (d) the liquidator of the company.

(3) Where the receiver has been paid or has retained for his remuneration for any period before the remuneration has been fixed by the Auditor of the Court of Session under subsection (2) any amount in excess of the remuneration so fixed for that period, the receiver or his personal representatives shall account for the excess.

59.— Priority of debts.

(1) Where a receiver is appointed and the company is not at the time of the appointment in course of being wound up, the debts which fall under subsection (2) of this section shall be paid out of any assets coming to the hands of the receiver in priority to any claim for principal or interest by the holder of the floating charge by virtue of which the receiver was appointed.

(2) Debts falling under this subsection are preferential debts (within the meaning given by section 386 in Part XII) which, by the end of a period of 6 months after advertisement by the receiver for claims in the Edinburgh Gazette and in a newspaper circulating in the district where the company carries on business either—

- (i) have been intimated to him, or
- (ii) have become known to him.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of ordinary creditors.

60.— Distribution of moneys.

(1) Subject to the next section, and to the rights of any of the following categories of persons (which rights shall, except to the extent otherwise provided in any instrument, have the following order of priority), namely—

- (a) the holder of any fixed security which is over property subject to the floating charge and which ranks prior to, or *pari passu* with, the floating charge;

(b) all persons who have effectually executed diligence on any part of the property of the company which is subject to the charge by virtue of which the receiver was appointed;

(c) creditors in respect of all liabilities, charges and expenses incurred by or on behalf of the receiver;

(d) the receiver in respect of his liabilities, expenses and remuneration, and any indemnity to which he is entitled out of the property of the company; and

(e) the preferential creditors entitled to payment under section 59,

the receiver shall pay moneys received by him to the holder of the floating charge by virtue of which the receiver was appointed in or towards satisfaction of the debt secured by the floating charge.

(2) Any balance of moneys remaining after the provisions of subsection (1) and section 61 below have been satisfied shall be paid in accordance with their respective rights and interests to the following persons, as the case may require—

- (a) any other receiver;
- (b) the holder of a fixed security which is over property subject to the floating charge;
- (c) the company or its liquidator, as the case may be.

(3) Where any question arises as to the person entitled to a payment under this section or where a receipt or a discharge of a security cannot be obtained in respect of any such payment, the receiver shall consign the amount of such payment in any joint stock bank of issue in Scotland in name of the Accountant of Court for behoof of the person or persons entitled thereto.

61.— Disposal of interest in property.

(1) Where the receiver sells or disposes, or is desirous of selling or disposing, of any property or interest in property of the company which is subject to the floating charge by virtue of which the receiver was appointed and which is—

- (a) subject to any security or interest of, or burden or encumbrance in favour of, a creditor the ranking of which is prior to, or *pari passu* with, or postponed to the floating charge, or
- (b) property or an interest in property affected or attached by effectual diligence executed by any person,

and the receiver is unable to obtain the consent of such creditor or, as the case may be, such person to such a sale or disposal, the receiver may apply to the court for authority to sell or dispose of the property or interest in property free of such security, interest, burden, encumbrance or diligence.

[(1A) For the purposes of subsection (1) above, an inhibition which takes effect after the creation of the floating charge by virtue of which the receiver was appointed is not an effectual diligence.]¹¹²

(2) Subject to the next subsection, on such an application the court may, if it thinks fit, authorise the sale or disposal of the property or interest in question free of such security, interest, burden, encumbrance or diligence, and such authorisation may be on such terms or conditions as the court thinks fit.

(3) In the case of an application where a fixed security over the property or interest in question which ranks prior to the floating charge has not been met or provided for in full, the court shall not

¹¹² Added by Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3 (Scottish Act) Pt 5 s.155(2) (April 22, 2009 subject to transitional modifications and savings specified in SSI 2009/67 arts 4-6)

authorise the sale or disposal of the property or interest in question unless it is satisfied that the sale or disposal would be likely to provide a more advantageous realisation of the company's assets than would otherwise be effected.

- (4) It shall be a condition of an authorisation to which subsection (3) applies that—
- (a) the net proceeds of the disposal, and
 - (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or interest in the open market by a willing seller, such sums as may be required to make good the deficiency,
- shall be applied towards discharging the sums secured by the fixed security.
- (5) Where a condition imposed in pursuance of subsection (4) relates to two or more such fixed securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those fixed securities in the order of their priorities.
- (6) A copy of an authorisation under subsection (2) [...] ¹¹³ shall, within 14 days of the granting of the authorisation, be sent by the receiver to the registrar of companies.
- (7) If the receiver without reasonable excuse fails to comply with subsection (6), he is liable to a fine and, for continued contravention, to a daily default fine.
- (8) Where any sale or disposal is effected in accordance with the authorisation of the court under subsection (2), the receiver shall grant to the purchaser or disponee an appropriate document of transfer or conveyance of the property or interest in question, and that document has the effect, or, where recording, intimation or registration of that document is a legal requirement for completion of title to the property or interest, then that recording, intimation or registration (as the case may be) has the effect, of—
- (a) disencumbering the property or interest of the security, interest, burden or encumbrance affecting it, and
 - (b) freeing the property or interest from the diligence executed upon it.
- (9) Nothing in this section prejudices the right of any creditor of the company to rank for his debt in the winding up of the company.

Amendments Pending

Pt III c. II s. 61(1B): added by Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3 (Scottish Act) Sch. 5 para. 14(2) (date to be appointed)

62.— Cessation of appointment of receiver.

- (1) A receiver may be removed from office by the court under subsection (3) below and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.

¹¹³ Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.74(6) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

(2) A receiver shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(3) Subject to the next subsection, a receiver may, on application to the court by the holder of the floating charge by virtue of which he was appointed, be removed by the court on cause shown.

(4) Where at any time a receiver vacates office—

(a) his remuneration and any expenses properly incurred by him, and

(b) any indemnity to which he is entitled out of the property of the company,

shall be paid out of the property of the company which is subject to the floating charge and shall have priority as provided for in section 60(1).

(5) When a receiver ceases to act as such otherwise than by death he shall, and, when a receiver is removed by the court, the holder of the floating charge by virtue of which he was appointed shall, within 14 days of the cessation or removal (as the case may be) give the registrar of companies notice to that effect, and the registrar shall enter the notice in the register of charges.

If the receiver or the holder of the floating charge (as the case may require) makes default in complying with the requirements of this subsection, he is liable to a fine and, for continued contravention, to a daily default fine.

(6) If by the expiry of a period of one month following upon the removal of the receiver or his ceasing to act as such no other receiver has been appointed, the floating charge by virtue of which the receiver was appointed—

(a) thereupon ceases to attach to the property then subject to the charge, and

(b) again subsists as a floating charge;

and for the purposes of calculating the period of one month under this subsection no account shall be taken of any period during which [the company is in administration,]¹¹⁴ under Part II of this Act [...]¹¹⁵.

Amendments Pending

Pt III c. II s. 62(5): words repealed by Companies Act 1989 c. 40 Sch. 24 para. 1 (date to be appointed: commencement order)

63.— Powers of court.

(1) The court on the application of—

(a) the holder of a floating charge by virtue of which a receiver was appointed, or

(b) a receiver appointed under section 51,

may give directions to the receiver in respect of any matter arising in connection with the performance by him of his functions.

(2) Where the appointment of a person as a receiver by the holder of a floating charge is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the court may order the holder of the floating charge to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

¹¹⁴ Words substituted by Enterprise Act 2002 (Insolvency) Order 2003/2096 Sch.1(1) para.9(a) (September 15, 2003)

¹¹⁵ Words repealed by Enterprise Act 2002 (Insolvency) Order 2003/2096 Sch.1(1) para.9(b) (September 15, 2003)

64.— Notification that receiver appointed.

[(1) Where a receiver has been appointed—

- (a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company or the receiver or the liquidator of the company; and
- (b) all the company's websites,

must contain a statement that a receiver has been appointed.

]¹¹⁶

(2) If default is made in complying with the requirements of this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely any officer of the company, any liquidator of the company and any receiver, is liable to a fine.

65.— Information to be given by receiver.

(1) Where a receiver is appointed, he shall—

- (a) forthwith send to the company and publish notice of his appointment, and
- (b) within 28 days after his appointment, unless the court otherwise directs, send such notice to all the creditors of the company (so far as he is aware of their addresses).

(2) This section and the next do not apply in relation to the appointment of a receiver to act—

- (a) with an existing receiver, or
- (b) in place of a receiver who has died or ceased to act,

except that, where they apply to a receiver who dies or ceases to act before they have been fully complied with, the references in this section and the next to the receiver include (subject to subsection (3) of this section his successor and any continuing receiver.

(3) If the company is being wound up, this section and the next apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If a person without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

66.— Company's statement of affairs.

(1) Where a receiver of a company is appointed, the receiver shall forthwith require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

¹¹⁶ Substituted by Companies (Trading Disclosures) (Insolvency) Regulations 2008/1897 reg.2(2) (October 1, 2008)

(3) The persons referred to in subsection (1) are—

- (a) those who are or have been officers of the company;
- (b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the receiver;
- (c) those who are in the company's employment or have been in its employment within that year, and are in the receiver's opinion capable of giving the information required;
- (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company.

In this subsection "employment" includes employment under a contract for services.

(4) Where any persons are required under this section to submit a statement of affairs to the receiver they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the receiver.

(5) The receiver, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or
- (b) either when giving the notice mentioned in subsection (4) or subsequently extend the period so mentioned,

and where the receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention to a daily default fine.

67.— Report by receiver.

(1) Where a receiver is appointed under section 51, he shall within 3 months (or such longer period as the court may allow) after his appointment, send to the registrar of companies, to the holder of the floating charge by virtue of which he was appointed and to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—

- (a) the events leading up to his appointment, so far as he is aware of them;
- (b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;
- (c) the amounts of principal and interest payable to the holder of the floating charge by virtue of which he was appointed and the amounts payable to preferential creditors; and
- (d) the amount (if any) likely to be available for the payment of other creditors.

(2) The receiver shall also, within 3 months (or such longer period as the court may allow) after his appointment, either—

- (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company, or
- (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,

and (in either case), unless the court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than 14 days' notice.

(3) The court shall not give a direction under subsection (2) unless—

- (a) the report states the intention of the receiver to apply for the direction, and
 - (b) a copy of the report is sent to the persons mentioned in paragraph (a) of that subsection, or a notice is published as mentioned in paragraph (b) of that subsection, not less than 14 days before the hearing of the application.
- (4) Where the company has gone or goes into liquidation, the receiver—
 - (a) shall, within 7 days after his compliance with subsection (1) or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator, and
 - (b) where he does so within the time limited for compliance with subsection (2), is not required to comply with that subsection.
- (5) A report under this section shall include a summary of the statement of affairs made out and submitted under section 66 and of his comments (if any) on it.
- (6) Nothing in this section shall be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the receiver of his functions.
- (7) Section 65(2) applies for the purposes of this section also.
- (8) If a person without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.
- (9) In this section “secured creditor”, in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and “unsecured creditor” shall be construed accordingly.

68.— Committee of creditors.

- (1) Where a meeting of creditors is summoned under section 67, the meeting may, if it thinks fit, establish a committee (“the creditors’ committee”) to exercise the functions conferred on it by or under this Act.
- (2) If such a committee is established, the committee may on giving not less than 7 days’ notice require the receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

69.— Enforcement of receiver’s duty to make returns, etc.

- (1) If any receiver—
 - (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or
 - (b) has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him,the court may, on an application made for the purpose, make an order directing the receiver to make good the default within such time as may be specified in the order.
- (2) In the case of any such default as is mentioned in subsection (1)(a), an application for the purposes of this section may be made by any member or creditor of the company or by the registrar of companies; and, in the case of any such default as is mentioned in subsection (1)(b), the application

shall be made by the liquidator; and, in either case, the order may provide that all expenses of and incidental to the application shall be borne by the receiver.

(3) Nothing in this section prejudices the operation of any enactments imposing penalties on receivers in respect of any such default as is mentioned in subsection (1).

70.— Interpretation for Chapter II.

(1) In this Chapter, unless the contrary intention appears, the following expressions have the following meanings respectively assigned to them—

“company” means an incorporated company (whether or not [a company registered under the Companies Act 2006]¹¹⁷) which the Court of Session has jurisdiction to wind up ;

“fixed security”, in relation to any property of a company, means any security, other than a floating charge or a charge having the nature of a floating charge, which on the winding up of the company in Scotland would be treated as an effective security over that property, and (without prejudice to that generality) includes a security over that property, being a heritable security within the meaning of the Conveyancing and Feudal Reform (Scotland) Act 1970;

“instrument of appointment” has the meaning given by section 53(1);

“prescribed” means prescribed by regulations made under this Chapter by the Secretary of State;

“receiver” means a receiver of such part of the property of the company as is subject to the floating charge by virtue of which he has been appointed under section 51;

“register of charges” means the register kept by the registrar of companies for the purposes of [Chapter 2 of Part 25 of the Companies Act 2006]¹¹⁸ ;

“secured debenture” means a bond, debenture, debenture stock or other security which, either itself or by reference to any other instrument, creates a floating charge over all or any part of the property of the company, but does not include a security which creates no charge other than a fixed security; and

“series of secured debentures” means two or more secured debentures created as a series by the company in such a manner that the holders thereof are entitled *pari passu* to the benefit of the floating charge.

(2) Where a floating charge, secured debenture or series of secured debentures has been created by the company, then, except where the context otherwise requires, any reference in this Chapter to the holder of the floating charge shall—

(a) where the floating charge, secured debenture or series of secured debentures provides for a receiver to be appointed by any person or body, be construed as a reference to that person or body;

(b) where, in the case of a series of secured debentures, no such provision has been made therein but—

¹¹⁷ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.74(7)(a) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹¹⁸ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.74(7)(b) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

- (i) there are trustees acting for the debenture-holders under and in accordance with a trust deed, be construed as a reference to those trustees, and
- (ii) where no such trustees are acting, be construed as a reference to—
 - (aa) a majority in nominal value of those present or represented by proxy and voting at a meeting of debenture-holders at which the holders of at least one-third in nominal value of the outstanding debentures of the series are present or so represented, or
 - (bb) where no such meeting is held, the holders of at least one-half in nominal value of the outstanding debentures of the series.

(3) Any reference in this Chapter to a floating charge, secured debenture, series of secured debentures or instrument creating a charge includes, except where the context otherwise requires, a reference to that floating charge, debenture, series of debentures or instrument as varied by any instrument.

(4) References in this Chapter to the instrument by which a floating charge was created are, in the case of a floating charge created by words in a bond or other written acknowledgement, references to the bond or, as the case may be, the other written acknowledgement.

71.— Prescription of forms, etc.; regulations.

(1) The notice referred to in section 62(5), and the notice referred to in section 65(1)(a) shall be in such form as may be prescribed.

(2) Any power conferred by this Chapter on the Secretary of State to make regulations is exercisable by statutory instrument; and a statutory instrument made in the exercise of the power so conferred to prescribe a fee is subject to annulment in pursuance of a resolution of either House of Parliament.

CHAPTER III

RECEIVERS' POWERS IN GREAT BRITAIN AS A WHOLE

72.— Cross-border operation of receivership provisions.

(1) A receiver appointed under the law of either part of Great Britain in respect of the whole or any part of any property or undertaking of a company and in consequence of the company having created a charge which, as created, was a floating charge may exercise his powers in the other part of Great Britain so far as their exercise is not inconsistent with the law applicable there.

(2) In subsection (1) “receiver” includes a manager and a person who is appointed both receiver and manager.

[CHAPTER IV

PROHIBITION OF APPOINTMENT OF ADMINISTRATIVE RECEIVER]¹¹⁹**[72A Floating charge holder not to appoint administrative receiver**

- (1) The holder of a qualifying floating charge in respect of a company's property may not appoint an administrative receiver of the company.
- (2) In Scotland, the holder of a qualifying floating charge in respect of a company's property may not appoint or apply to the court for the appointment of a receiver who on appointment would be an administrative receiver of property of the company.
- (3) In subsections (1) and (2)—
 “holder of a qualifying floating charge in respect of a company's property” has the same meaning as in paragraph 14 of Schedule B1 to this Act, and
 “administrative receiver” has the meaning given by section 251.
- (4) This section applies—
 (a) to a floating charge created on or after a date appointed by the Secretary of State by order made by statutory instrument, and
 (b) in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name).
- (5) An order under subsection (4)(a) may—
 (a) make provision which applies generally or only for a specified purpose;
 (b) make different provision for different purposes;
 (c) make transitional provision.
- (6) This section is subject to the exceptions specified in [sections 72B to 72GA]¹²⁰ .
]¹²¹

[72B First exception: capital market

- (1) Section 72A does not prevent the appointment of an administrative receiver in pursuance of an agreement which is or forms part of a capital market arrangement if—
 (a) a party incurs or, when the agreement was entered into was expected to incur, a debt of at least £50 million under the arrangement, and
 (b) the arrangement involves the issue of a capital market investment.
- (2) In subsection (1)—
 “capital market arrangement” means an arrangement of a kind described in paragraph 1 of Schedule 2A, and
 “capital market investment” means an investment of a kind described in paragraph 2 or 3 of that Schedule.

¹¹⁹ Added by Enterprise Act 2002 c. 40 Pt 10 s.250(1) (March 18, 2003 as SI 2003/765)

¹²⁰ Words substituted by Insolvency Act 1986 (Amendment) (Administrative Receivership and Urban Regeneration etc.) Order 2003/1832 art.2(a) (September 15, 2003: as 1986 c.45 ss.72A-72G and Sch.2A)

¹²¹ Added by Enterprise Act 2002 c. 40 Pt 10 s.250(1) (September 15, 2003 as SI 2003/2093)

J¹²²**[72C Second exception: public-private partnership]**

(1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a public-private partnership project, and
- (b) includes step-in rights.

(2) In this section “public-private partnership project” means a project—

- (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
- (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.

(3) In this section—

- “step-in rights” has the meaning given by paragraph 6 of Schedule 2A, and
- “project company” has the meaning given by paragraph 7 of that Schedule.

J¹²³**[72D Third exception: utilities]**

(1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a utility project, and
- (b) includes step-in rights.

(2) In this section—

- (a) “utility project” means a project designed wholly or mainly for the purpose of a regulated business,
- (b) “regulated business” means a business of a kind listed in paragraph 10 of Schedule 2A,
- (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule, and
- (d) “project company” has the meaning given by paragraph 7 of that Schedule.

J¹²⁴**[72DA Exception in respect of urban regeneration projects]**

(1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is designed wholly or mainly to develop land which at the commencement of the project is wholly or partly in a designated disadvantaged area outside Northern Ireland, and
- (b) includes step-in rights.

(2) In subsection (1) “develop” means to carry out—

¹²² Added by Enterprise Act 2002 c. 40 Pt 10 s.250(1) (September 15, 2003 as SI 2003/2093)

¹²³ Added by Enterprise Act 2002 c. 40 Pt 10 s.250(1) (September 15, 2003 as SI 2003/2093)

¹²⁴ Added by Enterprise Act 2002 c. 40 Pt 10 s.250(1) (September 15, 2003 as SI 2003/2093)

- (a) building operations,
- (b) any operation for the removal of substances or waste from land and the levelling of the surface of the land, or
- (c) engineering operations in connection with the activities mentioned in paragraph (a) or (b).

(3) In this section—

“building” includes any structure or erection, and any part of a building as so defined, but does not include plant and machinery comprised in a building,

“building operations” includes—

- (a) demolition of buildings,
- (b) filling in of trenches,
- (c) rebuilding,
- (d) structural alterations of, or additions to, buildings and
- (e) other operations normally undertaken by a person carrying on business as a builder,

“designated disadvantaged area” means an area designated as a disadvantaged area under section 92 of the Finance Act 2001,

“engineering operations” includes the formation and laying out of means of access to highways,

“project company” has the meaning given by paragraph 7 of Schedule 2A,

“step-in rights” has the meaning given by paragraph 6 of that Schedule,

“substance” means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour, and

“waste” includes any waste materials, spoil, refuse or other matter deposited on land.

]¹²⁵

[72E Fourth exception: project finance

(1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a financed project, and
- (b) includes step-in rights.

(2) In this section—

(a) a project is “financed” if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least £50 million for the purposes of carrying out the project,

(b) “project company” has the meaning given by paragraph 7 of Schedule 2A, and

(c) “step-in rights” has the meaning given by paragraph 6 of that Schedule.

]¹²⁶

¹²⁵ Added by Insolvency Act 1986 (Amendment) (Administrative Receivership and Urban Regeneration etc.) Order 2003/1832 art.2(b) (September 15, 2003: as 1986 c.45 ss.72A-72G and Sch.2A)

¹²⁶ Added by Enterprise Act 2002 c. 40 Pt 10 s.250(1) (September 15, 2003 as SI 2003/2093)

[72F Fifth exception: financial market

Section 72A does not prevent the appointment of an administrative receiver of a company by virtue of—

- (a) a market charge within the meaning of section 173 of the Companies Act 1989 (c. 40),
- (b) a system-charge within the meaning of the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469),
- (c) a collateral security charge within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979).

]¹²⁷

[72G Sixth exception: registered social landlord

Section 72A does not prevent the appointment of an administrative receiver of a company which is registered as a social landlord under Part I of the Housing Act 1996 (c. 52) or under Part 3 of the Housing (Scotland) Act 2001 (asp 10).]¹²⁸

[72GA Exception in relation to protected railway companies etc.

Section 72A does not prevent the appointment of an administrative receiver of—

- (a) a company holding an appointment under Chapter I of Part II of the Water Industry Act 1991,
- (b) a protected railway company within the meaning of section 59 of the Railways Act 1993 (including that section as it has effect by virtue of section 19 of the Channel Tunnel Rail Link Act 1996, or
- (c) a licence company within the meaning of section 26 of the Transport Act 2000.

]¹²⁹

[72H Sections 72A to 72G: supplementary

[(1) Schedule 2A (which supplements sections 72B to 72G) shall have effect.]¹³⁰

(2) The Secretary of State may by order—

- (a) insert into this Act provision creating an additional exception to section 72A(1) or (2);
- (b) provide for a provision of this Act which creates an exception to section 72A(1) or (2) to cease to have effect;
- (c) amend section 72A in consequence of provision made under paragraph (a) or (b);
- (d) amend any of sections 72B to 72G;
- (e) amend Schedule 2A.

(3) An order under subsection (2) must be made by statutory instrument.

(4) An order under subsection (2) may make—

- (a) provision which applies generally or only for a specified purpose;

¹²⁷ Added by Enterprise Act 2002 c. 40 Pt 10 s.250(1) (September 15, 2003 as SI 2003/2093)

¹²⁸ Added by Enterprise Act 2002 c. 40 Pt 10 s.250(1) (September 15, 2003 as SI 2003/2093)

¹²⁹ Added by Insolvency Act 1986 (Amendment) (Administrative Receivership and Urban Regeneration etc.) Order 2003/1832 art.2(c) (September 15, 2003: as 1986 c.45 ss.72A-72G and Sch.2A)

¹³⁰ Added by Enterprise Act 2002 c. 40 Pt 10 s.250(1) (September 15, 2003 as SI 2003/2093)

- (b) different provision for different purposes;
 - (c) consequential or supplementary provision;
 - (d) transitional provision.
- (5) An order under subsection (2)—
- (a) in the case of an order under subsection (2)(e), shall be subject to annulment in pursuance of a resolution of either House of Parliament,
 - (b) in the case of an order under subsection (2)(d) varying the sum specified in section 72B(1)(a) or 72E(2)(a) (whether or not the order also makes consequential or transitional provision), shall be subject to annulment in pursuance of a resolution of either House of Parliament, and
 - (c) in the case of any other order under subsection (2)(a) to (d), may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
-]

PART IV

WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

CHAPTER I

PRELIMINARY

*[Introductory]*¹³²

[73.— Scheme of this Part

- (1) This Part applies to the winding up of a company registered under the Companies Act 2006 in England and Wales or Scotland.
- (2) The winding up may be either—
 - (a) voluntary (see Chapters 2 to 5), or
 - (b) by the court (see Chapter 6).
- (3) This Chapter and Chapters 7 to 10 relate to winding up generally, except where otherwise stated.

]

Commencement

Pt IV c. I s. 73(1)-(2): June 1, 1991

¹³¹ Added by Enterprise Act 2002 c. 40 Pt 10 s.250(1) (March 18, 2003 as SI 2003/765)

¹³² Substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(2) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹³³ Substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(2) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

Contributories

74.— Liability as contributories of present and past members.

(1) When a company is wound up, every present and past member is liable to contribute to its assets to any amount sufficient for payment of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

(2) This is subject as follows—

- (a) a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;
- (b) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member is not liable to contribute, unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them [...] ¹³⁴ ;
- (d) in the case of a company limited by shares, no contribution is required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member;
- (e) nothing in [the Companies Acts] ¹³⁵ or this Act invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (f) a sum due to any member of the company (in his character of a member) by way of dividends, profits or otherwise is not deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(3) In the case of a company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be contributed by him to the company's assets in the event of its being wound up; but if it is a company with a share capital, every member of it is liable (in addition to the amount so undertaken to be contributed to the assets), to contribute to the extent of any sums unpaid on shares held by him.

Commencement

Pt IV c. I s. 74(1)-(3): June 1, 1991

75.— [...] ¹³⁶

¹³⁴ Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(3)(a) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹³⁵ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(3)(b) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹³⁶ Repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(4) (October 1, 2009: repeal has effect subject to savings and transitional provisions specified in SI 2009/1941 arts 8 and 9)

76.— Liability of past directors and shareholders.

- (1) This section applies where a company is being wound up and—
- (a) it has under [Chapter 5 of Part 18 of the Companies Act 2006 (acquisition by limited company of its own shares: redemption or purchase by private company out of capital)]¹³⁷ made a payment out of capital in respect of the redemption or purchase of any of its own shares (the payment being referred to below as “the relevant payment”), and
 - (b) the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets (apart from this section) is not sufficient for payment of its debts and liabilities, and the expenses of the winding up.
- (2) If the winding up commenced within one year of the date on which the relevant payment was made, then—
- (a) the person from whom the shares were redeemed or purchased, and
 - (b) the directors who signed the statutory declaration made in accordance with [section 714(1) to (3) of the Companies Act 2006]¹³⁸ for purposes of the redemption or purchase (except a director who shows that he had reasonable grounds for forming the opinion set out in the declaration),
- are, so as to enable that insufficiency to be met, liable to contribute to the following extent to the company's assets.
- (3) A person from whom any of the shares were redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his shares; and the directors are jointly and severally liable with that person to contribute that amount.
- (4) A person who has contributed any amount to the assets in pursuance of this section may apply to the court for an order directing any other person jointly and severally liable in respect of that amount to pay him such amount as the court thinks just and equitable.
- (5) [Section 74 does not apply]¹³⁹ in relation to liability accruing by virtue of this section.
- (6) [...] ¹⁴⁰

Commencement

Pt IV c. I s. 76(1)-(6): June 1, 1991

¹³⁷ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(5)(a) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹³⁸ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(5)(b) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹³⁹ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(5)(c) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹⁴⁰ Repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(5)(d) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

77.— Limited company formerly unlimited.

(1) This section applies in the case of a company being wound up which was at some former time registered as unlimited but has [re-registered as a limited company.]¹⁴¹

(a)-(b) [...] ¹⁴¹

(2) Notwithstanding section 74(2)(a) above, a past member of the company who was a member of it at the time of re-registration, if the winding up commences within the period of 3 years beginning with the day on which the company was re-registered, is liable to contribute to the assets of the company in respect of debts and liabilities contracted before that time.

(3) If no persons who were members of the company at that time are existing members of it, a person who at that time was a present or past member is liable to contribute as above notwithstanding that the existing members have satisfied the contributions required to be made by them [...] ¹⁴². This applies subject to section 74(2)(a) above and to subsection (2) of this section, but notwithstanding section 74(2)(c).

(4) Notwithstanding section 74(2)(d) and (3), there is no limit on the amount which a person who, at that time, was a past or present member of the company is liable to contribute as above.

Commencement

Pt IV c. I s. 77(1)-(4): June 1, 1991

78.— Unlimited company formerly limited.

(1) This section applies in the case of a company being wound up which was at some former time registered as limited but has been re-registered as unlimited [...] ¹⁴³.

(2) A person who, at the time when the application for the company to be re-registered was lodged, was a past member of the company and did not after that again become a member of it is not liable to contribute to the assets of the company more than he would have been liable to contribute had the company not been re-registered.

Commencement

Pt IV c. I s. 78(1)-(2): June 1, 1991

¹⁴¹ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(6)(a) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹⁴² Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(6)(b) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹⁴³ Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(7) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

79.— Meaning of “contributory”.

(1) In this Act [...] ¹⁴⁴ the expression “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

(2) The reference in subsection (1) to persons liable to contribute to the assets does not include a person so liable by virtue of a declaration by the court under section 213 (imputed responsibility for company's fraudulent trading) or section 214 (wrongful trading) in Chapter X of this Part.

(3) A reference in a company's articles to a contributory does not (unless the context requires) include a person who is a contributory only by virtue of section 76. [...] ¹⁴⁵

Commencement

Pt IV c. I s. 79(1)-(3): June 1, 1991

80. Nature of contributory's liability.

The liability of a contributory creates a debt (in England and Wales in the nature of [an ordinary contract debt] ¹⁴⁶) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Commencement

Pt IV c. I s. 80: June 1, 1991

81.— Contributories in case of death of a member.

(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives, and the heirs and legatees of heritage of his heritable estate in Scotland, are liable in a due course of administration to contribute to the assets of the company in discharge of his liability and are contributories accordingly.

(2) Where the personal representatives are placed on the list of contributories, the heirs or legatees of heritage need not be added, but they may be added as and when the court thinks fit.

(3) If in England and Wales the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment out of it of the money due.

¹⁴⁴ Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(8)(a) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹⁴⁵ Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(8)(b) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹⁴⁶ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(9) (October 1, 2009: substitution has effect subject to savings and transitional provisions specified in SI 2009/1941 arts 8 and 11)

Commencement

Pt IV c. I s. 81(1)-(3): June 1, 1991

82.— Effect of contributory's bankruptcy.

- (1) The following applies if a contributory becomes bankrupt, either before or after he has been placed on the list of contributories.
- (2) His trustee in bankruptcy represents him for all purposes of the winding up, and is a contributory accordingly.
- (3) The trustee may be called on to admit to proof against the bankrupt's estate, or otherwise allow to be paid out of the bankrupt's assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the company's assets.
- (4) There may be proved against the bankrupt's estate the estimated value of his liability to future calls as well as calls already made.

Commencement

Pt IV c. I s. 82(1)-(4): June 1, 1991

83.— [Companies registered but not formed under the Companies Act 2006]¹⁴⁷

- (1) The following applies in the event of a company being wound up which [is registered but not formed under the Companies Act 2006]¹⁴⁸.
- (2) Every person is a contributory, in respect of the company's debts and liabilities contracted before registration, who is liable—
 - (a) to pay, or contribute to the payment of, any debt or liability so contracted, or
 - (b) to pay, or contribute to the payment of, any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or
 - (c) to pay, or contribute to the amount of, the expenses of winding up the company, so far as relates to the debts or liabilities above-mentioned.
- (3) Every contributory is liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability.
- (4) In the event of the death, bankruptcy or insolvency of any contributory, provisions of this Act, with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories and to the trustees of bankrupt or insolvent contributories respectively, apply.

¹⁴⁷ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(10)(a) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹⁴⁸ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(10)(b) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

Commencement

Pt IV c. I s. 83(1)-(4): June 1, 1991

CHAPTER II

VOLUNTARY WINDING UP (INTRODUCTORY AND GENERAL)

Resolutions for, and commencement of, voluntary winding up

84.— Circumstances in which company may be wound up voluntarily.

(1) A company may be wound up voluntarily—

- (a) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring it to be wound up voluntarily;
- (b) if the company resolves by special resolution that it be wound up voluntarily;
- (c) [...]¹⁴⁹

(2) In this Act the expression “a resolution for voluntary winding up” means a resolution passed under [either of the paragraphs]¹⁵⁰ of subsection (1) .

[(2A) Before a company passes a resolution for voluntary winding up it must give written notice of the resolution to the holder of any qualifying floating charge to which section 72A applies.

(2B) Where notice is given under subsection (2A) a resolution for voluntary winding up may be passed only—

- (a) after the end of the period of five business days beginning with the day on which the notice was given, or
- (b) if the person to whom the notice was given has consented in writing to the passing of the resolution.

] ¹⁵¹

[(3) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to a resolution under paragraph (a) of subsection (1) as well as a special resolution under paragraph (b).¹⁵²]¹⁵³

¹⁴⁹ Repealed by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007/2194 Sch.5 para.1 (October 1, 2007)

¹⁵⁰ Words substituted by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007/2194 Sch.4(3) para.39(3) (October 1, 2007: substitution has effect in relation to written resolutions for which the circulation date is on or after October 1, 2007, and resolutions passed at a meeting of which notice is given on or after that date)

¹⁵¹ Added by Enterprise Act 2002 (Insolvency) Order 2003/2096 Sch.1(1) para.10 (September 15, 2003)

¹⁵² In relation to England and Wales: s. 84 is modified: [See Westlaw UK].

¹⁵³ Substituted by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007/2194 Sch.4(3) para.39(4) (October 1, 2007: substitution has effect in relation to written

Commencement

Pt IV c. II s. 84(1)-(3): June 1, 1991

85.— Notice of resolution to wind up.

(1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

For purposes of this subsection the liquidator is deemed an officer of the company.

Commencement

Pt IV c. II s. 85(1)-(2): June 1, 1991

86. Commencement of winding up.

A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up.

Commencement

Pt IV c. II s. 86: June 1, 1991

Consequences of resolution to wind up

87.— Effect on business and status of company.

(1) In case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.

(2) However, the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until the company is dissolved.

Commencement

Pt IV c. II s. 87(1)-(2): June 1, 1991

88. Avoidance of share transfers, etc. after winding-up resolution.

Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the company's members, made after the commencement of a voluntary winding up, is void.

resolutions for which the circulation date is on or after October 1, 2007, and resolutions passed at a meeting of which notice is given on or after that date)

Commencement

Pt IV c. II s. 88: June 1, 1991

*Declaration of solvency***89.— Statutory declaration of solvency.**

- (1) Where it is proposed to wind up a company voluntarily, the directors (or, in the case of a company having more than two directors, the majority of them) may at a directors' meeting make a statutory declaration to the effect that they have made a full inquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest at the official rate (as defined in section 251, within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.
- (2) Such a declaration by the directors has no effect for purposes of this Act unless—
 - (a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and
 - (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.
- (3) The declaration shall be delivered to the registrar of companies before the expiration of 15 days immediately following the date on which the resolution for winding up is passed.
- (4) A director making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within the period specified is liable to imprisonment or a fine, or both.
- (5) If the company is wound up in pursuance of a resolution passed within 5 weeks after the making of the declaration, and its debts (together with interest at the official rate) are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.
- (6) If a declaration required by subsection (3) to be delivered to the registrar is not so delivered within the time prescribed by that subsection, the company and every officer in default is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt IV c. II s. 89(1)-(6): June 1, 1991

90. Distinction between “members” and “creditors” voluntary winding up.

A winding up in the case of which a directors' statutory declaration under section 89 has been made is a “members' voluntary winding up”; and a winding up in the case of which such a declaration has not been made is a “creditors' voluntary winding up”.

Commencement

Pt IV c. II s. 90: June 1, 1991

CHAPTER III**MEMBERS' VOLUNTARY WINDING UP****91.— Appointment of liquidator.**

- (1) In a members' voluntary winding up, the company in general meeting shall appoint one or more liquidators for the purpose of winding up the company's affairs and distributing its assets.
- (2) On the appointment of a liquidator all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance.

Commencement

Pt IV c. III s. 91(1)-(2): June 1, 1991

92.— Power to fill vacancy in office of liquidator.

- (1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.
- (2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.
- (3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Commencement

Pt IV c. III s. 92(1)-(3): June 1, 1991

93.— General company meeting at each year's end.

- (1) Subject to sections 96 and 102, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Secretary of State may allow.
- (2) The liquidator shall lay before the meeting an account of his acts and dealings, and of the conduct of the winding up, during the preceding year.
- (3) If the liquidator fails to comply with this section, he is liable to a fine.

Commencement

Pt IV c. III s. 93(1)-(3): June 1, 1991

Amendments Pending

Pt IV c. III s. 93: word inserted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 6(2)(a) (April 6, 2010: insertion has effect subject to transitional provisions specified in SI 2010/18 art.12(2))

Pt IV c. III s. 93(1): words inserted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 6(2)(b) (April 6, 2010: insertion has effect subject to transitional provisions specified in SI 2010/18 art.12(2))

94.— Final meeting prior to dissolution.

- (1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving an explanation of it.
- (2) The meeting shall be called by advertisement in the Gazette, specifying its time, place and object and published at least one month before the meeting.
- (3) Within one week after the meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date.
- (4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.
- (5) If a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned above, make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made, the provisions of subsection (3) as to the making of the return are deemed complied with.
- (6) If the liquidator fails to call a general meeting of the company as required by subsection (1), he is liable to a fine.

Commencement

Pt IV c. III s. 94(1)-(6): June 1, 1991

Amendments Pending

Pt IV c. III s. 94: words repealed by Insolvency (Amendment) Rules 2010/686 Sch. 1 para. 502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

95.— Effect of company's insolvency.

- (1) This section applies where the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration under section 89.

- (2) [In the case of the winding up of a company registered in Scotland, the liquidator]¹⁵⁴ shall—
- (a) summon a meeting of creditors for a day not later than the 28th day after the day on which he formed that opinion;
 - (b) send notices of the creditors' meeting to the creditors by post not less than 7 days before the day on which that meeting is to be held;
 - (c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in 2 newspapers circulating in the relevant locality (that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period); and
 - (d) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;

and the notice of the creditors' meeting shall state the duty imposed by paragraph (d) above.

- [(2A) In the case of the winding up of a company registered in England and Wales, the liquidator—
- (a) shall summon a meeting of creditors for a day not later than the 28th day after the day on which he formed that opinion;
 - (b) shall send notices of the creditors' meeting to the creditors by post not less than 7 days before the day on which that meeting is to be held;
 - (c) shall cause notice of the creditors' meeting to be advertised once in the Gazette;
 - (d) may cause notice of the meeting to be advertised in such other manner as he thinks fit; and
 - (e) shall during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;

and the notice of the creditors' meeting shall state the duty imposed by paragraph (e) above.

]¹⁵⁵

- (3) The liquidator shall also—

- (a) make out a statement in the prescribed form as to the affairs of the company;
- (b) lay that statement before the creditors' meeting; and
- (c) attend and preside at that meeting.

- (4) The statement as to the affairs of the company shall be verified by affidavit by the liquidator and shall show—

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of the company's creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

- (5) Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duty imposed by subsection (2)(c) applies separately in relation to each of those localities.

¹⁵⁴ Words substituted by Legislative Reform (Insolvency) (Advertising Requirements) Order 2009/864 art.3(1)(a) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/864 art.4)

¹⁵⁵ Added by Legislative Reform (Insolvency) (Advertising Requirements) Order 2009/864 art.3(1)(b) (April 6, 2009: insertion has effect subject to transitional provisions specified in SI 2009/864 art.4)

(6) Where the company had no place of business in Great Britain during the relevant period, references in subsections (2)(c) and (5) to the company's principal place of business in Great Britain are replaced by references to its registered office.

(7) In this section “the relevant period” means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

(8) If the liquidator without reasonable excuse fails to comply with this section, he is liable to a fine.

Commencement

Pt IV c. III s. 95(1)-(8): June 1, 1991

Amendments Pending

Pt IV c. III s. 95(2A)(b): words repealed by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 7 (April 6, 2010: repeal has effect subject to transitional provisions specified in SI 2010/18 art.12(3))

Pt IV c. III s. 95(4): words repealed by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 5(2)(a) (April 6, 2010: repeal has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

Pt IV c. III s. 95(4A): added by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 5(2)(b) (April 6, 2010: insertion has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

96. Conversion to creditors' voluntary winding up.

As from the day on which the creditors' meeting is held under section 95, this Act has effect as if—

- (a) the directors' declaration under section 89 had not been made; and
- (b) the creditors' meeting and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in section 98 in the next Chapter;

and accordingly the winding up becomes a creditors' voluntary winding up.

Commencement

Pt IV c. III s. 96(a)-(b): June 1, 1991

CHAPTER IV

CREDITORS' VOLUNTARY WINDING UP

97.— Application of this Chapter.

(1) Subject as follows, this Chapter applies in relation to a creditors' voluntary winding up.

(2) Sections 98 and 99 do not apply where, under section 96 in Chapter III, a members' voluntary winding up has become a creditors' voluntary winding up.

Commencement

Pt IV c. IV s. 97(1)-(2): June 1, 1991

98.— Meeting of creditors.

- (1) [In the case of the winding up of a company registered in Scotland, the company]¹⁵⁶ shall—
- (a) cause a meeting of its creditors to be summoned for a day not later than the 14th day after the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;
 - (b) cause the notices of the creditors' meeting to be sent by post to the creditors not less than 7 days before the day on which that meeting is to be held; and
 - (c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in two newspapers circulating in the relevant locality (that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period).
- [(1A) In the case of the winding up of a company registered in England and Wales, the company—
- (a) shall cause a meeting of its creditors to be summoned for a day not later than the 14th day after the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;
 - (b) shall cause the notices of the creditors' meeting to be sent by post to the creditors not less than 7 days before the day on which that meeting is to be held;
 - (c) shall cause notice of the creditors' meeting to be advertised once in the Gazette; and
 - (d) may cause notice of the meeting to be advertised in such other manner as the directors think fit.
- ¹⁵⁷
- (2) The notice of the creditors' meeting shall state either—
- (a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require; or
 - (b) a place in the relevant locality where, on the two business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge.
- (3) Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duties imposed by subsections (1)(c) and (2)(b) above apply separately in relation to each of those localities.
- (4) Where the company had no place of business in Great Britain during the relevant period, references in subsections (1)(c) and (3) to the company's principal place of business in Great Britain are replaced by references to its registered office.

¹⁵⁶ Words substituted by Legislative Reform (Insolvency) (Advertising Requirements) Order 2009/864 art.3(2)(a) (April 6, 2009: substitution has effect subject to transitional provisions specified in SI 2009/864 art.4)

¹⁵⁷ Added by Legislative Reform (Insolvency) (Advertising Requirements) Order 2009/864 art.3(2)(b) (April 6, 2009: insertion has effect subject to transitional provisions specified in SI 2009/864 art.4)

(5) In this section “the relevant period” means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

(6) If the company without reasonable excuse fails to comply with subsection (1) [, (1A)]¹⁵⁸ or (2), it is guilty of an offence and liable to a fine.

Commencement

Pt IV c. IV s. 98(1)-(6): June 1, 1991

Amendments Pending

Pt IV c. IV s. 98(1A)(b): words repealed by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 7 (April 6, 2010: repealed subject to transitional provisions specified in SI 2010/18 art.12(3))

99.— Directors to lay statement of affairs before creditors.

(1) The directors of the company shall—

- (a) make out a statement in the prescribed form as to the affairs of the company;
- (b) cause that statement to be laid before the creditors meeting under section 98; and
- (c) appoint one of their number to preside at that meeting;

and it is the duty of the director so appointed to attend the meeting and preside over it.

(2) The statement as to the affairs of the company shall be verified by affidavit by some or all of the directors and shall show—

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of the company's creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

(3) If—

- (a) the directors without reasonable excuse fail to comply with subsection (1) or (2); or
- (b) any director without reasonable excuse fails to comply with subsection (1), so far as requiring him to attend and preside at the creditors' meeting,

the directors are or (as the case may be) the director is guilty of an offence and liable to a fine.

Commencement

Pt IV c. IV s. 99(1)-(3)(b): June 1, 1991

Amendments Pending

Pt IV c. IV s. 99(2): words repealed by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 5(3)(a) (April 6, 2010: repeal has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

Pt IV c. IV s. 99(2A): added by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 5(3)(b) (April 6, 2010: insertion has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

¹⁵⁸ Word inserted by Legislative Reform (Insolvency) (Advertising Requirements) Order 2009/864 art.3(2)(c) (April 6, 2009: insertion has effect subject to transitional provisions specified in SI 2009/864 art.4)

Pt IV c. IV s. 99(3)(a): words substituted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 5(3)(c) (April 6, 2010: substitution has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

100.— Appointment of liquidator.

- (1) The creditors and the company at their respective meetings mentioned in section 98 may nominate a person to be liquidator for the purpose of winding up the company's affairs and distributing its assets.
- (2) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the company.
- (3) In the case of different persons being nominated, any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either—
 - (a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or
 - (b) appointing some other person to be liquidator instead of the person nominated by the creditors.

Commencement

Pt IV c. IV s. 100(1)-(3)(b): June 1, 1991

Amendments Pending

Pt IV c. IV s. 100(4): added by Enterprise Act 2002 c. 40 Sch. 17 para. 14 (date to be appointed)

101.— Appointment of liquidation committee.

- (1) The creditors at the meeting to be held under section 98 or at any subsequent meeting may, if they think fit, appoint a committee ("the liquidation committee") of not more than 5 persons to exercise the functions conferred on it by or under this Act.
- (2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding 5.
- (3) However, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the liquidation committee; and if the creditors so resolve—
 - (a) the persons mentioned in the resolution are not then, unless the court otherwise directs, qualified to act as members of the committee; and
 - (b) on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(4) In Scotland, the liquidation committee has, in addition to the powers and duties conferred and imposed on it by this Act, such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on liquidation committees by the rules.

Commencement

Pt IV c. IV s. 101(1)-(4): June 1, 1991

102. Creditors' meeting where winding up converted under s. 96.

Where, in the case of a winding up which was, under section 96 in Chapter III, converted to a creditors' voluntary winding up, a creditors' meeting is held in accordance with section 95, any appointment made or committee established by that meeting is deemed to have been made or established by a meeting held in accordance with section 98 in this Chapter.

Commencement

Pt IV c. IV s. 102: June 1, 1991

103. Cesser of directors' powers.

On the appointment of a liquidator, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no such committee, the creditors) sanction their continuance.

Commencement

Pt IV c. IV s. 103: June 1, 1991

104. Vacancy in office of liquidator.

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the court), the creditors may fill the vacancy.

Commencement

Pt IV c. IV s. 104: June 1, 1991

105.— Meetings of company and creditors at each year's end.

(1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Secretary of State may allow.

(2) The liquidator shall lay before each of the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(3) If the liquidator fails to comply with this section, he is liable to a fine.

(4) Where under section 96 a members' voluntary winding up has become a creditors' voluntary winding up, and the creditors' meeting under section 95 is held 3 months or less before the end of

the first year from the commencement of the winding up, the liquidator is not required by this section to summon a meeting of creditors at the end of that year.

Commencement

Pt IV c. IV s. 105(1)-(4): June 1, 1991

Amendments Pending

Pt IV c. IV s. 105: word inserted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 6(4)(a) (April 6, 2010: insertion has effect subject to transitional provisions specified in SI 2010/18 art.12(2))

Pt IV c. IV s. 105(1): words inserted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 6(4)(b) (April 6, 2010: insertion has effect subject to transitional provisions specified in SI 2010/18 art.12(2))

106.— Final meeting prior to dissolution.

(1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.

(2) Each such meeting shall be called by advertisement in the Gazette specifying the time, place and object of the meeting, and published at least one month before it.

(3) Within one week after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates.

(4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.

(5) However, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by subsection (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such return being made the provisions of that subsection as to the making of the return are, in respect of that meeting, deemed complied with.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he is liable to a fine.

Commencement

Pt IV c. IV s. 106(1)-(6): June 1, 1991

Amendments Pending

Pt IV c. IV s. 106: words repealed by Insolvency (Amendment) Rules 2010/686 Sch. 1 para. 502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

CHAPTER V**PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP****107. Distribution of company's property.**

Subject to the provisions of this Act as to preferential payments, the company's property in a voluntary winding up shall on the winding up be applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the articles otherwise provide) be distributed among the members according to their rights and interests in the company.

Commencement

Pt IV c. V s. 107: June 1, 1991

108.— Appointment or removal of liquidator by the court.

- (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.
- (2) The court may, on cause shown, remove a liquidator and appoint another.

Commencement

Pt IV c. V s. 108(1)-(2): June 1, 1991

109.— Notice by liquidator of his appointment.

- (1) The liquidator shall, within 14 days after his appointment, publish in the Gazette and deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by statutory instrument made by the Secretary of State.
- (2) If the liquidator fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt IV c. V s. 109(1)-(2): June 1, 1991

110.— Acceptance of shares, etc., as consideration for sale of company property.

[(1) This section applies, in the case of a company proposed to be, or being, wound up voluntarily, where the whole or part of the company's business or property is proposed to be transferred or sold—

- (a) to another company (“the transferee company”), whether or not the latter is a [company registered under the Companies Act 2006]¹⁵⁹ or
- (b) to a limited liability partnership (the “transferee limited liability partnership”).

] ¹⁶⁰

[(2) With the requisite sanction, the liquidator of the company being, or proposed to be, wound up (“the transferor company”) may receive, in compensation or part compensation for the transfer or sale—

- (a) in the case of the transferee company, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or
- (b) in the case of the transferee limited liability partnership, membership in the transferee limited liability partnership for distribution among the members of the transferor company.

] ¹⁶⁰

(3) The sanction requisite under subsection (2) is—

- (a) in the case of a members' voluntary winding up, that of a special resolution of the company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, and
- (b) in the case of a creditors' voluntary winding up, that of either the court or the liquidation committee.

[(4) Alternatively to subsection (2), the liquidator may (with that sanction) enter into any other arrangement whereby the members of the transferor company may—

- (a) in the case of the transferee company, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto) participate in the profits of, or receive any other benefit from, the transferee company, or
- (b) in the case of the transferee limited liability partnership, in lieu of receiving cash or membership (or in addition thereto), participate in some other way in the profits of, or receive any other benefit from, the transferee limited liability partnership.

] ¹⁶⁰

(5) A sale or arrangement in pursuance of this section is binding on members of the transferor company.

(6) A special resolution is not invalid for purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but, if an order is made within a year for winding up the company by the court, the special resolution is not valid unless sanctioned by the court. [...] ¹⁶⁰

Commencement

Pt IV c. V s. 110(1)-(6): June 1, 1991

¹⁵⁹ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(11) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹⁶⁰ Modified by Limited Liability Partnerships Regulations 2001/1090 Sch.5 para.15 (April 6, 2001)

111.— Dissent from arrangement under s. 110.

(1) This section applies in the case of a voluntary winding up where, for the purposes of section 110(2) or (4), there has been passed a special resolution of the transferor company providing the sanction requisite for the liquidator under that section.

(2) If a member of the transferor company who did not vote in favour of the special resolution expresses his dissent from it in writing, addressed to the liquidator and left at the company's registered office within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration under this section.

(3) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(4) For purposes of an arbitration under this section, the provisions of the Companies Clauses Consolidation Act 1845 or, in the case of a winding up in Scotland, the Companies Clauses Consolidation (Scotland) Act 1845 with respect to the settlement of disputes by arbitration are incorporated with this Act, and—

(a) in the construction of those provisions this Act is deemed the special Act and “the company” means the transferor company, and

(b) any appointment by the incorporated provisions directed to be made under the hand of the secretary or any two of the directors may be made in writing by the liquidator (or, if there is more than one liquidator, then any two or more of them).

Commencement

Pt IV c. V s. 111(1)-(4)(b): June 1, 1991

112.— Reference of questions to court.

(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall enter it in his records relating to the company.

Commencement

Pt IV c. V s. 112(1)-(3): June 1, 1991

113. Court's power to control proceedings (Scotland).

If the court, on the application of the liquidator in the winding up of a company registered in Scotland, so directs, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.

Commencement

Pt IV c. V s. 113: June 1, 1991

114.— No liquidator appointed or nominated by company.

(1) This section applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the company.

(2) The powers of the directors shall not be exercised, except with the sanction of the court or (in the case of a creditors' voluntary winding up) so far as may be necessary to secure compliance with sections 98 (creditors' meeting) and 99 (statement of affairs), during the period before the appointment or nomination of a liquidator of the company.

(3) Subsection (2) does not apply in relation to the powers of the directors—

- (a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of, and
- (b) to do all such other things as may be necessary for the protection of the company's assets.

(4) If the directors of the company without reasonable excuse fail to comply with this section, they are liable to a fine.

Commencement

Pt IV c. V s. 114(1)-(4): June 1, 1991

115. Expenses of voluntary winding up.

All expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

Commencement

Pt IV c. V s. 115: June 1, 1991

116. Saving for certain rights.

The voluntary winding up of a company does not bar the right of any creditor or contributory to have it wound up by the court; but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

Commencement

Pt IV c. V s. 116: June 1, 1991

CHAPTER VI

WINDING UP BY THE COURT

Jurisdiction (England and Wales)

117.— High Court and county court jurisdiction.

- (1) The High Court has jurisdiction to wind up any company registered in England and Wales.
- (2) Where the amount of a company's share capital paid up or credited as paid up does not exceed £120,000, then (subject to this section) the county court of the district in which the company's registered office is situated has concurrent jurisdiction with the High Court to wind up the company.
- (3) The money sum for the time being specified in subsection (2) is subject to increase or reduction by order under section 416 in Part XV.
- (4) The Lord Chancellor [may, with the concurrence of the Lord Chief Justice, by order]¹⁶¹ in a statutory instrument exclude a county court from having winding-up jurisdiction, and for the purposes of that jurisdiction may attach its district, or any part thereof, to any other county court, and may by statutory instrument revoke or vary any such order.
In exercising the powers of this section, the Lord Chancellor shall provide that a county court is not to have winding-up jurisdiction unless it has for the time being jurisdiction for the purposes of Parts VIII to XI of this Act (individual insolvency).
- (5) Every court in England and Wales having winding-up jurisdiction has for the purposes of that jurisdiction all the powers of the High Court; and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of a judge of that court or otherwise in relation to winding up.
- (6) For the purposes of this section, a company's "registered office" is the place which has longest been its registered office during the 6 months immediately preceding the presentation of the petition for winding up.
- [(7) This section is subject to Article 3 of the EC Regulation (jurisdiction under EC Regulation).]¹⁶²
- [(8) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]¹⁶³

Commencement

Pt IV c. VI s. 117(1)-(6): June 1, 1991

118.— Proceedings taken in wrong court.

- (1) Nothing in section 117 invalidates a proceeding by reason of its being taken in the wrong court.

¹⁶¹ Words substituted by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.186(2) (April 3, 2006)

¹⁶² Added by Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002/1240 reg.6 (May 31, 2002)

¹⁶³ Added by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.186(3) (April 3, 2006)

(2) The winding up of a company by the court in England and Wales, or any proceedings in the winding up, may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

Commencement

Pt IV c. VI s. 118(1)-(2): June 1, 1991

119.— Proceedings in county court; case stated for High Court.

(1) If any question arises in any winding-up proceedings in a county court which all the parties to the proceedings, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court.

(2) Thereupon the special case and the proceedings (or such of them as may be required) shall be transmitted to the High Court for the purposes of the determination.

Commencement

Pt IV c. VI s. 119(1)-(2): June 1, 1991

Jurisdiction (Scotland)

120.— Court of Session and sheriff court jurisdiction.

(1) The Court of Session has jurisdiction to wind up any company registered in Scotland.

(2) When the Court of Session is in vacation, the jurisdiction conferred on that court by this section may (subject to the provisions of this Part) be exercised by the judge acting as vacation judge [...]
¹⁶⁴ .

(3) Where the amount of a company's share capital paid up or credited as paid up does not exceed £120,000, the sheriff court of the sheriffdom in which the company's registered office is situated has concurrent jurisdiction with the Court of Session to wind up the company; but—

(a) the Court of Session may, if it thinks expedient having regard to the amount of the company's assets to do so—

(i) remit to a sheriff court any petition presented to the Court of Session for winding up such a company, or

(ii) require such a petition presented to a sheriff court to be remitted to the Court of Session; and

(b) the Court of Session may require any such petition as above-mentioned presented to one sheriff court to be remitted to another sheriff court; and

(c) in a winding up in the sheriff court the sheriff may submit a stated case for the opinion of the Court of Session on any question of law arising in that winding up.

¹⁶⁴ Words repealed by Court of Session Act 1988 (c.36), s. 52(2), Sch. 2

(4) For purposes of this section, the expression “registered office” means the place which has longest been the company's registered office during the 6 months immediately preceding the presentation of the petition for winding up.

(5) The money sum for the time being specified in subsection (3) is subject to increase or reduction by order under section 416 in Part XV.

[(6) This section is subject to Article 3 of the EC Regulation (jurisdiction under EC Regulation).]¹⁶⁵

Commencement

Pt IV c. VI s. 120(1)-(5): June 1, 1991

121.— Power to remit winding up to Lord Ordinary.

(1) The Court of Session may, by Act of Sederunt, make provision for the taking of proceedings in a winding up before one of the Lords Ordinary; and, where provision is so made, the Lord Ordinary has, for the purposes of the winding up, all the powers and jurisdiction of the court.

(2) However, the Lord Ordinary may report to the Inner House any matter which may arise in the course of a winding up.

Commencement

Pt IV c. VI s. 121(1)-(2): June 1, 1991

Grounds and effect of winding-up petition

122.— Circumstances in which company may be wound up by the court.

(1) A company may be wound up by the court if—

(a) the company has by special resolution resolved that the company be wound up by the court.

(b) being a public company which was registered as such on its original incorporation, the company has not been issued with [a trading certificate under section 761 of the Companies Act 2006 (requirement as to minimum share capital)]¹⁶⁶ and more than a year has expired since it was so registered,

(c) it is an old public company, within the meaning of [Schedule 3 to the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009]¹⁶⁷

,

¹⁶⁵ Added by Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002/1240 reg.7 (May 31, 2002)

¹⁶⁶ Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.102 (April 6, 2008)

¹⁶⁷ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(12) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

- (d) the company does not commence its business within a year from its incorporation or suspends its business for a whole year,
- (e) [except in the case of a private company limited by shares or by guarantee,]¹⁶⁸ the number of members is reduced below 2,
- (f) the company is unable to pay its debts,
[(fa) at the time at which a moratorium for the company under section 1A comes to an end, no voluntary arrangement approved under Part I has effect in relation to the company.]¹⁶⁹
- (g) the court is of the opinion that it is just and equitable that the company should be wound up.

(2) In Scotland, a company which the Court of Session has jurisdiction to wind up may be wound up by the Court if there is subsisting a floating charge over property comprised in the company's property and undertaking, and the court is satisfied that the security of the creditor entitled to the benefit of the floating charge is in jeopardy.

For this purpose a creditor's security is deemed to be in jeopardy if the Court is satisfied that events have occurred or are about to occur which render it unreasonable in the creditor's interests that the company should retain power to dispose of the property which is subject to the floating charge.

Commencement

Pt IV c. VI s. 122(1)-(2): June 1, 1991

123.— Definition of inability to pay debts.

(1) A company is deemed unable to pay its debts—

- (a) if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company's registered office, a written demand (in the prescribed form) requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or
- (b) if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or
- (c) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or
- (d) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company, or
- (e) if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.

¹⁶⁸ Words added by Companies (Single Member Private Limited Companies) Regulations 1992/1699 Sch.1 para.8 (July 15, 1992)

¹⁶⁹ Added by Insolvency Act 2000 c. 39 Sch.1 para.6 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

(2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(3) The money sum for the time being specified in subsection (1)(a) is subject to increase or reduction by order under section 416 in Part XV.

Commencement

Pt IV c. VI s. 123(1)-(3): June 1, 1991

124.— Application for winding up.

(1) Subject to the provisions of this section, an application to the court for the winding up of a company shall be by petition presented either by the company, or the directors, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories [, or by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation or a temporary administrator (within the meaning of Article 38 of the EC Regulation)]¹⁷⁰, or by all or any of those parties, together or separately.

(2) Except as mentioned below, a contributory is not entitled to present a winding-up petition unless either—

- (a) the number of members is reduced below 2, or
- (b) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder.

(3) A person who is liable under section 76 to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in section 122(1)(f) and (g), and subsection (2) above does not then apply; but unless the person is a contributory otherwise than under section 76, he may not in his character as contributory petition on any other ground. [...] ¹⁷¹

[(3A) A winding-up petition on the ground set out in section 122(1)(fa) may only be presented by one or more creditors.]¹⁷²

(4) A winding-up petition may be presented by the Secretary of State—

- (a) if the ground of the petition is that in section 122(1)(b) or (c), or
- [(b) in a case falling within [section 124A or 124B] ¹⁷³ below.]¹⁷⁴

¹⁷⁰ Words inserted by Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002/1240 reg.8 (May 31, 2002)

¹⁷¹ Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(13) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹⁷² Added by Insolvency Act 2000 c. 39 Sch.1 para.7 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

¹⁷³ Words inserted by European Public Limited-Liability Company Regulations 2004/2326 Pt 5 reg.73(4)(a) (October 8, 2004)

¹⁷⁴ S. 124(4)(b) substituted by Companies Act 1989 (c.40), ss. 60(2), 213(2)

[(4AA) A winding up petition may be presented by the Financial Services Authority in a case falling within section 124C(1) or (2).]¹⁷⁵

[(4A) A winding-up petition may be presented by the Regulator of Community Interest Companies in a case falling within section 50 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.]¹⁷⁶

(5) Where a company is being wound up voluntarily in England and Wales, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section; but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.¹⁷⁷

Commencement

Pt IV c. VI s. 124(1)-(5): June 1, 1991

[124A.— Petition for winding up on grounds of public interest.

(1) Where it appears to the Secretary of State from—

(a) any report made or information obtained under [Part XIV (except section 448A) of the Companies Act 1985]¹⁷⁸ (company investigations, &c.),

[(b) any report made by inspectors under—

(i) section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000, or

(ii) where the company is an open-ended investment company (within the meaning of that Act), regulations made as a result of section 262(2)(k) of that Act;

(bb) any information or documents obtained under section 165, 171, 172, 173 or 175 of that Act,]¹⁷⁹

(c) any information obtained under section 2 of the Criminal Justice Act 1987 or section 52 of the Criminal Justice (Scotland) Act 1987 (fraud investigations), or

(d) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),

that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.

(2) This section does not apply if the company is already being wound up by the court.

] ¹⁸⁰

¹⁷⁵ Added by European Cooperative Society Regulations 2006/2078 Pt 5 reg.33(2) (August 18, 2006)

¹⁷⁶ Added by Companies (Audit, Investigations and Community Enterprise) Act 2004 c. 27 Pt 2 s.50(3) (July 1, 2005)

¹⁷⁷ In relation to England and Wales: s. 124 is modified: [See Westlaw UK].

¹⁷⁸ Words inserted by Companies (Audit, Investigations and Community Enterprise) Act 2004 c. 27 Sch.2(3) para.27 (April 6, 2005)

¹⁷⁹ S.124A(1)(b)-(bb) are substituted for s.124A(1)(b) by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649 Pt 8 art.305 (December 1, 2001)

¹⁸⁰ S. 124A inserted by Companies Act 1989 (c.40), ss. 60(3), 213(2)

Commencement

Pt IV c. VI s. 124A(1)-(2): June 1, 1991

[124B Petition for winding up of SE

(1) Where—

(a) an SE whose registered office is in Great Britain is not in compliance with Article 7 of Council Regulation (EC) No 2157/2001 on the Statute for a European company (the “EC Regulation”) (location of head office and registered office), and

(b) it appears to the Secretary of State that the SE should be wound up, he may present a petition for it to be wound up if the court thinks it is just and equitable for it to be so.

(2) This section does not apply if the SE is already being wound up by the court.

(3) In this section “SE” has the same meaning as in the EC Regulation.

]¹⁸¹

[124C Petition for winding up of SCE

(1) Where, in the case of an SCE whose registered office is in Great Britain—

(a) there has been such a breach as is mentioned in Article 73(1) of Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE) (the “European Cooperative Society Regulation”) (winding up by the court or other competent authority), and

(b) it appears to the Financial Services Authority that the SCE should be wound up, the Authority may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(2) Where, in the case of an SCE whose registered office is in Great Britain—

(a) the SCE is not in compliance with Article 6 of the European Cooperative Society Regulation (location of head office and registered office, and

(b) it appears to the Financial Service Authority that the SCE should be wound up, the Authority may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(3) This section does not apply if the SCE is already being wound up by the court.

(4) In this section “SCE” has the same meaning as in the European Cooperative Society Regulation.

]¹⁸²

125.— Powers of court on hearing of petition.

(1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit; but the court shall

¹⁸¹ Added by European Public Limited-Liability Company Regulations 2004/2326 Pt 5 reg.73(3) (October 8, 2004)

¹⁸² Added by European Cooperative Society Regulations 2006/2078 Pt 5 reg.33(1) (August 18, 2006)

not refuse to make a winding-up order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion—

(a) that the petitioners are entitled to relief either by winding up the company or by some other means, and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding-up order; but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Commencement

Pt IV c. VI s. 125(1)-(2)(b): June 1, 1991

126.— Power to stay or restrain proceedings against company.

(1) At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—

(a) Where any action or proceeding against the company is pending in the High Court or Court of Appeal in England and Wales or Northern Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein, and

(b) Where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;

and the court to which application is so made may (as the case may be) stay, sist or restrain the proceedings accordingly on such terms as it thinks fit.

(2) In the case of [a company registered but not formed under the Companies Act 2006]¹⁸³, where the application to stay, sist or restrain is by a creditor, this section extends to actions and proceedings against any contributory of the company.

Commencement

Pt IV c. VI s. 126(1)-(2): June 1, 1991

[127. Avoidance of property dispositions, etc.

(1) In a winding up by the court, any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the court otherwise orders, void.

(2) This section has no effect in respect of anything done by an administrator of a company while a winding-up petition is suspended under paragraph 40 of Schedule B1.

¹⁸³ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(14) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

]¹⁸⁴

Commencement

Pt IV c. VI s. 127: June 1, 1991

128.— Avoidance of attachments, etc.

(1) Where a company registered in England and Wales is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up is void.

(2) This section, so far as relates to any estate or effects of the company situated in England and Wales, applies in the case of a company registered in Scotland as it applies in the case of a company registered in England and Wales.

Commencement

Pt IV c. VI s. 128(1)-(2): June 1, 1991

Commencement of winding up

129.— Commencement of winding up by the court.

(1) If, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution; and unless the court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

[(1A) Where the court makes a winding-up order by virtue of paragraph 13(1)(e) of Schedule B1, the winding up is deemed to commence on the making of the order.]¹⁸⁵

(2) In any other case, the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for winding up.

Commencement

Pt IV c. VI s. 129(1)-(2): June 1, 1991

¹⁸⁴ Existing s.127 renumbered as s.127(1) and s.127(2) is added subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.15 (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

¹⁸⁵ Added subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.16 (September 15, 2003: addition has effect subject to transitional provisions specified in SI 2003/2093 art.3)

130.— Consequences of winding-up order.

- (1) On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company (or otherwise as may be prescribed) to the registrar of companies, who shall enter it in his records relating to the company.
- (2) When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the court and subject to such terms as the court may impose.
- (3) When an order has been made for winding up a company [registered but not formed under the Companies Act 2006]¹⁸⁶, no action or proceeding shall be commenced or proceeded with against the company or its property or any contributory of the company, in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.
- (4) An order for winding up a company operates in favour of all the creditors and of all contributories of the company as if made on the joint petition of a creditor and of a contributory.

Commencement

Pt IV c. VI s. 130(1)-(4): June 1, 1991

*Investigation procedures***131.— Company's statement of affairs.**

- (1) Where the court has made a winding-up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) The statement shall be verified by affidavit by the persons required to submit it and shall show—
 - (a) particulars of the company's assets, debts and liabilities;
 - (b) the names and addresses of the company's creditors;
 - (c) the securities held by them respectively;
 - (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed or as the official receiver may require.
- (3) The persons referred to in subsection (1) are—
 - (a) those who are or have been officers of the company;
 - (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
 - (c) those who are in the company's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;
 - (d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.

¹⁸⁶ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(15) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

(4) Where any persons are required under this section to submit a statement of affairs to the official receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the official receiver.

(5) The official receiver, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above; or
- (b) either when giving the notice mentioned in subsection (4) or subsequently, extend the period so mentioned;

and where the official receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) In this section—

“employment” includes employment under a contract for services; and

“the relevant date” means—

- (a) in a case where a provisional liquidator is appointed, the date of his appointment; and
- (b) in a case where no such appointment is made, the date of the winding-up order

(7) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine.

(8) In the application of this section to Scotland references to the official receiver are to the liquidator or, in a case where a provisional liquidator is appointed, the provisional liquidator.

Commencement

Pt IV c. VI s. 131(1)-(8): June 1, 1991

Amendments Pending

Pt IV c. VI s. 131(2): words repealed by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 5(4)(a) (April 6, 2010: repeal has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

Pt IV c. VI s. 131(2A): added by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 5(4)(b) (April 6, 2010: insertion has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

132.— Investigation by official receiver.

(1) Where a winding-up order is made by the court in England and Wales, it is the duty of the official receiver to investigate—

- (a) if the company has failed, the causes of the failure; and
 - (b) generally, the promotion, formation, business, dealings and affairs of the company,
- and to make such report (if any) to the court as he thinks fit.

(2) The report is, in any proceedings, prima facie evidence of the facts stated in it.

Commencement

Pt IV c. VI s. 132(1)-(2): June 1, 1991

133.— Public examination of officers.

(1) Where a company is being wound up by the court, the official receiver or, in Scotland, the liquidator may at any time before the dissolution of the company apply to the court for the public examination of any person who—

- (a) is or has been an officer of the company; or
- (b) has acted as liquidator or administrator of the company or as receiver or manager or, in Scotland, receiver of its property; or
- (c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company.

(2) Unless the court otherwise orders, the official receiver or, in Scotland, the liquidator shall make an application under subsection (1) if he is requested in accordance with the rules to do so by—

- (a) one-half, in value, of the company's creditors; or
- (b) three-quarters, in value, of the company's contributories.

(3) On an application under subsection (1), the court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of the company or as to the conduct of its business and affairs, or his conduct or dealings in relation to the company.

(4) The following may take part in the public examination of a person under this section and may question that person concerning the matters mentioned in subsection (3), namely—

- (a) the official receiver;
- (b) the liquidator of the company;
- (c) any person who has been appointed as special manager of the company's property or business;
- (d) any creditor of the company who has tendered a proof or, in Scotland, submitted a claim in the winding up;
- (e) any contributory of the company.

Commencement

Pt IV c. VI s. 133(1)-(4)(e): June 1, 1991

134.— Enforcement of s. 133.

(1) If a person without reasonable excuse fails, at any time to attend his public examination under section 133, he is guilty of a contempt of court and liable to be punished accordingly.

(2) In a case where a person without reasonable excuse fails at any time to attend his examination under section 133 or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under that section, the court may cause a warrant to be issued to a constable or prescribed officer of the court—

- (a) for the arrest of that person; and
- (b) for the seizure of any books, papers, records, money or goods in that person's possession.

(3) In such a case the court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.

Commencement

Pt IV c. VI s. 134(1)-(3): June 1, 1991

*Appointment of liquidator***135.— Appointment and powers of provisional liquidator.**

- (1) Subject to the provisions of this section, the court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally.
- (2) In England and Wales, the appointment of a provisional liquidator may be made at any time before the making of a winding-up order; and either the official receiver or any other fit person may be appointed.
- (3) In Scotland, such an appointment may be made at any time before the first appointment of liquidators.
- (4) The provisional liquidator shall carry out such functions as the court may confer on him.
- (5) When a liquidator is provisionally appointed by the court, his powers may be limited by the order appointing him.

Commencement

Pt IV c. VI s. 135(1)-(5): June 1, 1991

136.— Functions of official receiver in relation to office of liquidator.

- (1) The following provisions of this section have effect, subject to section 140 below, on a winding-up order being made by the court in England and Wales.
- (2) The official receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator under the provisions of this Part.
- (3) The official receiver is, by virtue of his office, the liquidator during any vacancy.
- (4) At any time when he is the liquidator of the company, the official receiver may summon separate meetings of the company's creditors and contributories for the purpose of choosing a person to be liquidator of the company in place of the official receiver.
- (5) It is the duty of the official receiver—
 - (a) as soon as practicable in the period of 12 weeks beginning with the day on which the winding-up order was made, to decide whether to exercise his power under subsection (4) to summon meetings, and
 - (b) if in pursuance of paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the court and to the company's creditors and contributories, and

- (c) (whether or not he has decided to exercise that power) to exercise his power to summon meetings under subsection (4) if he is at any time requested, in accordance with the rules, to do so by one-quarter, in value, of the company's creditors;
- and accordingly, where the duty imposed by paragraph (c) arises before the official receiver has performed a duty imposed by paragraph (a) or (b), he is not required to perform the latter duty.
- (6) A notice given under subsection (5)(b) to the company's creditors shall contain an explanation of the creditors' power under subsection (5)(c) to require the official receiver to summon meetings of the company's creditors and contributories.

Commencement

Pt IV c. VI s. 136(1)-(6): June 1, 1991

137.— Appointment by Secretary of State.

- (1) In a winding up by the court in England and Wales the official receiver may, at any time when he is the liquidator of the company, apply to the Secretary of State for the appointment of a person as liquidator in his place.
- (2) If meetings are held in pursuance of a decision under section 136(5)(a), but no person is chosen to be liquidator as a result of those meetings, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.
- (3) On an application under subsection (1), or a reference made in pursuance of a decision under subsection (2), the Secretary of State shall either make an appointment or decline to make one.
- (4) Where a liquidator has been appointed by the Secretary of State under subsection (3), the liquidator shall give notice of his appointment to the company's creditors or, if the court so allows, shall advertise his appointment in accordance with the directions of the court.
- (5) In that notice or advertisement the liquidator shall—
- (a) state whether he proposes to summon a general meeting of the company's creditors under section 141 below for the purpose of determining (together with any meeting of contributories) whether a liquidation committee should be established under that section, and
 - (b) if he does not propose to summon such a meeting, set out the power of the company's creditors under that section to require him to summon one.

Commencement

Pt IV c. VI s. 137(1)-(5)(b): June 1, 1991

138.— Appointment of liquidator in Scotland.

- (1) Where a winding-up order is made by the court in Scotland, a liquidator shall be appointed by the court at the time when the order is made.
- (2) The liquidator so appointed (here referred to as “the interim liquidator”) continues in office until another person becomes liquidator in his place under this section or the next.

(3) The interim liquidator shall (subject to the next subsection) as soon as practicable in the period of 28 days beginning with the day on which the winding-up order was made or such longer period as the court may allow, summon separate meetings of the company's creditors and contributories for the purpose of choosing a person (who may be the person who is the interim liquidator) to be liquidator of the company in place of the interim liquidator.

(4) If it appears to the interim liquidator, in any case where a company is being wound up on grounds including its inability to pay its debts, that it would be inappropriate to summon under subsection (3) a meeting of the company's contributories, he may summon only a meeting of the company's creditors for the purpose mentioned in that subsection.

(5) If one or more meetings are held in pursuance of this section but no person is appointed or nominated by the meeting or meetings, the interim liquidator shall make a report to the court which shall appoint either the interim liquidator or some other person to be liquidator of the company.

(6) A person who becomes liquidator of the company in place of the interim liquidator shall, unless he is appointed by the court, forthwith notify the court of that fact.

Commencement

Pt IV c. VI s. 138(1)-(6): June 1, 1991

139.— Choice of liquidator at meetings of creditors and contributories.

(1) This section applies where a company is being wound up by the court and separate meetings of the company's creditors and contributories are summoned for the purpose of choosing a person to be liquidator of the company.

(2) The creditors and the contributories at their respective meetings may nominate a person to be liquidator.

(3) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the contributories.

(4) In the case of different persons being nominated, any contributory or creditor may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either—

(a) appointing the person nominated as liquidator by the contributories to be a liquidator instead of, or jointly with, the person nominated by the creditors; or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

Commencement

Pt IV c. VI s. 139(1)-(4)(b): June 1, 1991

140.— Appointment by the court following administration or voluntary arrangement.

[(1) Where a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect, the court may appoint as liquidator of the company the person whose appointment as administrator has ceased to have effect.]¹⁸⁷

(2) Where a winding-up order is made at a time when there is a supervisor of a voluntary arrangement approved in relation to the company under Part I, the court may appoint as liquidator of the company the person who is the supervisor at the time when the winding-up order is made.

(3) Where the court makes an appointment under this section, the official receiver does not become the liquidator as otherwise provided by section 136(2), and he has no duty under section 136(5) (a) or (b) in respect of the summoning of creditors' or contributories' meetings.

Commencement

Pt IV c. VI s. 140(1)-(3): June 1, 1991

Liquidation committees

141.— Liquidation committee (England and Wales).

(1) Where a winding-up order has been made by the court in England and Wales and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator, those meetings may establish a committee ("the liquidation committee") to exercise the functions conferred on it by or under this Act.

(2) The liquidator (not being the official receiver) may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is so determined, of establishing it. The liquidator (not being the official receiver) shall summon such a meeting if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.

(3) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator, and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the committee shall be established in accordance with the rules, unless the court otherwise orders.

(4) The liquidation committee is not to be able or required to carry out its functions at any time when the official receiver is liquidator; but at any such time its functions are vested in the Secretary of State except to the extent that the rules otherwise provide.

(5) Where there is for the time being no liquidation committee, and the liquidator is a person other than the official receiver, the functions of such a committee are vested in the Secretary of State except to the extent that the rules otherwise provide.

Commencement

Pt IV c. VI s. 141(1)-(5): June 1, 1991

¹⁸⁷ Substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.17 (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

142.— Liquidation committee (Scotland).

- (1) Where a winding-up order has been made by the court in Scotland and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator or, under section 138(4), only a meeting of creditors has been summoned for that purpose, those meetings or (as the case may be) that meeting may establish a committee (“the liquidation committee”) to exercise the functions conferred on it by or under this Act.
- (2) The liquidator may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is so determined, of establishing it.
- (3) The liquidator, if appointed by the court otherwise than under section 139(4)(a), is required to summon meetings under subsection (2) if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.
- (4) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator, and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the committee shall be established in accordance with the rules, unless the court otherwise orders.
- (5) Where in the case of any winding up there is for the time being no liquidation committee, the functions of such a committee are vested in the court except to the extent that the rules otherwise provide.
- (6) In addition to the powers and duties conferred and imposed on it by this Act, a liquidation committee has such of the powers and duties of commissioners in a sequestration as may be conferred and imposed on such committees by the rules.

Commencement

Pt IV c. VI s. 142(1)-(6): June 1, 1991

*The liquidator's functions***143.— General functions in winding up by the court.**

- (1) The functions of the liquidator of a company which is being wound up by the court are to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.
- (2) It is the duty of the liquidator of a company which is being wound up by the court in England and Wales, if he is not the official receiver—
 - (a) to furnish the official receiver with such information,
 - (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
 - (c) to give the official receiver such other assistance,as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up.

Commencement

Pt IV c. VI s. 143(1)-(2)(c): June 1, 1991

144.— Custody of company's property.

(1) When a winding-up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator (as the case may be) shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

(2) In a winding up by the court in Scotland, if and so long as there is no liquidator, all the property of the company is deemed to be in the custody of the court.

Commencement

Pt IV c. VI s. 144(1)-(2): June 1, 1991

145.— Vesting of company property in liquidator.

(1) When a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name; and thereupon the property to which the order relates vests accordingly.

(2) The liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

Commencement

Pt IV c. VI s. 145(1)-(2): June 1, 1991

146.— Duty to summon final meeting.

(1) Subject to the next subsection, if it appears to the liquidator of a company which is being wound by the court that the winding up of the company is for practical purposes complete and the liquidator is not the official receiver, the liquidator shall summon a final general meeting of the company's creditors which—

- (a) shall receive the liquidator's report of the winding up, and
- (b) shall determine whether the liquidator should have his release under section 174 in Chapter VII of this Part.

(2) The liquidator may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the company's property but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the liquidator is able to report to the meeting that the winding up of the company is for practical purposes complete.

(3) In the carrying out of his functions in the winding up it is the duty of the liquidator to retain sufficient sums from the company's property to cover the expenses of summoning and holding the meeting required by this section.

Commencement

Pt IV c. VI s. 146(1)-(3): June 1, 1991

General powers of court

147.— Power to stay or sist winding up.

(1) The court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in the winding up ought to be stayed or sisted, make an order staying or sisting the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) The court may, before making an order, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall enter it in his records relating to the company.

Commencement

Pt IV c. VI s. 147(1)-(3): June 1, 1991

148.— Settlement of list of contributories and application of assets.

(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required [...]¹⁸⁸, and shall cause the company's assets to be collected, and applied in discharge of its liabilities.

(2) If it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(3) In settling the list, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

Commencement

Pt IV c. VI s. 148(1)-(3): June 1, 1991

¹⁸⁸ Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(16) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

149.— Debts due from contributory to company.

(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him (or from the estate of the person who he represents) to the company, exclusive of any money payable by him or the estate by virtue of any call [...] ¹⁸⁹ .

(2) The court in making such an order may—

(a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit, and

(b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full (together with interest at the official rate), any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Commencement

Pt IV c. VI s. 149(1)-(3): June 1, 1991

150.— Power to make calls.

(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the company's debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

Commencement

Pt IV c. VI s. 150(1)-(2): June 1, 1991

151.— Payment into bank of money due to company.

(1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into the Bank of England (or any branch of it) to the account of the liquidator instead of to the liquidator, and such an order may be enforced in the same manner as if it had directed payment to the liquidator.

¹⁸⁹ Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(16) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

(2) All money and securities paid or delivered into the Bank of England (or branch) in the event of a winding up by the court are subject in all respects to the orders of the court.

Commencement

Pt IV c. VI s. 151(1)-(2): June 1, 1991

152.— Order on contributory to be conclusive evidence.

(1) An order made by the court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, but subject to any right of appeal.

(2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings except proceedings in Scotland against the heritable estate of a deceased contributory; and in that case the order is only prima facie evidence for the purpose of charging his heritable estate, unless his heirs or legatees of heritage were on the list of contributories at the time of the order being made.

Commencement

Pt IV c. VI s. 152(1)-(2): June 1, 1991

153. Power to exclude creditors not proving in time.

The court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

Commencement

Pt IV c. VI s. 153: June 1, 1991

154. Adjustment of rights of contributories.

The court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

Commencement

Pt IV c. VI s. 154: June 1, 1991

155.— Inspection of books by creditors, etc.

(1) The court may, at any time after making a winding-up order, make such order for inspection of the company's books and papers by creditors and contributories as the court thinks just; and any books and papers in the company's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this section excludes or restricts any statutory rights of a government department or person acting under the authority of a government department.

[(3) For the purposes of subsection (2) above, references to a government department shall be construed as including references to any part of the Scottish Administration.]¹⁹⁰

Commencement

Pt IV c. VI s. 155(1)-(2): June 1, 1991

156. Payment of expenses of winding up.

The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the court thinks just.

Commencement

Pt IV c. VI s. 156: June 1, 1991

157. Attendance at company meetings (Scotland).

In the winding up by the court of a company registered in Scotland, the court has power to require the attendance of any officer of the company at any meeting of creditors or of contributories, or of a liquidation committee, for the purpose of giving information as to the trade, dealings, affairs or property of the company.

Commencement

Pt IV c. VI s. 157: June 1, 1991

158. Power to arrest absconding contributory.

The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, may cause the contributory to be arrested and his books and papers and moveable personal property to be seized and him and them to be kept safely until such time as the court may order.

Commencement

Pt IV c. VI s. 158: June 1, 1991

¹⁹⁰ Added by Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999/1820 Sch.2(I) para.85 (July 1, 1999 the principal appointed day for 1998 c.46)

159. Powers of court to be cumulative.

Powers conferred [on the court by this Act]¹⁹¹ are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Commencement

Pt IV c. VI s. 159: June 1, 1991

160.— Delegation of powers to liquidator (England and Wales).

(1) Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England and Wales [...] ¹⁹² in respect of the following matters—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories,
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,
- (c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator,
- (d) the making of calls,
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the court, and subject to the court's control.

(2) But the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either that special leave or the sanction of the liquidation committee.

Commencement

Pt IV c. VI s. 160(1)-(2): June 1, 1991

*Enforcement of, and appeal from, orders***161.— Orders for calls on contributories (Scotland).**

(1) In Scotland, where an order, interlocutor or decree has been made for winding up a company by the court, it is competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when that amount became due, to pronounce forthwith a decree against

¹⁹¹ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(17) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹⁹² Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(18) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

those contributories for payment of the sums so certified to be due, with interest from that date until payment (at 5 per cent. per annum) in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of 6 days, of a legal obligation to pay those calls and interest.

(2) The decree may be extracted immediately, and no suspension of it is competent, except on caution or consignment, unless with special leave of the court.

Commencement

Pt IV c. VI s. 161(1)-(2): June 1, 1991

162.— Appeals from orders in Scotland.

(1) Subject to the provisions of this section and to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court in Scotland under this Act lies in the same manner and subject to the same conditions as an appeal from an order or decision of the court in cases within its ordinary jurisdiction.

(2) In regard to orders or judgments pronounced by the judge acting as vacation judge [...] ¹⁹³

- (a) none of the orders specified in Part I of Schedule 3 to this Act are subject to review, reduction, suspension or stay of execution, and
- (b) every other order or judgment (except as mentioned below) may be submitted to review by the Inner House by reclaiming motion enrolled within 14 days from the date of the order or judgment.

(3) However, an order being one of those specified in Part II of that Schedule shall, from the date of the order and notwithstanding that it has been submitted to review as above, be carried out and receive effect until the Inner House have disposed of the matter.

(4) In regard to orders or judgments pronounced in Scotland by a Lord Ordinary before whom proceedings in a winding up are being taken, any such order or judgment may be submitted to review by the Inner House by reclaiming motion enrolled within 14 days from its date; but should it not be so submitted to review during session, the provisions of this section in regard to orders or judgments pronounced by the judge acting as vacation judge apply.

(5) Nothing in this section affects provisions of [the Companies Acts] ¹⁹⁴ or this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntary or by the court.

Commencement

Pt IV c. VI s. 162(1)-(5): June 1, 1991

¹⁹³ Words repealed by Court of Session Act 1988 (c.36), s. 52(2), Sch. 2

¹⁹⁴ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(19) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

CHAPTER VII

LIQUIDATORS

Preliminary

163. Style and title of liquidators.

The liquidator of a company shall be described—

- (a) where a person other than the official receiver is liquidator, by the style of “the liquidator” of the particular company, or
- (b) where the official receiver is liquidator, by the style of “the official receiver and liquidator” of the particular company;

and in neither case shall he be described by an individual name.

Commencement

Pt IV c. VII s. 163(a)-(b): June 1, 1991

164. Corrupt inducement affecting appointment.

A person who gives, or agrees or offers to give, to any members or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator is liable to a fine.

Commencement

Pt IV c. VII s. 164: June 1, 1991

Liquidator's powers and duties

165.— Voluntary winding up.

(1) This section has effect where a company is being wound up voluntarily, but subject to section 166 below in the case of a creditors' voluntary winding up.

(2) The liquidator may—

- (a) in the case of a members' voluntary winding up, with the sanction of an [special resolution]¹⁹⁵ of the company, and
- (b) in the case of a creditors' voluntary winding up, with the sanction of the court or the liquidation committee (or, if there is no such committee, a meeting of the company's creditors),

¹⁹⁵ Words substituted by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007/2194 Sch.4(3) para.41(1)(a) (October 1, 2007: substitution has effect in relation to written resolutions for which the circulation date is on or after October 1, 2007, and resolutions passed at a meeting of which notice is given on or after that date)

exercise any of the powers specified in Part I of Schedule 4 to this Act (payment of debts, compromise of claims, etc.).

(3) The liquidator may, without sanction, exercise either of the powers specified in Part II of that Schedule (institution and defence of proceedings; carrying on the business of the company) and any of the general powers specified in Part III of that Schedule.

(4) The liquidator may—

- (a) exercise the court's power of settling a list of contributories (which list is prima facie evidence of the liability of the persons named in it to be contributories),
- (b) exercise the court's power of making calls,
- (c) summon general meetings of the company for the purpose of obtaining its sanction by [special resolution]¹⁹⁶ or for any other purpose he may think fit.

(5) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.

(6) Where the liquidator in exercise of the powers conferred on him by this Act disposes of any property of the company to a person who is connected with the company (within the meaning of section 249 in Part VII), he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

Commencement

Pt IV c. VII s. 165(1)-(6): June 1, 1991

166.— Creditors' voluntary winding up.

(1) This section applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.

(2) The powers conferred on the liquidator by section 165 shall not be exercised, except with the sanction of the court, during the period before the holding of the creditors' meeting under section 98 in Chapter IV.

(3) Subsection (2) does not apply in relation to the power of the liquidator—

- (a) to take into his custody or under his control all the property to which the company is or appears to be entitled;
- (b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and
- (c) to do all such other things as may be necessary for the protection of the company's assets.

(4) The liquidator shall attend the creditors' meeting held under section 98 and shall report to the meeting on any exercise by him of his powers (whether or not under this section or under section 112 or 165).

¹⁹⁶ Words substituted by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007/2194 Sch.4(3) para.41(1)(b) (October 1, 2007: substitution has effect in relation to written resolutions for which the circulation date is on or after October 1, 2007, and resolutions passed at a meeting of which notice is given on or after that date)

(5) If default is made—

- (a) by the company in complying with [subsection (1), (1A) or (2) of section 98]¹⁹⁷, or
- (b) by the directors in complying with subsection (1) or (2) of section 99,

the liquidator shall, within 7 days of the relevant day, apply to the court for directions as to the manner in which that default is to be remedied.

(6) “The relevant day” means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.

(7) If the liquidator without reasonable excuse fails to comply with this section, he is liable to a fine.¹⁹⁸ ¹⁹⁹

Commencement

Pt IV c. VII s. 166(1)-(7): June 1, 1991

Amendments Pending

Pt IV c. VII s. 166(5)(b): words substituted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 5(5) (April 6, 2010: substitution has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

167.— Winding up by the court

(1) Where a company is being wound up by the court, the liquidator may—

- (a) with the sanction of the court or the liquidation committee, exercise any of the powers specified in Parts I and II of Schedule 4 to this Act (payment of debts; compromise of claims, etc.; institution and defence of proceedings; carrying on of the business of the company), and
- (b) with or without that sanction, exercise any of the general powers specified in Part III of that Schedule.

(2) Where the liquidator (not being the official receiver), in exercise of the powers conferred on him by this Act—

- (a) disposes of any property of the company to a person who is connected with the company (within the meaning of section 249 in Part VII), or
- (b) employs a solicitor to assist him in the carrying out of his functions,

he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section is subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

¹⁹⁷ Word inserted by Legislative Reform (Insolvency) (Advertising Requirements) Order 2009/864 art.3(3) (April 6, 2009: insertion has effect subject to transitional provisions specified in SI 2009/864 art.4)

¹⁹⁸ In relation to Scotland: s. 166 is modified: [See Westlaw UK].

¹⁹⁹ Added by Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3 (Scottish Act) Pt 5 s.155(3) (April 22, 2009 subject to transitional modifications and savings specified in SSI 2009/67 arts 4-6)

Commencement

Pt IV c. VII s. 167(1)-(3): June 1, 1991

168.— Supplementary powers (England and Wales).

(1) This section applies in the case of a company which is being wound up by the court in England and Wales.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by resolution (either at the meeting appointing the liquidator or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories (as the case may be).

(3) The liquidator may apply to the court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the assets and their distribution among the creditors.

(5) If any person is aggrieved by an act or decision of the liquidator, that person may apply to the court; and the court may confirm, reverse or modify the act or decision complained of, and make such order in the case as it thinks just.

[(5A) Where at any time after a winding-up petition has been presented to the court against any person (including an insolvent partnership or other body which may be wound up under Part V of the Act as an unregistered company), whether by virtue of the provisions of the Insolvent Partnerships Order 1994 or not, the attention of the court is drawn to the fact that the person in question is a member of an insolvent partnership, the court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(5B) Any order or directions under subsection (5A) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.

[(5C) Where the court makes an order for the winding up of an insolvent partnership under—

- (a) section 72(1)(a) of the Financial Services Act 1986;
- (b) section 92(1)(a) of the Banking Act 1987; or
- (c) section 367(3)(a) of the Financial Services and Markets Act 2000,

the court may make an order as to the future conduct of the winding up proceedings, and any such order may apply any provisions of the Insolvent Partnerships Order 1994 with any necessary modifications.

]²⁰⁰

]²⁰¹

Commencement

Pt IV c. VII s. 168(1)-(5): June 1, 1991

169.— Supplementary powers (Scotland).

(1) In the case of a winding up in Scotland, the court may provide by order that the liquidator may, where there is no liquidation committee, exercise any of the following powers, namely—

- (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company, or
- (b) to carry on the business of the company so far as may be necessary for its beneficial winding up,

without the sanction or intervention of the court.

(2) In a winding up by the court in Scotland, the liquidator has (subject to the rules) the same powers as a trustee on a bankrupt estate.

Commencement

Pt IV c. VII s. 169(1)-(2): June 1, 1991

170.— Enforcement of liquidator's duty to make returns, etc.

(1) If a liquidator who has made any default—

- (a) in filing, delivering or making any return, account or other document, or
- (b) in giving any notice which he is by law required to file, deliver, make or give,

fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the court has the following powers.

(2) On an application made by any creditor or contributory of the company, or by the registrar of companies, the court may make an order directing the liquidator to make good the default within such time as may be specified in the order.

(3) The court's order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(4) Nothing in this section prejudices the operation of any enactment imposing penalties on a liquidator in respect of any such default as is mentioned above.

Commencement

Pt IV c. VII s. 170(1)-(4): June 1, 1991

²⁰⁰ S.168(5C) was repealed by SI 2001/3649 art.306 on December 1, 2001 but that repeal is treated as though it had not been made and s.168(5C) is instead substituted by Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002/1555 Pt 2 art.15(2) (July 3, 2002)

²⁰¹ Added by Insolvent Partnerships Order 1994/2421 Pt VI art.14(1) (December 1, 1994)

*Removal; vacation of office***171.— Removal, etc. (voluntary winding up).**

- (1) This section applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up voluntarily.
- (2) Subject to the next subsection, the liquidator may be removed from office only by an order of the court or—
- (a) in the case of a members' voluntary winding up, by a general meeting of the company summoned specially for that purpose, or
 - (b) in the case of a creditors' voluntary winding up, by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules.
- (3) Where the liquidator was appointed by the court under section 108 in Chapter V, a meeting such as is mentioned in subsection (2) above shall be summoned for the purpose of replacing him only if he thinks fit or the court so directs or the meeting is requested, in accordance with the rules—
- (a) in the case of a members' voluntary winding up, by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting, or
 - (b) in the case of a creditors' voluntary winding up, by not less than one-half, in value, of the company's creditors.
- (4) A liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (5) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the registrar of companies.
- (6) Where—
- (a) in the case of a members' voluntary winding up, a final meeting of the company has been held under section 94 in Chapter III, or
 - (b) in the case of a creditors' voluntary winding up, final meetings of the company and of the creditors have been held under section 106 in Chapter IV,
- the liquidator whose report was considered at the meeting or meetings shall vacate office as soon as he has complied with subsection (3) of that section and has given notice to the registrar of companies that the meeting or meetings have been held and of the decisions (if any) of the meeting or meetings.

Commencement

Pt IV c. VII s. 171(1)-(6)(b): June 1, 1991

172.— Removal, etc. (winding up by the court).

- (1) This section applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up by the court, or of a provisional liquidator.
- (2) Subject as follows, the liquidator may be removed from office only by an order of the court or by a general meeting of the company's creditors summoned specially for that purpose in accordance

with the rules; and a provisional liquidator may be removed from office only by an order of the court.

(3) Where—

(a) the official receiver is liquidator otherwise than in succession under section 136(3) to a person who held office as a result of a nomination by a meeting of the company's creditors or contributories, or

(b) the liquidator was appointed by the court otherwise than under section 139(4)(a) or 140(1), or was appointed by the Secretary of State,

a general meeting of the company's creditors shall be summoned for the purpose of replacing him only if he thinks fit, or the court so directs, or the meeting is requested, in accordance with the rules, by not less than one-quarter, in value, of the creditors.

(4) If appointed by the Secretary of State, the liquidator may be removed from office by a direction of the Secretary of State.

(5) A liquidator or provisional liquidator, not being the official receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(6) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.

(7) Where an order is made under section 204 (early dissolution in Scotland) for the dissolution of the company, the liquidator shall vacate office when the dissolution of the company takes effect in accordance with that section.

(8) Where a final meeting has been held under section 146 (liquidator's report on completion of winding up), the liquidator whose report was considered at the meeting shall vacate office as soon as he has given notice to the court and the registrar of companies that the meeting has been held and of the decisions (if any) of the meeting.

Commencement

Pt IV c. VII s. 172(1)-(8): June 1, 1991

Amendments Pending

Pt IV c. VII s. 172(8): words repealed by Insolvency (Amendment) Rules 2010/686 Sch. 1 para. 502(2)(b)(ii) (April 6, 2010: repeal has effect subject to savings and transitional provisions specified in SI 2010/686 Sch.4 and Sch.5 and SI 2010/734 rule 13)

Release of liquidator

173.— Release (voluntary winding up).

(1) This section applies with respect to the release of the liquidator of a company which is being wound up voluntarily.

(2) A person who has ceased to be a liquidator shall have his release with effect from the following time, that is to say—

- (a) in the case of a person who has been removed from office by a general meeting of the company or by a general meeting of the company's creditors that has not resolved against his release or who has died, the time at which notice is given to the registrar of companies in accordance with the rules that that person has ceased to hold office;
- (b) in the case of a person who has been removed from office by a general meeting of the company's creditors that has resolved against his release, or by the court, or who has vacated office under section 171(4) above, such time as the Secretary of State may, on the application of that person, determine;
- (c) in the case of a person who has resigned, such time as may be prescribed;
- (d) in the case of a person who has vacated office under subsection (6)(a) of section 171, the time at which he vacated office;
- (e) in the case of a person who has vacated office under subsection (6)(b) of that section—
 - (i) if the final meeting of the creditors referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine, and
 - (ii) if that meeting has not resolved against that person's release, the time at which he vacated office.

(3) In the application of subsection (2) to the winding up of a company registered in Scotland, the references to a determination by the Secretary of State as to the time from which a person who has ceased to be liquidator shall have his release are to be read as references to such a determination by the Accountant of Court.

(4) Where a liquidator has his release under subsection (2), he is, with effect from the time specified in that subsection, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator.

But nothing in this section prevents the exercise, in relation to a person who has had his release under subsection (2), of the court's powers under section 212 of this Act (summary remedy against delinquent directors, liquidators, etc.).

Commencement

Pt IV c. VII s. 173(1)-(4): June 1, 1991

174.— Release (winding up by the court).

(1) This section applies with respect to the release of the liquidator of a company which is being wound up by the court, or of a provisional liquidator.

(2) Where the official receiver has ceased to be liquidator and a person becomes liquidator in his stead, the official receiver has his release with effect from the following time, that is to say—

- (a) in a case where that person was nominated by a general meeting of creditors or contributories, or was appointed by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced;
- (b) in a case where that person is appointed by the court, such time as the court may determine.

(3) If the official receiver while he is a liquidator gives notice to the Secretary of State that the winding up is for practical purposes complete, he has his release with effect from such time as the Secretary of State may determine.

(4) A person other than the official receiver who has ceased to be a liquidator has his release with effect from the following time, that is to say—

- (a) in the case of a person who has been removed from office by a general meeting of creditors that has not resolved against his release or who has died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office;
- (b) in the case of a person who has been removed from office by a general meeting of creditors that has resolved against his release, or by the court or the Secretary of State, or who has vacated office under section 172(5) or (7), such time as the Secretary of State may, on an application by that person, determine;
- (c) in the case of a person who has resigned, such time as may be prescribed;
- (d) in the case of a person who has vacated office under section 172(8)—
 - (i) if the final meeting referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine, and
 - (ii) if that meeting has not so resolved, the time at which that person vacated office.

(5) A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the court may, on an application by him, determine.

(6) Where the official receiver or a liquidator or provisional liquidator has his release under this section, he is, with effect from the time specified in the preceding provisions of this section, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator or provisional liquidator.

But nothing in this section prevents the exercise, in relation to a person who has had his release under this section, of the court's powers under section 212 (summary remedy against delinquent directors, liquidators, etc.).

(7) In the application of this section to a case where the order for winding up has been made by the court in Scotland, the references to a determination by the Secretary of State as to the time from which a person who has ceased to be liquidator has his release are to such a determination by the Accountant of Court.

Commencement

Pt IV c. VII s. 174(1)-(7): June 1, 1991

CHAPTER VIII

PROVISIONS OF GENERAL APPLICATION IN WINDING UP

Preferential debts

175.— Preferential debts (general provision).

(1) In a winding up the company's preferential debts (within the meaning given by section 386 in Part XII) shall be paid in priority to all other debts.

(2) Preferential debts—

- (a) rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

Commencement

Pt IV c. VIII s. 175(1)-(2)(b): June 1, 1991

176.— Preferential charge on goods distrained.

- (1) This section applies where a company is being wound up by the court in England and Wales, and is without prejudice to section 128 (avoidance of attachments, etc.).
- (2) Where any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of the company in the period of 3 months ending with the date of the winding-up order, those goods or effects, or the proceeds of their sale, shall be charged for the benefit of the company with the preferential debts of the company to the extent that the company's property is for the time being insufficient for meeting them.
- (3) Where by virtue of a charge under subsection (2) any person surrenders any goods or effects to a company or makes a payment to a company, that person ranks, in respect of the amount of the proceeds of sale of those goods or effects by the liquidator or (as the case may be) the amount of the payment, as a preferential creditor of the company, except as against so much of the company's property as is available for the payment of preferential creditors by virtue of the surrender or payment.

Commencement

Pt IV c. VIII s. 176(1)-(3): June 1, 1991

*[Property subject to floating charge]*²⁰²

[176ZA Payment of expenses of winding up (England and Wales)]

- (1) The expenses of winding up in England and Wales, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over any claims to property comprised in or subject to any floating charge created by the company and shall be paid out of any such property accordingly.
- (2) In subsection (1)—
 - (a) the reference to assets of the company available for payment of general creditors does not include any amount made available under section 176A(2)(a);

²⁰² Added by Enterprise Act 2002 c. 40 Pt 10 s.252 (September 15, 2003)

- (b) the reference to claims to property comprised in or subject to a floating charge is to the claims of—
 - (i) the holders of debentures secured by, or holders of, the floating charge, and
 - (ii) any preferential creditors entitled to be paid out of that property in priority to them.
- (3) Provision may be made by rules restricting the application of subsection (1), in such circumstances as may be prescribed, to expenses authorised or approved—
 - (a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them, or
 - (b) by the court.
- (4) References in this section to the expenses of the winding up are to all expenses properly incurred in the winding up, including the remuneration of the liquidator.

]²⁰³

[176A Share of assets for unsecured creditors

- (1) This section applies where a floating charge relates to property of a company—
 - (a) which has gone into liquidation,
 - (b) which is in administration,
 - (c) of which there is a provisional liquidator, or
 - (d) of which there is a receiver.
- (2) The liquidator, administrator or receiver—
 - (a) shall make a prescribed part of the company's net property available for the satisfaction of unsecured debts, and
 - (b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.
- (3) Subsection (2) shall not apply to a company if—
 - (a) the company's net property is less than the prescribed minimum, and
 - (b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.
- (4) Subsection (2) shall also not apply to a company if or in so far as it is disapplied by—
 - (a) a voluntary arrangement in respect of the company, or
 - (b) a compromise or arrangement agreed under [Part 26 of the Companies Act 2006 (arrangements and reconstructions)]²⁰⁴.
- (5) Subsection (2) shall also not apply to a company if—
 - (a) the liquidator, administrator or receiver applies to the court for an order under this subsection on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and
 - (b) the court orders that subsection (2) shall not apply.

²⁰³ Added by Companies Act 2006 c. 46 Pt 44 s.1282(1) (April 6, 2008 subject to savings and transitional provisions specified in SI 2007/3495 arts 6, 7, 9, 12 and Schs 1 and 4 as amended by SI 2008/674 art.5 Sch.3 para.6(4))

²⁰⁴ Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.103 (April 6, 2008)

(6) In subsections (2) and (3) a company's net property is the amount of its property which would, but for this section, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.

(7) An order under subsection (2) prescribing part of a company's net property may, in particular, provide for its calculation—

- (a) as a percentage of the company's net property, or
- (b) as an aggregate of different percentages of different parts of the company's net property.

(8) An order under this section—

- (a) must be made by statutory instrument, and
- (b) shall be subject to annulment pursuant to a resolution of either House of Parliament.

(9) In this section—

- “floating charge” means a charge which is a floating charge on its creation and which is created after the first order under subsection (2)(a) comes into force, and
- “prescribed” means prescribed by order by the Secretary of State.

(10) An order under this section may include transitional or incidental provision.

²⁰⁵

Special managers

177.— Power to appoint special manager.

(1) Where a company has gone into liquidation or a provisional liquidator has been appointed, the court may, on an application under this section, appoint any person to be the special manager of the business or property of the company.

(2) The application may be made by the liquidator or provisional liquidator in any case where it appears to him that the nature of the business or property of the company, or the interests of the company's creditors or contributories or members generally, require the appointment of another person to manage the company's business or property.

(3) The special manager has such powers as may be entrusted to him by the court.

(4) The court's power to entrust powers to the special manager includes power to direct that any provision of this Act that has effect in relation to the provisional liquidator or liquidator of a company shall have the like effect in relation to the special manager for the purposes of the carrying out by him of any of the functions of the provisional liquidator or liquidator.

(5) The special manager shall—

- (a) give such security or, in Scotland, caution as may be prescribed;
- (b) prepare and keep such accounts as may be prescribed; and
- (c) produce those accounts in accordance with the rules to the Secretary of State or to such other persons as may be prescribed.

²⁰⁵ Added by Enterprise Act 2002 c. 40 Pt 10 s.252 (September 15, 2003)

Commencement

Pt IV c. VIII s. 177(1)-(5)(c): June 1, 1991

Disclaimer (England and Wales only)

178.— Power to disclaim onerous property.

- (1) This and the next two sections apply to a company that is being wound up in England and Wales.
- (2) Subject as follows, the liquidator may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavored to sell it, or otherwise exercised rights of ownership in relation to it.
- (3) The following is onerous property for the purposes of this section—
 - (a) any unprofitable contract, and
 - (b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.
- (4) A disclaimer under this section—
 - (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but
 - (b) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.
- (5) A notice of disclaimer shall not be given under this section in respect of any property if—
 - (a) a person interested in the property has applied in writing to the liquidator or one of his predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not, and
 - (b) the period of 28 days beginning with the day on which that application was made, or such longer period as the court may allow, has expired without a notice of disclaimer having been given under this section in respect of that property.
- (6) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

Commencement

Pt IV c. VIII s. 178(1)-(6): June 1, 1991

179.— Disclaimer of leaseholds.

- (1) The disclaimer under section 178 of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either—

- (a) no application under section 181 below is made with respect to that property before the end of the period of 14 days beginning with the day on which the last notice served under this subsection was served; or
- (b) where such an application has been made, the court directs that the disclaimer shall take effect.

(2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 181, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

Commencement

Pt IV c. VIII s. 179(1)-(2): June 1, 1991

180.— Land subject to rentcharge.

- (1) The following applies where, in consequence of the disclaimer under section 178 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in the next subsection as “the proprietor”).
- (2) The proprietor and the successors in title of the proprietor are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

Commencement

Pt IV c. VIII s. 180(1)-(2): June 1, 1991

181.— Powers of court (general).

- (1) This section and the next apply where the liquidator has disclaimed property under section 178.
- (2) An application under this section may be made to the court by—
 - (a) any person who claims an interest in the disclaimed property, or
 - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.
- (3) Subject as follows, the court may on the application make an order, on such terms as it thinks fit, for the vesting of the disclaimed property in, or for its delivery to—
 - (a) a person entitled to it or a trustee for such a person, or
 - (b) a person subject to such a liability as is mentioned in subsection (2)(b) or a trustee for such a person.
- (4) The court shall not make an order under subsection (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of any order under this section shall be taken into account in assessing for the purpose of section 178(6) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(6) An order under this section vesting property in any person need not be completed by conveyance, assignment or transfer.

Commencement

Pt IV c. VIII s. 181(1)-(6): June 1, 1991

182.— Powers of court (leaseholds).

(1) The court shall not make an order under section 181 vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person—

- (a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up, or
- (b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.

(2) For the purposes of an order under section 181 relating to only part of any property comprised in a lease, the requirements of subsection (1) apply as if the lease comprised only the property to which the order relates.

(3) Where subsection (1) applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under section 181 on the terms required by virtue of that subsection, the court may, by order under that section, vest the company's estate or interest in the property in any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the company) to perform the lessee's covenants in the lease.

The court may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.

(4) Where subsection (1) applies and a person claiming under the company as underlessee or mortgagee declines to accept an order under section 181, that person is excluded from all interest in the property.

Commencement

Pt IV c. VIII s. 182(1)-(4): June 1, 1991

Execution, attachment and the Scottish equivalents

183.— Effect of execution or attachment (England and Wales).

(1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to it, and the company is subsequently wound up, he is not entitled to retain the benefit

of the execution or attachment against the liquidator unless he has completed the execution or attachment before the commencement of the winding up.

(2) However—

- (a) if a creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which he had notice is substituted, for the purpose of subsection (1), for the date of commencement of the winding up;
- (b) a person who purchases in good faith under a sale by the [enforcement officer or other officer charged with the execution of the writ]²⁰⁶ any goods of a company on which execution has been levied in all cases acquires a good title to them against the liquidator; and
- (c) the rights conferred by subsection (1) on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(3) For purposes of this Act—

- (a) an execution against goods is completed by seizure and sale, or by the making of a charging order under section 1 of the Charging Orders Act 1979;
- (b) an attachment of a debt is completed by receipt of the debt; and
- (c) an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order under section 1 of the Act above-mentioned.

(4) In this section, “goods” includes all chattels personal; and [“enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003]²⁰⁷.

(5) This section does not apply in the case of a winding up in Scotland.

Commencement

Pt IV c. VIII s. 183(1)-(5): June 1, 1991

184.— Duties of [officers charged with execution of writs and other processes]²⁰⁸ (England and Wales).

(1) The following applies where a company's goods are taken in execution and, before their sale or the completion of the execution (by the receipt or recovery of the full amount of the levy), notice is served on the [enforcement officer, or other officer, charged with execution of the writ or other process,]²⁰⁹ that a provisional liquidator has been appointed or that a winding-up order has been made, or that a resolution for voluntary winding up has been passed.

(2) The [enforcement officer or other officer]²¹⁰ shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator; but the costs of execution are a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part of them, for the purpose of satisfying the charge.

²⁰⁶ Word substituted by Courts Act 2003 c. 39 Sch.8 para.295(2) (March 15, 2004)

²⁰⁷ Words substituted by Courts Act 2003 c. 39 Sch.8 para.295(3) (March 15, 2004)

²⁰⁸ Word substituted by Courts Act 2003 c. 39 Sch.8 para.296(5) (March 15, 2004)

²⁰⁹ Word substituted by Courts Act 2003 c. 39 Sch.8 para.296(2) (March 15, 2004)

²¹⁰ Word substituted by Courts Act 2003 c. 39 Sch.8 para.296(3) (March 15, 2004)

(3) If under an execution in respect of a judgment for a sum exceeding [£500]²¹¹ a company's goods are sold or money is paid in order to avoid sale, the [enforcement officer or other officer]²¹⁰ shall deduct the costs of the execution from the proceeds of sale or the money paid and retain the balance for 14 days.

(4) If within that time notice is served on the [enforcement officer or other officer]²¹⁰ of a petition for the winding up of the company having been presented, or of a meeting having been called at which there is to be proposed a resolution for voluntary winding up, and an order is made or a resolution passed (as the case may be), the [enforcement officer or other officer]²¹⁰ shall pay the balance to the liquidator, who is entitled to retain it as against the execution creditor.

(5) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(6) In this section, “goods” includes all chattels personal; and [“enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003.]²¹²

(7) The money sum for the time being specified in subsection (3) is subject to increase or reduction by order under section 416 in Part XV.

(8) This section does not apply in the case of a winding up in Scotland.

Commencement

Pt IV c. VIII s. 184(1)-(8): June 1, 1991

185.— Effect of diligence (Scotland).

(1) In the winding up of a company registered in Scotland, the following provisions of the Bankruptcy (Scotland) Act 1985—

- (a) subsections (1) to (6) of section 37 (effect of sequestration on diligence); and
- (b) subsections (3), (4), (7) and (8) of section 39 (realisation of estate),

apply, so far as consistent with this Act, in like manner as they apply in the sequestration of a debtor's estate, with the substitutions specified below and with any other necessary modifications.

(2) The substitutions to be made in those sections of the Act of 1985 are as follows—

- (a) for references to the debtor, substitute references to the company;
- (b) for references to the sequestration, substitute references to the winding up;
- (c) for references to the date of sequestration, substitute references to the commencement of the winding up of the company; and
- (d) for references to the [...] ²¹³ trustee, substitute references to the liquidator.

(3) In this section, “the commencement of the winding up of the company” means, where it is being wound up by the court, the day on which the winding-up order is made.

²¹¹ Amount substituted by S.I. 1986/1996, art. 2(1), Sch. Pt. I, (by art. 2(2) of that S.I. the new amount is not to affect any case where the goods are sold or payment to avoid sale is made, before the coming into force of the increase)

²¹² Words substituted by Courts Act 2003 c. 39 Sch.8 para.296(4) (March 15, 2004)

²¹³ Word repealed by Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3 (Scottish Act) Sch.6(1) para.1 (April 1, 2008: as SSI 2008/115)

(4) This section, so far as relating to any estate or effects of the company situated in Scotland, applies in the case of a company registered in England and Wales as in the case of one registered in Scotland.

Commencement

Pt IV c. VIII s. 185(1)-(4): June 1, 1991

Amendments Pending

Pt IV c. VIII s. 185(1)(a): words inserted by Bankruptcy and Diligence etc. (Scotland) Act 2007 asp 3 (Scottish Act)
Sch. 5 para. 14(3) (date to be appointed)

Miscellaneous matters

186.— Rescission of contracts by the court.

(1) The court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just.

(2) Any damages payable under the order to such a person may be proved by him as a debt in the winding up.

Commencement

Pt IV c. VIII s. 186(1)-(2): June 1, 1991

187.— Power to make over assets to employees.

(1) On the winding up of a company (whether by the court or voluntarily), the liquidator may, subject to the following provisions of this section, make any payment which the company has, before the commencement of the winding up, decided to make under [section 247 of the Companies Act 2006]²¹⁴ of the Companies Act (power to provide for employees or former employees on cessation or transfer of business).

[(2) The liquidator may, after the winding up has commenced, make any such provision as is mentioned in section 247(1) if—

- (a) the company's liabilities have been fully satisfied and provision has been made for the expenses of the winding up,
- (b) the exercise of the power has been sanctioned by a resolution of the company, and

²¹⁴ Words substituted by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007/2194 Sch.4(3) para.42(2) (October 1, 2007)

(c) any requirements of the company's [articles]²¹⁵ as to the exercise of the power conferred by section 247(1) are complied with.

]²¹⁶

(3) Any payment which may be made by a company under this section (that is, a payment after the commencement of its winding up) may be made out of the company's assets which are available to the members on the winding up.

(4) On a winding up by the court, the exercise by the liquidator of his powers under this section is subject to the court's control, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of the power.

(5) Subsections (1) and (2) above have effect notwithstanding anything in any rule of law or in section 107 of this Act (property of company after satisfaction of liabilities to be distributed among members).

Commencement

Pt IV c. VIII s. 187(1)-(5): June 1, 1991

188.— Notification that company is in liquidation.

[(1) When a company is being wound up, whether by the court or voluntarily—

(a) every invoice, order for goods [or services]²¹⁷, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, or a liquidator of the company or a receiver or manager of the company's property, [...] ²¹⁸ and

(b) all the company's websites,

must contain a statement that the company is being wound up.

]²¹⁹

(2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, is liable to a fine.

Commencement

Pt IV c. VIII s. 188(1)-(2): June 1, 1991

²¹⁵ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(20) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

²¹⁶ Substituted by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007/2194 Sch.4(3) para.42(3) (October 1, 2007)

²¹⁷ Words inserted by Companies (Trading Disclosures) (Insolvency) Regulations 2008/1897 reg.5(1)(a) (October 1, 2008)

²¹⁸ Words repealed by Companies (Trading Disclosures) (Insolvency) Regulations 2008/1897 reg.5(1)(b) (October 1, 2008)

²¹⁹ Substituted by Companies (Registrar, Languages and Trading Disclosures) Regulations 2006/3429 reg.7(1) (January 1, 2007)

189.— Interest on debts.

- (1) In a winding up interest is payable in accordance with this section on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.
- (2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation.
- (3) All interest under this section ranks equally, whether or not the debts on which it is payable rank equally.
- (4) The rate of interest payable under this section in respect of any debt (“the official rate” for the purposes of any provision of this Act in which that expression is used) is whichever is the greater of—
 - (a) the rate specified in section 17 of the Judgments Act 1838 on the day on which the company went into liquidation, and
 - (b) the rate applicable to that debt apart from the winding up.
- (5) In the application of this section to Scotland—
 - (a) references to a debt proved in a winding up have effect as references to a claim accepted in a winding up, and
 - (b) the reference to section 17 of the Judgments Act 1838 has effect as a reference to the rules.

Commencement

Pt IV c. VIII s. 189(1)-(5)(b): June 1, 1991

190.— Documents exempt from stamp duty.

- (1) In the case of a winding up by the court, or of a creditors' voluntary winding up, the following has effect as regards exemption from duties chargeable under the enactments relating to stamp duties.
 - (2) If the company is registered in England and Wales, the following documents are exempt from stamp duty—
 - (a) every assurance relating solely to freehold or leasehold property, or to any estate, right or interest in, any real or personal property, which forms part of the company's assets and which, after the execution of the assurance, either at law or in equity, is or remains part of those assets, and
 - (b) every writ, order, certificate, or other instrument or writing relating solely to the property of any company which is being wound up as mentioned in subsection (1), or to any proceeding under such a winding up.
- “Assurance” here includes deed, conveyance, assignment and surrender.
- (3) If the company is registered in Scotland, the following documents are exempt from stamp duty—

- (a) every conveyance relating solely to property which forms part of the company's assets and which, after the execution of the conveyance, is or remains the company's property for the benefit of its creditors,
 - (b) any articles of roup or sale, submission and every other instrument and writing whatsoever relating solely to the company's property, and
 - (c) every deed or writing forming part of the proceedings in the winding up.
- “Conveyance” here includes assignation, instrument, discharge, writing and deed.

Commencement

Pt IV c. VIII s. 190(1)-(3)(c): June 1, 1991

191. Company's books to be evidence.

Where a company is being wound up, all books and papers of the company and of the liquidators are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in them.

Commencement

Pt IV c. VIII s. 191: June 1, 1991

192.— Information as to pending liquidations.

(1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.

(2) If a liquidator fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt IV c. VIII s. 192(1)-(2): June 1, 1991

193.— Unclaimed dividends (Scotland).

(1) The following applies where a company registered in Scotland has been wound up, and is about to be dissolved.

(2) The liquidator shall lodge in an appropriate bank or institution as defined in section 73(1) of the Bankruptcy (Scotland) Act 1985 (not being a bank or institution in or of which the liquidator is Acting partner, manager, agent or cashier) in the name of the Accountant of Court the whole unclaimed dividends and unapplied or undistributable balances, and the deposit receipts shall be transmitted to the Accountant of Court.

(3) The provisions of section 58 of the Bankruptcy (Scotland) Act 1985 (so far as consistent with this Act and [the Companies Acts]²²⁰) apply with any necessary modifications to sums lodged in a bank or institution under this section as they apply to sums deposited under section 57 of the Act first mentioned.

Commencement

Pt IV c. VIII s. 193(1)-(3): June 1, 1991

194. Resolutions passed at adjourned meetings.

Where a resolution is passed at an adjourned meeting of a company's creditors or contributories, the resolution is treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

Commencement

Pt IV c. VIII s. 194: June 1, 1991

195.— Meetings to ascertain wishes of creditors or contributories.

(1) The court may—

- (a) as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence), and
- (b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory [...]²²¹ .

Commencement

Pt IV c. VIII s. 195(1)-(3): June 1, 1991

196. Judicial notice of court documents.

In all proceedings under this Part, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court shall take judicial notice—

²²⁰ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(21) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

²²¹ Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(22) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

- (a) of the signature of any officer of the High Court or of a county court in England and Wales, or of the Court of Session or a sheriff court in Scotland, or of the High Court in Northern Ireland, and also
- (b) of the official seal or stamp of the several offices of the High Court in England and Wales or Northern Ireland, or of the Court of Session, appended to or impressed on any document made, issued or signed under the provisions of this Act or [the Companies Acts]²²², or any official copy of such a document.

Commencement

Pt IV c. VIII s. 196(a)-(b): June 1, 1991

197.— Commission for receiving evidence.

(1) When a company is wound up in England and Wales or in Scotland, the court may refer the whole or any part of the examination of witnesses—

- (a) to a specified county court in England and Wales, or
- (b) to the sheriff principal for a specified sheriffdom in Scotland, or
- (c) to the High Court in Northern Ireland or a specified Northern Ireland County Court, (“specified” meaning specified in the order of the winding-up court).

(2) Any person exercising jurisdiction as a judge of the court to which the reference is made (or, in Scotland, the sheriff principal to whom it is made) shall then, by virtue of this section, be a commissioner for the purpose of taking the evidence of those witnesses.

(3) The judge or sheriff principal has in the matter referred the same power of summoning and examining witnesses, of requiring the production and delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

These powers are in addition to any which the judge or sheriff principal might lawfully exercise apart from this section.

(4) The examination so taken shall be returned or reported to the court which made the order in such manner as that court requests.

(5) This section extends to Northern Ireland.

Commencement

Pt IV c. VIII s. 197(1)-(5): June 1, 1991

198.— Court order for examination of persons in Scotland.

(1) The court may direct the examination in Scotland of any person for the time being in Scotland (whether a contributory of the company or not), in regard to the trade, dealings, affairs or property

²²² Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(23) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested by reason of his being a contributory.

(2) The order or commission to take the examination shall be directed to the sheriff principal of the sheriffdom in which the person to be examined is residing or happens to be for the time; and the sheriff principal shall summon the person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

(3) The sheriff principal may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with the report the books and papers produced, if the originals are required and specified by the order or commission, or otherwise copies or extracts authenticated by the sheriff.

(4) If a person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff principal shall proceed against him as a witness or haver duly cited; and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.

(5) The sheriff principal is entitled to such fees, and the witness is entitled to such allowances, as sheriffs principal when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(6) If any objection is stated to the sheriff principal by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff principal may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

Commencement

Pt IV c. VIII s. 198(1)-(6): June 1, 1991

199. Costs of application for leave to proceed (Scottish companies).

Where a petition or application for leave to proceed with an action or proceeding against a company which is being wound up in Scotland is unopposed and is granted by the court, the costs of the petition or application shall, unless the court otherwise directs, be added to the amount of the petitioner's or applicant's claim against the company.

Commencement

Pt IV c. VIII s. 199: June 1, 1991

200.— Affidavits etc. in United Kingdom and overseas.

(1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in the United Kingdom, or elsewhere in Her Majesty's dominions, before any court, judge or person lawfully authorised to take and receive affidavits, or before any of Her Majesty's consuls or vice-consuls in any place outside Her dominions.

(2) All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

Commencement

Pt IV c. VIII s. 200(1)-(2): June 1, 1991

CHAPTER IX

DISSOLUTION OF COMPANIES AFTER WINDING UP

201.— Dissolution (voluntary winding up).

(1) This section applies, in the case of a company wound up voluntarily, where the liquidator has sent to the registrar of companies his final account and return under section 94 (members' voluntary) or section 106 (creditors' voluntary).

(2) The registrar on receiving the account and return shall forthwith register them; and on the expiration of 3 months from the registration of the return the company is deemed to be dissolved.

(3) However, the court may, on the application of the liquidator or any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(4) It is the duty of the person on whose application an order of the court under this section is made within 7 days after the making of the order to deliver to the registrar an office copy of the order for registration; and if that person fails to do so he is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt IV c. IX s. 201(1)-(4): June 1, 1991

202.— Early dissolution (England and Wales).

(1) This section applies where an order for the winding up of a company has been made by the court in England and Wales.

(2) The official receiver, if—

(a) he is the liquidator of the company, and

(b) it appears to him—

(i) that the realisable assets of the company are insufficient to cover the expenses of the winding up, and

(ii) that the affairs of the company do not require any further investigation,

may at any time apply to the registrar of companies for the early dissolution of the company.

(3) Before making that application, the official receiver shall give not less than 28 days' notice of his intention to do so to the company's creditors and contributories and, if there is an administrative receiver of the company, to that receiver.

(4) With the giving of that notice the official receiver ceases (subject to any directions under the next section) to be required to perform any duties imposed on him in relation to the company, its creditors or contributories by virtue of any provision of this Act, apart from a duty to make an application under subsection (2) of this section.

(5) On the receipt of the official receiver's application under subsection (2) the registrar shall forthwith register it and, at the end of the period of 3 months beginning with the day of the registration of the application, the company shall be dissolved.

However, the Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give directions under section 203 at any time before the end of that period.

Commencement

Pt IV c. IX s. 202(1)-(5): June 1, 1991

203.— Consequence of notice under s. 202.

(1) Where a notice has been given under section 202(3), the official receiver or any creditor or contributory of the company, or the administrative receiver of the company (if there is one) may apply to the Secretary of State for directions under this section.

(2) The grounds on which that application may be made are—

- (a) that the realisable assets of the company are sufficient to cover the expenses of the winding up;
- (b) that the affairs of the company do require further investigation; or
- (c) that for any other reason the early dissolution of the company is inappropriate.

(3) Directions under this section—

- (a) are directions making such provision as the Secretary of State thinks fit for enabling the winding up of the company to proceed as if no notice had been given under section 202(3), and
- (b) may, in the case of an application under section 202(5), include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.

(4) An appeal to the court lies from any decision of the Secretary of State on an application for directions under this section.

(5) It is the duty of the person on whose application any directions are given under this section, or in whose favour an appeal with respect to an application for such directions is determined, within 7 days after the giving of the directions or the determination of the appeal, to deliver to the registrar of companies for registration such a copy of the directions or determination as is prescribed.

(6) If a person without reasonable excuse fails to deliver a copy as required by subsection (5), he is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt IV c. IX s. 203(1)-(6): June 1, 1991

204.— Early dissolution (Scotland).

- (1) This section applies where a winding-up order has been made by the court in Scotland.
- (2) If after a meeting or meetings under section 138 (appointment of liquidator in Scotland) it appears to the liquidator that the realisable assets of the company are insufficient to cover the expenses of the winding up, he may apply to the court for an order that the company be dissolved.
- (3) Where the liquidator makes that application, if the court is satisfied that the realisable assets of the company are insufficient to cover the expenses of the winding up and it appears to the court appropriate to do so, the court shall make an order that the company be dissolved in accordance with this section.
- (4) A copy of the order shall within 14 days from its date be forwarded by the liquidator to the registrar of companies, who shall forthwith register it; and, at the end of the period of 3 months beginning with the day of the registration of the order, the company shall be dissolved.
- (5) The court may, on an application by any person who appears to the court to have an interest, order that the date at which the dissolution of the company is to take effect shall be deferred for such period as the court thinks fit.
- (6) It is the duty of the person on whose application an order is made under subsection (5), within 7 days after the making of the order, to deliver to the registrar of companies such a copy of the order as is prescribed.
- (7) If the liquidator without reasonable excuse fails to comply with the requirements of subsection (4), he is liable to a fine and, for continued contravention, to a daily default fine.
- (8) If a person without reasonable excuse fails to deliver a copy as required by subsection (6), he is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt IV c. IX s. 204(1)-(8): June 1, 1991

205.— Dissolution otherwise than under ss. 202-204.

- (1) This section applies where the registrar of companies receives—
 - (a) a notice served for the purposes of section 172(8) (final meeting of creditors and vacation of office by liquidator), or
 - (b) a notice, from the official receiver that the winding up of a company by the court is complete.
- (2) The registrar shall, on receipt of the notice, forthwith register it; and, subject as follows, at the end of the period of 3 months beginning with the day of the registration of the notice, the company shall be dissolved.
- (3) The Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.
- (4) An appeal to the court lies from any decision of the Secretary of State on an application for a direction under subsection (3);

(5) Subsection (3) does not apply in a case where the winding-up order was made by the court in Scotland, but in such a case the court may, on an application by any person appearing to the court to have an interest, order that the date at which the dissolution of the company is to take effect shall be deferred for such period as the court thinks fit.

(6) It is the duty of the person—

- (a) on whose application a direction is given under subsection (3);
- (b) in whose favour an appeal with respect to an application for such a direction is determined; or
- (c) on whose application an order is made under subsection (5),

within 7 days after the giving of the direction, the determination of the appeal or the making of the order, to deliver to the registrar for registration such a copy of the direction, determination or order as is prescribed.

(7) If a person without reasonable excuse fails to deliver a copy as required by subsection (6), he is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt IV c. IX s. 205(1)-(7): June 1, 1991

CHAPTER X

MALPRACTICE BEFORE AND DURING LIQUIDATION; PENALISATION OF COMPANIES AND COMPANY OFFICERS; INVESTIGATIONS AND PROSECUTIONS

Offences of fraud, deception, etc.

206.— Fraud, etc. in anticipation of winding up.

(1) When a company is ordered to be wound up by the court, or passes a resolution for voluntary winding up, any person, being a past or present officer of the company, is deemed to have committed an offence if, within the 12 months immediately preceding the commencement of the winding up, he has—

- (a) concealed any part of the company's property to the value of [£500]²²³ or more, or concealed any debt due to or from the company, or
- (b) fraudulently removed any part of the company's property to the value of [£500]²²³ or more, or
- (c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the company's property or affairs, or
- (d) made any false entry in any book or paper affecting or relating to the company's property or affairs, or
- (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's property or affairs, or

²²³ Amount substituted by S.I. 1986/1996, art. 2(1), Sch. Pt. I

- (f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).
- (2) Such a person is deemed to have committed an offence if within the period above mentioned he has been privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of subsection (1); and he commits an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in paragraphs (a) to (f) of that subsection, or is privy to the doing by others of any of the things mentioned in paragraphs (c) to (e) of it.
- (3) For purposes of this section, "officer" includes a shadow director.
- (4) It is a defence—
 - (a) for a person charged under paragraph (a) or (f) of subsection (1) (or under subsection (2) in respect of the things mentioned in either of those two paragraphs) to prove that he had no intent to defraud, and
 - (b) for a person charged under paragraph (c) or (d) of subsection (1) (or under subsection (2) in respect of the things mentioned in either of those two paragraphs) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.
- (5) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(f), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in such circumstances, is guilty of an offence.
- (6) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.
- (7) The money sums specified in paragraphs (a) and (b) of subsection (1) are subject to increase or reduction by order under section 416 in Part XV.

Commencement

Pt IV c. X s. 206(1)-(7): June 1, 1991

207.— Transactions in fraud of creditors.

- (1) When a company is ordered to be wound up by the court or passes a resolution for voluntary winding up, a person is deemed to have committed an offence if he, being at the time an officer of the company—
 - (a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the company's property, or
 - (b) has concealed or removed any part of the company's property since, or within 2 months before, the date of any unsatisfied judgment or order for the payment of money obtained against the company.
- (2) A person is not guilty of an offence under this section—
 - (a) by reason of conduct constituting an offence under subsection (1)(a) which occurred more than 5 years before the commencement of the winding up, or
 - (b) if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.
- (3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

Commencement

Pt IV c. X s. 207(1)-(3): June 1, 1991

208.— Misconduct in course of winding up.

(1) When a company is being wound up, whether by the court or voluntarily, any person, being a past or present officer of the company, commits an offence if he—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company's property, and how and to whom and for what consideration and when the company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the company's business), or
- (b) does not deliver up to the liquidator (or as he directs) all such part of the company's property as is in his custody or under his control, and which he is required by law to deliver up, or
- (c) does not deliver up to the liquidator (or as he directs) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up, or
- (d) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the liquidator as soon as practicable, or
- (e) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the company's property or affairs.

(2) Such a person commits an offence if after the commencement of the winding up he attempts to account for any part of the company's property by fictitious losses or expenses; and he is deemed to have committed that offence if he has so attempted at any meeting of the company's creditors within the 12 months immediately preceding the commencement of the winding up.

(3) For purposes of this section, “officer” includes a shadow director.

(4) It is a defence—

- (a) for a person charged under paragraph (a), (b) or (c) of subsection (1) to prove that he had no intent to defraud, and
- (b) for a person charged under paragraph (e) of that subsection to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(5) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

Commencement

Pt IV c. X s. 208(1)-(5): June 1, 1991

209.— Falsification of company's books.

(1) When a company is being wound up, an officer or contributory of the company commits an offence if he destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person.

(2) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

Commencement

Pt IV c. X s. 209(1)-(2): June 1, 1991

210.— Material omissions from statement relating to company's affairs.

(1) When a company is being wound up, whether by the court or voluntarily, any person, being a past or present officer of the company, commits an offence if he makes any material omission in any statement relating to the company's affairs.

(2) When a company has been ordered to be wound up by the court, or has passed a resolution for voluntary winding up, any such person is deemed to have committed that offence if, prior to the winding up, he has made any material omission in any such statement.

(3) For purposes of this section, “officer” includes a shadow director.

(4) It is a defence for a person charged under this section to prove that he had no intent to defraud.

(5) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

Commencement

Pt IV c. X s. 210(1)-(5): June 1, 1991

211.— False representations to creditors.

(1) When a company is being wound up, whether by the court or voluntarily, any person, being a past or present officer of the company—

(a) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the winding up, and

(b) is deemed to have committed that offence if, prior to the winding up, he has made any false representation, or committed any other fraud, for that purpose.

(2) For purposes of this section, “officer” includes a shadow director.

(3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

Commencement

Pt IV c. X s. 211(1)-(3): June 1, 1991

Penalisation of directors and officers

212.— Summary remedy against delinquent directors, liquidators, etc.

(1) This section applies if in the course of the winding up of a company it appears that a person who—

- (a) is or has been an officer of the company,
 - (b) has acted as liquidator [...] ²²⁴ or administrative receiver of the company, or
 - (c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company,
- has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.
- (2) The reference in subsection (1) to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator [...] ²²⁵ of the company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator [...] ²²⁵ of the company.
- (3) The court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the person falling within subsection (1) and compel him—
- (a) to repay, restore or account for the money or property or any part of it, with interest at such rate as the court thinks just, or
 - (b) to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just.
- (4) The power to make an application under subsection (3) in relation to a person who has acted as liquidator [...] ²²⁵ of the company is not exercisable, except with the leave of the court, after [he] ²²⁶ has had his release.
- (5) The power of a contributory to make an application under subsection (3) is not exercisable except with the leave of the court, but is exercisable notwithstanding that he will not benefit from any order the court may make on the application.

Commencement

Pt IV c. X s. 212(1)-(5): June 1, 1991

213.— Fraudulent trading.

- (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.
- (2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.

²²⁴ Word repealed subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.3)

²²⁵ Words repealed subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.3)

²²⁶ Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.18(c)(ii) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

Commencement

Pt IV c. X s. 213(1)-(2): June 1, 1991

214.— Wrongful trading.

(1) Subject to subsection (3) below, if in the course of the winding up of a company it appears that subsection (2) of this section applies in relation to a person who is or has been a director of the company, the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the court thinks proper.

(2) This subsection applies in relation to a person if—

- (a) the company has gone into insolvent liquidation,
 - (b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, and
 - (c) that person was a director of the company at that time;
- but the court shall not make a declaration under this section in any case where the time mentioned in paragraph (b) above was before 28th April 1986.

(3) The court shall not make a declaration under this section with respect to any person if it is satisfied that after the condition specified in subsection (2)(b) was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the company's creditors as (assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation) he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and
- (b) the general knowledge, skill and experience that that director has.

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.

(6) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(7) In this section “director” includes a shadow director.

(8) This section is without prejudice to section 213.

Commencement

Pt IV c. X s. 214(1)-(8): June 1, 1991

[214A Adjustment of withdrawals]

(1) ²²⁷ [²²⁸]²²⁹ This section has effect in relation to a person who is or has been a member of a limited liability partnership where, in the course of the winding up of that limited liability partnership, it appears that subsection (2) of this section applies in relation to that person.

(2) This subsection applies in relation to a person if—

(a) within the period of two years ending with the commencement of the winding up, he was a member of the limited liability partnership who withdrew property of the limited liability partnership, whether in the form of a share of profits, salary, repayment of or payment of interest on a loan to the limited liability partnership or any other withdrawal of property, and

(b) it is proved by the liquidator to the satisfaction of the court that at the time of the withdrawal he knew or had reasonable ground for believing that the limited liability partnership—

(i) was at the time of the withdrawal unable to pay its debts within the meaning of section 123, or

(ii) would become so unable to pay its debts after the assets of the limited liability partnership had been depleted by that withdrawal taken together with all other withdrawals (if any) made by any members contemporaneously with that withdrawal or in contemplation when that withdrawal was made.

(3) Where this section has effect in relation to any person the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the limited liability partnership's assets as the court thinks proper.

(4) The court shall not make a declaration in relation to any person the amount of which exceeds the aggregate of the amounts or values of all the withdrawals referred to in subsection (2) made by that person within the period of two years referred to in that subsection.

(5) The court shall not make a declaration under this section with respect to any person unless that person knew or ought to have concluded that after each withdrawal referred to in subsection (2) there was no reasonable prospect that the limited liability partnership would avoid going into insolvent liquidation.

(6) For the purposes of subsection (5) the facts which a member ought to know or ascertain and the conclusions which he ought to reach are those which would be known, ascertained, or reached by a reasonably diligent person having both:

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that member in relation to the limited liability partnership, and

(b) the general knowledge, skill and experience that that member has.

²²⁷ The insertion of s.214A for England and Wales is one of the modifications to the Insolvency Act 1986 made by SI 2001/1090Sch.3 in relation to Limited Liability Partnerships and is reproduced as full-text for the sake of clarity. The remaining modifications to this Act can be accessed via the Analysis Information of the relevant provisions.

²²⁸ The insertion of s.214A for Scotland is one of the modifications to the Insolvency Act 1986 made by SSI 2001/128Sch.3 in relation to Limited Liability Partnerships and is reproduced as full-text for the sake of clarity. The remaining modifications to this Act can be accessed via the Analysis Information of the relevant provisions. In relation to Scotland: [See Westlaw UK].

²²⁹ Added by Limited Liability Partnerships (Scotland) Regulations 2001/128 (Scottish SI) Sch.3 para.1 (April 6, 2001)

(7) For the purposes of this section a limited liability partnership goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(8) In this section “member” includes a shadow member.

(9) This section is without prejudice to section 214.

]²³⁰

215.— Proceedings under ss. 213, 214.

(1) On the hearing of an application under section 213 or 214, the liquidator may himself give evidence or call witnesses.

(2) Where under either section the court makes a declaration, it may give such further directions as it thinks proper for giving effect to the declaration; and in particular, the court may—

(a) provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf, and

(b) from time to time make such further order as may be necessary for enforcing any charge imposed under this subsection.

(3) For the purposes of subsection (2), “assignee”—

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but

(b) does not include an assignee for valuable consideration (not including consideration by way of marriage [or the formation of a civil partnership]²³¹) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where the court makes a declaration under either section in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5) Sections 213 and 214 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

Commencement

Pt IV c. X s. 215(1)-(5): June 1, 1991

²³⁰ Added by Limited Liability Partnerships Regulations 2001/1090 Sch.3 para.1 (April 6, 2001)

²³¹ Words inserted by Civil Partnership Act 2004 c. 33 Sch.27 para.112 (December 5, 2005)

216.— Restriction on re-use of company names.

- (1) This section applies to a person where a company (“the liquidating company”) has gone into insolvent liquidation on or after the appointed day and he was a director or shadow director of the company at any time in the period of 12 months ending with the day before it went into liquidation.
- (2) For the purposes of this section, a name is a prohibited name in relation to such a person if—
- (a) it is a name by which the liquidating company was known at any time in that period of 12 months, or
 - (b) it is a name which is so similar to a name falling within paragraph (a) as to suggest an association with that company.
- (3) Except with leave of the court or in such circumstances as may be prescribed, a person to whom this section applies shall not at any time in the period of 5 years beginning with the day on which the liquidating company went into liquidation—
- (a) be a director of any other company that is known by a prohibited name, or
 - (b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company, or
 - (c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.
- (4) If a person acts in contravention of this section, he is liable to imprisonment or a fine, or both.
- (5) In subsection (3) “the court” means any court having jurisdiction to wind up companies; and on an application for leave under that subsection, the Secretary of State or the official receiver may appear and call the attention of the court to any matters which seem to him to be relevant.
- (6) References in this section, in relation to any time, to a name by which a company is known are to the name of the company at that time or to any name under which the company carries on business at that time.
- (7) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.
- (8) In this section “company” includes a company which may be wound up under Part V of this Act.

Commencement

Pt IV c. X s. 216(1)-(8): June 1, 1991

217.— Personal liability for debts, following contravention of s. 216.

- (1) A person is personally responsible for all the relevant debts of a company if at any time—
- (a) in contravention of section 216, he is involved in the management of the company, or
 - (b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given (without the leave of the court) by a person whom he knows at that time to be in contravention in relation to the company of section 216.
- (2) Where a person is personally responsible under this section for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable.

- (3) For the purposes of this section the relevant debts of a company are—
- (a) in relation to a person who is personally responsible under paragraph (a) of subsection (1), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and
 - (b) in relation to a person who is personally responsible under paragraph (b) of that subsection, such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.
- (4) For the purposes of this section, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.
- (5) For the purposes of this section a person who, as a person involved in the management of a company, has at any time acted on instructions given (without the leave of the court) by a person whom he knew at that time to be in contravention in relation to the company of section 216 is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.
- (6) In this section “company” includes a company which may be wound up under Part V.

Commencement

Pt IV c. X s. 217(1)-(6): June 1, 1991

Investigation and prosecution of malpractice

218.— Prosecution of delinquent officers and members of company.

(1) If it appears to the court in the course of a winding up by the court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may (either on the application of a person interested in the winding up or of its own motion) direct the liquidator to refer the matter [...] ²³²

- [(a) in the case of a winding up in England and Wales, to the Secretary of State, and
- (b) in the case of a winding up in Scotland, to the Lord Advocate.] ²³²

(2) [...] ²³³

(3) If in the case of a winding up by the court in England and Wales it appears to the liquidator, not being the official receiver, that any past or present officer of the company, or any member of it, has been guilty of an offence in relation to the company for which he is criminally liable, the liquidator shall report the matter to the official receiver.

²³² Words substituted subject to transitional provisions in SI 2001/766, art.3(4) by Insolvency Act 2000 c. 39 s.10(2) (April 2, 2001)

²³³ Repealed subject to transitional provisions in SI 2001/766, art.3(4) by Insolvency Act 2000 c. 39 Sch.5 para.1 (April 2, 2001 as SI 2001/766)

(4) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty of an offence in relation to the company for which he is criminally liable, he shall [forthwith report the matter—]²³⁴

[(a) in the case of a winding up in England and Wales, to the Secretary of State, and

(b) in the case of a winding up in Scotland, to the Lord Advocate,

and shall furnish to the Secretary of State or (as the case may be) the Lord Advocate such information and give to him such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as [the Secretary of State or (as the case may be) the Lord Advocate]²³⁵ requires.]²³⁴

[(5) Where a report is made to the Secretary of State under subsection (4) he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of [the Companies Act 1985]²³⁶ to investigate a company's affairs.]²³⁷

(6) If it appears to the court in the course of a voluntary winding up that—

(a) any past or present officer of the company, or any member of it, has been guilty as above-mentioned, and

(b) no report with respect to the matter has been made by the liquidator [...] ²³⁸ under subsection (4),

the court may (on the application of any person interested in the winding up or of its own motion) direct the liquidator to make such a report.

On a report being made accordingly, this section has effect as though the report had been made in pursuance of subsection (4).

Commencement

Pt IV c. X s. 218(1)-(6)(b): June 1, 1991

219.— Obligations arising under s. 218.

(1) For the purpose of an investigation by the Secretary of State [in consequence of a report made to him under section 218(4)]²³⁹, any obligation imposed on a person by any provision of [the

²³⁴ Words substituted subject to transitional provisions in SI 2001/766, art.3(4) by Insolvency Act 2000 c. 39 s.10(4)(a) (April 2, 2001)

²³⁵ Words substituted subject to transitional provisions in SI 2001/766, art.3(4) by Insolvency Act 2000 c. 39 s.10(4)(b) (April 2, 2001)

²³⁶ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(24) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

²³⁷ Substituted subject to transitional provisions in SI 2001/766, art.3(4) by Insolvency Act 2000 c. 39 s.10(5) (April 2, 2001)

²³⁸ Words repealed subject to transitional provisions in SI 2001/766, art.3(4) by Insolvency Act 2000 c. 39 Sch.5 para.1 (April 2, 2001 as SI 2001/766)

²³⁹ Words substituted subject to transitional provisions in SI 2001/766, art.3(4) by Insolvency Act 2000 c. 39 s.10(7)(a) (April 2, 2001)

Companies Act 1985]²⁴⁰ to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in [section 218(5)]²³⁹ is to be regarded as an obligation similarly to assist the Secretary of State in his investigation.

(2) An answer given by a person to a question put to him in exercise of the powers conferred by section 218(5) may be used in evidence against him.

[(2A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

- (a) no evidence relating to the answer may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(2B) Subsection (2A) applies to any offence other than—

- (a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or
- (b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).

] ²⁴¹

(3) Where criminal proceedings are instituted by [the Director of Public Prosecutions, the Lord Advocate]²⁴² or the Secretary of State following any report or reference under section 218, it is the duty of the liquidator and every officer and agent of the company past and present (other than the defendant or defender) to give to [the Director of Public Prosecutions, the Lord Advocate]²⁴² or the Secretary of State (as the case may be) all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(4) If a person fails or neglects to give assistance in the manner required by subsection (3), the court may, on the application of the [Director of Public Prosecutions, the Lord Advocate]²⁴³ or the Secretary of State (as the case may be) direct the person to comply with that subsection; and if the application is made with respect to a liquidator, the court may (unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so) direct that the costs shall be borne by the liquidator personally.

Commencement

Pt IV c. X s. 219(1)-(4): June 1, 1991

²⁴⁰ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.75(24) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

²⁴¹ Added by Insolvency Act 2000 c. 39 s.11 (April 2, 2001)

²⁴² Words substituted subject to transitional provisions in SI 2001/766, art.3(4) by Insolvency Act 2000 c. 39 s.10(7)(b) (April 2, 2001)

²⁴³ Words substituted subject to transitional provisions in SI 2001/766, art.3(4) by Insolvency Act 2000 c. 39 s.10(7)(c) (April 2, 2001)

PART V

WINDING UP OF UNREGISTERED COMPANIES

WINDING UP OF UNREGISTERED COMPANIES

[220. Meaning of “unregistered company”

For the purposes of this Part “unregistered company” includes any association and any company, with the exception of a company registered under the Companies Act 2006 in any part of the United Kingdom.]²⁴⁴

Commencement

Pt V s. 220(1)-(2): June 1, 1991

221.— Winding up of unregistered companies.

(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act; and all the provisions of this Act [...] ²⁴⁵ about winding up apply to an unregistered company with the exceptions and additions mentioned in the following subsections.

(2) If an unregistered company has a principal place of business situated in Northern Ireland, it shall not be wound up under this Part unless it has a principal place of business situated in England and Wales or Scotland, or in both England and Wales and Scotland.

(3) For the purpose of determining a court's winding-up jurisdiction, an unregistered company is deemed—

- (a) to be registered in England and Wales or Scotland, according as its principal place of business is situated in England and Wales or Scotland, or
- (b) if it has a principal place of business situated in both countries, to be registered in both countries;

and the principal place of business situated in that part of Great Britain in which proceedings are being instituted is, for all purposes of the winding up, deemed to be the registered office of the company.

(4) No unregistered company shall be wound up under this Act voluntarily [, except in accordance with the EC Regulation]²⁴⁶ .

(5) The circumstances in which an unregistered company may be wound up are as follows—

- (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

²⁴⁴ Substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.76(2) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

²⁴⁵ Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.76(3) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

²⁴⁶ Words inserted by Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002/1240 reg.9 (May 31, 2002)

- (b) if the company is unable to pay its debts;
- (c) if the court is of opinion that it is just and equitable that the company should be wound up.

(6) A petition for winding up a trustee savings bank may be presented by the Trustee Savings Banks Central Board or by a commissioner appointed under section 35 of the Trustee Savings Banks Act 1981 as well as by any person authorised under Part IV of this Act to present a petition for the winding up of a company.

On such day as the Treasury appoints by order under section 4(3) of the Trustee Savings Banks Act 1985, this subsection ceases to have effect and is hereby repealed.

(7) In Scotland, an unregistered company which the Court of Session has jurisdiction to wind up may be wound up by the court if there is subsisting a floating charge over property comprised in the company's property and undertaking, and the court is satisfied that the security of the creditor entitled to the benefit of the floating charge is in jeopardy.

For this purpose a creditor's security is deemed to be in jeopardy if the court is satisfied that events have occurred or are about to occur which render it unreasonable in the creditor's interests that the company should retain power to dispose of the property which is subject to the floating charge.

Commencement

Pt V s. 221(1)-(7): June 1, 1991

222.— Inability to pay debts: unpaid creditor for £750 or more.

(1) An unregistered company is deemed (for the purposes of section 221) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £750 then due and—

- (a) the creditor has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a written demand in the prescribed form requiring the company to pay the sum due, and
- (b) the company has for 3 weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the creditor's satisfaction.

(2) The money sum for the time being specified in subsection (1) is subject to increase or reduction by regulations under section 417 in Part XV; but no increase in the sum so specified affects any case in which the winding-up petition was presented before the coming into force of the increase.

Commencement

Pt V s. 222(1)-(2): June 1, 1991

223. Inability to pay debts: debt remaining unsatisfied after action brought.

An unregistered company is deemed (for the purposes of section 221) unable to pay its debts if an action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and—

- (a) notice in writing of the institution of the action or proceeding has been served on the company by leaving it at the company's principal place of business (or by delivering it to

the secretary, or some director, manager or principal officer of the company, or by otherwise serving it in such manner as the court may approve or direct), and

(b) the company has not within 3 weeks after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed or sisted, or indemnified the defendant or defender to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him because of it.

Commencement

Pt V s. 223(a)-(b): June 1, 1991

224.— Inability to pay debts: other cases.

- (1) An unregistered company is deemed (for purposes of section 221) unable to pay its debts—
- (a) if in England and Wales execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member of it as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
 - (b) if in Scotland the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;
 - (c) if in Northern Ireland a certificate of unenforceability has been granted in respect of any judgment, decree or order obtained as mentioned in paragraph (a);
 - (d) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.
- (2) An unregistered company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

Commencement

Pt V s. 224(1)-(2): June 1, 1991

[225. [Company incorporated outside Great Britain]²⁴⁷ may be wound up though dissolved.

(1) Where a company incorporated outside Great Britain which has been carrying on business in Great Britain ceases to carry on business in Great Britain, it may be wound up as an unregistered company under this Act, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

(2) This section is subject to the EC Regulation.

]²⁴⁸

²⁴⁷ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.76(4) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

²⁴⁸ S.225(2) inserted and existing text renumbered as s.225(1) by Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002/1240 reg.10 (May 31, 2002)

Commencement

Pt V s. 225: June 1, 1991

226.— Contributories in winding up of unregistered company.

(1) In the event of an unregistered company being wound up, every person is deemed a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of members among themselves, or to pay or contribute to the payment of the expenses of winding up the company.

(2) Every contributory is liable to contribute to the company's assets all sums due from him in respect of any such liability as is mentioned above.

(3) In the case of an unregistered company engaged in or formed for working mines within the stannaries, a past member is not liable to contribute to the assets if he has ceased to be a member for 2 years or more either before the mine ceased to be worked or before the date of the winding-up order.

(4) [...] ²⁴⁹

Commencement

Pt V s. 226(1)-(4): June 1, 1991

227. Power of court to stay, sist or restrain proceedings.

The provisions of this Part with respect to staying, sisting or restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order extend, in the case of an unregistered company, where the application to stay, sist or restrain is presented by a creditor, to actions and proceedings against any contributory of the company.

Commencement

Pt V s. 227: June 1, 1991

228. Actions stayed on winding-up order.

Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

²⁴⁹ Repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.76(5) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

CommencementPt V s. 228: June 1, 1991

229.— Provisions of this Part to be cumulative.

(1) The provisions of this Part with respect to unregistered companies are in addition to and not in restriction of any provisions in Part IV with respect to winding up companies by the court; and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up [companies registered under the Companies Act 2006 in England and Wales or Scotland]²⁵⁰ .

(2) [...] ²⁵¹

CommencementPt V s. 229(1)-(2): June 1, 1991

PART VI**MISCELLANEOUS PROVISIONS APPLYING TO COMPANIES WHICH ARE
INSOLVENT OR IN LIQUIDATION***Office-holders***230.— Holders of office to be qualified insolvency practitioners.**

(1) [...] ²⁵²

(2) Where an administrative receiver of a company is appointed, he must be a person who is so qualified.

(3) Where a company goes into liquidation, the liquidator must be a person who is so qualified.

(4) Where a provisional liquidator is appointed, he must be a person who is so qualified.

(5) Subsections (3) and (4) are without prejudice to any enactment under which the official receiver is to be, or may be, liquidator or provisional liquidator.

²⁵⁰ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.76(6)(a) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

²⁵¹ Repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.76(6)(b) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

²⁵² Repealed subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.3)

CommencementPt VI s. 230(1)-(5): June 1, 1991

231.— Appointment to office of two or more persons.

(1) This section applies if an appointment or nomination of any person to the office of [...] ²⁵³ administrative receiver, liquidator or provisional liquidator—

- (a) relates to more than one person, or
- (b) has the effect that the office is to be held by more than one person.

(2) The appointment or nomination shall declare whether any act required or authorised under any enactment to be done by the [...] ²⁵³ administrative receiver, liquidator or provisional liquidator is to be done by all or any one or more of the persons for the time being holding the office in question.

CommencementPt VI s. 231(1)-(2): June 1, 1991

232. Validity of office-holder's acts.

The acts of an individual as [...] ²⁵⁴ administrative receiver, liquidator or provisional liquidator of a company are valid notwithstanding any defect in his appointment, nomination or qualifications.

CommencementPt VI s. 232: June 1, 1991

Management by administrators, liquidators, etc.

233.— Supplies of gas, water, electricity, etc.

(1) This section applies in the case of a company where—

- [(a) the company enters administration, or] ²⁵⁵
- (b) an administrative receiver is appointed, or
- [(ba) a moratorium under section 1A is in force, or,] ²⁵⁶

²⁵³ Words repealed subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.3)

²⁵⁴ Words repealed subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.3)

²⁵⁵ Substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.22(a) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

- (c) a voluntary arrangement [approved under Part I]²⁵⁷, has taken effect, or
- (d) the company goes into liquidation, or
- (e) a provisional liquidator is appointed;

and “the office-holder” means the administrator, the administrative receiver, [the nominee,]²⁵⁸ the supervisor of the voluntary arrangement, the liquidator or the provisional liquidator, as the case may be.

(2) If a request is made by or with the concurrence of the office-holder for the giving, after the effective date, of any of the supplies mentioned in the next subsection, the supplier—

- (a) may make it a condition of the giving of the supply that the office-holder personally guarantees the payment of any charges in respect of the supply, but
- (b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the effective date are paid.

(3) The supplies referred to in subsection (2) are—

- [(a) a supply of gas by a gas supplier within the meaning of Part I of the Gas Act 1986:]²⁵⁹
- [(b) a supply of electricity by an electricity supplier within the meaning of Part I of the Electricity Act 1989,]²⁶⁰
- (c) a supply of water by [a water undertaker]²⁶¹ or, in Scotland, [Scottish Water]²⁶²,
- [(d) a supply of communications services by a provider of a public electronic communications service.]²⁶³

(4) “The effective date” for the purposes of this section is whichever is applicable of the following dates—

- [(a) the date on which the company entered administration,]²⁶⁴
- (b) the date on which the administrative receiver was appointed (or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed),

²⁵⁶ Added by Insolvency Act 2000 c. 39 Sch.1 para.8(2)(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

²⁵⁷ Words substituted by Insolvency Act 2000 c. 39 Sch.1 para.8(2)(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

²⁵⁸ Words inserted by Insolvency Act 2000 c. 39 Sch.1 para.8(2)(c) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

²⁵⁹ Substituted by Gas Act 1995 c. 45 Sch.4 para.14(1) (March 1, 1996)

²⁶⁰ Substituted by Utilities Act 2000 c. 27 Sch.6(III) para.47(2)(a) (October 1, 2001 subject to transitional provisions as specified in SI 2001/3266 arts 3-20)

²⁶¹ Words substituted by Water Act 1989 (c.15), s. 190, Sch. 25 para. 78(1)(withss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4))\u201310, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

²⁶² Words substituted by Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004/1822 Sch.1(1) para.14(a) (July 14, 2004)

²⁶³ Substituted by Communications Act 2003 c. 21 Sch.17 para.82(2)(a) (July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2))

²⁶⁴ Substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.22(b) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

- [(ba) the date on which the moratorium came into force,]²⁶⁵
- (c) the date on which the voluntary arrangement [took effect]²⁶⁶ ,
- (d) the date on which the company went into liquidation,
- (e) the date on which the provisional liquidator was appointed

(5) The following applies to expressions used in subsection (3)—

- (a) [...] ²⁶⁷
- (b) [...] ²⁶⁸
- (c) [...] ²⁶⁹

[(d) 'communications services' do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003).]²⁷⁰

Commencement

Pt VI s. 233(1)-(5)(d): June 1, 1991

234.— Getting in the company's property.

(1) This section applies in the case of a company where—

- [(a) the company enters administration,]²⁷¹
- (b) an administrative receiver is appointed, or
- (c) the company goes into liquidation, or
- (d) a provisional liquidator is appointed;

and “the office-holder” means the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.

(2) Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the court may require that person forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder.

²⁶⁵ Added by Insolvency Act 2000 c. 39 Sch.1 para.8(3)(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

²⁶⁶ Words substituted by Insolvency Act 2000 c. 39 Sch.1 para.8(3)(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

²⁶⁷ Repealed by Gas Act 1995 c. 45 Sch.6 para.1 (March 1, 1996 as SI 1996/218)

²⁶⁸ Repealed subject to transitional provisions as specified in SI 2001/3266 arts 3-20 by Utilities Act 2000 c. 27 Sch.8 para.1 (October 1, 2001: repeal has effect as SI 2001/3266 subject to transitional provisions as specified in SI 2001/3266 arts 3-20)

²⁶⁹ Repealed by Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004/1822 Sch.1(1) para.14(b) (July 14, 2004)

²⁷⁰ Substituted by Communications Act 2003 c. 21 Sch.17 para.82(2)(b) (July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2))

²⁷¹ Substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.23 (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

(3) Where the office-holder—

- (a) seizes or disposes of any property which is not property of the company, and
- (b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the next subsection has effect.

(4) In that case the office-holder—

- (a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office-holder's own negligence, and
- (b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

Commencement

Pt VI s. 234(1)-(4)(b): June 1, 1991

235.— Duty to co-operate with office-holder.

(1) This section applies as does section 234; and it also applies, in the case of a company in respect of which a winding-up order has been made by the court in England and Wales, as if references to the office-holder included the official receiver, whether or not he is the liquidator.

(2) Each of the persons mentioned in the next subsection shall—

- (a) give to the office-holder such information concerning the company and its promotion, formation, business, dealings, affairs or property as the office-holder may at any time after the effective date reasonably require, and
- (b) attend on the office-holder at such times as the latter may reasonably require.

(3) The persons referred to above are—

- (a) those who are or have at any time been officers of the company,
- (b) those who have taken part in the formation of the company at any time within one year before the effective date,
- (c) those who are in the employment of the company, or have been in its employment (including employment under a contract for services) within that year, and are in the office-holder's opinion capable of giving information which he requires,
- (d) those who are, or have within that year been, officers of, or in the employment (including employment under a contract for services) of, another company which is, or within that year was, an officer of the company in question, and
- (e) in the case of a company being wound up by the court, any person who has acted as administrator, administrative receiver or liquidator of the company.

(4) For the purposes of subsections (2) and (3), “the effective date” is whichever is applicable of the following dates—

- [(a) the date on which the company entered administration,]²⁷²

²⁷² Substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.24 (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

- (b) the date on which the administrative receiver was appointed or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed,
 - (c) the date on which the provisional liquidator was appointed, and
 - (d) the date on which the company went into liquidation.
- (5) If a person without reasonable excuse fails to comply with any obligation imposed by this section, he is liable to a fine and, for continued contravention, to a daily default fine.

Commencement

Pt VI s. 235(1)-(5): June 1, 1991

236.— Inquiry into company's dealings, etc.

- (1) This section applies as does section 234; and it also applies in the case of a company in respect of which a winding-up order has been made by the court in England and Wales as if references to the office-holder included the official receiver, whether or not he is the liquidator.
- (2) The court may, on the application of the office-holder, summon to appear before it—
- (a) any officer of the company,
 - (b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or
 - (c) any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company.
- (3) The court may require any such person as is mentioned in subsection (2)(a) to (c) to submit an affidavit to the court containing an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (c) of the subsection.
- (4) The following applies in a case where—
- (a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or
 - (b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.
- (5) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—
- (a) for the arrest of that person, and
 - (b) for the seizure of any books, papers, records, money or goods in that person's possession.
- (6) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

Commencement

Pt VI s. 236(1)-(6): June 1, 1991

Amendments Pending

Pt VI s. 236(3): words substituted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 5(6)(a) (April 6, 2010: substitution has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

Pt VI s. 236(3A): added by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 5(6)(b) (April 6, 2010: insertion has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

237.— Court's enforcement powers under s. 236.

(1) If it appears to the court, on consideration of any evidence obtained under section 236 or this section, that any person has in his possession any property of the company, the court may, on the application of the office-holder, order that person to deliver the whole or any part of the property to the office-holder at such time, in such manner and on such terms as the court thinks fit.

(2) If it appears to the court, on consideration of any evidence so obtained, that any person is indebted to the company, the court may, on the application of the office-holder, order that person to pay to the office-holder, at such time and in such manner as the court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the court thinks fit.

(3) The court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under section 236 or this section shall be examined in any part of the United Kingdom where he may for the time being be, or in a place outside the United Kingdom.

(4) Any person who appears or is brought before the court under section 236 or this section may be examined on oath, either orally or (except in Scotland) by interrogatories, concerning the company or the matters mentioned in section 236(2)(c).

Commencement

Pt VI s. 237(1)-(4): June 1, 1991

*Adjustment of prior transactions (administration and liquidation)***238.— Transactions at an undervalue (England and Wales).**

(1) This section applies in the case of a company where—

[(a) the company enters administration, or]²⁷³

(b) the company goes into liquidation;

and “the office-holder” means the administrator or the liquidator, as the case may be.

²⁷³ Substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.25 (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

- (2) Where the company has at a relevant time (defined in section 240) entered into a transaction with any person at an undervalue, the office-holder may apply to the court for an order under this section.
- (3) Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.
- (4) For the purposes of this section and section 241, a company enters into a transaction with a person at an undervalue if—
- (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or
 - (b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.
- (5) The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied—
- (a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and
 - (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

Commencement

Pt VI s. 238(1)-(5)(b): June 1, 1991

239.— Preferences (England and Wales).

- (1) This section applies as does section 238.
- (2) Where the company has at a relevant time (defined in the next section, given a preference to any person, the office-holder may apply to the court for an order under this section.
- (3) Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not given that preference.
- (4) For the purposes of this section and section 241, a company gives a preference to a person if—
- (a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, and
 - (b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.
- (5) The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b).
- (6) A company which has given a preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (5).

(7) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

Commencement

Pt VI s. 239(1)-(7): June 1, 1991

240.— “Relevant time” under ss. 238, 239.

(1) Subject to the next subsection, the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given—

(a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company (otherwise than by reason only of being its employee), at a time in the period of 2 years ending with the onset of insolvency (which expression is defined below),

(b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of 6 months ending with the onset of insolvency, [...] ²⁷⁴

[(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, and

(d) in either case, at a time between the filing with the court of a copy of notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 and the making of an appointment under that paragraph.] ²⁷⁵

(2) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (1)(a) or (b), that time is not a relevant time for the purpose of section 238 or 239 unless the company—

(a) is at that time unable to pay its debts within the meaning of section 123 in Chapter VI of Part IV, or

(b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction or preference;

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.

(3) For the purposes of subsection (1), the onset of insolvency is—

[(a) in a case where section 238 or 239 applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,

(b) in a case where section 238 or 239 applies by reason of an administrator of a company being appointed under paragraph 14 or 22 of Schedule B1 following filing with the court

²⁷⁴ Word repealed subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.3)

²⁷⁵ S.240(1)(c)-(d) substituted for s.240(1)(c) subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.26(2) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

of a copy of a notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,

(c) in a case where section 238 or 239 applies by reason of an administrator of a company being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect,

(d) in a case where section 238 or 239 applies by reason of a company going into liquidation either following conversion of administration into winding up by virtue of Article 37 of the EC Regulation or at the time when the appointment of an administrator ceases to have effect, the date on which the company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed), and

(e) in a case where section 238 or 239 applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding up.]²⁷⁶

Commencement

Pt VI s. 240(1)-(3)(b): June 1, 1991

241.— Orders under ss. 238, 239.

(1) Without prejudice to the generality of sections 238(3) and 239(3), an order under either of those sections with respect to a transaction or preference entered into or given by a company may (subject to the next subsection)—

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company,

(b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred,

(c) release or discharge (in whole or in part) any security given by the company,

(d) require any person to pay, in respect of benefits received by him from the company, such sums to the office-holder as the court may direct,

(e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be under such new or revived obligations to that person as the court thinks appropriate,

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference, and

(g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

²⁷⁶ S.240(3)(a)-(e) substituted for s.240(3)(a),(aa) and (b) subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.26(4) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

(2) An order under section 238 or 239 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction or (as the case may be) the person to whom the preference was given; but such an order—

- (a) shall not prejudice any interest in property which was acquired from a person other than the company and was acquired [in good faith and for value]²⁷⁷, or prejudice any interest deriving from such an interest, and
- (b) shall not require a person who received a benefit from the transaction or preference [in good faith and for value]²⁷⁷ to pay a sum to the office-holder, except where that person was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the company.

[(2A) Where a person has acquired an interest in property from a person other than the company in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or
- (b) he was connected with, or was an associate of, either the company in question or the person with whom that company entered into the transaction or to whom that company gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of paragraph (a) or (as the case may be) paragraph (b) of subsection (2) that the interest was acquired or the benefit was received otherwise than in good faith.

] ²⁷⁸

[(3) For the purposes of subsection (2A)(a), the relevant surrounding circumstances are (as the case may require)—

- (a) the fact that the company in question entered into the transaction at an undervalue; or
- (b) the circumstances which amounted to the giving of the preference by the company in question;

and subsections (3A) to (3C) have effect to determine whether, for those purposes, a person has notice of the relevant proceedings.

[(3A) Where section 238 or 239 applies by reason of a company's entering administration, a person has notice of the relevant proceedings if he has notice that—

- (a) an administration application has been made,
- (b) an administration order has been made,
- (c) a copy of a notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 has been filed, or
- (d) notice of the appointment of an administrator has been filed under paragraph 18 or 29 of that Schedule.

] ²⁷⁹

²⁷⁷ Words substituted by Insolvency (No. 2) Act 1994 c. 12 s.1(1) (July 26, 1994)

²⁷⁸ Added by Insolvency (No. 2) Act 1994 c. 12 s.1(2) (July 26, 1994)

²⁷⁹ Substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.27(2) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

[(3B) Where section 238 or 239 applies by reason of a company's going into liquidation at the time when the appointment of an administrator of the company ceases to have effect, a person has notice of the relevant proceedings if he has notice that—

- (a) an administration application has been made,
- (b) an administration order has been made,
- (c) a copy of a notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 has been filed,
- (d) notice of the appointment of an administrator has been filed under paragraph 18 or 29 of that Schedule, or
- (e) the company has gone into liquidation.

]²⁸⁰

(3C) In a case where section 238 or 239 applies by reason of the company in question going into liquidation at any other time, a person has notice of the relevant proceedings if he has notice—

- (a) where the company goes into liquidation on the making of a winding-up order, of the fact that the petition on which the winding-up order is made has been presented or of the fact that the company has gone into liquidation;
- (b) in any other case, of the fact that the company has gone into liquidation.

]²⁸¹

(4) The provisions of sections 238 to 241 apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the company had no power to enter into or give.

Commencement

Pt VI s. 241(1)-(4): June 1, 1991

242.— Gratuitous alienations (Scotland).

(1) Where this subsection applies and—

- (a) the winding up of a company has commenced, an alienation by the company is challengeable by—
 - (i) any creditor who is a creditor by virtue of a debt incurred on or before the date of such commencement, or
 - (ii) the liquidator;
- (b) [a company enters administration]²⁸², an alienation by the company is challengeable by the administrator.

(2) Subsection (1) applies where—

²⁸⁰ Substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.27(3) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

²⁸¹ S.241(3), (3A), (3B) and (3C) s.241(3) by Insolvency (No. 2) Act 1994 c. 12 s.1(3) (July 26, 1994)

²⁸² Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.28(2) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

- (a) by the alienation, whether before or after 1st April 1986 (the coming into force of section 75 of the Bankruptcy (Scotland) Act 1985), any part of the company's property is transferred or any claim or right of the company is discharged or renounced, and
 - (b) the alienation takes place on a relevant day.
- (3) For the purposes of subsection (2)(b), the day on which an alienation takes place is the day on which it becomes completely effectual; and in that subsection “relevant day” means, if the alienation has the effect of favouring—
- (a) a person who is an associate (within the meaning of the Bankruptcy (Scotland) Act 1985) of the company, a day not earlier than 5 years before the date on which—
 - (i) the winding up of the company commences, or
 - (ii) as the case may be, [the company enters administration]²⁸³ ; or
 - (b) any other person, a day not earlier than 2 years before that date.
- (4) On a challenge being brought under subsection (1), the court shall grant decree of reduction or for such restoration of property to the company's assets or other redress as may be appropriate; but the court shall not grant such a decree if the person seeking to uphold the alienation establishes—
- (a) that immediately, or at any other time, after the alienation the company's assets were greater than its liabilities, or
 - (b) that the alienation was made for adequate consideration, or
 - (c) that the alienation—
 - (i) was a birthday, Christmas or other conventional gift, or
 - (ii) was a gift made, for a charitable purpose, to a person who is not an associate of the company,
 which, having regard to all the circumstances, it was reasonable for the company to make:
- Provided that this subsection is without prejudice to any right or interest acquired in good faith and for value from or through the transferee in the alienation.
- (5) In subsection (4) above, “charitable purpose” means any charitable, benevolent or philanthropic purpose, whether or not it is charitable within the meaning of any rule of law.
- (6) For the purposes of the foregoing provisions of this section, an alienation in implementation of a prior obligation is deemed to be one for which there was no consideration or no adequate consideration to the extent that the prior obligation was undertaken for no consideration or no adequate consideration.
- (7) A liquidator and an administrator have the same right as a creditor has under any rule of law to challenge an alienation of a company made for no consideration or no adequate consideration.
- (8) This section applies to Scotland only.

Commencement

Pt VI s. 242(1)-(8): June 1, 1991

²⁸³ Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.28(3) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

243.— Unfair preferences (Scotland).

(1) Subject to subsection (2) below, subsection (4) below applies to a transaction entered into by a company, whether before or after 1st April 1986, which has the effect of creating a preference in favour of a creditor to the prejudice of the general body of creditors, being a preference created not earlier than 6 months before the commencement of the winding up of the company or [the company enters administration]²⁸⁴ .

(2) Subsection (4) below does not apply to any of the following transaction—

- (a) a transaction in the ordinary course of trade or business;
- (b) a payment in cash for a debt which when it was paid had become payable, unless the transaction was collusive with the purpose of prejudicing the general body of creditors;
- (c) a transaction whereby the parties to it undertake reciprocal obligations (whether the performance by the parties of their respective obligations occurs at the same time or at different times) unless the transaction was collusive as aforesaid;
- (d) the granting of a mandate by a company authorising an arrestee to pay over the arrested funds or part thereof to the arrester where—
 - (i) there has been a decree for payment or a warrant for summary diligence, and
 - (ii) the decree or warrant has been preceded by an arrestment on the dependence of the action or followed by an arrestment in execution.

(3) For the purposes of subsection (1) above, the day on which a preference was created is the day on which the preference became completely effectual.

(4) A transaction to which this subsection applies is challengeable by—

- (a) in the case of a winding up—
 - (i) any creditor who is a creditor by virtue of a debt incurred on or before the date of commencement of the winding up, or
 - (ii) the liquidator; and
- (b) [where the company has entered administration]²⁸⁵ , the administrator.

(5) On a challenge being brought under subsection (4) above, the court, if satisfied that the transaction challenged is a transaction to which this section applies, shall grant decree of reduction or for such restoration of property to the company's assets or other redress as may be appropriate:

Provided that this subsection is without prejudice to any right or interest acquired in good faith and for value from or through the creditor in whose favour the preference was created.

(6) A liquidator and an administrator have the same right as a creditor has under any rule of law to challenge a preference created by a debtor.

(7) This section applies to Scotland only.

Commencement

Pt VI s. 243(1)-(7): June 1, 1991

²⁸⁴ Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.29(2) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

²⁸⁵ Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.29(3) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

244.— Extortionate credit transactions.

(1) This section applies as does section 238, and where the company is, or has been, a party to a transaction for, or involving, the provision of credit to the company.

(2) The court may, on the application of the office-holder, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending with [the day on which the company entered administration or went into liquidation]²⁸⁶.

(3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

(a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or

(b) it otherwise grossly contravened ordinary principles of fair dealing;

and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.

(4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit, that is to say—

(a) provision setting aside the whole or part of any obligation created by the transaction,

(b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held,

(c) provision requiring any person who is or was a party to the transaction to pay to the office-holder any sums paid to that person, by virtue of the transaction, by the company,

(d) provision requiring any person to surrender to the office-holder any property held by him as security for the purposes of the transaction,

(e) provision directing accounts to be taken between any persons.

(5) The powers conferred by this section are exercisable in relation to any transaction concurrently with any powers exercisable in relation to that transaction as a transaction at an undervalue or under section 242 (gratuitous alienations in Scotland).

Commencement

Pt VI s. 244(1)-(5): June 1, 1991

245.— Avoidance of certain floating charges.

(1) This section applies as does section 238, but applies to Scotland as well as to England and Wales.

(2) Subject as follows, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—

(a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge,

²⁸⁶ Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.30 (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

- (b) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company, and
 - (c) the amount of such interest (if any) as is payable on the amount falling within paragraph (a) or (b) in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.
- (3) Subject to the next subsection, the time at which a floating charge is created by a company is a relevant time for the purposes of this section if the charge is created—
- (a) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of 2 years ending with the onset of insolvency,
 - (b) in the case of a charge which is created in favour of any other person, at a time in the period of 12 months ending with the onset of insolvency, [...] ²⁸⁷
 - [(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, or
 - (d) in either case, at a time between the filing with the court of a copy of notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 and the making of an appointment under that paragraph.] ²⁸⁸
- (4) Where a company creates a floating charge at a time mentioned in subsection (3)(b) and the person in favour of whom the charge is created is not connected with the company, that time is not a relevant time for the purposes of this section unless the company—
- (a) is at that time unable to pay its debts within the meaning of section 123 in Chapter VI of Part IV, or
 - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction under which the charge is created.
- (5) For the purposes of subsection (3), the onset of insolvency is—
- [(a) in a case where this section applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,
 - (b) in a case where this section applies by reason of an administrator of a company being appointed under paragraph 14 or 22 of Schedule B1 following filing with the court of a copy of notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,
 - (c) in a case where this section applies by reason of an administrator of a company being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect, and
 - (d) in a case where this section applies by reason of a company going into liquidation, the date of the commencement of the winding up.] ²⁸⁹

²⁸⁷ Word repealed subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.3)

²⁸⁸ S.245(3)(c)-(d) substituted for s.245(3)(c) subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.31(3) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

²⁸⁹ S.245(5)(a)-(d) substituted for s.245(5)(a)-(b) subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.31(4) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

(6) For the purposes of subsection (2)(a) the value of any goods or services supplied by way of consideration for a floating charge is the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.

Commencement

Pt VI s. 245(1)-(6): June 1, 1991

246.— Unenforceability of liens on books, etc.

(1) This section applies in the case of a company where—

- [(a) the company enters administration, or]²⁹⁰
- (b) the company goes into liquidation, or
- (c) a provisional liquidator is appointed;

and “the office-holder” means the administrator, the liquidator or the provisional liquidator, as the case may be.

(2) Subject as follows, a lien or other right to retain possession of any of the books, papers or other records of the company is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the office-holder.

(3) This does not apply to a lien on documents which give a title to property and are held as such.

Commencement

Pt VI s. 246(1)-(3): June 1, 1991

PART VII

INTERPRETATION FOR FIRST GROUP OF PARTS

247.— “Insolvency” and “go into liquidation”.

(1) In this Group of Parts, except in so far as the context otherwise requires, “insolvency”, in relation to a company, includes the approval of a voluntary arrangement under Part I, [or the appointment of an administrator or administrative receiver]²⁹¹.

(2) For the purposes of any provision in this Group of Parts, a company goes into liquidation if it passes a resolution for voluntary winding up or an order for its winding up is made by the court at a time when it has not already gone into liquidation by passing such a resolution.

²⁹⁰ Substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.32 (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

²⁹¹ Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.33(2) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

[(3) The reference to a resolution for voluntary winding up in subsection (2) includes a reference to a resolution which is deemed to occur by virtue of—

- (a) paragraph 83(6)(b) of Schedule B1, or
- (b) an order made following conversion of administration or a voluntary arrangement into winding up by virtue of Article 37 of the EC Regulation.

]²⁹²

Commencement

Pt VII s. 247(1)-(2): June 1, 1991

248. “Secured creditor”, etc.

In this Group of Parts, except in so far as the context otherwise requires—

- (a) “secured creditor”, in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and “unsecured creditor” is to be read accordingly; and
- (b) “security” means—
 - (i) in relation to England and Wales, any mortgage, charge, lien or other security, and
 - (ii) in relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and any right of retention (other than a right of compensation or set off).

Commencement

Pt VII s. 248(a)-(b)(ii): June 1, 1991

249. “Connected” with a company.

For the purposes of any provision in this Group of Parts, a person is connected with a company if—

- (a) he is a director or shadow director of the company or an associate of such a director or shadow director, or
- (b) he is an associate of the company;

and “associate” has the meaning given by section 435 in Part XVIII of this Act.

Commencement

Pt VII s. 249(a)-(b): June 1, 1991

250. “Member” of a company

For the purposes of any provision in this Group of Parts, a person who is not a member of a company but to whom shares in the company have been transferred, or transmitted by operation of law, is

²⁹² Substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.33(3) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

to be regarded as a member of the company, and references to a member or members are to be read accordingly.

Commencement

Pt VII s. 250: June 1, 1991

251. Expressions used generally.

In this Group of Parts, except in so far as the context otherwise requires—

“administrative receiver” means —

- (a) an administrative receiver as defined by section 29(2) in Chapter I of Part III, or
- (b) a receiver appointed under section 51 in Chapter II of that Part in a case where the whole (or substantially the whole) of the company's property is attached by the floating charge;

[“agent” does not include a person's counsel acting as such;

“books and papers” and “books or papers” includes accounts, deeds, writing and documents;]²⁹³

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain;

“chattel leasing agreement” means an agreement for the bailment or, in Scotland, the hiring of goods which is capable of subsisting for more than 3 months;

“contributory” has the meaning given by section 79;

[“the court”, in relation to a company, means a court having jurisdiction to wind up the company;]²⁹⁴

“director” includes any person occupying the position of director, by whatever name called;

[“document” includes summons, notice, order and other legal process, and registers;]²⁹⁴

“floating charge” means a charge which, as created, was a floating charge and includes a floating charge within section 462 of the Companies Act (Scottish floating charges);

[...] ²⁹⁵

[“the Gazette” means—

- (a) as respects companies registered in England and Wales, the London Gazette;
- (b) as respects companies registered in Scotland, the Edinburgh Gazette;

]²⁹⁴

[“officer”, in relation to a body corporate, includes a director, manager or secretary;]²⁹⁴

“the official rate”, in relation to interest, means the rate payable under section 189(4);

“prescribed” means prescribed by the rules;

²⁹³ Definitions inserted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.77(2) (October 1, 2009: insertion has effect subject to transitional provisions specified in SI 2009/1941 art.8)

²⁹⁴ Definition inserted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.77(2) (October 1, 2009: insertion has effect subject to transitional provisions specified in SI 2009/1941 art.8)

²⁹⁵ Definition repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.77(3) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

“receiver”, in the expression “receiver or manager”, does not include a receiver appointed under section 51 in Chapter II of Part III;

“retention of title agreement” means an agreement for the sale of goods to a company, being an agreement—

(a) which does not constitute a charge on the goods, but

(b) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company as respects the goods or any property representing the goods;

“the rules” means rules under section 411 in Part XV; and

“shadow director”, in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act (but so that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity);

(a)-(b) [...] ²⁹⁶

Commencement

Pt VII s. 251 definition of "administrative receiver"- definition of "shadow director": June 1, 1991

[PART 7A

DEBT RELIEF ORDERS

] ²⁹⁷

[Preliminary] ²⁹⁸

[251A Debt relief orders

(1) An individual who is unable to pay his debts may apply for an order under this Part (“a debt relief order”) to be made in respect of his qualifying debts.

(2) In this Part “qualifying debt” means (subject to subsection (3)) a debt which—

- (a) is for a liquidated sum payable either immediately or at some certain future time; and
- (b) is not an excluded debt.

(3) A debt is not a qualifying debt to the extent that it is secured.

(4) In this Part “excluded debt” means a debt of any description prescribed for the purposes of this subsection.

²⁹⁶ Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.77(4) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

²⁹⁷ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

²⁹⁸ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

] ²⁹⁹*[Applications for a debt relief order]* ³⁰⁰**[251B Making of application]**

- (1) An application for a debt relief order must be made to the official receiver through an approved intermediary.
- (2) The application must include—
 - (a) a list of the debts to which the debtor is subject at the date of the application, specifying the amount of each debt (including any interest, penalty or other sum that has become payable in relation to that debt on or before that date) and the creditor to whom it is owed;
 - (b) details of any security held in respect of any of those debts; and
 - (c) such other information about the debtor's affairs (including his creditors, debts and liabilities and his income and assets) as may be prescribed.
- (3) The rules may make further provision as to—
 - (a) the form of an application for a debt relief order;
 - (b) the manner in which an application is to be made; and
 - (c) information and documents to be supplied in support of an application.
- (4) For the purposes of this Part an application is not to be regarded as having been made until—
 - (a) the application has been submitted to the official receiver; and
 - (b) any fee required in connection with the application by an order under section 415 has been paid to such person as the order may specify.

] ³⁰¹**[251C Duty of official receiver to consider and determine application]**

- (1) This section applies where an application for a debt relief order is made.
- (2) The official receiver may stay consideration of the application until he has received answers to any queries raised with the debtor in relation to anything connected with the application.
- (3) The official receiver must determine the application by—
 - (a) deciding whether to refuse the application;
 - (b) if he does not refuse it, by making a debt relief order in relation to the specified debts he is satisfied were qualifying debts of the debtor at the application date;
 but he may only refuse the application if he is authorised or required to do so by any of the following provisions of this section.
- (4) The official receiver may refuse the application if he considers that—

²⁹⁹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³⁰⁰ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³⁰¹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

- (a) the application does not meet all the requirements imposed by or under section 251B;
 - (b) any queries raised with the debtor have not been answered to the satisfaction of the official receiver within such time as he may specify when they are raised;
 - (c) the debtor has made any false representation or omission in making the application or on supplying any information or documents in support of it.
- (5) The official receiver must refuse the application if he is not satisfied that–
- (a) the debtor is an individual who is unable to pay his debts;
 - (b) at least one of the specified debts was a qualifying debt of the debtor at the application date;
 - (c) each of the conditions set out in Part 1 of Schedule 4ZA is met.
- (6) The official receiver may refuse the application if he is not satisfied that each condition specified in Part 2 of Schedule 4ZA is met.
- (7) If the official receiver refuses an application he must give reasons for his refusal to the debtor in the prescribed manner.
- (8) In this section “specified debt” means a debt specified in the application.
- ³⁰²

[251D Presumptions applicable to the determination of an application]

- (1) The following presumptions are to apply to the determination of an application for a debt relief order.
- (2) The official receiver must presume that the debtor is an individual who is unable to pay his debts at the determination date if–
- (a) that appears to the official receiver to be the case at the application date from the information supplied in the application and he has no reason to believe that the information supplied is incomplete or inaccurate; and
 - (b) he has no reason to believe that, by virtue of a change in the debtor's financial circumstances since the application date, the debtor may be able to pay his debts.
- (3) The official receiver must presume that a specified debt (of the amount specified in the application and owed to the creditor so specified) is a qualifying debt at the application date if–
- (a) that appears to him to be the case from the information supplied in the application; and
 - (b) he has no reason to believe that the information supplied is incomplete or inaccurate.
- (4) The official receiver must presume that the condition specified in paragraph 1 of Schedule 4ZA is met if–
- (a) that appears to him to be the case from the information supplied in the application;
 - (b) any prescribed verification checks relating to the condition have been made; and
 - (c) he has no reason to believe that the information supplied is incomplete or inaccurate.
- (5) The official receiver must presume that any other condition specified in Part 1 or 2 of Schedule 4ZA is met if–

³⁰² Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

- (a) that appears to him to have been the case as at the application date from the information supplied in the application and he has no reason to believe that the information supplied is incomplete or inaccurate;
- (b) any prescribed verification checks relating to the condition have been made; and
- (c) he has no reason to believe that, by virtue of a change in circumstances since the application date, the condition may no longer be met.

(6) References in this section to information supplied in the application include information supplied to the official receiver in support of the application.

(7) In this section “specified debt” means a debt specified in the application.

]³⁰³

[Making and effect of debt relief order]³⁰⁴

[251E Making of debt relief orders

(1) This section applies where the official receiver makes a debt relief order on determining an application under section 251C.

(2) The order must be made in the prescribed form.

(3) The order must include a list of the debts which the official receiver is satisfied were qualifying debts of the debtor at the application date, specifying the amount of the debt at that time and the creditor to whom it was then owed.

(4) The official receiver must—

- (a) give a copy of the order to the debtor; and
- (b) make an entry for the order in the register containing the prescribed information about the order or the debtor.

(5) The rules may make provision as to other steps to be taken by the official receiver or the debtor on the making of the order.

(6) Those steps may include in particular notifying each creditor to whom a qualifying debt specified in the order is owed of—

- (a) the making of the order and its effect,
- (b) the grounds on which a creditor may object under section 251K, and
- (c) any other prescribed information.

(7) In this Part the date on which an entry relating to the making of a debt relief order is first made in the register is referred to as “the effective date”.

]³⁰⁵

³⁰³ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³⁰⁴ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³⁰⁵ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

[251F Effect of debt relief order on other debt management arrangements]

- (1) This section applies if—
- (a) a debt relief order is made, and
 - (b) immediately before the order is made, other debt management arrangements are in force in respect of the debtor.
- (2) The other debt management arrangements cease to be in force when the debt relief order is made.
- (3) In this section “other debt management arrangements” means—
- (a) an administration order under Part 6 of the County Courts Act 1984;
 - (b) an enforcement restriction order under Part 6A of that Act;
 - (c) a debt repayment plan arranged in accordance with a debt management scheme that is approved under Chapter 4 of Part 5 of the Tribunals, Courts and Enforcement Act 2007.

] ³⁰⁶**[251G Moratorium from qualifying debts]**

- (1) A moratorium commences on the effective date for a debt relief order in relation to each qualifying debt specified in the order (“a specified qualifying debt”).
- (2) During the moratorium, the creditor to whom a specified qualifying debt is owed—
- (a) has no remedy in respect of the debt, and
 - (b) may not—
 - (i) commence a creditor's petition in respect of the debt, or
 - (ii) otherwise commence any action or other legal proceedings against the debtor for the debt,
 except with the permission of the court and on such terms as the court may impose.
- (3) If on the effective date a creditor to whom a specified qualifying debt is owed has any such petition, action or other proceeding as mentioned in subsection (2)(b) pending in any court, the court may—
- (a) stay the proceedings on the petition, action or other proceedings (as the case may be), or
 - (b) allow them to continue on such terms as the court thinks fit.
- (4) In subsection (2)(a) and (b) references to the debt include a reference to any interest, penalty or other sum that becomes payable in relation to that debt after the application date.
- (5) Nothing in this section affects the right of a secured creditor of the debtor to enforce his security.

] ³⁰⁷

³⁰⁶ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³⁰⁷ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

[251H The moratorium period]

- (1) The moratorium relating to the qualifying debts specified in a debt relief order continues for the period of one year beginning with the effective date for the order, unless—
- (a) the moratorium terminates early; or
 - (b) the moratorium period is extended by the official receiver under this section or by the court under section 251M.
- (2) The official receiver may only extend the moratorium period for the purpose of—
- (a) carrying out or completing an investigation under section 251K;
 - (b) taking any action he considers necessary (whether as a result of an investigation or otherwise) in relation to the order; or
 - (c) in a case where he has decided to revoke the order, providing the debtor with the opportunity to make arrangements for making payments towards his debts.
- (3) The official receiver may not extend the moratorium period for the purpose mentioned in subsection (2)(a) without the permission of the court.
- (4) The official receiver may not extend the moratorium period beyond the end of the period of three months beginning after the end of the initial period of one year mentioned in subsection (1).
- (5) The moratorium period may be extended more than once, but any extension (whether by the official receiver or by the court) must be made before the moratorium would otherwise end.
- (6) References in this Part to a moratorium terminating early are to its terminating before the end of what would otherwise be the moratorium period, whether on the revocation of the order or by virtue of any other enactment.

]

[251I Discharge from qualifying debts]

- (1) Subject as follows, at the end of the moratorium applicable to a debt relief order the debtor is discharged from all the qualifying debts specified in the order (including all interest, penalties and other sums which may have become payable in relation to those debts since the application date).
- (2) Subsection (1) does not apply if the moratorium terminates early.
- (3) Subsection (1) does not apply in relation to any qualifying debt which the debtor incurred in respect of any fraud or fraudulent breach of trust to which the debtor was a party.
- (4) The discharge of the debtor under subsection (1) does not release any other person from—
- (a) any liability (whether as partner or co-trustee of the debtor or otherwise) from which the debtor is released by the discharge; or
 - (b) any liability as surety for the debtor or as a person in the nature of such a surety.
- (5) If the order is revoked by the court under section 251M after the end of the moratorium period, the qualifying debts specified in the order shall (so far as practicable) be treated as though subsection (1) had never applied to them.

³⁰⁸ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

]³⁰⁹

*[Duties of debtor]*³¹⁰

[251J Providing assistance to official receiver etc

(1) The duties in this section apply to a debtor at any time after the making of an application by him for a debt relief order.

(2) The debtor must—

- (a) give to the official receiver such information as to his affairs,
- (b) attend on the official receiver at such times, and
- (c) do all such other things,

as the official receiver may reasonably require for the purpose of carrying out his functions in relation to the application or, as the case may be, the debt relief order made as a result of the application.

(3) The debtor must notify the official receiver as soon as reasonably practicable if he becomes aware of—

- (a) any error in, or omission from, the information supplied to the official receiver in, or in support of, the application;
- (b) any change in his circumstances between the application date and the determination date that would affect (or would have affected) the determination of the application.

(4) The duties under subsections (2) and (3) apply after (as well as before) the determination of the application, for as long as the official receiver is able to exercise functions of the kind mentioned in subsection (2).

(5) If a debt relief order is made as a result of the application, the debtor must notify the official receiver as soon as reasonably practicable if—

- (a) there is an increase in his income during the moratorium period applicable to the order;
- (b) he acquires any property or any property is devolved upon him during that period;
- (c) he becomes aware of any error in or omission from any information supplied by him to the official receiver after the determination date.

(6) A notification under subsection (3) or (5) must give the prescribed particulars (if any) of the matter being notified.

]³¹¹

³⁰⁹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³¹⁰ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³¹¹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

*[Objections, investigations and revocation]*³¹²

[251K Objections and investigations]

(1) Any person specified in a debt relief order as a creditor to whom a specified qualifying debt is owed may object to—

- (a) the making of the order;
- (b) the inclusion of the debt in the list of the debtor's qualifying debts; or
- (c) the details of the debt specified in the order.

(2) An objection under subsection (1) must be—

- (a) made during the moratorium period relating to the order and within the prescribed period for objections;
- (b) made to the official receiver in the prescribed manner;
- (c) based on a prescribed ground;
- (d) supported by any information and documents as may be prescribed;

and the prescribed period mentioned in paragraph (a) must not be less than 28 days after the creditor in question has been notified of the making of the order.

(3) The official receiver must consider every objection made to him under this section.

(4) The official receiver may—

- (a) as part of his consideration of an objection, or
- (b) on his own initiative,

carry out an investigation of any matter that appears to the official receiver to be relevant to the making of any decision mentioned in subsection (5) in relation to a debt relief order or the debtor.

(5) The decisions to which an investigation may be directed are—

- (a) whether the order should be revoked or amended under section 251L;
- (b) whether an application should be made to the court under section 251M; or
- (c) whether any other steps should be taken in relation to the debtor.

(6) The power to carry out an investigation under this section is exercisable after (as well as during) the moratorium relating to the order.

(7) The official receiver may require any person to give him such information and assistance as he may reasonably require in connection with an investigation under this section.

(8) Subject to anything prescribed in the rules as to the procedure to be followed in carrying out an investigation under this section, an investigation may be carried out by the official receiver in such manner as he thinks fit.

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³¹³

³¹² Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³¹³ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

[251L Power of official receiver to revoke or amend a debt relief order]

(1) The official receiver may revoke or amend a debt relief order during the applicable moratorium period in the circumstances provided for by this section.

(2) The official receiver may revoke the order on the ground that—

- (a) any information supplied to him by the debtor—
 - (i) in, or in support of, the application, or
 - (ii) after the determination date,
 was incomplete, incorrect or otherwise misleading;
- (b) the debtor has failed to comply with a duty under section 251J;
- (c) a bankruptcy order has been made in relation to the debtor; or
- (d) the debtor has made a proposal under Part 8 (or has notified the official receiver of his intention to do so).

(3) The official receiver may revoke the order on the ground that he should not have been satisfied—

- (a) that the debts specified in the order were qualifying debts of the debtor as at the application date;
- (b) that the conditions specified in Part 1 of Schedule 4ZA were met;
- (c) that the conditions specified in Part 2 of that Schedule were met or that any failure to meet such a condition did not prevent his making the order.

(4) The official receiver may revoke the order on the ground that either or both of the conditions in paragraphs 7 and 8 of Schedule 4ZA (monthly surplus income and property) are not met at any time after the order was made.

For this purpose those paragraphs are to be read as if references to the determination date were references to the time in question.

(5) Where the official receiver decides to revoke the order, he may revoke it either—

- (a) with immediate effect, or
- (b) with effect from such date (not more than three months after the date of the decision) as he may specify.

(6) In considering when the revocation should take effect the official receiver must consider (in the light of the grounds on which the decision to revoke was made and all the other circumstances of the case) whether the debtor ought to be given the opportunity to make arrangements for making payments towards his debts.

(7) If the order has been revoked with effect from a specified date the official receiver may, if he thinks it appropriate to do so at any time before that date, revoke the order with immediate effect.

(8) The official receiver may amend a debt relief order for the purpose of correcting an error in or omission from anything specified in the order.

(9) But subsection (8) does not permit the official receiver to add any debts that were not specified in the application for the debt relief order to the list of qualifying debts.

(10) The rules may make further provision as to the procedure to be followed by the official receiver in the exercise of his powers under this section.

]³¹⁴

³¹⁴ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

*[Role of the court]*³¹⁵

[251M Powers of court in relation to debt relief orders]

- (1) Any person may make an application to the court if he is dissatisfied by any act, omission or decision of the official receiver in connection with a debt relief order or an application for such an order.
- (2) The official receiver may make an application to the court for directions or an order in relation to any matter arising in connection with a debt relief order or an application for such an order.
- (3) The matters referred to in subsection (2) include, among other things, matters relating to the debtor's compliance with any duty arising under section 251J.
- (4) An application under this section may, subject to anything in the rules, be made at any time.
- (5) The court may extend the moratorium period applicable to a debt relief order for the purposes of determining an application under this section.
- (6) On an application under this section the court may dismiss the application or do one or more of the following—
 - (a) quash the whole or part of any act or decision of the official receiver;
 - (b) give the official receiver directions (including a direction that he reconsider any matter in relation to which his act or decision has been quashed under paragraph (a));
 - (c) make an order for the enforcement of any obligation on the debtor arising by virtue of a duty under section 251J;
 - (d) extend the moratorium period applicable to the debt relief order;
 - (e) make an order revoking or amending the debt relief order;
 - (f) make an order under section 251N; or
 - (g) make such other order as the court thinks fit.
- (7) An order under subsection (6)(e) for the revocation of a debt relief order—
 - (a) may be made during the moratorium period applicable to the debt relief order or at any time after that period has ended;
 - (b) may be made on the court's own motion if the court has made a bankruptcy order in relation to the debtor during that period;
 - (c) may provide for the revocation of the order to take effect on such terms and at such a time as the court may specify.
- (8) An order under subsection (6)(e) for the amendment of a debt relief order may not add any debts that were not specified in the application for the debt relief order to the list of qualifying debts.

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³¹⁶

³¹⁵ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³¹⁶ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

[251N Inquiry into debtor's dealings and property]

- (1) An order under this section may be made by the court on the application of the official receiver.
- (2) An order under this section is an order summoning any of the following persons to appear before the court—
 - (a) the debtor;
 - (b) the debtor's spouse or former spouse or the debtor's civil partner or former civil partner;
 - (c) any person appearing to the court to be able to give information or assistance concerning the debtor or his dealings, affairs and property.
- (3) The court may require a person falling within subsection (2)(c)—
 - (a) to provide a written account of his dealings with the debtor; or
 - (b) to produce any documents in his possession or under his control relating to the debtor or to the debtor's dealings, affairs or property.
- (4) Subsection (5) applies where a person fails without reasonable excuse to appear before the court when he is summoned to do so by an order under this section.
- (5) The court may cause a warrant to be issued to a constable or prescribed officer of the court—
 - (a) for the arrest of that person, and
 - (b) for the seizure of any records or other documents in that person's possession.
- (6) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

]

*[Offences]*³¹⁸

[251O False representations and omissions]

- (1) A person who makes an application for a debt relief order is guilty of an offence if he knowingly or recklessly makes any false representation or omission in making the application or providing any information or documents to the official receiver in support of the application.
- (2) A person who makes an application for a debt relief order is guilty of an offence if—
 - (a) he intentionally fails to comply with a duty under section 251J(3) in connection with the application; or
 - (b) he knowingly or recklessly makes any false representation or omission in providing any information to the official receiver in connection with such a duty or otherwise in connection with the application.
- (3) It is immaterial for the purposes of an offence under subsection (1) or (2) whether or not a debt relief order is made as a result of the application.
- (4) A person in respect of whom a debt relief order is made is guilty of an offence if—

³¹⁷ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³¹⁸ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

- (a) he intentionally fails to comply with a duty under section 251J(5) in connection with the order; or
 - (b) he knowingly or recklessly makes any false representation or omission in providing information to the official receiver in connection with such a duty or otherwise in connection with the performance by the official receiver of functions in relation to the order.
- (5) It is immaterial for the purposes of an offence under subsection (4)–
- (a) whether the offence is committed during or after the moratorium period; and
 - (b) whether or not the order is revoked after the conduct constituting the offence takes place.

]³¹⁹

[251P Concealment or falsification of documents

- (1) A person in respect of whom a debt relief order is made is guilty of an offence if, during the moratorium period in relation to that order–
- (a) he does not provide, at the request of the official receiver, all his books, papers and other records of which he has possession or control and which relate to his affairs;
 - (b) he prevents the production to the official receiver of any books, papers or other records relating to his affairs;
 - (c) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating his affairs;
 - (d) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his affairs; or
 - (e) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his affairs.
- (2) A person in respect of whom a debt relief order is made is guilty of an offence if–
- (a) he did anything falling within paragraphs (c) to (e) of subsection (1) during the period of 12 months ending with the application date; or
 - (b) he did anything falling within paragraphs (b) to (e) of subsection (1) after that date but before the effective date.
- (3) A person is not guilty of an offence under this section if he proves that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.
- (4) In its application to a trading record subsection (2)(a) has effect as if the reference to 12 months were a reference to two years.
- (5) In subsection (4) “trading record” means a book, document or record which shows or explains the transactions or financial position of a person's business, including–
- (a) a periodic record of cash paid and received,
 - (b) a statement of periodic stock-taking, and
 - (c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.

³¹⁹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

(6) It is immaterial for the purposes of an offence under this section whether or not the debt relief order in question is revoked after the conduct constituting the offence takes place (but no offence is committed under this section by virtue of conduct occurring after the order is revoked).

]³²⁰

[251Q Fraudulent disposal of property

(1) A person in respect of whom a debt relief order is made is guilty of an offence if he made or caused to be made any gift or transfer of his property during the period between—

- (a) the start of the period of two years ending with the application date; and
- (b) the end of the moratorium period.

(2) The reference in subsection (1) to making a transfer of any property includes causing or conniving at the levying of any execution against that property.

(3) A person is not guilty of an offence under this section if he proves that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(4) For the purposes of subsection (3) a person is to be taken to have proved that he had no such intent if—

- (a) sufficient evidence is adduced to raise an issue as to whether he had such intent; and
- (b) the contrary is not proved beyond reasonable doubt.

(5) It is immaterial for the purposes of this section whether or not the debt relief order in question is revoked after the conduct constituting an offence takes place (but no offence is committed by virtue of conduct occurring after the order is revoked).

]³²¹

[251R Fraudulent dealing with property obtained on credit

(1) A person in respect of whom a debt relief order is made is guilty of an offence if during the relevant period he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for it.

(2) Any other person is guilty of an offence if during the relevant period he acquired or received property from a person in respect of whom a debt relief order was made (the “debtor”) knowing or believing—

- (a) that the debtor owed money in respect of the property, and
- (b) that the debtor did not intend, or was unlikely to be able, to pay the money he so owed.

(3) In subsections (1) and (2) “relevant period” means the period between—

- (a) the start of the period of two years ending with the application date; and
- (b) the determination date.

³²⁰ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³²¹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

(4) A person is not guilty of an offence under subsection (1) or (2) if the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the debtor at the time of the disposal, acquisition or receipt.

(5) In determining for the purposes of subsection (4) whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the debtor, regard may be had, in particular, to the price paid for the property.

(6) A person is not guilty of an offence under subsection (1) if he proves that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(7) In this section references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

(8) It is immaterial for the purposes of this section whether or not the debt relief order in question is revoked after the conduct constituting an offence takes place (but no offence is committed by virtue of conduct occurring after the order is revoked).

]³²²

[251S Obtaining credit or engaging in business

(1) A person in respect of whom a debt relief order is made is guilty of an offence if, during the relevant period—

- (a) he obtains credit (either alone or jointly with any other person) without giving the person from whom he obtains the credit the relevant information about his status; or
- (b) he engages directly or indirectly in any business under a name other than that in which the order was made without disclosing to all persons with whom he enters into any business transaction the name in which the order was made.

(2) For the purposes of subsection (1)(a) the relevant information about a person's status is the information that—

- (a) a moratorium is in force in relation to the debt relief order,
- (b) a debt relief restrictions order is in force in respect of him, or
- (c) both a moratorium and a debt relief restrictions order is in force,

as the case may be.

(3) In subsection (1) “relevant period” means—

- (a) the moratorium period relating to the debt relief order, or
- (b) the period for which a debt relief restrictions order is in force in respect of the person in respect of whom the debt relief order is made,

as the case may be.

(4) Subsection (1)(a) does not apply if the amount of the credit is less than the prescribed amount (if any).

(5) The reference in subsection (1)(a) to a person obtaining credit includes the following cases—

- (a) where goods are bailed to him under a hire-purchase agreement, or agreed to be sold to him under a conditional sale agreement;
- (b) where he is paid in advance (in money or otherwise) for the supply of goods or services.

³²² Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

]

³²³

[251T Offences: supplementary

- (1) Proceedings for an offence under this Part may only be instituted by the Secretary of State or by or with the consent of the Director of Public Prosecutions.
- (2) It is not a defence in proceedings for an offence under this Part that anything relied on, in whole or in part, as constituting the offence was done outside England and Wales.
- (3) A person guilty of an offence under this Part is liable to imprisonment or a fine, or both (but see section 430).

]

³²⁴

*[Supplementary]*³²⁵

[251U Approved intermediaries

- (1) In this Part “approved intermediary” means an individual for the time being approved by a competent authority to act as an intermediary between a person wishing to make an application for a debt relief order and the official receiver.
- (2) In this section “competent authority” means a person or body for the time being designated by the Secretary of State for the purposes of granting approvals under this section.
- (3) Designation as a competent authority may be limited so as to permit the authority only to approve persons of a particular description.
- (4) The Secretary of State may by regulations make provision as to—
 - (a) the procedure for designating persons or bodies as competent authorities;
 - (b) descriptions of individuals who are ineligible to be approved under this section;
 - (c) the procedure for granting approvals under this section;
 - (d) the withdrawal of designations or approvals under this section;
 and provision made under paragraph (a) or (c) may include provision requiring the payment of fees.
- (5) The rules may make provision about the activities to be carried out by an approved intermediary in connection with an application for a debt relief order, which may in particular include—
 - (a) assisting the debtor in making the application;
 - (b) checking that the application has been properly completed;
 - (c) sending the application to the official receiver.
- (6) The rules may also make provision about other activities to be carried out by approved intermediaries.

³²³ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³²⁴ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³²⁵ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

(7) An approved intermediary may not charge a debtor any fee in connection with an application for a debt relief order.

(8) An approved intermediary is not liable to any person in damages for anything done or omitted to be done when acting (or purporting to act) as an approved intermediary in connection with a particular application by a debtor for a debt relief order.

(9) Subsection (8) does not apply if the act or omission was in bad faith.

(10) Regulations under subsection (4) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

]

[251V Debt relief restrictions orders and undertakings

Schedule 4ZB (which makes provision about debt relief restrictions orders and debt relief restrictions undertakings) has effect.]

[251W Register of debt relief orders etc

The Secretary of State must maintain a register of matters relating to—

- (a) debt relief orders;
- (b) debt relief restrictions orders; and
- (c) debt relief restrictions undertakings.

]

[251X Interpretation

(1) In this Part—

“the application date”, in relation to a debt relief order or an application for a debt relief order, means the date on which the application for the order is made to the official receiver;

“approved intermediary” has the meaning given in section 251U(1);

“debt relief order” means an order made by the official receiver under this Part;

“debtor” means—

- (a) in relation to an application for a debt relief order, the applicant; and
- (b) in relation to a debt relief order, the person in relation to whom the order is made;

“debt relief restrictions order” and “debt relief restrictions undertaking” means an order made, or an undertaking accepted, under Schedule 4ZB;

“the determination date”, in relation to a debt relief order or an application for a debt relief order, means the date on which the application for the order is determined by the official receiver;

“the effective date” has the meaning given in section 251E(7);

³²⁶ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³²⁷ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³²⁸ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

“excluded debt” is to be construed in accordance with section 251A;
 “moratorium” and “moratorium period” are to be construed in accordance with sections 251G and 251H;
 “qualifying debt”, in relation to a debtor, has the meaning given in section 251A(2);
 “the register” means the register maintained under section 251W;
 “specified qualifying debt” has the meaning given in section 251G(1).

(2) In this Part references to a creditor specified in a debt relief order as the person to whom a qualifying debt is owed by the debtor include a reference to any person to whom the right to claim the whole or any part of the debt has passed, by assignment or operation of law, after the date of the application for the order.

]³²⁹

PART VIII

INDIVIDUAL VOLUNTARY ARRANGEMENTS

Moratorium for insolvent debtor

252.— Interim order of court.

(1) In the circumstances specified below, the court may in the case of a debtor (being an individual) make an interim order under this section.

(2) An interim order has the effect that, during the period for which it is in force—

(a) no bankruptcy petition relating to the debtor may be presented or proceeded with, [...]³³⁰

[(aa) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the court, and]³³⁰

(b) no other proceedings, and no execution or other legal process, may be commenced or continued [and no distress may be levied]³³¹ against the debtor or his property except with the leave of the court.

³²⁹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.17 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³³⁰ Added by Insolvency Act 2000 c. 39 Sch.3 para.2(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³³¹ Words inserted by Insolvency Act 2000 c. 39 Sch.3 para.2(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

253.— Application for interim order.

- (1) Application to the court for an interim order may be made where the debtor intends to make a proposal [under this Part, that is, a proposal]³³² to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs (from here on referred to, in either case, as a “voluntary arrangement”).
- (2) The proposal must provide for some person (“the nominee”) to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation[and the nominee must be a person who is qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement]³³³ .
- (3) Subject as follows, the application may be made—
- (a) if the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate, or the official receiver, and
 - (b) in any other case, by the debtor.
- (4) An application shall not be made under subsection (3)(a) unless the debtor has given notice of [the proposal]³³⁴ to the official receiver and, if there is one, the trustee of his estate.
- (5) An application shall not be made while a bankruptcy petition presented by the debtor is pending, if the court has, under section 273 below, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

254.— Effect of application.

- (1) [At any time when an application under section 253 for an interim order is pending,
- (a) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the court, and
 - (b) the court may forbid the levying of any distress on the debtor's property or its subsequent sale, or both, and stay any action, execution or other legal process against the property or person of the debtor.]³³⁵
- (2) Any court in which proceedings are pending against an individual may, on proof that an application under that section has been made in respect of that individual, either stay the proceedings or allow them to continue on such terms as it thinks fit.

³³² Words inserted by Insolvency Act 2000 c. 39 Sch.3 para.3(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³³³ Words inserted by Insolvency Act 2000 c. 39 Sch.3 para.3(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³³⁴ Words substituted by Insolvency Act 2000 c. 39 Sch.3 para.3(c) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³³⁵ S.254(1)(a) and words inserted, and part of existing text renumbered as s.254(1)(b) by Insolvency Act 2000 c. 39 Sch.3 para.4 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

255.— Cases in which interim order can be made.

(1) The court shall not make an interim order on an application under section 253 unless it is satisfied—

- (a) that the debtor intends to make [a proposal under this Part]³³⁶ ;
- (b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy;
- (c) that no previous application has been made by the debtor for an interim order in the period of 12 months ending with that day; and
- (d) that the nominee under the debtor's proposal [...] ³³⁷ is willing to act in relation to the proposal.

(2) The court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.

(3) Where the debtor is an undischarged bankrupt, the interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.

(4) Subject as follows, the provision contained in an interim order by virtue of subsection (3) may include provision staying proceedings in the bankruptcy or modifying any provision in this Group of Parts, and any provision of the rules in their application to the debtor's bankruptcy.

(5) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of provisions in this Group of Parts, or of the rules, unless the court is satisfied that that provision is unlikely to result in any significant diminution in, or in the value of, the debtor's estate for the purposes of the bankruptcy.

(6) Subject to the following provisions of this Part, an interim order made on an application under section 253 ceases to have effect at the end of the period of 14 days beginning with the day after the making of the order.

256.— Nominee's report on debtor's proposal.

(1) Where an interim order has been made on an application under section 253, the nominee shall, before the order ceases to have effect, submit a report to the court stating—

- [(a) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,
- (aa) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and]³³⁸
- (b) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(2) For the purpose of enabling the nominee to prepare his report the debtor shall submit to the nominee—

³³⁶ Words substituted by Insolvency Act 2000 c. 39 Sch.3 para.5(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³³⁷ Words repealed by Insolvency Act 2000 c. 39 Sch.5 para.1 (January 1, 2003 as SI 2002/2711)

³³⁸ Words inserted and existing text renumbered as s.256(1)(aa) by Insolvency Act 2000 c. 39 Sch.3 para.6(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

- (a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and
- (b) a statement of his affairs containing—
 - (i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and
 - (ii) such other information as may be prescribed.

[(3) The court may—

- (a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died, or
- (b) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3A) The court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this section, direct that the interim order shall continue, or (if it has ceased to have effect) be renewed, for such further period as the court may specify in the direction.]³³⁹

(4) The court may, on the application of the nominee, extend the period for which the interim order has effect so as to enable the nominee to have more time to prepare his report.

(5) If the court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the court shall direct that the period for which the interim order has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Part.

- (6) The court may discharge the interim order if it is satisfied, on the application of the nominee—
 - (a) that the debtor has failed to comply with his obligations under subsection (2), or
 - (b) that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

257.—

[s.257 is not repealed but has been moved into a new Section Group as part of the amendment inserting s.256A.]³⁴⁰

³³⁹ S.256(3) and (3A) substituted for s.256(3) by Insolvency Act 2000 c. 39 Sch.3 para.6(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³⁴⁰ Existing s.257 is moved into a new section group and s.256A is inserted by Insolvency Act 2000 c. 39 Sch.3 para.7 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

*[Procedure where no interim order made]*³⁴¹

[256A.— Debtor's proposal and nominee's report.

- (1) This section applies where a debtor (being an individual)—
- (a) intends to make a proposal under this Part (but an interim order has not been made in relation to the proposal and no application for such an order is pending), and
 - (b) if he is an undischarged bankrupt, has given notice of the proposal to the official receiver and, if there is one, the trustee of his estate,
- unless a bankruptcy petition presented by the debtor is pending and the court has, under section 273, appointed an insolvency practitioner to inquire into the debtor's affairs and report.
- (2) For the purpose of enabling the nominee to prepare a report to the court, the debtor shall submit to the nominee—
- (a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and
 - (b) a statement of his affairs containing—
 - (i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and
 - (ii) such other information as may be prescribed.
- (3) If the nominee is of the opinion that the debtor is an undischarged bankrupt, or is able to petition for his own bankruptcy, the nominee shall, within 14 days (or such longer period as the court may allow) after receiving the document and statement mentioned in subsection (2), submit a report to the court stating—
- (a) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,
 - (b) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and
 - (c) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.
- (4) The court may—
- (a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died, or
 - (b) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,
- direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.
- (5) The court may, on an application made by the nominee, extend the period within which the nominee is to submit his report.

]

³⁴²

³⁴¹ Existing s.257 is moved into a new section group and s.256A is inserted by Insolvency Act 2000 c. 39 Sch.3 para.7 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³⁴² Existing s.257 is moved into a new section group and s.256A is inserted by Insolvency Act 2000 c. 39 Sch.3 para.7 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

Amendments Pending

Pt VIII s. 256A(2): words substituted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 8(1)(a) (April 6, 2010: substitution has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

Pt VIII s. 256A(3): words substituted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 8(1)(b) (April 6, 2010: substitution has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

*[Creditors' meeting]*³⁴³

[257.— Summoning of creditors' meeting.

(1) Where it has been reported to the court under [section 256 or 256A]³⁴⁴ that a meeting of the debtor's creditors should be summoned, the nominee (or his replacement under [section 256(3) or 256A(4)]³⁴⁵) shall, unless the court otherwise directs, summon that meeting for the time, date and place proposed in his report.

(2) The persons to be summoned to the meeting are every creditor of the debtor of whose claim and address the person summoning the meeting is aware.

(3) For this purpose the creditors of a debtor who is an undischarged bankrupt include—

(a) every person who is a creditor of the bankrupt in respect of a bankruptcy debt, and

(b) every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the meeting is given.

]

³⁴⁶
Amendments Pending

Pt VIII s. 257(1): substituted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 8(2) (April 6, 2010: substitution has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

Consideration and implementation of debtor's proposal

258.— Decisions of creditors' meeting.

(1) A creditors' meeting summoned under section 257 shall decide whether to approve the proposed voluntary arrangement.

³⁴³ Existing s.257 is moved into a new section group and s.256A is inserted by Insolvency Act 2000 c. 39 Sch.3 para.7 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³⁴⁴ Words inserted by Insolvency Act 2000 c. 39 Sch.3 para.8(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³⁴⁵ Words substituted by Insolvency Act 2000 c. 39 Sch.3 para.8(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³⁴⁶ Existing s.257 is moved into a new section group and s.256A is inserted by Insolvency Act 2000 c. 39 Sch.3 para.7 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

(2) The meeting may approve the proposed voluntary arrangement with modifications, but shall not do so unless the debtor consents to each modification.

(3) The modifications subject to which the proposed voluntary arrangement may be approved may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner [or authorised to act as nominee, in relation to the voluntary arrangement]³⁴⁷.

But they shall not include any modification by virtue of which the proposal ceases to be a proposal [under this Part]³⁴⁷.

(4) The meeting shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security, except with the concurrence of the creditor concerned.

(5) Subject as follows, the meeting shall not approve any proposal or modification under which—
 (a) any preferential debt of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts, or
 (b) a preferential creditor of the debtor is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

However, the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(6) Subject as above, the meeting shall be conducted in accordance with the rules.

(7) In this section “preferential debt” has the meaning given by section 386 in Part XII; and “preferential creditor” is to be construed accordingly.

259.— Report of decisions to court.

(1) After the conclusion in accordance with the rules of the meeting summoned under section 257, the chairman of the meeting shall report the result of it to the court and, immediately after so reporting, shall give notice of the result of the meeting to such persons as may be prescribed.

(2) If the report is that the meeting has declined (with or without modifications) to approve the debtor's proposal, the court may discharge any interim order which is in force in relation to the debtor.

Amendments Pending

Pt VIII s. 259(1): substituted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 8(3)(a) (April 6, 2010: substitution has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

³⁴⁷ Words substituted by Insolvency Act 2000 c. 39 Sch.3 para.9 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

Pt VIII s. 259(2): words substituted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 8(3)(b) (April 6, 2010: substitution has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

260.— Effect of approval.

(1) This section has effect where the meeting summoned under section 257 approves the proposed voluntary arrangement (with or without modifications).

(2) The approved arrangement—

(a) takes effect as if made by the debtor at the meeting, and

[(b) binds every person who in accordance with the rules—

(i) was entitled to vote at the meeting (whether or not he was present or represented at it), or

(ii) would have been so entitled if he had had notice of it,

as if he were a party to the arrangement.

] ³⁴⁸

[(2A) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of subsection (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the debtor shall at that time become liable to pay to that person the amount payable under the arrangement.

] ³⁴⁸

(3) The Deeds of Arrangement Act 1914 does not apply to the approved voluntary arrangement.

(4) Any interim order in force in relation to the debtor immediately before the end of the period of 28 days beginning with the day on which the report with respect to the creditors' meeting was made to the court under section 259 ceases to have effect at the end of that period.

This subsection applies except to such extent as the court may direct for the purposes of any application under section 262 below.

(5) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under subsection (4), that petition is deemed, unless the court otherwise orders, to have been dismissed.

[261 Additional effect on undischarged bankrupt

(1) This section applies where—

(a) the creditors' meeting summoned under section 257 approves the proposed voluntary arrangement (with or without modifications), and

(b) the debtor is an undischarged bankrupt.

(2) Where this section applies the court shall annul the bankruptcy order on an application made—

(a) by the bankrupt, or

³⁴⁸ S.260(2)(b) and (2A) substituted for s.260(2)(b) by Insolvency Act 2000 c. 39 Sch.3 para.10 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

- (b) where the bankrupt has not made an application within the prescribed period, by the official receiver.
- (3) An application under subsection (2) may not be made—
 - (a) during the period specified in section 262(3)(a) during which the decision of the creditors' meeting can be challenged by application under section 262,
 - (b) while an application under that section is pending, or
 - (c) while an appeal in respect of an application under that section is pending or may be brought.
- (4) Where this section applies the court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

]³⁴⁹

262.— Challenge of meeting's decision.

- (1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—
 - (a) that a voluntary arrangement approved by a creditors' meeting summoned under section 257 unfairly prejudices the interests of a creditor of the debtor;
 - (b) that there has been some material irregularity at or in relation to such a meeting.
- (2) The persons who may apply under this section are—
 - (a) the debtor;
 - [(b) a person who—
 - (i) was entitled, in accordance with the rules, to vote at the creditors' meeting, or
 - (ii) would have been so entitled if he had had notice of it;
-]³⁵⁰
- (c) the nominee (or his replacement under [section 256(3), 256A(4) or 258(3)]³⁵¹); and
- (d) if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.
- (3) [An application under this section shall not be made—
 - (a) after the end of the period of 28 days beginning with the day on which the report of the creditors' meeting was made to the court under section 259; or
 - (b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,
 but (subject to that) an application made by a person within subsection (2)(b)(ii) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it has come to an end prematurely.]³⁵²

³⁴⁹ Substituted by Enterprise Act 2002 c. 40 Sch.22 para.1 (April 1, 2004)

³⁵⁰ Substituted by Insolvency Act 2000 c. 39 Sch.3 para.11(1)(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³⁵¹ Words substituted by Insolvency Act 2000 c. 39 Sch.3 para.11(1)(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³⁵² Existing text renumbered as s.262(3)(a), (b) and words inserted by Insolvency Act 2000 c. 39 Sch.3 para.11(2) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

(4) Where on an application under this section the court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following, namely—

- (a) revoke or suspend any approval given by the meeting;
- (b) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal he may make or, in a case falling within subsection (1)(b), to reconsider his original proposal.

(5) Where at any time after giving a direction under subsection (4)(b) for the summoning of a meeting to consider a revised proposal the court is satisfied that the debtor does not intend to submit such a proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meeting.

(6) Where the court gives a direction under subsection (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.

(7) In any case where the court, on an application made under this section with respect to a creditors' meeting, gives a direction under subsection (4)(b) or revokes or suspends an approval under subsection (4)(a) or (5), the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

- (a) things done since the meeting under any voluntary arrangement approved by the meeting, and
- (b) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.

(8) Except in pursuance of the preceding provisions of this section, an approval given at a creditors' meeting summoned under section 257 is not invalidated by any irregularity at or in relation to the meeting.

[262A.— False representations etc.]

(1) If for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement, the debtor—

- (a) makes any false representation, or
- (b) fraudulently does, or omits to do, anything,

he commits an offence.

(2) Subsection (1) applies even if the proposal is not approved.

(3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

³⁵³

[262B.— Prosecution of delinquent debtors.]

(1) This section applies where a voluntary arrangement approved by a creditors' meeting summoned under section 257 has taken effect.

³⁵³ Added by Insolvency Act 2000 c. 39 Sch.3 para.12 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

(2) If it appears to the nominee or supervisor that the debtor has been guilty of any offence in connection with the arrangement for which he is criminally liable, he shall forthwith—

- (a) report the matter to the Secretary of State, and
- (b) provide the Secretary of State with such information and give the Secretary of State such access to and facilities for inspecting and taking copies of documents (being information or documents in his possession or under his control and relating to the matter in question) as the Secretary of State requires.

(3) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the nominee or, as the case may be, supervisor shall give the authority all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose, “prosecuting authority” means the Director of Public Prosecutions or the Secretary of State.

(4) The court may, on the application of the prosecuting authority, direct a nominee or supervisor to comply with subsection (3) if he has failed to do so.

]³⁵⁴

[262C. Arrangements coming to an end prematurely

For the purposes of this Part, a voluntary arrangement approved by a creditors' meeting summoned under section 257 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of section 260(2)(b)(i).]³⁵⁵

263.— Implementation and supervision of approved voluntary arrangement.

(1) This section applies where a voluntary arrangement approved by a creditors' meeting summoned under section 257 has taken effect.

(2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred by virtue of the approval on the nominee (or his replacement under [section 256(3), 256A(4) or 258(3)]³⁵⁶) shall be known as the supervisor of the voluntary arrangement.

(3) If the debtor, any of his creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on such an application the court may—

- (a) confirm, reverse or modify any act or decision of the supervisor,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(4) The supervisor may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement.

(5) The court may, whenever—

³⁵⁴ Added by Insolvency Act 2000 c. 39 Sch.3 para.12 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³⁵⁵ Added by Insolvency Act 2000 c. 39 Sch.3 para.12 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³⁵⁶ Words substituted by Insolvency Act 2000 c. 39 Sch.3 para.13(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

- (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
- (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,

make an order appointing a person who is qualified to act as an insolvency practitioner [or authorised to act as supervisor, in relation to the voluntary arrangement]³⁵⁷, either in substitution for the existing supervisor or to fill a vacancy.

This is without prejudice to section 41(2) of the Trustee Act 1925 (power of court to appoint trustees of deeds of arrangement).

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

*[Fast-track voluntary arrangement]*³⁵⁸

[263A Availability]

Section 263B applies where an individual debtor intends to make a proposal to his creditors for a voluntary arrangement and—

- (a) the debtor is an undischarged bankrupt,
- (b) the official receiver is specified in the proposal as the nominee in relation to the voluntary arrangement, and
- (c) no interim order is applied for under section 253.

³⁵⁹

[263B Decision]

(1) The debtor may submit to the official receiver—

- (a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and
- (b) a statement of his affairs containing such particulars as may be prescribed of his creditors, debts, other liabilities and assets and such other information as may be prescribed.

(2) If the official receiver thinks that the voluntary arrangement proposed has a reasonable prospect of being approved and implemented, he may make arrangements for inviting creditors to decide whether to approve it.

(3) For the purposes of subsection (2) a person is a “creditor” only if—

- (a) he is a creditor of the debtor in respect of a bankruptcy debt, and
- (b) the official receiver is aware of his claim and his address.

(4) Arrangements made under subsection (2)—

- (a) must include the provision to each creditor of a copy of the proposed voluntary arrangement,

³⁵⁷ Words substituted by Insolvency Act 2000 c. 39 Sch.3 para.13(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

³⁵⁸ Added by Enterprise Act 2002 c. 40 Sch.22 para.2 (April 1, 2004)

³⁵⁹ Added by Enterprise Act 2002 c. 40 Sch.22 para.2 (April 1, 2004)

- (b) must include the provision to each creditor of information about the criteria by reference to which the official receiver will determine whether the creditors approve or reject the proposed voluntary arrangement, and
- (c) may not include an opportunity for modifications to the proposed voluntary arrangement to be suggested or made.

(5) Where a debtor submits documents to the official receiver under subsection (1) no application under section 253 for an interim order may be made in respect of the debtor until the official receiver has—

- (a) made arrangements as described in subsection (2), or
- (b) informed the debtor that he does not intend to make arrangements (whether because he does not think the voluntary arrangement has a reasonable prospect of being approved and implemented or because he declines to act).

]³⁶⁰

[263C Result

As soon as is reasonably practicable after the implementation of arrangements under section 263B(2) the official receiver shall report to the court whether the proposed voluntary arrangement has been approved or rejected.]³⁶¹

Amendments Pending

Pt VIII s. 263C: words substituted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 9(1) (April 6, 2010: substitution has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

[263D Approval of voluntary arrangement

(1) This section applies where the official receiver reports to the court under section 263C that a proposed voluntary arrangement has been approved.

(2) The voluntary arrangement—

- (a) takes effect,
- (b) binds the debtor, and
- (c) binds every person who was entitled to participate in the arrangements made under section 263B(2).

(3) The court shall annul the bankruptcy order in respect of the debtor on an application made by the official receiver.

(4) An application under subsection (3) may not be made—

- (a) during the period specified in section 263F(3) during which the voluntary arrangement can be challenged by application under section 263F(2),
- (b) while an application under that section is pending, or
- (c) while an appeal in respect of an application under that section is pending or may be brought.

³⁶⁰ Added by Enterprise Act 2002 c. 40 Sch.22 para.2 (April 1, 2004)

³⁶¹ Added by Enterprise Act 2002 c. 40 Sch.22 para.2 (April 1, 2004)

(5) The court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

(6) The Deeds of Arrangement Act 1914 (c. 47) does not apply to the voluntary arrangement.

(7) A reference in this Act or another enactment to a voluntary arrangement approved under this Part includes a reference to a voluntary arrangement which has effect by virtue of this section.

]³⁶²

Amendments Pending

Pt VIII s. 263D(1): words substituted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 9(2) (April 6, 2010: substitution has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

[263E Implementation

Section 263 shall apply to a voluntary arrangement which has effect by virtue of section 263D(2) as it applies to a voluntary arrangement approved by a creditors' meeting.]³⁶³

[263F Revocation

(1) The court may make an order revoking a voluntary arrangement which has effect by virtue of section 263D(2) on the ground—

- (a) that it unfairly prejudices the interests of a creditor of the debtor, or
- (b) that a material irregularity occurred in relation to the arrangements made under section 263B(2).

(2) An order under subsection (1) may be made only on the application of—

- (a) the debtor,
- (b) a person who was entitled to participate in the arrangements made under section 263B(2),
- (c) the trustee of the bankrupt's estate, or
- (d) the official receiver.

(3) An application under subsection (2) may not be made after the end of the period of 28 days beginning with the date on which the official receiver makes his report to the court under section 263C.

(4) But a creditor who was not made aware of the arrangements under section 263B(2) at the time when they were made may make an application under subsection (2) during the period of 28 days beginning with the date on which he becomes aware of the voluntary arrangement.

]³⁶⁴

³⁶² Added by Enterprise Act 2002 c. 40 Sch.22 para.2 (April 1, 2004)

³⁶³ Added by Enterprise Act 2002 c. 40 Sch.22 para.2 (April 1, 2004)

³⁶⁴ Added by Enterprise Act 2002 c. 40 Sch.22 para.2 (April 1, 2004)

Amendments Pending

Pt VIII s. 263F(3): words substituted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 9(3) (April 6, 2010: substitution has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

[263G Offences

(1) Section 262A shall have effect in relation to obtaining approval to a proposal for a voluntary arrangement under section 263D.

(2) Section 262B shall have effect in relation to a voluntary arrangement which has effect by virtue of section 263D(2) (for which purposes the words “by a creditors' meeting summoned under section 257” shall be disregarded).

]³⁶⁵

PART IX**BANKRUPTCY****CHAPTER I****BANKRUPTCY PETITIONS; BANKRUPTCY ORDERS***Preliminary***264.— Who may present a bankruptcy petition.**

(1) A petition for a bankruptcy order to be made against an individual may be presented to the court in accordance with the following provisions of this Part—

(a) by one of the individual's creditors or jointly by more than one of them,

(b) by the individual himself,

[(ba) by a temporary administrator (within the meaning of Article 38 of the EC Regulation),
(bb) by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation,]³⁶⁶

(c) by the supervisor of, or any person (other than the individual) who is for the time being bound by, a voluntary arrangement proposed by the individual and approved under Part VIII, or

(d) where a criminal bankruptcy order has been made against the individual, by the Official Petitioner or by any person specified in the order in pursuance of section 39(3)(b) of the Powers of Criminal Courts Act 1973.

(2) Subject to those provisions, the court may make a bankruptcy order on any such petition.

³⁶⁵ Added by Enterprise Act 2002 c. 40 Sch.22 para.2 (April 1, 2004)

³⁶⁶ Added by Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002/1240 reg.13 (May 31, 2002)

Amendments Pending

Pt IX c. I s. 264(1)(d): section 264(1)(d) and the word "or" immediately preceding it repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

265.— Conditions to be satisfied in respect of debtor.

(1) A bankruptcy petition shall not be presented to the court under section 264(1)(a) or (b) unless the debtor—

- (a) is domiciled in England and Wales,
- (b) is personally present in England and Wales on the day on which the petition is presented, or
- (c) at any time in the period of 3 years ending with that day—
 - (i) has been ordinarily resident, or has had a place of residence, in England and Wales, or
 - (ii) has carried on business in England and Wales.

(2) The reference in subsection (1)(c) to an individual carrying on business includes—

- (a) the carrying on of business by a firm or partnership of which the individual is a member, and
- (b) the carrying on of business by an agent or manager for the individual or for such a firm or partnership.

[(3) This section is subject to Article 3 of the EC Regulation.]³⁶⁷

266.— Other preliminary conditions.

(1) Where a bankruptcy petition relating to an individual is presented by a person who is entitled to present a petition under two or more paragraphs of section 264(1), the petition is to be treated for the purposes of this Part as a petition under such one of those paragraphs as may be specified in the petition.

(2) A bankruptcy petition shall not be withdrawn without the leave of the court.

(3) The court has a general power, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, to dismiss a bankruptcy petition or to stay proceedings on such a petition; and, where it stays proceedings on a petition, it may do so on such terms and conditions as it thinks fit.

(4) Without prejudice to subsection (3), where a petition under section 264(1)(a), (b) or (c) in respect of an individual is pending at a time when a criminal bankruptcy order is made against him, or is presented after such an order has been so made, the court may on the application of the Official Petitioner dismiss the petition if it appears to it appropriate to do so.

³⁶⁷ Added by Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002/1240 reg.14 (May 31, 2002)

Amendments Pending

Pt IX c. I s. 266(4): repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

*Creditor's petition***267.— Grounds of creditor's petition.**

(1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.

(2) Subject to the next three sections, a creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented—

- (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,
- (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,
- (c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and
- (d) there is no outstanding application to set aside a statutory demand served (under section 268 below) in respect of the debt or any of the debts.

(3) A debt is not to be regarded for the purposes of subsection (2) as a debt for a liquidated sum by reason only that the amount of the debt is specified in a criminal bankruptcy order.

(4) “The bankruptcy level” is £750; but the Secretary of State may by order in a statutory instrument substitute any amount specified in the order for that amount or (as the case may be) for the amount which by virtue of such an order is for the time being the amount of the bankruptcy level.

(5) An order shall not be made under subsection (4) unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

Amendments Pending

Pt IX c. I s. 267(3): repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

268.— Definition of “inability to pay”, etc.; the statutory demand.

(1) For the purposes of section 267(2)(c), the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—

- (a) the petitioning creditor to whom the debt is owed has served on the debtor a demand (known as “the statutory demand”) in the prescribed form requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed

since the demand was served and the demand has been neither complied with nor set aside in accordance with the rules, or

(b) execution or other process issued in respect of the debt on a judgment or order of any court in favour of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed, has been returned unsatisfied in whole or in part

(2) For the purposes of section 267(2)(c) the debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and—

(a) the petitioning creditor to whom it is owed has served on the debtor a demand (also known as “the statutory demand”) in the prescribed form requiring him to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due,

(b) at least 3 weeks have elapsed since the demand was served, and

(c) the demand has been neither complied with nor set aside in accordance with the rules.

269.— Creditor with security.

(1) A debt which is the debt, or one of the debts, in respect of which a creditor's petition is presented need not be unsecured if either—

(a) the petition contains a statement by the person having the right to enforce the security that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of all the bankrupt's creditors, or

(b) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of the estimated value at the date of the petition of the security for the secured part of the debt.

(2) In a case falling within subsection (1)(b) the secured and unsecured parts of the debt are to be treated for the purposes of sections 267 to 270 as separate debts.

270. Expedited petition.

In the case of a creditor's petition presented wholly or partly in respect of a debt which is the subject of a statutory demand under section 268, the petition may be presented before the end of the 3-week period there mentioned if there is a serious possibility that the debtor's property or the value of any of his property will be significantly diminished during that period and the petition contains a statement to that effect.

271.— Proceedings on creditor's petition.

(1) The court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either—

(a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for, or

(b) a debt which the debtor has no reasonable prospect of being able to pay when it falls due.

(2) In a case in which the petition contains such a statement as is required by section 270, the court shall not make a bankruptcy order until at least 3 weeks have elapsed since the service of any statutory demand under section 268.

(3) The court may dismiss the petition if it is satisfied that the debtor is able to pay all his debts or is satisfied—

- (a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented,
- (b) that the acceptance of that offer would have required the dismissal of the petition, and
- (c) that the offer has been unreasonably refused;

and, in determining for the purposes of this subsection whether the debtor is able to pay all his debts, the court shall take into account his contingent and prospective liabilities.

(4) In determining for the purposes of this section what constitutes a reasonable prospect that a debtor will be able to pay a debt when it falls due, it is to be assumed that the prospect given by the facts and other matters known to the creditor at the time he entered into the transaction resulting in the debt was a reasonable prospect.

(5) Nothing in sections 267 to 271 prejudices the power of the court, in accordance with the rules, to authorise a creditor's petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of those sections had been done only by or in relation to the remaining creditors or debts.

Debtor's petition

272.— Grounds of debtor's petition.

(1) A debtor's petition may be presented to the court only on the grounds that the debtor is unable to pay his debts.

(2) The petition shall be accompanied by a statement of the debtor's affairs containing—

- (a) such particulars of the debtor's creditors and of his debts and other liabilities and of his assets as may be prescribed, and
- (b) such other information as may be prescribed.

273.— Appointment of insolvency practitioner by the court.

(1) Subject to the next section, on the hearing of a debtor's petition the court shall not make a bankruptcy order if it appears to the court—

- (a) that if a bankruptcy order were made the aggregate amount of the bankruptcy debts, so far as unsecured, would be less than the small bankruptcies level,
- (b) that if a bankruptcy order were made, the value of the bankrupt's estate would be equal to or more than the minimum amount,
- (c) that within the period of 5 years ending with the presentation of the petition the debtor has neither been adjudged bankrupt nor made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs, and
- (d) that it would be appropriate to appoint a person to prepare a report under section 274.

“The minimum amount” and “the small bankruptcies level” mean such amounts as may for the time being be prescribed for the purposes of this section.

(2) Where on the hearing of the petition, it appears to the court as mentioned in subsection (1), the court shall appoint a person who is qualified to act as an insolvency practitioner in relation to the debtor—

- (a) to prepare a report under the next section, and
- (b) subject to section 258(3) in Part VIII, to act in relation to any voluntary arrangement to which the report relates either as trustee or otherwise for the purpose of supervising its implementation.

274.— Action on report of insolvency practitioner.

(1) A person appointed under section 273 shall inquire into the debtor's affairs and, within such period as the court may direct, shall submit a report to the court stating whether the debtor is willing, for the purposes of Part VIII, to make a proposal for a voluntary arrangement.

(2) A report which states that the debtor is willing as above mentioned shall also state—

- (a) whether, in the opinion of the person making the report, a meeting of the debtor's creditors should be summoned to consider the proposal, and
- (b) if in that person's opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(3) On considering a report under this section the court may—

- (a) without any application, make an interim order under section 252, if it thinks that it is appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal, or
- (b) if it thinks it would be inappropriate to make such an order, make a bankruptcy order.

(4) An interim order made by virtue of this section ceases to have effect at the end of such period as the court may specify for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the applicable provisions of Part VIII.

(5) Where it has been reported to the court under this section that a meeting of the debtor's creditors should be summoned, the person making the report shall, unless the court otherwise directs, summon that meeting for the time, date and place proposed in his report.

The meeting is then deemed to have been summoned under section 257 in Part VIII, and subsections (2) and (3) of that section, and sections 258 to 263 apply accordingly.

[274A Debtor who meets conditions for a debt relief order

(1) This section applies where, on the hearing of a debtor's petition—

- (a) it appears to the court that a debt relief order would be made in relation to the debtor if, instead of presenting the petition, he had made an application under Part 7A; and
- (b) the court does not appoint an insolvency practitioner under section 273.

(2) If the court thinks it would be in the debtor's interests to apply for a debt relief order instead of proceeding on the petition, the court may refer the debtor to an approved intermediary (within the meaning of Part 7A) for the purposes of making an application for a debt relief order.

(3) Where a reference is made under subsection (2) the court shall stay proceedings on the petition on such terms and conditions as it thinks fit; but if following the reference a debt relief order is made in relation to the debtor the court shall dismiss the petition.

]³⁶⁸

275.— [...] ³⁶⁹

Other cases for special consideration

276.— Default in connection with voluntary arrangement.

- (1) The court shall not make a bankruptcy order on a petition under section 264(1)(c) (supervisor of, or person bound by, voluntary arrangement proposed and approved) unless it is satisfied—
- (a) that the debtor has failed to comply with his obligations under the voluntary arrangement, or
 - (b) that information which was false or misleading in any material particular or which contained material omissions—
 - (i) was contained in any statement of affairs or other document supplied by the debtor under Part VIII to any person, or
 - (ii) was otherwise made available by the debtor to his creditors at or in connection with a meeting summoned under that Part, or
 - (c) that the debtor has failed to do all such things as may for the purposes of the voluntary arrangement have been reasonably required of him by the supervisor of the arrangement.
- (2) Where a bankruptcy order is made on a petition under section 264(1)(c), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.

277.— Petition based on criminal bankruptcy order.

- (1) Subject to section 266(3), the court shall make a bankruptcy order on a petition under section 264(1)(d) on production of a copy of the criminal bankruptcy order on which the petition is based. This does not apply if it appears to the court that the criminal bankruptcy order has been rescinded on appeal.
- (2) Subject to the provisions of this Part, the fact that an appeal is pending against any conviction by virtue of which a criminal bankruptcy order was made does not affect any proceedings on a petition under section 264(1)(d) based on that order.
- (3) For the purposes of this section, an appeal against a conviction is pending—
- (a) in any case, until the expiration of the period of 28 days beginning with the date of conviction;
 - (b) if notice of appeal to the Court of Appeal is given during that period and during that period the appellant notifies the official receiver of it, until the determination of the appeal

³⁶⁸ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.3 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

³⁶⁹ Repealed subject to transitional provisions specified in SI 2003/2093 art.8 by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.8)

and thereafter for so long as an appeal to the [Supreme Court]³⁷⁰ is pending within the meaning of [subsection (4)].³⁷¹

[(4) For the purposes of subsection (3)(b) an appeal to the Supreme Court shall be treated as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and for the purposes of this subsection an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.]³⁷¹

Amendments Pending

Pt IX c. I s. 277: repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

Commencement and duration of bankruptcy; discharge

278. Commencement and continuance.

The bankruptcy of an individual against whom a bankruptcy order has been made—

- (a) commences with the day on which the order is made, and
- (b) continues until the individual is discharged under the following provisions of this Chapter.

[279 Duration

(1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.

(2) If before the end of that period the official receiver files with the court a notice stating that investigation of the conduct and affairs of the bankrupt under section 289 is unnecessary or concluded, the bankrupt is discharged when the notice is filed.

(3) On the application of the official receiver or the trustee of a bankrupt's estate, the court may order that the period specified in subsection (1) shall cease to run until—

- (a) the end of a specified period, or
- (b) the fulfilment of a specified condition.

(4) The court may make an order under subsection (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.

(5) In subsection (3)(b) “condition” includes a condition requiring that the court be satisfied of something.

(6) In the case of an individual who is adjudged bankrupt on a petition under section 264(1)(d)—

- (a) subsections (1) to (5) shall not apply, and
- (b) the bankrupt is discharged from bankruptcy by an order of the court under section 280.

³⁷⁰ Words substituted by Constitutional Reform Act 2005 c. 4 Sch.9(1) para.44(a) (October 1, 2009)

³⁷¹ S.277(4) and words substituted for words by Constitutional Reform Act 2005 c. 4 Sch.9(1) para.44(b) (October 1, 2009)

(7) This section is without prejudice to any power of the court to annul a bankruptcy order.
]³⁷²

280.— Discharge by order of the court.

(1) An application for an order of the court discharging an individual from bankruptcy in a case falling within [section 279(6)]³⁷³ may be made by the bankrupt at any time after the end of the period of 5 years beginning with the [date on which the bankruptcy commences]³⁷⁴ .

(2) On an application under this section the court may—

- (a) refuse to discharge the bankrupt from bankruptcy,
- (b) make an order discharging him absolutely, or
- (c) make an order discharging him subject to such conditions with respect to any income which may subsequently become due to him, or with respect to property devolving upon him, or acquired by him, after his discharge, as may be specified in the order.

(3) The court may provide for an order falling within subsection (2)(b) or (c) to have immediate effect or to have its effect suspended for such period, or until the fulfilment of such conditions (including a condition requiring the court to be satisfied as to any matter), as may be specified in the order.

281.— Effect of discharge.

(1) Subject as follows, where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts, but has no effect—

- (a) on the functions (so far as they remain to be carried out) of the trustee of his estate, or
- (b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part;

and, in particular, discharge does not affect the right of any creditor of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released.

(2) Discharge does not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is released.

(3) Discharge does not release the bankrupt from any bankruptcy debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was a party.

(4) Discharge does not release the bankrupt from any liability in respect of a fine imposed for an offence or from any liability under a recognisance except, in the case of a penalty imposed for an offence under an enactment relating to the public revenue or of a recognisance, with the consent of the Treasury.

³⁷² Substituted by Enterprise Act 2002 c. 40 Pt 10 s.256(1) (April 1, 2004: substitution of s.279(3)-(5) has effect in relation to the period specified in 2002 c.40)

³⁷³ Words substituted by Enterprise Act 2002 c. 40 Sch.23 para.3(a) (April 1, 2004)

³⁷⁴ Words substituted by Enterprise Act 2002 c. 40 Sch.23 para.3(b) (April 1, 2004)

[(4A) In subsection (4) the reference to a fine includes a reference to a confiscation order under [Part 2, 3 or 4 of the Proceeds of Crime Act 2002]³⁷⁵ .]³⁷⁶

(5) Discharge does not, except to such extent and on such conditions as the court may direct, release the bankrupt from any bankruptcy debt which—

(a) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, [or to pay damages by virtue of Part I of the Consumer Protection Act 1987, being in either case]³⁷⁷ damages in respect of personal injuries to any person, or

(b) arises under any order made in family proceedings [or under a [maintenance calculation]³⁷⁸ made under the Child Support Act 1991]³⁷⁹ [...] ³⁸⁰ .

(6) Discharge does not release the bankrupt from such other bankruptcy debts, not being debts provable in his bankruptcy, as are prescribed.

(7) Discharge does not release any person other than the bankrupt from any liability (whether as partner or co-trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in the nature of such a surety.

(8) In this section—

[“family proceedings” means —

(a) family proceedings within the meaning of the Magistrates' Courts Act 1980 and any proceedings which would be such proceedings but for section 65(1)(ii) of that Act (proceedings for variation of order for periodical payments); and

(b) family proceedings within the meaning of Part V of the Matrimonial and Family Proceedings Act 1984.

] ³⁸¹

“fine” means the same as in the Magistrates' Courts Act 1980; and

“personal injuries” includes death and any disease or other impairment of a person's physical or mental condition.

282.— Court's power to annul bankruptcy order.

(1) The court may annul a bankruptcy order if it at any time appears to the court—

(a) that, on any grounds existing at the time the order was made, the order ought not to have been made, or

³⁷⁵ Words inserted by Proceeds of Crime Act 2002 c. 29 Sch.11 para.16(2) (March 24, 2003: as SSI 2003/210)

³⁷⁶ Added by Proceeds of Crime Act 2002 c. 29 Sch.11 para.16(2) (March 24, 2003 as SI 2003/333)

³⁷⁷ Words substituted by Consumer Protection Act 1987 (c.43), ss. 41(2), 47(1)(2), 48, Sch. 4 para. 12

³⁷⁸ Words substituted in relation to cases specified in SI 2003/192 art.3 by Child Support, Pensions and Social Security Act 2000 c. 19 Sch.3 para.6 (March 3, 2003 in relation to cases specified in SI 2003/192 art.3)

³⁷⁹ Words added by Child Support Act 1991 c. 48 Sch.5 para.7 (April 5, 1993 subject to transitional provisions specified in SI 1992/2644 Sch.1)

³⁸⁰ Words repealed by Children Act 1989 c. 41 Sch.11(II) para.11(1) (October 14, 1991)

³⁸¹ Definition of "family proceedings" substituted for the definitions of "domestic proceedings" and "family proceedings" by Children Act 1989 c. 41 Sch.11(II) para.11(2) (October 14, 1991)

(b) that, to the extent required by the rules, the bankruptcy debts and the expenses of the bankruptcy have all, since the making of the order, been either paid or secured for to the satisfaction of the court.

(2) The court may annul a bankruptcy order made against an individual on a petition under paragraph (a), (b) or (c) of section 264(1) if it at any time appears to the court, on an application by the Official Petitioner—

(a) that the petition was pending at a time when a criminal bankruptcy order was made against the individual or was presented after such an order was so made, and

(b) no appeal is pending (within the meaning of section 277) against the individual's conviction of any offence by virtue of which the criminal bankruptcy order was made;

and the court shall annul a bankruptcy order made on a petition under section 264(1)(d) if it at any time appears to the court that the criminal bankruptcy order on which the petition was based has been rescinded in consequence of an appeal.

(3) The court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.

(4) Where the court annuls a bankruptcy order (whether under this section or under [section 261 or 263D in Part VIII]³⁸²)—

(a) any sale or other disposition of property, payment made or other thing duly done, under any provision in this Group of Parts, by or under the authority of the official receiver or a trustee of the bankrupt's estate or by the court is valid, but

(b) if any of the bankrupt's estate is then vested, under any such provision, in such a trustee, it shall vest in such person as the court may appoint or, in default of any such appointment, revert to the bankrupt on such terms (if any) as the court may direct;

and the court may include in its order such supplemental provisions as may be authorised by the rules.

(5) [...] ³⁸³

Amendments Pending

Pt IX c. I s. 282(2): repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

[281A Post-discharge restrictions

Schedule 4A to this Act (bankruptcy restrictions order and bankruptcy restrictions undertaking) shall have effect.] ³⁸⁴

³⁸² Words inserted by Enterprise Act 2002 c. 40 Sch.23 para.4(a) (April 1, 2004)

³⁸³ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004 as SI 2003/2093)

³⁸⁴ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Pt 10 s.257(1) (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

CHAPTER II

PROTECTION OF BANKRUPT'S ESTATE AND INVESTIGATION OF HIS AFFAIRS

283.— Definition of bankrupt's estate.

- (1) Subject as follows, a bankrupt's estate for the purposes of any of this Group of Parts comprises—
- (a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy, and
 - (b) any property which by virtue of any of the following provisions of this Part is comprised in that estate or is treated as falling within the preceding paragraph.

- (2) Subsection (1) does not apply to—

- (a) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment, business or vocation;
- (b) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family.

This subsection is subject to section 308 in Chapter IV (certain excluded property reclaimable by trustee).

- (3) Subsection (1) does not apply to—

- (a) property held by the bankrupt on trust for any other person, or
- (b) the right of nomination to a vacant ecclesiastical benefice.

- [(3A) Subject to section 308A in Chapter IV, subsection (1) does not apply to—

- (a) a tenancy which is an assured tenancy or an assured agricultural occupancy, within the meaning of Part I of the Housing Act 1988, and the terms of which inhibit an assignment as mentioned in section 127(5) of the Rent Act 1977, or
- (b) a protected tenancy, within the meaning of the Rent Act 1977, in respect of which, by virtue of any provision of Part IX of that Act, no premium can lawfully be required as a condition of assignment, or
- (c) a tenancy of a dwelling-house by virtue of which the bankrupt is, within the meaning of the Rent (Agriculture) Act 1976, a protected occupier of the dwelling-house and the terms of which inhibit an assignment as mentioned in section 127(5) of the Rent Act 1977, or
- (d) a secure tenancy, within the meaning of Part IV of the Housing Act 1985, which is not capable of being assigned, except in the cases mentioned in section 91(3) of that Act.

]³⁸⁵

- (4) References in any of this Group of Parts to property, in relation to a bankrupt, include references to any power exercisable by him over or in respect of property except in so far as the power is exercisable over or in respect of property not for the time being comprised in the bankrupt's estate and—

- (a) is so exercisable at a time after either the official receiver has had his release in respect of that estate under section 299(2) in Chapter III or a meeting summoned by the trustee of that estate under section 331 in Chapter IV has been held, or
- (b) cannot be so exercised for the benefit of the bankrupt;

³⁸⁵ S. 283(3A) inserted by Housing Act 1988 (c.50), s. 117(1)

and a power exercisable over or in respect of property is deemed for the purposes of any of this Group of Parts to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person (whether or not it becomes so exercisable at that time).

(5) For the purposes of any such provision in this Group of Parts, property comprised in a bankrupt's estate is so comprised subject to the rights of any person other than the bankrupt (whether as a secured creditor of the bankrupt or otherwise) in relation thereto, but disregarding—

- (a) any rights in relation to which a statement such as is required by section 269(1)(a) was made in the petition on which the bankrupt was adjudged bankrupt, and
- (b) any rights which have been otherwise given up in accordance with the rules.

(6) This section has effect subject to the provisions of any enactment not contained in this Act under which any property is to be excluded from a bankrupt's estate.

[283A Bankrupt's home ceasing to form part of estate

(1) This section applies where property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

- (a) the bankrupt,
- (b) the bankrupt's spouse [or civil partner]³⁸⁶, or
- (c) a former spouse [or former civil partner]³⁸⁷ of the bankrupt.

(2) At the end of the period of three years beginning with the date of the bankruptcy the interest mentioned in subsection (1) shall—

- (a) cease to be comprised in the bankrupt's estate, and
- (b) vest in the bankrupt (without conveyance, assignment or transfer).

(3) Subsection (2) shall not apply if during the period mentioned in that subsection—

- (a) the trustee realises the interest mentioned in subsection (1),
- (b) the trustee applies for an order for sale in respect of the dwelling-house,
- (c) the trustee applies for an order for possession of the dwelling-house,
- (d) the trustee applies for an order under section 313 in Chapter IV in respect of that interest, or
- (e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in subsection (1) shall cease to form part of the estate.

(4) Where an application of a kind described in subsection (3)(b) to (d) is made during the period mentioned in subsection (2) and is dismissed, unless the court orders otherwise the interest to which the application relates shall on the dismissal of the application—

- (a) cease to be comprised in the bankrupt's estate, and
- (b) vest in the bankrupt (without conveyance, assignment or transfer).

³⁸⁶ Words inserted by Civil Partnership Act 2004 c. 33 Sch.27 para.113(a) (December 5, 2005)

³⁸⁷ Words inserted by Civil Partnership Act 2004 c. 33 Sch.27 para.113(b) (December 5, 2005)

- (5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of three months beginning with the date of the bankruptcy, the period of three years mentioned in subsection (2)—
- (a) shall not begin with the date of the bankruptcy, but
 - (b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt's interest.
- (6) The court may substitute for the period of three years mentioned in subsection (2) a longer period—
- (a) in prescribed circumstances, and
 - (b) in such other circumstances as the court thinks appropriate.
- (7) The rules may make provision for this section to have effect with the substitution of a shorter period for the period of three years mentioned in subsection (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).
- (8) The rules may also, in particular, make provision—
- (a) requiring or enabling the trustee of a bankrupt's estate to give notice that this section applies or does not apply;
 - (b) about the effect of a notice under paragraph (a);
 - (c) requiring the trustee of a bankrupt's estate to make an application to the Chief Land Registrar.
- (9) Rules under subsection (8)(b) may, in particular—
- (a) disapply this section;
 - (b) enable a court to disapply this section;
 - (c) make provision in consequence of a disapplication of this section;
 - (d) enable a court to make provision in consequence of a disapplication of this section;
 - (e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.

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284.— Restrictions on dispositions of property.

- (1) Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.
- (2) Subsection (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid shall hold the sum paid for the bankrupt as part of his estate.
- (3) This section applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting, under Chapter IV of this Part, of the bankrupt's estate in a trustee.
- (4) The preceding provisions of this section do not give a remedy against any person—

³⁸⁸ Added by Enterprise Act 2002 c. 40 Pt 10 s.261(1) (April 1, 2004)

- (a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the petition had been presented, or
 - (b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this subsection, no remedy.
- (5) Where after the commencement of his bankruptcy the bankrupt has incurred a debt to a banker or other person by reason of the making of a payment which is void under this section, that debt is deemed for the purposes of any of this Group of Parts to have been incurred before the commencement of the bankruptcy unless—
- (a) that banker or person had notice of the bankruptcy before the debt was incurred, or
 - (b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.
- (6) A disposition of property is void under this section notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate; but nothing in this section affects any disposition made by a person of property held by him on trust for any other person.

285.— Restriction on proceedings and remedies.

- (1) At any time when proceedings on a bankruptcy petition are pending or an individual has been adjudged bankrupt the court may stay any action, execution or other legal process against the property or person of the debtor or, as the case may be, of the bankrupt.
- (2) Any court in which proceedings are pending against any individual may, on proof that a bankruptcy petition has been presented in respect of that individual or that he is an undischarged bankrupt, either stay the proceedings or allow them to continue on such terms as it thinks fit.
- (3) After the making of a bankruptcy order no person who is a creditor of the bankrupt in respect of a debt provable in the bankruptcy shall—
- (a) have any remedy against the property or person of the bankrupt in respect of that debt, or
 - (b) before the discharge of the bankrupt, commence any action or other legal proceedings against the bankrupt except with the leave of the court and on such terms as the court may impose.

This is subject to section 346(enforcement procedures) and 347 (limited right to distress).

- (4) Subject as follows, subsection (3) does not affect the right of a secured creditor of the bankrupt to enforce his security.
- (5) Where any goods of an undischarged bankrupt are held by any person by way of pledge, pawn or other security, the official receiver may, after giving notice in writing of his intention to do so, inspect the goods.
- Where such a notice has been given to any person, that person is not entitled, without leave of the court, to realise his security unless he has given the trustee of the bankrupt's estate a reasonable opportunity of inspecting the goods and of exercising the bankrupt's right of redemption.
- (6) References in this section to the property or goods of the bankrupt are to any of his property or goods, whether or not comprised in his estate.

286.— Power to appoint interim receiver.

- (1) The court may, if it is shown to be necessary for the protection of the debtor's property, at any time after the presentation of a bankruptcy petition and before making a bankruptcy order, appoint the official receiver to be interim receiver of the debtor's property.
- (2) Where the court has, on a debtor's petition, appointed an insolvency practitioner under section 273 and it is shown to the court as mentioned in subsection (1) of this section, the court may, without making a bankruptcy order, appoint that practitioner, instead of the official receiver, to be interim receiver of the debtor's property.
- (3) The court may by an order appointing any person to be an interim receiver direct that his powers shall be limited or restricted in any respect; but, save as so directed, an interim receiver has, in relation to the debtor's property, all the rights, powers, duties and immunities of a receiver and manager under the next section.
- (4) An order of the court appointing any person to be an interim receiver shall require that person to take immediate possession of the debtor's property or, as the case may be, the part of it to which his powers as interim receiver are limited.
- (5) Where an interim receiver has been appointed, the debtor shall give him such inventory of his property and such other information, and shall attend on the interim receiver at such times, as the latter may for the purpose of carrying out his functions under this section reasonably require.
- (6) Where an interim receiver is appointed, section 285(3) applies for the period between the appointment and the making of a bankruptcy order on the petition, or the dismissal of the petition, as if the appointment were the making of such an order.
- (7) A person ceases to be interim receiver of a debtor's property if the bankruptcy petition relating to the debtor is dismissed, if a bankruptcy order is made on the petition or if the court by order otherwise terminates the appointment.
- (8) References in this section to the debtor's property are to all his property, whether or not it would be comprised in his estate if he were adjudged bankrupt.

287.— Receivership pending appointment of trustee.

- (1) Between the making of a bankruptcy order and the time at which the bankrupt's estate vests in a trustee under Chapter IV of this Part, the official receiver is the receiver and (subject to section 370 (special manager)) the manager of the bankrupt's estate and is under a duty to act as such.
- (2) The function of the official receiver while acting as receiver or manager of the bankrupt's estate under this section is to protect the estate; and for this purpose—
 - (a) he has the same powers as if he were a receiver or manager appointed by the High Court, and
 - (b) he is entitled to sell or otherwise dispose of any perishable goods comprised in the estate and any other goods so comprised the value of which is likely to diminish if they are not disposed of.
- (3) The official receiver while acting as receiver or manager of the estate under this section—
 - (a) shall take all such steps as he thinks fit for protecting any property which may be claimed for the estate by the trustee of that estate,

- (b) is not, except in pursuance of directions given by the Secretary of State, required to do anything that involves his incurring expenditure,
- (c) may, if he thinks fit (and shall, if so directed by the court) at any time summon a general meeting of the bankrupt's creditors.

(4) Where—

- (a) the official receiver acting as receiver or manager of the estate under this section seizes or disposes of any property which is not comprised in the estate, and
- (b) at the time of the seizure or disposal the official receiver believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the official receiver is not to be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by his negligence; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

(5) This section does not apply where by virtue of section 297 (appointment of trustee; special cases) the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.

288.— Statement of affairs.

(1) Where a bankruptcy order has been made otherwise than on a debtor's petition, the bankrupt shall submit a statement of his affairs to the official receiver before the end of the period of 21 days beginning with the commencement of the bankruptcy.

(2) The statement of affairs shall contain—

- (a) such particulars of the bankrupt's creditors and of his debts and other liabilities and of his assets as may be prescribed, and
- (b) such other information as may be prescribed.

(3) The official receiver may, if he thinks fit—

- (a) release the bankrupt from his duty under subsection (1), or
- (b) extend the period specified in that subsection;

and where the official receiver has refused to exercise a power conferred by this section, the court, if it thinks fit, may exercise it.

(4) A bankrupt who—

- (a) without reasonable excuse fails to comply with the obligation imposed by this section, or
- (b) without reasonable excuse submits a statement of affairs that does not comply with the prescribed requirements,

is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

[289 Investigatory duties of official receiver

(1) The official receiver shall—

- (a) investigate the conduct and affairs of each bankrupt (including his conduct and affairs before the making of the bankruptcy order), and
- (b) make such report (if any) to the court as the official receiver thinks fit.

- (2) Subsection (1) shall not apply to a case in which the official receiver thinks an investigation under that subsection unnecessary.
- (3) Where a bankrupt makes an application for discharge under section 280—
- (a) the official receiver shall make a report to the court about such matters as may be prescribed, and
 - (b) the court shall consider the report before determining the application.
- (4) A report by the official receiver under this section shall in any proceedings be prima facie evidence of the facts stated in it.

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290.— Public examination of bankrupt.

- (1) Where a bankruptcy order has been made, the official receiver may at any time before the discharge of the bankrupt apply to the court for the public examination of the bankrupt.
- (2) Unless the court otherwise orders, the official receiver shall make an application under subsection (1) if notice requiring him to do so is given to him, in accordance with the rules, by one of the bankrupt's creditors with the concurrence of not less than one-half, in value, of those creditors (including the creditor giving notice).
- (3) On an application under subsection (1), the court shall direct that a public examination of the bankrupt shall be held on a day appointed by the court; and the bankrupt shall attend on that day and be publicly examined as to his affairs, dealings and property.
- (4) The following may take part in the public examination of the bankrupt and may question him concerning his affairs, dealings and property and the causes of his failure, namely—
- (a) the official receiver and, in the case of an individual adjudged bankrupt on a petition under section 264(1)(d), the Official Petitioner,
 - (b) the trustee of the bankrupt's estate, if his appointment has taken effect,
 - (c) any person who has been appointed as special manager of the bankrupt's estate or business,
 - (d) any creditor of the bankrupt who has tendered a proof in the bankruptcy.
- (5) If a bankrupt without reasonable excuse fails at any time to attend his public examination under this section he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

291.— Duties of bankrupt in relation to official receiver.

- (1) Where a bankruptcy order has been made, the bankrupt is under a duty—
- (a) to deliver possession of his estate to the official receiver, and
 - (b) to deliver up to the official receiver all books, papers and other records of which he has possession or control and which relate to his estate and affairs (including any which would be privileged from disclosure in any proceedings).
- (2) In the case of any part of the bankrupt's estate which consists of things possession of which cannot be delivered to the official receiver, and in the case of any property that may be claimed for

³⁸⁹ Substituted by Enterprise Act 2002 c. 40 Pt 10 s.258 (April 1, 2004)

the bankrupt's estate by the trustee, it is the bankrupt's duty to do all such things as may reasonably be required by the official receiver for the protection of those things or that property.

(3) Subsections (1) and (2) do not apply where by virtue of section 297 below the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.

[(4) The bankrupt shall give the official receiver such inventory of his estate and such other information, and shall attend on the official receiver at such times, as the official receiver may reasonably require—

(a) for a purpose of this Chapter, or

(b) in connection with the making of a bankruptcy restrictions order.

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(5) Subsection (4) applies to a bankrupt after his discharge.

(6) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this section, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

CHAPTER III

TRUSTEES IN BANKRUPTCY

Tenure of office as trustee

292.— Power to make appointments.

(1) The power to appoint a person as trustee of a bankrupt's estate (whether the first such trustee or a trustee appointed to fill any vacancy) is exercisable—

(a) [...] ³⁹¹ by a general meeting of the bankrupt's creditors;

(b) under section 295(2), 296(2) or 300(6) below in this Chapter, by the Secretary of State;
or

(c) under section 297, by the court.

(2) No person may be appointed as trustee of a bankrupt's estate unless he is, at the time of the appointment, qualified to act as an insolvency practitioner in relation to the bankrupt.

(3) Any power to appoint a person as trustee of a bankrupt's estate includes power to appoint two or more persons as joint trustees; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

(4) The appointment of any person as trustee takes effect only if that person accepts the appointment in accordance with the rules. Subject to this, the appointment of any person as trustee takes effect at the time specified in his certificate of appointment.

³⁹⁰ Substituted by Enterprise Act 2002 c. 40 Sch.23 para.5 (April 1, 2004)

³⁹¹ Words repealed subject to transitional provisions specified in SI 2003/2093 art.8 by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.8)

(5) This section is without prejudice to the provisions of this Chapter under which the official receiver is, in certain circumstances, to be trustee of the estate.

293.— Summoning of meeting to appoint first trustee.

(1) Where a bankruptcy order has been made [...] ³⁹² it is the duty of the official receiver, as soon as practicable in the period of 12 weeks beginning with the day on which the order was made, to decide whether to summon a general meeting of the bankrupt's creditors for the purpose of appointing a trustee of the bankrupt's estate.

This section does not apply where the bankruptcy order was made on a petition under section 264(1)(d) (criminal bankruptcy); and it is subject to the provision made in sections 294(3) and 297(6) below.

(2) Subject to the next section, if the official receiver decides not to summon such a meeting, he shall, before the end of the period of 12 weeks above mentioned, give notice of his decision to the court and to every creditor of the bankrupt who is known to the official receiver or is identified in the bankrupt's statement of affairs.

(3) As from the giving to the court of a notice under subsection (2), the official receiver is the trustee of the bankrupt's estate.

Amendments Pending

Pt IX c. III s. 293(1): words repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

294.— Power of creditors to requisition meeting.

(1) Where in the case of any bankruptcy—

- (a) the official receiver has not yet summoned, or has decided not to summon, a general meeting of the bankrupt's creditors for the purpose of appointing the trustee, [...] ³⁹³
- (b) [...] ³⁹³

any creditor of the bankrupt may request the official receiver to summon such a meeting for that purpose.

(2) If such a request appears to the official receiver to be made with the concurrence of not less than one-quarter, in value, of the bankrupt's creditors (including the creditor making the request), it is the duty of the official receiver to summon the requested meeting.

(3) Accordingly, where the duty imposed by subsection (2) has arisen, the official receiver is required neither to reach a decision for the purposes of section 293(1) nor (if he has reached one) to serve any notice under section 293(2).

³⁹² Words repealed subject to transitional provisions specified in SI 2003/2093 art.8 by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.8)

³⁹³ Repealed subject to transitional provisions specified in SI 2003/2093 art.8 by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.8)

295.— Failure of meeting to appoint trustee.

(1) If a meeting summoned under section 293 or 294 is held but no appointment of a person as trustee is made, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.

(2) On a reference made in pursuance of that decision, the Secretary of State shall either make an appointment or decline to make one.

(3) If—

(a) the official receiver decides not to refer the need for an appointment to the Secretary of State, or

(b) on such a reference the Secretary of State declines to make an appointment, the official receiver shall give notice of his decision or, as the case may be, of the Secretary of State's decision to the court.

(4) As from the giving of notice under subsection (3) in a case in which no notice has been given under section 293(2), the official receiver shall be trustee of the bankrupt's estate.

296.— Appointment of trustee by Secretary of State.

(1) At any time when the official receiver is the trustee of a bankrupt's estate by virtue of any provision of this Chapter (other than section 297(1) below) he may apply to the Secretary of State for the appointment of a person as trustee instead of the official receiver.

(2) On an application under subsection (1) the Secretary of State shall either make an appointment or decline to make one.

(3) Such an application may be made notwithstanding that the Secretary of State has declined to make an appointment either on a previous application under subsection (1) or on a reference under section 295 or under section 300(4) below.

(4) Where the trustee of a bankrupt's estate has been appointed by the Secretary of State (whether under this section or otherwise), the trustee shall give notice to the bankrupt's creditors of his appointment or, if the court so allows, shall advertise his appointment in accordance with the court's directions.

(5) In that notice or advertisement the trustee shall—

(a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditors' committee under section 301, and

(b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

297.— Special cases.

(1) Where a bankruptcy order is made on a petition under section 264(1)(d) (criminal bankruptcy), the official receiver shall be trustee of the bankrupt's estate.

(2)-(3) [...]³⁹⁴

³⁹⁴ Repealed subject to transitional provisions specified in SI 2003/2093 art.8 by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.8)

- (4) Where a bankruptcy order is made in a case in which an insolvency practitioner's report has been submitted to the court under section 274 [...] ³⁹⁵, the court, if it thinks fit, may on making the order appoint the person who made the report as trustee.
- (5) Where a bankruptcy order is made (whether or not on a petition under section 264(1)(c)) at a time when there is a supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII, the court, if it thinks fit, may on making the order appoint the supervisor of the arrangement as trustee.
- (6) Where an appointment is made under subsection (4) or (5) of this section, the official receiver is not under the duty imposed by section 293(1) (to decide whether or not to summon a meeting of creditors).
- (7) Where the trustee of a bankrupt's estate has been appointed by the court, the trustee shall give notice to the bankrupt's creditors of his appointment or, if the court so allows, shall advertise his appointment in accordance with the directions of the court.
- (8) In that notice or advertisement he shall—
- (a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditors' committee under section 301 below, and
 - (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

Amendments Pending

Pt IX c. III s. 297(1): repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

298.— Removal of trustee; vacation of office.

- (1) Subject as follows, the trustee of a bankrupt's estate may be removed from office only by an order of the court or by a general meeting of the bankrupt's creditors summoned specially for that purpose in accordance with the rules.
- (2) Where the official receiver is trustee by virtue of section 297(1), he shall not be removed from office under this section.
- (3) [...] ³⁹⁶
- (4) Where the official receiver is trustee by virtue of section 293(3) or 295(4) or a trustee is appointed by the Secretary of State or (otherwise than under section 297(5)) by the court, a general meeting of the bankrupt's creditors shall be summoned for the purpose of replacing the trustee only if—
- (a) the trustee thinks fit, or

³⁹⁵ Words repealed subject to transitional provisions specified in SI 2003/2093 art.8 by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.8)

³⁹⁶ Repealed subject to transitional provisions specified in SI 2003/2093 art.8 by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.8)

- (b) the court so directs, or
 - (c) the meeting is requested by one of the bankrupt's creditors with the concurrence of not less than one-quarter, in value, of the creditors (including the creditor making the request).
- (5) If the trustee was appointed by the Secretary of State, he may be removed by a direction of the Secretary of State.
- (6) The trustee (not being the official receiver) shall vacate office if he ceases to be a person who is for the time being qualified to act as an insolvency practitioner in relation to the bankrupt.
- (7) The trustee may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.
- (8) The trustee shall vacate office on giving notice to the court that a final meeting has been held under section 331 in Chapter IV and of the decision (if any) of that meeting.
- (9) The trustee shall vacate office if the bankruptcy order is annulled.

299.— Release of trustee.

- (1) Where the official receiver has ceased to be the trustee of a bankrupt's estate and a person is appointed in his stead, the official receiver shall have his release with effect from the following time, that is to say—
- (a) where that person is appointed by a general meeting of the bankrupt's creditors or by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced, and
 - (b) where that person is appointed by the court, such time as the court may determine.
- (2) If the official receiver while he is the trustee gives notice to the Secretary of State that the administration of the bankrupt's estate in accordance with Chapter IV of this Part is for practical purposes complete, he shall have his release with effect from such time as the Secretary of State may determine.
- (3) A person other than the official receiver who has ceased to be the trustee shall have his release with effect from the following time, that is to say—
- (a) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has not resolved against his release or who has died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office;
 - (b) in the case of a person who has been removed from office by a general meeting of the bankrupt's creditors that has resolved against his release, or by the court, or by the Secretary of State, or who has vacated office under section 298(6), such time as the Secretary of State may, on an application by that person, determine;
 - (c) in the case of a person who has resigned, such time as may be prescribed;
 - (d) in the case of a person who has vacated office under section 298(8)—
 - (i) if the final meeting referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine; and
 - (ii) if that meeting has not so resolved, the time at which the person vacated office.
- (4) Where a bankruptcy order is annulled, the trustee at the time of the annulment has his release with effect from such time as the court may determine.

(5) Where the official receiver or the trustee has his release under this section, he shall, with effect from the time specified in the preceding provisions of this section, be discharged from all liability both in respect of acts or omissions of his in the administration of the estate and otherwise in relation to his conduct as trustee.

But nothing in this section prevents the exercise, in relation to a person who has had his release under this section, of the court's powers under section 304.

300.— Vacancy in office of trustee.

(1) This section applies where the appointment of any person as trustee of a bankrupt's estate fails to take effect or, such an appointment having taken effect, there is otherwise a vacancy in the office of trustee.

(2) The official receiver shall be trustee until the vacancy is filled.

(3) The official receiver may summon a general meeting of the bankrupt's creditors for the purpose of filling the vacancy and shall summon such a meeting if required to do so in pursuance of section 314(7) (creditors' requisition).

(4) If at the end of the period of 28 days beginning with the day on which the vacancy first came to the official receiver's attention he has not summoned, and is not proposing to summon, a general meeting of creditors for the purpose of filling the vacancy, he shall refer the need for an appointment to the Secretary of State.

(5) [...] ³⁹⁷

(6) On a reference to the Secretary of State under subsection (4) [...] ³⁹⁸ the Secretary of State shall either make an appointment or decline to make one.

(7) If on a reference under subsection (4) [...] ³⁹⁸ no appointment is made, the official receiver shall continue to be trustee of the bankrupt's estate, but without prejudice to his power to make a further reference.

(8) References in this section to a vacancy include a case where it is necessary, in relation to any property which is or may be comprised in a bankrupt's estate, to revive the trusteeship of that estate after the holding of a final meeting summoned under section 331 or the giving by the official receiver of notice under section 299(2).

Control of trustee

301.— Creditors' committee.

(1) Subject as follows, a general meeting of a bankrupt's creditors (whether summoned under the preceding provisions of this Chapter or otherwise) may, in accordance with the rules, establish a

³⁹⁷ Repealed subject to transitional provisions specified in SI 2003/2093 art.8 by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.8)

³⁹⁸ Words repealed subject to transitional provisions specified in SI 2003/2093 art.8 by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.8)

committee (known as “the creditors' committee”) to exercise the functions conferred on it by or under this Act.

(2) A general meeting of the bankrupt's creditors shall not establish such a committee, or confer any functions on such a committee, at any time when the official receiver is the trustee of the bankrupt's estate, except in connection with an appointment made by that meeting of a person to be trustee instead of the official receiver.

302.— Exercise by Secretary of State of functions of creditors' committee.

(1) The creditors' committee is not to be able or required to carry out its functions at any time when the official receiver is trustee of the bankrupt's estate; but at any such time the functions of the committee under this Act shall be vested in the Secretary of State, except to the extent that the rules otherwise provide.

(2) Where in the case of any bankruptcy there is for the time being no creditors' committee and the trustee of the bankrupt's estate is a person other than the official receiver, the functions of such a committee shall be vested in the Secretary of State, except to the extent that the rules otherwise provide.

303.— General control of trustee by the court.

(1) If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt's estate, he may apply to the court; and on such an application the court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks fit.

(2) The trustee of a bankrupt's estate may apply to the court for directions in relation to any particular matter arising under the bankruptcy.

[(2A) Where at any time after a bankruptcy petition has been presented to the court against any person, whether under the provisions of the Insolvent Partnerships Order 1994 or not, the attention of the court is drawn to the fact that the person in question is a member of an insolvent partnership, the court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(2B) Where a bankruptcy petition has been presented against more than one individual in the circumstances mentioned in subsection (2A) above, the court may give such directions for consolidating the proceedings, or any of them, as it thinks just.

(2C) Any order or directions under subsection (2A) or (2B) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.]³⁹⁹

³⁹⁹ Added by Insolvent Partnerships Order 1994/2421 Pt VI art.14(2) (December 1, 1994)

304.— Liability of trustee.

(1) Where on an application under this section the court is satisfied—

(a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate, or

(b) that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his functions, the court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other property (together with interest at such rate as the court thinks just) or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just.

This is without prejudice to any liability arising apart from this section.

(2) An application under this section may be made by the official receiver, the Secretary of State, a creditor of the bankrupt or (whether or not there is, or is likely to be, a surplus for the purposes of section 330(5) (final distribution)) the bankrupt himself.

But the leave of the court is required for the making of an application if it is to be made by the bankrupt or if it is to be made after the trustee has had his release under section 299.

(3) Where—

(a) the trustee seizes or disposes of any property which is not comprised in the bankrupt's estate, and

(b) at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the trustee is not liable to any person (whether under this section or otherwise) in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the trustee; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

CHAPTER IV

ADMINISTRATION BY TRUSTEE

Preliminary

305.— General functions of trustee.

(1) This Chapter applies in relation to any bankruptcy where either—

(a) the appointment of a person as trustee of a bankrupt's estate takes effect, or

(b) the official receiver becomes trustee of a bankrupt's estate.

(2) The function of the trustee is to get in, realise and distribute the bankrupt's estate in accordance with the following provisions of this Chapter; and in the carrying out of that function and in the management of the bankrupt's estate the trustee is entitled, subject to those provisions, to use his own discretion.

(3) It is the duty of the trustee, if he is not the official receiver—

(a) to furnish the official receiver with such information,

- (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
 - (c) to give the official receiver such other assistance,
- as the official receiver may reasonably require for the purpose of enabling him to carry out his functions in relation to the bankruptcy.
- (4) The official name of the trustee shall be “the trustee of the estate of, a bankrupt” (inserting the name of the bankrupt); but he may be referred to as “the trustee in bankruptcy” of the particular bankrupt.

Acquisition, control and realisation of bankrupt's estate

306.— Vesting of bankrupt's estate in trustee.

- (1) The bankrupt's estate shall vest in the trustee immediately on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.
- (2) Where any property which is, or is to be, comprised in the bankrupt's estate vests in the trustee (whether under this section or under any other provision of this Part), it shall so vest without any conveyance, assignment or transfer.

Amendments Pending

Pt IX c. IV s. 306(1): words substituted by Policing and Crime Act 2009 c. 26 Sch. 7(6) para. 54(2)(a) (date to be appointed)

[306A Property subject to restraint order

- (1) This section applies where—
 - (a) property is excluded from the bankrupt's estate by virtue of section 417(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),
 - (b) an order under [section 50, 128 or 198]⁴⁰⁰ of that Act has not been made in respect of the property, and
 - (c) the restraint order is discharged.
- (2) On the discharge of the restraint order the property vests in the trustee as part of the bankrupt's estate.
- (3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).

]⁴⁰¹

⁴⁰⁰ Words substituted by Serious Crime Act 2007 c. 27 Sch.8(7) para.151(b) (April 1, 2008 subject to transitional and transitory provisions and savings as specified in SI 2008/755 arts 3-14)

⁴⁰¹ Added by Proceeds of Crime Act 2002 c. 29 Sch.11 para.16(3) (March 24, 2003 as SI 2003/333)

Amendments Pending

Pt IX c. IV s. 306A(1)(b): word repealed by Policing and Crime Act 2009 c. 26 Sch. 8(4) para. 1 (date to be appointed)

Pt IX c. IV s. 306A(1)(d): added by Policing and Crime Act 2009 c. 26 Sch. 7(6) para. 54(2)(b) (date to be appointed)

Pt IX c. IV s. 306A(2): substituted by Policing and Crime Act 2009 c. 26 Sch. 7(6) para. 54(3) (date to be appointed)

[306B Property in respect of which receivership or administration order made

(1) This section applies where—

- (a) property is excluded from the bankrupt's estate by virtue of section 417(2)(b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),
- (b) a confiscation order is made under [section 692 or 156]⁴⁰² of that Act,
- (c) the amount payable under the confiscation order is fully paid, and
- (d) any of the property remains in the hands of the receiver or administrator (as the case may be).

(2) The property vests in the trustee as part of the bankrupt's estate.

]⁴⁰³

Amendments Pending

Pt IX c. IV s. 306B(1)(a): words substituted by Policing and Crime Act 2009 c. 26 Sch. 7(6) para. 56 (date to be appointed)

[306C Property subject to certain orders where confiscation order discharged or quashed

(1) This section applies where—

- (a) property is excluded from the bankrupt's estate by virtue of section 417(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which a restraint order or an order for the appointment of a receiver or administrator under that Act is in force),
- (b) a confiscation order is made under [section 692 or 156]⁴⁰⁴ of that Act, and
- (c) the confiscation order is discharged under [section 30114 or 180]⁴⁰⁴ of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.

(2) Any such property in the hands of a receiver appointed under Part 2 or 4 [or an administrator appointed under Part 3]⁴⁰⁴ of that Act vests in the trustee as part of the bankrupt's estate.

(3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).

⁴⁰² Words inserted by Proceeds of Crime Act 2002 c. 29 Sch.11 para.16(3) (March 24, 2003: as SSI 2003/210)

⁴⁰³ Added by Proceeds of Crime Act 2002 c. 29 Sch.11 para.16(3) (March 24, 2003 as SI 2003/333)

⁴⁰⁴ Words inserted by Proceeds of Crime Act 2002 c. 29 Sch.11 para.16(3) (March 24, 2003: as SSI 2003/210)

] ⁴⁰⁵**Amendments Pending**

Pt IX c. IV s. 306C(1)(a): words substituted by Policing and Crime Act 2009 c. 26 Sch. 7(6) para. 58(2) (date to be appointed)

Pt IX c. IV s. 306C(2): substituted by Policing and Crime Act 2009 c. 26 Sch. 7(6) para. 58(3) (date to be appointed)

307.— After-acquired property.

(1) Subject to this section and section 309, the trustee may by notice in writing claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt since the commencement of the bankruptcy.

(2) A notice under this section shall not be served in respect of—

(a) any property falling within subsection (2) or (3) of section 283 in Chapter II,

[(aa) any property vesting in the bankrupt by virtue of section 283A in Chapter II,] ⁴⁰⁶

(b) any property which by virtue of any other enactment is excluded from the bankrupt's estate, or

(c) without prejudice to section 280(2)(c) (order of court on application for discharge), any property which is acquired by, or devolves upon, the bankrupt after his discharge.

(3) Subject to the next subsection, upon the service on the bankrupt of a notice under this section the property to which the notice relates shall vest in the trustee as part of the bankrupt's estate; and the trustee's title to that property has relation back to the time at which the property was acquired by, or devolved upon, the bankrupt.

(4) Where, whether before or after service of a notice under this section—

(a) a person acquires property in good faith, for value and without notice of the bankruptcy, or

(b) a banker enters into a transaction in good faith and without such notice,

the trustee is not in respect of that property or transaction entitled by virtue of this section to any remedy against that person or banker, or any person whose title to any property derives from that person or banker.

(5) References in this section to property do not include any property which, as part of the bankrupt's income, may be the subject of an income payments order under section 310.

308.— Vesting in trustee of certain items of excess value.

(1) Subject to [section 309] ⁴⁰⁷, where—

(a) property is excluded by virtue of section 283(2) (tools of trade, household effects, etc.) from the bankrupt's estate, and

⁴⁰⁵ Added by Proceeds of Crime Act 2002 c. 29 Sch.11 para.16(3) (March 24, 2003 as SI 2003/333)

⁴⁰⁶ Added by Enterprise Act 2002 c. 40 Pt 10 s.261(4) (April 1, 2004)

⁴⁰⁷ Words substituted by Housing Act 1988 (c.50), s. 140, Sch. 17 Pt. I para. 73

(b) it appears to the trustee that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it, the trustee may by notice in writing claim that property or, as the case may be, that part of it for the bankrupt's estate.

(2) Upon the service on the bankrupt of a notice under this section, the property to which the notice relates vests in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that property has relation back to the commencement of the bankruptcy.

(3) The trustee shall apply funds comprised in the estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any property vested in the trustee under this section; and the duty imposed by this subsection has priority over the obligation of the trustee to distribute the estate.

(4) For the purposes of this section property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

[308A. Vesting in trustee of certain tenancies.

Upon the service on the bankrupt by the trustee of a notice in writing under this section, any tenancy—

- (a) which is excluded by virtue of section 283(3A) from the bankrupt's estate, and
- (b) to which the notice relates,

vests in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that tenancy has relation back to the commencement of the bankruptcy.

⁴⁰⁸

309.— Time-limit for notice under s. 307 or 308.

(1) Except with the leave of the court, a notice shall not be served—

- (a) under section 307, after the end of the period of 42 days beginning with the day on which it first came to the knowledge of the trustee that the property in question had been acquired by, or had devolved upon, the bankrupt;
- (b) under section 308 [or section 308A]⁴⁰⁹, after the end of the period of 42 days beginning with the day on which the property [or tenancy]⁴¹⁰ in question first came to the knowledge of the trustee.

(2) For the purposes of this section—

- (a) anything which comes to the knowledge of the trustee is deemed in relation to any successor of his as trustee to have come to the knowledge of the successor at the same time; and
- (b) anything which comes (otherwise than under paragraph (a), to the knowledge of a person before he is the trustee is deemed to come to his knowledge on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

⁴⁰⁸ S. 308A inserted by Housing Act 1988 (c.50), s. 117(2)

⁴⁰⁹ Words inserted by Housing Act 1988 (c.50), s. 117(3)(a)

⁴¹⁰ Words inserted by Housing Act 1988 (c.50), s. 117(3)(b)

310.— Income payments orders.

(1) The court may [...] ⁴¹¹ make an order (“an income payments order”) claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.

[(1A) An income payments order may be made only on an application instituted—

- (a) by the trustee, and
- (b) before the discharge of the bankrupt.

] ⁴¹²

(2) The court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt [when taken together with any payments to which subsection (8) applies] ⁴¹³ below what appears to the court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.

(3) An income payments order shall, in respect of any payment of income to which it is to apply, either—

- (a) require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order, or
- (b) require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.

(4) Where the court makes an income payments order it may, if it thinks fit, discharge or vary any attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(5) Sums received by the trustee under an income payments order form part of the bankrupt's estate.

[(6) An income payments order must specify the period during which it is to have effect; and that period—

- (a) may end after the discharge of the bankrupt, but
- (b) may not end after the period of three years beginning with the date on which the order is made.

(6A) An income payments order may (subject to subsection (6)(b)) be varied on the application of the trustee or the bankrupt (whether before or after discharge).] ⁴¹⁴

(7) For the purposes of this section the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment [and [(despite anything in section 11 or 12 of the Welfare Reform and Pensions Act 1999)] ⁴¹⁵ any payment under a pension scheme but excluding any payment to which subsection (8) applies] ⁴¹⁶ .

[(8) This subsection applies to—

- (a) payments by way of guaranteed minimum pension; and

⁴¹¹ Words repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004 as SI 2003/2093)

⁴¹² Added by Enterprise Act 2002 c. 40 Pt 10 s.259(3) (April 1, 2004)

⁴¹³ Words inserted by Pensions Act 1995 c. 26 Sch.3 para.15(a) (April 6, 1997)

⁴¹⁴ S.310(6)-(6A) substituted for s.310(6) by Enterprise Act 2002 c. 40 Pt 10 s.259(4) (April 1, 2004)

⁴¹⁵ Words inserted by Welfare Reform and Pensions Act 1999 c. 30 Sch.2 para.2 (November 11, 1999 as SI 2000/1382)

⁴¹⁶ Words added by Pensions Act 1995 c. 26 Sch.3 para.15(b) (April 6, 1997)

(b) payments giving effect to the bankrupt's protected rights as a member of a pension scheme.”

(9) In this section, “guaranteed minimum pension” and “protected rights” have the same meaning as in the Pension Schemes Act 1993.]⁴¹⁶

[310A Income payments agreement

(1) In this section “income payments agreement” means a written agreement between a bankrupt and his trustee or between a bankrupt and the official receiver which provides—

- (a) that the bankrupt is to pay to the trustee or the official receiver an amount equal to a specified part or proportion of the bankrupt's income for a specified period, or
- (b) that a third person is to pay to the trustee or the official receiver a specified proportion of money due to the bankrupt by way of income for a specified period.

(2) A provision of an income payments agreement of a kind specified in subsection (1)(a) or (b) may be enforced as if it were a provision of an income payments order.

(3) While an income payments agreement is in force the court may, on the application of the bankrupt, his trustee or the official receiver, discharge or vary an attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(4) The following provisions of section 310 shall apply to an income payments agreement as they apply to an income payments order—

- (a) subsection (5) (receipts to form part of estate), and
- (b) subsections (7) to (9) (meaning of income).

(5) An income payments agreement must specify the period during which it is to have effect; and that period—

- (a) may end after the discharge of the bankrupt, but
- (b) may not end after the period of three years beginning with the date on which the agreement is made.

(6) An income payments agreement may (subject to subsection (5)(b)) be varied—

- (a) by written agreement between the parties, or
- (b) by the court on an application made by the bankrupt, the trustee or the official receiver.

(7) The court—

- (a) may not vary an income payments agreement so as to include provision of a kind which could not be included in an income payments order, and
- (b) shall grant an application to vary an income payments agreement if and to the extent that the court thinks variation necessary to avoid the effect mentioned in section 310(2).

] ⁴¹⁷

311.— Acquisition by trustee of control.

(1) The trustee shall take possession of all books, papers and other records which relate to the bankrupt's estate or affairs and which belong to him or are in his possession or under his control (including any which would be privileged from disclosure in any proceedings).

⁴¹⁷ Added by Enterprise Act 2002 c. 40 Pt 10 s.260 (April 1, 2004)

(2) In relation to, and for the purpose of acquiring or retaining possession of, the bankrupt's estate, the trustee is in the same position as if he were a receiver of property appointed by the High Court; and the court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the bankrupt's estate consists of stock or shares in a company, shares in a ship or any other property transferable in the books of a company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the estate consists of things in action, they are deemed to have been assigned to the trustee; but notice of the deemed assignment need not be given except in so far as it is necessary, in a case where the deemed assignment is from the bankrupt himself, for protecting the priority of the trustee.

(5) Where any goods comprised in the estate are held by any person by way of pledge, pawn or other security and no notice has been served in respect of those goods by the official receiver under subsection (5) of section 285 (restriction on realising security), the trustee may serve such a notice in respect of the goods; and whether or not a notice has been served under this subsection or that subsection, the trustee may, if he thinks fit, exercise the bankrupt's right of redemption in respect of any such goods.

(6) A notice served by the trustee under subsection (5) has the same effect as a notice served by the official receiver under section 285(5).

312.— Obligation to surrender control to trustee.

(1) The bankrupt shall deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession. This is without prejudice to the general duties of the bankrupt under section 333 in this Chapter.

(2) If any of the following is in possession of any property, books, papers or other records of which the trustee is required to take possession, namely—

- (a) the official receiver,
- (b) a person who has ceased to be trustee of the bankrupt's estate, or
- (c) a person who has been the supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII,

the official receiver or, as the case may be, that person shall deliver up possession of the property, books, papers or records to the trustee.

(3) Any banker or agent of the bankrupt or any other person who holds any property to the account of, or for, the bankrupt shall pay or deliver to the trustee all property in his possession or under his control which forms part of the bankrupt's estate and which he is not by law entitled to retain as against the bankrupt or trustee.

(4) If any person without reasonable excuse fails to comply with any obligation imposed by this section, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

313.— Charge on bankrupt's home.

(1) Where any property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse [or by his civil partner or former civil partner]⁴¹⁸ is comprised in the bankrupt's estate and the trustee is, for any reason, unable for the time being to realise that property, the trustee may apply to the court for an order imposing a charge on the property for the benefit of the bankrupt's estate.

(2) If on an application under this section the court imposes a charge on any property, the benefit of that charge shall be comprised in the bankrupt's estate and is enforceable [, up to the charged value from time to time,]⁴¹⁹ for the payment of any amount which is payable otherwise than to the bankrupt out of the estate and of interest on that amount at the prescribed rate.

[(2A) In subsection (2) the charged value means—

- (a) the amount specified in the charging order as the value of the bankrupt's interest in the property at the date of the order, plus
- (b) interest on that amount from the date of the charging order at the prescribed rate.

(2B) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the rules.]⁴²⁰

(3) An order under this section made in respect of property vested in the trustee shall provide, in accordance with the rules, for the property to cease to be comprised in the bankrupt's estate and, subject to the charge (and any prior charge), to vest in the bankrupt.

(4) Subsections (1) and (2) and (4) to (6) of section 3 of the Charging Orders Act 1979 (supplemental provisions with respect to charging orders) have effect in relation to orders under this section as in relation to charging orders under that Act.

[(5) But an order under section 3(5) of that Act may not vary a charged value.]⁴²¹

Amendments Pending

Pt IX c. IV s. 313(4): words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Pt 4 s. 93(5) (date to be appointed)

[313A Low value home: application for sale, possession or charge

(1) This section applies where—

- (a) property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—
 - (i) the bankrupt,
 - (ii) the bankrupt's spouse [or civil partner]⁴²² , or

⁴¹⁸ Words inserted by Civil Partnership Act 2004 c. 33 Sch.27 para.114 (December 5, 2005)

⁴¹⁹ Words substituted by Enterprise Act 2002 c. 40 Pt 10 s.261(2)(a) (April 1, 2004)

⁴²⁰ Added by Enterprise Act 2002 c. 40 Pt 10 s.261(2)(b) (April 1, 2004)

⁴²¹ Added by Enterprise Act 2002 c. 40 Pt 10 s.261(2)(c) (April 1, 2004)

⁴²² Words inserted by Civil Partnership Act 2004 c. 33 Sch.27 para.115(a) (December 5, 2005)

- (iii) a former spouse of the bankrupt [or former civil partner]⁴²³ , and
 - (b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under section 313 in respect of the property.
- (2) The court shall dismiss the application if the value of the interest is below the amount prescribed for the purposes of this subsection.
- (3) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the order which prescribes the amount for the purposes of subsection (2).
- J⁴²⁴

314.— Powers of trustee.

- (1) The trustee may—
- (a) with the permission of the creditors' committee or the court, exercise any of the powers specified in Part I of Schedule 5 to this Act, and
 - (b) without that permission, exercise any of the general powers specified in Part II of that Schedule.
- (2) With the permission of the creditors' committee or the court, the trustee may appoint the bankrupt—
- (a) to superintend the management of his estate or any part of it,
 - (b) to carry on his business (if any) for the benefit of his creditors, or
 - (c) in any other respect to assist in administering the estate in such manner and on such terms as the trustee may direct.
- (3) A permission given for the purposes of subsection (1)(a) or (2) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required in either case has been given.
- (4) Where the trustee has done anything without the permission required by subsection (1)(a) or (2), the court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.
- But the committee shall not do so unless it is satisfied that the trustee has acted in a case of urgency and has sought its ratification without undue delay.
- (5) Part III of Schedule 5 to this Act has effect with respect to the things which the trustee is able to do for the purposes of, or in connection with, the exercise of any of his powers under any of this Group of Parts.
- (6) Where the trustee (not being the official receiver) in exercise of the powers conferred on him by any provision in this Group of Parts—
- (a) disposes of any property comprised in the bankrupt's estate to an associate of the bankrupt, or
 - (b) employs a solicitor,

⁴²³ Words inserted by Civil Partnership Act 2004 c. 33 Sch.27 para.115(b) (December 5, 2005)

⁴²⁴ Added by Enterprise Act 2002 c. 40 Pt 10 s.261(3) (April 1, 2004)

he shall, if there is for the time being a creditors' committee, give notice to the committee of that exercise of his powers.

(7) Without prejudice to the generality of subsection (5) and Part III of Schedule 5, the trustee may, if he thinks fit, at any time summon a general meeting of the bankrupt's creditors.

Subject to the preceding provisions in this Group of Parts, he shall summon such a meeting if he is requested to do so by a creditor of the bankrupt and the request is made with the concurrence of not less than one-tenth, in value, of the bankrupt's creditors (including the creditor making the request).

(8) Nothing in this Act is to be construed as restricting the capacity of the trustee to exercise any of his powers outside England and Wales.

Disclaimer of onerous property

315.— Disclaimer (general power).

(1) Subject as follows, the trustee may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this section, that is to say—

(a) any unprofitable contract, and

(b) any other property comprised in the bankrupt's estate which is unsaleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this section—

(a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed, and

(b) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship,

but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this section in respect of any property that has been claimed for the estate under section 307(after-acquired property) or 308 (personal property of bankrupt exceeding reasonable replacement value) [or 308A]⁴²⁵, except with the leave of the court.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed to be a creditor of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

316.— Notice requiring trustee's decision.

(1) Notice of disclaimer shall not be given under section 315 in respect of any property if—

⁴²⁵ Words inserted by Housing Act 1988 (c.50), s. 117(4)

- (a) a person interested in the property has applied in writing to the trustee or one of his predecessors as trustee requiring the trustee or that predecessor to decide whether he will disclaim or not, and
- (b) the period of 28 days beginning with the day on which that application was made has expired without a notice of disclaimer having been given under section 315 in respect of that property.

(2) The trustee is deemed to have adopted any contract which by virtue of this section he is not entitled to disclaim.

317.— Disclaimer of leaseholds.

(1) The disclaimer of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person claiming under the bankrupt as underlessee or mortgagee and either—

- (a) no application under section 320 below is made with respect to the property before the end of the period of 14 days beginning with the day on which the last notice served under this subsection was served, or
- (b) where such an application has been made, the court directs that the disclaimer is to take effect.

(2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 320, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

318. Disclaimer of dwelling house.

Without prejudice to section 317, the disclaimer of any property in a dwelling house does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person in occupation of or claiming a right to occupy the dwelling house and either—

- (a) no application under section 320 is made with respect to the property before the end of the period of 14 days beginning with the day on which the last notice served under this section was served, or
- (b) where such an application has been made, the court directs that the disclaimer is to take effect.

319.— Disclaimer of land subject to rentcharge.

(1) The following applies where, in consequence of the disclaimer under section 315 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in the next subsection as “the proprietor”).

(2) The proprietor, and the successors in title of the proprietor, are not subject to any personal liability in respect of any sums becoming due under the rentcharge, except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

320.— Court order vesting disclaimed property.

- (1) This section and the next apply where the trustee has disclaimed property under section 315.
- (2) An application may be made to the court under this section by—
 - (a) any person who claims an interest in the disclaimed property,
 - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer, or
 - (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.
- (3) Subject as follows in this section and the next, the court may, on an application under this section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to—
 - (a) a person entitled to it or a trustee for such a person,
 - (b) a person subject to such a liability as is mentioned in subsection (2)(b) or a trustee for such a person, or
 - (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.
- (4) The court shall not make an order by virtue of subsection (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (5) The effect of any order under this section shall be taken into account in assessing for the purposes of section 315(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.
- (6) An order under this section vesting property in any person need not be completed by any conveyance, assignment or transfer.

321.— Order under s. 320 in respect of leaseholds.

- (1) The court shall not make an order under section 320 vesting property of a leasehold nature in any person, except on terms making that person—
 - (a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease on the day the bankruptcy petition was presented, or
 - (b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him on that day.
- (2) For the purposes of an order under section 320 relating to only part of any property comprised in a lease, the requirements of subsection (1) apply as if the lease comprised only the property to which the order relates.
- (3) Where subsection (1) applies and no person is willing to accept an order under section 320 on the terms required by that subsection, the court may (by order under section 320) vest the estate or interest of the bankrupt in the property in any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the bankrupt) to perform the lessee's covenants in the lease.

The court may by virtue of this subsection vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the bankrupt.

(4) Where subsection (1) applies and a person declines to accept any order under section 320, that person shall be excluded from all interest in the property.

Distribution of bankrupt's estate

322.— Proof of debts.

(1) Subject to this section and the next, the proof of any bankruptcy debt by a secured or unsecured creditor of the bankrupt and the admission or rejection of any proof shall take place in accordance with the rules.

(2) Where a bankruptcy debt bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the commencement of the bankruptcy.

(3) The trustee shall estimate the value of any bankruptcy debt which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value.

(4) Where the value of a bankruptcy debt is estimated by the trustee under subsection (3) or, by virtue of section 303 in Chapter III, by the court, the amount provable in the bankruptcy in respect of the debt is the amount of the estimate.

323.— Mutual credit and set-off.

(1) This section applies where before the commencement of the bankruptcy there have been mutual credits, mutual debts or other mutual dealings between the bankrupt and any creditor of the bankrupt proving or claiming to prove for a bankruptcy debt.

(2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(3) Sums due from the bankrupt to another party shall not be included in the account taken under subsection (2) if that other party had notice at the time they became due that a bankruptcy petition relating to the bankrupt was pending.

(4) Only the balance (if any) of the account taken under subsection (2) is provable as a bankruptcy debt or, as the case may be, to be paid to the trustee as part of the bankrupt's estate.

324.— Distribution by means of dividend.

(1) Whenever the trustee has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy, declare and distribute dividends among the creditors in respect of the bankruptcy debts which they have respectively proved.

(2) The trustee shall give notice of his intention to declare and distribute a dividend.

(3) Where the trustee has declared a dividend, he shall give notice of the dividend and of how it is proposed to distribute it; and a notice given under this subsection shall contain the prescribed particulars of the bankrupt's estate.

- (4) In the calculation and distribution of a dividend the trustee shall make provision—
- (a) for any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs,
 - (b) for any bankruptcy debts which are the subject of claims which have not yet been determined, and
 - (c) for disputed proofs and claims.

325.— Claims by unsatisfied creditors.

- (1) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—
- (a) when he has proved that debt he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive; and
 - (b) any dividend or dividends payable under paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.
- (2) No action lies against the trustee for a dividend, but if the trustee refuses to pay a dividend the court may, if it thinks fit, order him to pay it and also to pay, out of his own money—
- (a) interest on the dividend, at the rate for the time being specified in section 17 of the Judgments Act 1838, from the time it was withheld, and
 - (b) the costs of the proceedings in which the order to pay is made.

326.— Distribution of property in specie.

- (1) Without prejudice to sections 315 to 319 (disclaimer), the trustee may, with the permission of the creditors' committee, divide in its existing form amongst the bankrupt's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.
- (2) A permission given for the purposes of subsection (1) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required by subsection (1) has been given.
- (3) Where the trustee has done anything without the permission required by subsection (1), the court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.
- But the committee shall not do so unless it is satisfied that the trustee acted in a case of urgency and has sought its ratification without undue delay.

327. Distribution in criminal bankruptcy.

Where the bankruptcy order was made on a petition under section 264(1)(d) (criminal bankruptcy), no distribution shall be made under sections 324 to 326 so long as an appeal is pending (within the meaning of section 277) against the bankrupt's conviction of any offence by virtue of which the criminal bankruptcy order on which the petition was based was made.

Amendments Pending

Pt IX c. IV s. 327: repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

328.— Priority of debts.

- (1) In the distribution of the bankrupt's estate, his preferential debts (within the meaning given by section 386 in Part XII) shall be paid in priority to other debts.
- (2) Preferential debts rank equally between themselves after the expenses of the bankruptcy and shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.
- (3) Debts which are neither preferential debts nor debts to which the next section applies also rank equally between themselves and, after the preferential debts, shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.
- (4) Any surplus remaining after the payment of the debts that are preferential or rank equally under subsection (3) shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the commencement of the bankruptcy; and interest on preferential debts ranks equally with interest on debts other than preferential debts.
- (5) The rate of interest payable under subsection (4) in respect of any debt is whichever is the greater of the following—
 - (a) the rate specified in section 17 of the Judgments Act 1838 at the commencement of the bankruptcy, and
 - (b) the rate applicable to that debt apart from the bankruptcy.
- (6) This section and the next are without prejudice to any provision of this Act or any other Act under which the payment of any debt or the making of any other payment is, in the event of bankruptcy, to have a particular priority or to be postponed.

329.— Debts to spouse.

- (1) This section applies to bankruptcy debts owed in respect of credit provided by a person who (whether or not the bankrupt's spouse [or civil partner]⁴²⁶ at the time the credit was provided) was the bankrupt's spouse [or civil partner]⁴²⁶ at the commencement of the bankruptcy.
- (2) Such debts—
 - (a) rank in priority after the debts and interest required to be paid in pursuance of section 328(3) and (4), and
 - (b) are payable with interest at the rate specified in section 328(5) in respect of the period during which they have been outstanding since the commencement of the bankruptcy;and the interest payable under paragraph (b) has the same priority as the debts on which it is payable.

⁴²⁶ Words inserted by Civil Partnership Act 2004 c. 33 Sch.27 para.116 (December 5, 2005)

330.— Final distribution.

(1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the trustee's opinion, be realised without needlessly protracting the trusteeship, he shall give notice in the prescribed manner either—

- (a) of his intention to declare a final dividend, or
- (b) that no dividend, or further dividend, will be declared.

(2) The notice under subsection (1) shall contain the prescribed particulars and shall require claims against the bankrupt's estate to be established by a date ("the final date") specified in the notice.

(3) The court may, on the application of any person, postpone the final date.

(4) After the final date, the trustee shall—

- (a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate, and
- (b) if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.

(5) If a surplus remains after payment in full and with interest of all the bankrupt's creditors and the payment of the expenses of the bankruptcy, the bankrupt is entitled to the surplus.

[(6) Subsection (5) is subject to Article 35 of the EC Regulation (surplus in secondary proceedings to be transferred to main proceedings).]⁴²⁷

331.— Final meeting.

(1) Subject as follows in this section and the next, this section applies where—

- (a) it appears to the trustee that the administration of the bankrupt's estate in accordance with this Chapter is for practical purposes complete, and
- (b) the trustee is not the official receiver.

(2) The trustee shall summon a final general meeting of the bankrupt's creditors which—

- (a) shall receive the trustee's report of his administration of the bankrupt's estate, and
- (b) shall determine whether the trustee should have his release under section 299 in Chapter III.

(3) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under section 330(1); but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.

(4) In the administration of the estate it is the trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the meeting required by this section.

332.— Saving for bankrupt's home.

(1) This section applies where—

⁴²⁷ Added by Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002/1240 reg.15 (May 31, 2002)

- (a) there is comprised in the bankrupt's estate property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse [or by his civil partner or former civil partner]⁴²⁸ , and
 - (b) the trustee has been unable for any reason to realise that property.
- (2) The trustee shall not summon a meeting under section 331 unless either—
 - (a) the court has made an order under section 313 imposing a charge on that property for the benefit of the bankrupt's estate, or
 - (b) the court has declined, on an application under that section, to make such an order, or
 - (c) the Secretary of State has issued a certificate to the trustee stating that it would be inappropriate or inexpedient for such an application to be made in the case in question.

Supplemental

333.— Duties of bankrupt in relation to trustee.

- (1) The bankrupt shall—
 - (a) give to the trustee such information as to his affairs,
 - (b) attend on the trustee at such times, and
 - (c) do all such other things,as the trustee may for the purposes of carrying out his functions under any of this Group of Parts reasonably require.
- (2) Where at any time after the commencement of the bankruptcy any property is acquired by, or devolves upon, the bankrupt or there is an increase of the bankrupt's income, the bankrupt shall, within the prescribed period, give the trustee notice of the property or, as the case may be, of the increase.
- (3) Subsection (1) applies to a bankrupt after his discharge.
- (4) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this section, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

334.— Stay of distribution in case of second bankruptcy.

- (1) This section and the next apply where a bankruptcy order is made against an undischarged bankrupt; and in both sections—
 - (a) “the later bankruptcy” means the bankruptcy arising from that order,
 - (b) “the earlier bankruptcy” means the bankruptcy (or, as the case may be, most recent bankruptcy) from which the bankrupt has not been discharged at the commencement of the later bankruptcy, and
 - (c) “the existing trustee” means the trustee (if any) of the bankrupt's estate for the purposes of the earlier bankruptcy.
- (2) Where the existing trustee has been given the prescribed notice of the presentation of the petition for the later bankruptcy, any distribution or other disposition by him of anything to which the next

⁴²⁸ Words inserted by Civil Partnership Act 2004 c. 33 Sch.27 para.117 (December 5, 2005)

subsection applies, if made after the giving of the notice, is void except to the extent that it was made with the consent of the court or is or was subsequently ratified by the court. This is without prejudice to section 284 (restrictions on dispositions of property following bankruptcy order).

(3) This subsection applies to—

- (a) any property which is vested in the existing trustee under section 307(3) (after-acquired property);
- (b) any money paid to the existing trustee in pursuance of an income payments order under section 310; and
- (c) any property or money which is, or in the hands of the existing trustee represents, the proceeds of sale or application of property or money falling within paragraph (a) or (b) of this subsection.

335.— Adjustment between earlier and later bankruptcy estates.

(1) With effect from the commencement of the later bankruptcy anything to which section 334(3) applies which, immediately before the commencement of that bankruptcy, is comprised in the bankrupt's estate for the purposes of the earlier bankruptcy is to be treated as comprised in the bankrupt's estate for the purposes of the later bankruptcy and, until there is a trustee of that estate, is to be dealt with by the existing trustee in accordance with the rules.

(2) Any sums which in pursuance of an income payments order under section 310 are payable after the commencement of the later bankruptcy to the existing trustee shall form part of the bankrupt's estate for the purposes of the later bankruptcy; and the court may give such consequential directions for the modification of the order as it thinks fit.

(3) Anything comprised in a bankrupt's estate by virtue of subsection (1) or (2) is so comprised subject to a first charge in favour of the existing trustee for any bankruptcy expenses incurred by him in relation thereto.

(4) Except as provided above and in section 334, property which is, or by virtue of section 308 (personal property of bankrupt exceeding reasonable replacement value) [or section 308A (vesting in trustee of certain tenancies)]⁴²⁹ is capable of being, comprised in the bankrupt's estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to it, shall not be comprised in his estate for the purposes of the later bankruptcy.

(5) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier one, are not to be creditors of his in the later bankruptcy in respect of the same debts; but the existing trustee may prove in the later bankruptcy for—

- (a) the unsatisfied balance of the debts (including any debt under this subsection) provable against the bankrupt's estate in the earlier bankruptcy;
- (b) any interest payable on that balance; and
- (c) any unpaid expenses of the earlier bankruptcy.

(6) Any amount provable under subsection (5) ranks in priority after all the other debts provable in the later bankruptcy and after interest on those debts and, accordingly, shall not be paid unless those debts and that interest have first been paid in full.

⁴²⁹ Words inserted by Housing Act 1988 (c.50), s. 140(1), Sch. 17 Pt. I para. 74

CHAPTER V

EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS, TRANSACTIONS, ETC.

*[Rights under trusts of land]*⁴³⁰

[335A.— Rights under trusts of land

(1) Any application by a trustee of a bankrupt's estate under section 14 of the Trusts of Land and Appointment of Trustees Act 1996 (powers of court in relation to trusts of land) for an order under that section for the sale of land shall be made to the court having jurisdiction in relation to the bankruptcy.

(2) On such an application the court shall make such order as it thinks just and reasonable having regard to—

- (a) the interests of the bankrupt's creditors,
- (b) where the application is made in respect of land which includes a dwelling house which is or has been the home of the bankrupt or the [bankrupt's spouse or civil partner or former spouse or former civil partner]⁴³¹ —
 - (i) the conduct of the [spouse, civil partner, former spouse or former civil partner]⁴³², so far as contributing to the bankruptcy,
 - (ii) the needs and financial resources of the [spouse, civil partner, former spouse or former civil partner]⁴³², and
 - (iii) the needs of any children; and
- (c) all the circumstances of the case other than the needs of the bankrupt.

(3) Where such an application is made after the end of the period of one year beginning with the first vesting under Chapter IV of this Part of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

(4) The powers conferred on the court by this section are exercisable on an application whether it is made before or after the commencement of this section.

]⁴³³

Rights of occupation

336.— Rights of occupation etc. of bankrupt's spouse [or civil partner]⁴³⁴ .

(1) Nothing occurring in the initial period of the bankruptcy (that is to say, the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting

⁴³⁰ Added by Trusts of Land and Appointment of Trustees Act 1996 c. 47 Sch.3 para.23 (January 1, 1997)

⁴³¹ Words substituted by Civil Partnership Act 2004 c. 33 Sch.27 para.118(a) (December 5, 2005)

⁴³² Words substituted by Civil Partnership Act 2004 c. 33 Sch.27 para.118(b) (December 5, 2005)

⁴³³ Added by Trusts of Land and Appointment of Trustees Act 1996 c. 47 Sch.3 para.23 (January 1, 1997)

⁴³⁴ Words inserted by Civil Partnership Act 2004 c. 33 Sch.9(2) para.21(5) (December 5, 2005)

of the bankrupt's estate in a trustee) is to be taken as having given rise to any [[home rights] ⁴³⁵ under Part IV of the Family Law Act 1996] ⁴³⁶ in relation to a dwelling house comprised in the bankrupt's estate.

(2) Where [a spouse's or civil partner's home rights] ⁴³⁷ [under the Act of 1996] ⁴³⁸ are a charge on the estate or interest of the other spouse [or civil partner] ⁴³⁹ , or of trustees for the other spouse [or civil partner] ⁴³⁹ , and the other spouse is adjudged bankrupt—

(a) the charge continues to subsist notwithstanding the bankruptcy and, subject to the provisions of that Act, binds the trustee of the bankrupt's estate and persons deriving title under that trustee, and

(b) any application for an order [under section 33 of that Act] ⁴⁴⁰ shall be made to the court having jurisdiction in relation to the bankruptcy.

(3) [...] ⁴⁴¹

(4) On such an application as is mentioned in subsection (2) [...] ⁴⁴² the court shall make such order under [section 33 of the Act of 1996] ⁴⁴³ [...] ⁴⁴² as it thinks just and reasonable having regard to—

(a) the interests of the bankrupt's creditors,

(b) the conduct of the spouse or former spouse [or civil partner or former civil partner] ⁴⁴⁴ , so far as contributing to the bankruptcy,

(c) the needs and financial resources of the spouse or former spouse [or civil partner or former civil partner] ⁴⁴⁴ ,

(d) the needs of any children, and

(e) all the circumstances of the case other than the needs of the bankrupt.

(5) Where such an application is made after the end of the period of one year beginning with the first vesting under Chapter IV of this Part of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

337.— Rights of occupation of bankrupt.

(1) This section applies where—

(a) a person who is entitled to occupy a dwelling house by virtue of a beneficial estate or interest is adjudged bankrupt, and

⁴³⁵ Words substituted by Civil Partnership Act 2004 c. 33 Sch.9(2) para.21(2) (December 5, 2005)

⁴³⁶ Words substituted by Family Law Act 1996 c. 27 Sch.8(III) para.57(2) (October 1, 1997)

⁴³⁷ Words substituted by Civil Partnership Act 2004 c. 33 Sch.9(2) para.21(3)(a) (December 5, 2005)

⁴³⁸ Words substituted by Family Law Act 1996 c. 27 Sch.8(III) para.57(3)(a) (October 1, 1997)

⁴³⁹ Words inserted by Civil Partnership Act 2004 c. 33 Sch.9(2) para.21(3)(b) (December 5, 2005)

⁴⁴⁰ Words substituted by Family Law Act 1996 c. 27 Sch.8(III) para.57(3)(b) (October 1, 1997)

⁴⁴¹ Repealed by Trusts of Land and Appointment of Trustees Act 1996 c. 47 Sch.4 para.1 (January 1, 1997)

⁴⁴² Words repealed by Trusts of Land and Appointment of Trustees Act 1996 c. 47 Sch.4 para.1 (January 1, 1997)

⁴⁴³ Words substituted by Family Law Act 1996 c. 27 Sch.8(III) para.57(4) (October 1, 1997)

⁴⁴⁴ Words inserted by Civil Partnership Act 2004 c. 33 Sch.9(2) para.21(4) (December 5, 2005)

(b) any persons under the age of 18 with whom that person had at some time occupied that dwelling house had their home with that person at the time when the bankruptcy petition was presented and at the commencement of the bankruptcy.

(2) Whether or not the bankrupt's [spouse or civil partner (if any) has home rights]⁴⁴⁵ [under Part IV of the Family Law Act 1996]⁴⁴⁶ —

(a) the bankrupt has the following rights as against the trustee of his estate—

(i) if in occupation, a right not to be evicted or excluded from the dwelling house or any part of it, except with the leave of the court,

(ii) if not in occupation, a right with the leave of the court to enter into and occupy the dwelling house, and

(b) the bankrupt's rights are a charge, having the like priority as an equitable interest created immediately before the commencement of the bankruptcy, on so much of his estate or interest in the dwelling house as vests in the trustee.

[(3) The Act of 1996 has effect, with the necessary modification, as if—

(a) the rights conferred by paragraph (a) of subsection (2) were [home rights]⁴⁴⁷ under that Act.

(b) any application for such leave as is mentioned in that paragraph were an application for an order under section 33 of that Act and

(c) any charge under paragraph (b) of that subsection on the estate or interest of the trustee were a charge under that Act on the estate or interest of a spouse [or civil partner]⁴⁴⁸ .

]⁴⁴⁹

(4) Any application for leave such as is mentioned in subsection (2)(a) or otherwise by virtue of this section for an order under [section 33 of the Act of 1996]⁴⁵⁰ shall be made to the court having jurisdiction in relation to the bankruptcy.

(5) On such an application the court shall make such order under [section 33 of the Act of 1996]⁴⁵⁰ as it thinks just and reasonable having regard to the interests of the creditors, to the bankrupt's financial resources, to the needs of the children and to all the circumstances of the case other than the needs of the bankrupt.

(6) Where such an application is made after the end of the period of one year beginning with the first vesting (under Chapter IV of this Part) of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

338. Payments in respect of premises occupied by bankrupt.

Where any premises comprised in a bankrupt's estate are occupied by him (whether by virtue of the preceding section or otherwise) on condition that he makes payments towards satisfying any

⁴⁴⁵ Words substituted by Civil Partnership Act 2004 c. 33 Sch.9(2) para.22(2) (December 5, 2005)

⁴⁴⁶ Words substituted by Family Law Act 1996 c. 27 Sch.8(III) para.58(2) (October 1, 1997)

⁴⁴⁷ Words substituted by Civil Partnership Act 2004 c. 33 Sch.9(2) para.22(3)(a) (December 5, 2005)

⁴⁴⁸ Words inserted by Civil Partnership Act 2004 c. 33 Sch.9(2) para.22(3)(b) (December 5, 2005)

⁴⁴⁹ Substituted by Family Law Act 1996 c. 27 Sch.8(III) para.58(3) (October 1, 1997)

⁴⁵⁰ Words substituted by Family Law Act 1996 c. 27 Sch.8(III) para.58(4) (October 1, 1997)

liability arising under a mortgage of the premises or otherwise towards the outgoings of the premises, the bankrupt does not, by virtue of those payments, acquire any interest in the premises.

Adjustment of prior transactions, etc.

339.— Transactions at an undervalue.

(1) Subject as follows in this section and sections 341 and 342, where an individual is adjudged bankrupt and he has at a relevant time (defined in section 341) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.

(3) For the purposes of this section and sections 341 and 342, an individual enters into a transaction with a person at an undervalue if—

- (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration,
- (b) he enters into a transaction with that person in consideration of marriage [or the formation of a civil partnership]⁴⁵¹, or
- (c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

340.— Preferences.

(1) Subject as follows in this and the next two sections, where an individual is adjudged bankrupt and he has at a relevant time (defined in section 341) given a preference to any person, the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not given that preference.

(3) For the purposes of this and the next two sections, an individual gives a preference to a person if—

- (a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities, and
- (b) the individual does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.

(4) The court shall not make an order under this section in respect of a preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (3)(b) above.

⁴⁵¹ Words inserted by Civil Partnership Act 2004 c. 33 Sch.27 para.119 (December 5, 2005)

(5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of his (otherwise than by reason only of being his employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (4).

(6) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

341.— “Relevant time” under ss. 339, 340.

(1) Subject as follows, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given—

- (a) in the case of a transaction at an undervalue, at a time in the period of 5 years ending with the day of the presentation of the bankruptcy petition on which the individual is adjudged bankrupt,
- (b) in the case of a preference which is not a transaction at an undervalue and is given to a person who is an associate of the individual (otherwise than by reason only of being his employee), at a time in the period of 2 years ending with that day, and
- (c) in any other case of a preference which is not a transaction at an undervalue, at a time in the period of 6 months ending with that day.

(2) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (a), (b) or (c) of subsection (1) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the end of the period mentioned in paragraph (a), that time is not a relevant time for the purposes of sections 339 and 340 unless the individual—

- (a) is insolvent at that time, or
- (b) becomes insolvent in consequence of the transaction or preference;

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by an individual with a person who is an associate of his (otherwise than by reason only of being his employee).

(3) For the purposes of subsection (2), an individual is insolvent if—

- (a) he is unable to pay his debts as they fall due, or
- (b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.

(4) A transaction entered into or preference given by a person who is subsequently adjudged bankrupt on a petition under section 264(1)(d) (criminal bankruptcy) is to be treated as having been entered into or given at a relevant time for the purposes of sections 339 and 340 if it was entered into or given at any time on or after the date specified for the purposes of this subsection in the criminal bankruptcy order on which the petition was based.

(5) No order shall be made under section 339 or 340 by virtue of subsection (4) of this section where an appeal is pending (within the meaning of section 277) against the individual's conviction of any offence by virtue of which the criminal bankruptcy order was made.

Amendments Pending

Pt IX c. V s. 341(4): repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

Pt IX c. V s. 341(5): repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

342.— Orders under ss. 339, 340.

(1) Without prejudice to the generality of section 339(2) or 340(2), an order under either of those sections with respect to a transaction or preference entered into or given by an individual who is subsequently adjudged bankrupt may (subject as follows)—

- (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate;
- (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) any security given by the individual;
- (d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate as the court may direct;
- (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the court thinks appropriate;
- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and
- (g) provide for the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under section 339 or 340 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual in question entered into the transaction or, as the case may be, the person to whom the preference was given; but such an order—

- (a) shall not prejudice any interest in property which was acquired from a person other than that individual and was acquired [in good faith and for value]⁴⁵², or prejudice any interest deriving from such an interest, and
- (b) shall not require a person who received a benefit from the transaction or preference [in good faith and for value]⁴⁵² to pay a sum to the trustee of the bankrupt's estate, except where he was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of that individual.

[(2A) Where a person has acquired an interest in property from a person other than the individual in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or

⁴⁵² Words substituted by Insolvency (No. 2) Act 1994 c. 12 s.2(1) (July 26, 1994)

(b) he was an associate of, or was connected with, either the individual in question or the person with whom that individual entered into the transaction or to whom that individual gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of paragraph (a) or (as the case may be) paragraph (b) of subsection (2) that the interest was acquired or the benefit was received otherwise than in good faith.

]⁴⁵³

(3) Any sums required to be paid to the trustee in accordance with an order under section 339 or 340 shall be comprised in the bankrupt's estate.


[(4) For the purposes of subsection (2A)(a), the relevant surrounding circumstances are (as the case may require)—

(a) the fact that the individual in question entered into the transaction at an undervalue; or
(b) the circumstances which amounted to the giving of the preference by the individual in question.

(5) For the purposes of subsection (2A)(a), a person has notice of the relevant proceedings if he has notice—

(a) of the fact that the petition on which the individual in question is adjudged bankrupt has been presented; or
(b) of the fact that the individual in question has been adjudged bankrupt.

(6) Section 249 in Part VII of this Act shall apply for the purposes of subsection (2A)(b) as it applies for the purposes of the first Group of Parts.]⁴⁵⁴

 Partially in force

[342A.— Recovery of excessive pension contributions.

(1) Where an individual who is adjudged bankrupt—

(a) has rights under an approved pension arrangement, or
(b) has excluded rights under an unapproved pension arrangement,

the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) If the court is satisfied—

(a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and
(b) that the making of any of the relevant contributions (“the excessive contributions”) has unfairly prejudiced the individual's creditors,

the court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.

(3) Subsection (4) applies where the court is satisfied that the value of the rights under the arrangement is, as a result of rights of the individual under the arrangement or any other pension arrangement having at any time become subject to a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999 (debts giving effect to pension-sharing), less than it would otherwise have been.


(4) Where this subsection applies—

⁴⁵³ Added by Insolvency (No. 2) Act 1994 c. 12 s.2(2) (July 26, 1994)

⁴⁵⁴ S.342(4), (5) and (6) substituted for s.342(4) by Insolvency (No. 2) Act 1994 c. 12 s.2(3) (July 26, 1994)

- (a) any relevant contributions which were represented by the rights which became subject to the debit shall, for the purposes of subsection (2), be taken to be contributions of which the rights under the arrangement are the fruits, and
 - (b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of paragraph (a) shall be treated as excessive contributions before any which are so represented by virtue of that paragraph.
- (5) In subsections (2) to (4) “relevant contributions” means contributions to the arrangement or any other pension arrangement—
- (a) which the individual has at any time made on his own behalf, or
 - (b) which have at any time been made on his behalf.
- (6) The court shall, in determining whether it is satisfied under subsection (2)(b), consider in particular—
- (a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the individual's creditors or any of them, and
 - (b) whether the total amount of any contributions—
 - (i) made by or on behalf of the individual to pension arrangements, and
 - (ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pension arrangements,
 is an amount which is excessive in view of the individual's circumstances when those contributions were made.
- (7) For the purposes of this section and sections 342B and 342C (“the recovery provisions”), rights of an individual under an unapproved pension arrangement are excluded rights if they are rights which are excluded from his estate by virtue of regulations under section 12 of the Welfare Reform and Pensions Act 1999.
- (8) In the recovery provisions—
- “approved pension arrangement” has the same meaning as in section 11 of the Welfare Reform and Pensions Act 1999;
 - “unapproved pension arrangement” has the same meaning as in section 12 of that Act.

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 Partially in force

[342B.— Orders under section 342A.

- (1) Without prejudice to the generality of section 342A(2), an order under section 342A may include provision—
- (a) requiring the person responsible for the arrangement to pay an amount to the individual's trustee in bankruptcy,
 - (b) adjusting the liabilities of the arrangement in respect of the individual,
 - (c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the individual under the arrangement,
 - (d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that

⁴⁵⁵ Substituted by Welfare Reform and Pensions Act 1999 c. 30 Pt II s.15 (April 6, 2002 as SI 2002/153)

person in complying in the bankrupt's case with any requirement under section 342C(1) or in giving effect to the order.

(2) In subsection (1), references to adjusting the liabilities of the arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(3) In subsection (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (pension sharing orders and agreements).

(4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under section 342A is the lesser of—

- (a) the amount of the excessive contributions, and
- (b) the value of the individual's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

(5) An order under section 342A which requires the person responsible for an arrangement to pay an amount (“the restoration amount”) to the individual's trustee in bankruptcy must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of subsection (5), liabilities are correspondingly reduced if the difference between—


- (a) the amount of the liabilities immediately before the reduction, and
- (b) the amount of the liabilities immediately after the reduction,

is equal to the restoration amount.

(7) An order under section 342A in respect of an arrangement—

- (a) shall be binding on the person responsible for the arrangement, and
- (b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

]⁴⁵⁶

 Partially in force

[342C.— Orders under section 342A: supplementary.

(1) The person responsible for—

- (a) an approved pension arrangement under which a bankrupt has rights,
- (b) an unapproved pension arrangement under which a bankrupt has excluded rights, or
- (c) a pension arrangement under which a bankrupt has at any time had rights,

shall, on the bankrupt's trustee in bankruptcy making a written request, provide the trustee with such information about the arrangement and rights as the trustee may reasonably require for, or in connection with, the making of applications under section 342A.

(2) Nothing in—

- (a) any provision of section 159 of the Pension Schemes Act 1993 or section 91 of the Pensions Act 1995 (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),

⁴⁵⁶ Substituted by Welfare Reform and Pensions Act 1999 c. 30 Pt II s.15 (April 6, 2002 as SI 2002/153)

- (b) any provision of any enactment (whether passed or made before or after the passing of the Welfare Reform and Pensions Act 1999) corresponding to any of the provisions mentioned in paragraph (a), or
 - (c) any provision of the arrangement in question corresponding to any of those provisions, applies to a court exercising its powers under section 342A.
- (3) Where any sum is required by an order under section 342A to be paid to the trustee in bankruptcy, that sum shall be comprised in the bankrupt's estate.
- (4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—
- (a) any such value as is mentioned in section 342B(4)(b);
 - (b) any such amounts as are mentioned in section 342B(6)(a) and (b).
- (5) The power conferred by subsection (4) includes power to provide for calculation or verification—
- (a) in such manner as may, in the particular case, be approved by a prescribed person; or
 - [(b) in accordance with guidance from time to time prepared by a prescribed person.]⁴⁵⁷
- (6) References in the recovery provisions to the person responsible for a pension arrangement are to—
- (a) the trustees, managers or provider of the arrangement, or
 - (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.
- (7) In this section and sections 342A and 342B—
- “prescribed” means prescribed by regulations;
 - “the recovery provisions” means this section and sections 342A and 342B;
 - “regulations” means regulations made by the Secretary of State.
- (8) Regulations under the recovery provisions may—
- (a) make different provision for different cases;
 - (b) contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient.
- (9) Regulations under the recovery provisions shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
-]⁴⁵⁸

[342D.— Recovery of excessive contributions in pension-sharing cases.

- (1) For the purposes of sections 339, 341 and 342, a pension-sharing transaction shall be taken—
- (a) to be a transaction, entered into by the transferor with the transferee, by which the appropriate amount is transferred by the transferor to the transferee; and
 - (b) to be capable of being a transaction entered into at an undervalue only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (2) For the purposes of sections 340 to 342, a pension-sharing transaction shall be taken—
- (a) to be something (namely a transfer of the appropriate amount to the transferee) done by the transferor; and

⁴⁵⁷ Substituted by Pensions Act 2007 c. 22 Sch.5 para.3 (November 1, 2007)

⁴⁵⁸ Substituted by Welfare Reform and Pensions Act 1999 c. 30 Pt II s.15 (April 6, 2002 as SI 2002/153)

- (b) to be capable of being a preference given to the transferee only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (3) If on an application under section 339 or 340 any question arises as to whether, or the extent to which, the appropriate amount in the case of a pension-sharing transaction is recoverable, the question shall be determined in accordance with subsections (4) to (8).
- (4) The court shall first determine the extent (if any) to which the transferor's rights under the shared arrangement at the time of the transaction appear to have been (whether directly or indirectly) the fruits of contributions ("personal contributions")—
- (a) which the transferor has at any time made on his own behalf, or
 - (b) which have at any time been made on the transferor's behalf,
- to the shared arrangement or any other pension arrangement.
- (5) Where it appears that those rights were to any extent the fruits of personal contributions, the court shall then determine the extent (if any) to which those rights appear to have been the fruits of personal contributions whose making has unfairly prejudiced the transferor's creditors ("the unfair contributions").
- (6) If it appears to the court that the extent to which those rights were the fruits of the unfair contributions is such that the transfer of the appropriate amount could have been made out of rights under the shared arrangement which were not the fruits of the unfair contributions, then the appropriate amount is not recoverable.
- (7) If it appears to the court that the transfer could not have been wholly so made, then the appropriate amount is recoverable to the extent to which it appears to the court that the transfer could not have been so made.
- (8) In making the determination mentioned in subsection (5) the court shall consider in particular—
- (a) whether any of the personal contributions were made for the purpose of putting assets beyond the reach of the transferor's creditors or any of them, and
 - (b) whether the total amount of any personal contributions represented, at the time the pension-sharing transaction was made, by rights under pension arrangements is an amount which is excessive in view of the transferor's circumstances when those contributions were made.
- (9) In this section and sections 342E and 342F—
- "appropriate amount", in relation to a pension-sharing transaction, means the appropriate amount in relation to that transaction for the purposes of section 29(1) of the Welfare Reform and Pensions Act 1999 (creation of pension credits and debits);
 - "pension-sharing transaction" means an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (orders and agreements which activate pension-sharing);
 - "shared arrangement", in relation to a pension-sharing transaction, means the pension arrangement to which the transaction relates;
 - "transferee", in relation to a pension-sharing transaction, means the person for whose benefit the transaction is made;
 - "transferor", in relation to a pension-sharing transaction, means the person to whose rights the transaction relates.

] ⁴⁵⁹**[342E.— Orders under section 339 or 340 in respect of pension-sharing transactions.**

(1) This section and section 342F apply if the court is making an order under section 339 or 340 in a case where—

- (a) the transaction or preference is, or is any part of, a pension-sharing transaction, and
- (b) the transferee has rights under a pension arrangement (“the destination arrangement”, which may be the shared arrangement or any other pension arrangement) that are derived, directly or indirectly, from the pension-sharing transaction.

(2) Without prejudice to the generality of section 339(2) or 340(2), or of section 342, the order may include provision—

- (a) requiring the person responsible for the destination arrangement to pay an amount to the transferor's trustee in bankruptcy,
- (b) adjusting the liabilities of the destination arrangement in respect of the transferee,
- (c) adjusting any liabilities of the destination arrangement in respect of any other person that derive, directly or indirectly, from rights of the transferee under the destination arrangement,
- (d) for the recovery by the person responsible for the destination arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the transferor's case with any requirement under section 342F(1) or in giving effect to the order,
- (e) for the recovery, from the transferor's trustee in bankruptcy, by the person responsible for a pension arrangement, of costs incurred by that person in complying in the transferor's case with any requirement under section 342F(2) or (3).

(3) In subsection (2), references to adjusting the liabilities of the destination arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(4) The maximum amount which the person responsible for the destination arrangement may be required to pay by the order is the smallest of—

- (a) so much of the appropriate amount as, in accordance with section 342D, is recoverable,
- (b) so much (if any) of the amount of the unfair contributions (within the meaning given by section 342D(5)) as is not recoverable by way of an order under section 342A containing provision such as is mentioned in section 342B(1)(a), and
- (c) the value of the transferee's rights under the destination arrangement so far as they are derived, directly or indirectly, from the pension-sharing transaction.

(5) If the order requires the person responsible for the destination arrangement to pay an amount (“the restoration amount”) to the transferor's trustee in bankruptcy it must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of subsection (5), liabilities are correspondingly reduced if the difference between—

- (a) the amount of the liabilities immediately before the reduction, and

⁴⁵⁹ Added by Welfare Reform and Pensions Act 1999 c. 30 Sch.12(II) para.71 (April 6, 2002 as SI 2002/153 as amended by SI 2002/818)

(b) the amount of the liabilities immediately after the reduction, is equal to the restoration amount.

(7) The order—

- (a) shall be binding on the person responsible for the destination arrangement, and
- (b) overrides provisions of the destination arrangement to the extent that they conflict with the provisions of the order.

]⁴⁶⁰

[342F.— Orders under section 339 or 340 in pension-sharing cases: supplementary.

(1) On the transferor's trustee in bankruptcy making a written request to the person responsible for the destination arrangement, that person shall provide the trustee with such information about—

- (a) the arrangement,
- (b) the transferee's rights under it, and
- (c) where the destination arrangement is the shared arrangement, the transferor's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.

(2) Where the shared arrangement is not the destination arrangement, the person responsible for the shared arrangement shall, on the transferor's trustee in bankruptcy making a written request to that person, provide the trustee with such information about—

- (a) the arrangement, and
- (b) the transferor's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.

(3) On the transferor's trustee in bankruptcy making a written request to the person responsible for any intermediate arrangement, that person shall provide the trustee with such information about—

- (a) the arrangement, and
- (b) the transferee's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.

(4) In subsection (3) “intermediate arrangement” means a pension arrangement, other than the shared arrangement or the destination arrangement, in relation to which the following conditions are fulfilled—

- (a) there was a time when the transferee had rights under the arrangement that were derived (directly or indirectly) from the pension-sharing transaction, and
- (b) the transferee's rights under the destination arrangement (so far as derived from the pension-sharing transaction) are to any extent derived (directly or indirectly) from the rights mentioned in paragraph (a).

(5) Nothing in—

⁴⁶⁰ Added by Welfare Reform and Pensions Act 1999 c. 30 Sch.12(II) para.71 (April 6, 2002 as SI 2002/153 as amended by SI 2002/818)

- (a) any provision of section 159 of the Pension Schemes Act 1993 or section 91 of the Pensions Act 1995 (which prevent assignment and the making of orders which restrain a person from receiving anything which he is prevented from assigning),
 - (b) any provision of any enactment (whether passed or made before or after the passing of the Welfare Reform and Pensions Act 1999) corresponding to any of the provisions mentioned in paragraph (a), or
 - (c) any provision of the destination arrangement corresponding to any of those provisions, applies to a court exercising its powers under section 339 or 340.
- (6) Regulations may, for the purposes of sections 339 to 342, sections 342D and 342E and this section, make provision about the calculation and verification of—
- (a) any such value as is mentioned in section 342E(4)(c);
 - (b) any such amounts as are mentioned in section 342E(6)(a) and (b).
- (7) The power conferred by subsection (6) includes power to provide for calculation or verification—
- (a) in such manner as may, in the particular case, be approved by a prescribed person; or
 - [(b) in accordance with guidance from time to time prepared by a prescribed person.]⁴⁶¹
- (8) In section 342E and this section, references to the person responsible for a pension arrangement are to—
- (a) the trustees, managers or provider of the arrangement, or
 - (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.
- (9) In this section—
- “prescribed” means prescribed by regulations;
 - “regulations” means regulations made by the Secretary of State.
- (10) Regulations under this section may—
- (a) make different provision for different cases;
 - (b) contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient.
- (11) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
-] ⁴⁶²

343.— Extortionate credit transactions

- (1) This section applies where a person is adjudged bankrupt who is or has been a party to a transaction for, or involving, the provision to him of credit.
- (2) The court may, on the application of the trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than 3 years before the commencement of the bankruptcy.
- (3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

⁴⁶¹ Substituted by Pensions Act 2007 c. 22 Sch.5 para.4 (November 1, 2007)

⁴⁶² Added by Welfare Reform and Pensions Act 1999 c. 30 Sch.12(II) para.71 (April 6, 2002 as SI 2002/153 as amended by SI 2002/818)

- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or
 - (b) it otherwise grossly contravened ordinary principles of fair dealing;
- and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.
- (4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks, fit, that is to say—
- (a) provision setting aside the whole or part of any obligation created by the transaction;
 - (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;
 - (c) provision requiring any person who is or was party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the bankrupt;
 - (d) provision requiring any person to surrender to the trustee any property held by him as security for the purposes of the transaction;
 - (e) provision directing accounts to be taken between any persons.
- (5) Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this section shall be comprised in the bankrupt's estate.
- (6) [...] ⁴⁶³ But the powers conferred by this section are exercisable in relation to any transaction concurrently with any powers exercisable under this Act in relation to that transaction as a transaction at an undervalue.

344.— Avoidance of general assignment of book debts.

- (1) The following applies where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt.
- (2) The assignment is void against the trustee of the bankrupt's estate as regards book debts which were not paid before the presentation of the bankruptcy petition, unless the assignment has been registered under the Bills of Sale Act 1878.
- (3) For the purposes of subsections (1) and (2)—
- (a) “assignment” includes an assignment by way of security or charge on book debts, and
 - (b) “general assignment” does not include—
 - (i) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts, or
 - (ii) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally
- (4) For the purposes of registration under the Act of 1878 an assignment of book debts is to be treated as if it were a bill of sale given otherwise than by way of security for the payment of a sum

⁴⁶³ Words repealed subject to savings and transitional provisions specified in 2006 c.14 Sch.3 para.15(5) by Consumer Credit Act 2006 c. 14 Sch.4 para.1 (April 6, 2007: repeal has effect as SI 2007/123, subject to savings and transitional provisions specified in 2006 c.14 Sch.3 para.15(5))

of money; and the provisions of that Act with respect to the registration of bills of sale apply accordingly with such necessary modifications as may be made by rules under that Act.

345.— Contracts to which bankrupt is a party.

- (1) The following applies where a contract has been made with a person who is subsequently adjudged bankrupt.
- (2) The court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the court to be equitable.
- (3) Any damages payable by the bankrupt by virtue of an order of the court under this section are provable as a bankruptcy debt.
- (4) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

346.— Enforcement procedures.

- (1) Subject to section 285 in Chapter II (restrictions on proceedings and remedies) and to the following provisions of this section, where the creditor of any person who is adjudged bankrupt has, before the commencement of the bankruptcy—
 - (a) issued execution against the goods or land of that person, or
 - (b) attached a debt due to that person from another person,that creditor is not entitled, as against the official receiver or trustee of the bankrupt's estate, to retain the benefit of the execution or attachment, or any sums paid to avoid it, unless the execution or attachment was completed, or the sums were paid, before the commencement of the bankruptcy.
- (2) Subject as follows, where any goods of a person have been taken in execution, then, if before the completion of the execution notice is given to the [enforcement officer]⁴⁶⁴ or other officer charged with the execution that that person has been adjudged bankrupt—
 - (a) the [enforcement officer]⁴⁶⁴ or other officer shall on request deliver to the official receiver or trustee of the bankrupt's estate the goods and any money seized or recovered in part satisfaction of the execution, but
 - (b) the costs of the execution are a first charge on the goods or money so delivered and the official receiver or trustee may sell the goods or a sufficient part of them for the purpose of satisfying the charge.
- (3) Subject to subsection (6) below, where—
 - (a) under an execution in respect of a judgment for a sum exceeding such sum as may be prescribed for the purposes of this subsection, the goods of any person are sold or money is paid in order to avoid a sale, and
 - (b) before the end of the period of 14 days beginning with the day of the sale or payment the [enforcement officer]⁴⁶⁴ or other officer charged with the execution is given notice that a bankruptcy petition has been presented in relation to that person, and
 - (c) a bankruptcy order is or has been made on that petition,

⁴⁶⁴ Word substituted by Courts Act 2003 c. 39 Sch.8 para.297(2) (March 15, 2004)

the balance of the proceeds of sale or money paid, after deducting the costs of execution, shall (in priority to the claim of the execution creditor) be comprised in the bankrupt's estate.

(4) Accordingly, in the case of an execution in respect of a judgment for a sum exceeding the sum prescribed for the purposes of subsection (3), the [enforcement officer]⁴⁶⁴ or other officer charged with the execution—

(a) shall not dispose of the balance mentioned in subsection (3) at any time within the period of 14 days so mentioned or while there is pending a bankruptcy petition of which he has been given notice under that subsection, and

(b) shall pay that balance, where by virtue of that subsection it is comprised in the bankrupt's estate, to the official receiver or (if there is one) to the trustee of that estate.

(5) For the purposes of this section—

(a) an execution against goods is completed by seizure and sale or by the making of a charging order under section 1 of the Charging Orders Act 1979;

(b) an execution against land is completed by seizure, by the appointment of a receiver or by the making of a charging order under that section;

(c) an attachment of a debt is completed by the receipt of the debt.

(6) The rights conferred by subsections (1) to (3) on the official receiver or the trustee may, to such extent and on such terms as it thinks fit, be set aside by the court in favour of the creditor who has issued the execution or attached the debt.

(7) Nothing in this section entitles the trustee of a bankrupt's estate to claim goods from a person who has acquired them in good faith under a sale by [an enforcement officer]⁴⁶⁵ or other officer charged with an execution.

(8) Neither subsection (2) nor subsection (3) applies in relation to any execution against property which has been acquired by or has devolved upon the bankrupt since the commencement of the bankruptcy, unless, at the time the execution is issued or before it is completed—

(a) the property has been or is claimed for the bankrupt's estate under section 307 (after-acquired property), and

(b) a copy of the notice given under that section has been or is served on the [enforcement officer]⁴⁶⁴ or other officer charged with the execution.

[(9) In this section “enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003.]⁴⁶⁶

347.— Distress, etc.

(1) The right of any landlord or other person to whom rent is payable to distrain upon the goods and effects of an undischarged bankrupt for rent due to him from the bankrupt is available (subject to [sections 252(2)(b) and 254(1) above and]⁴⁶⁷ subsection (5) below) against goods and effects comprised in the bankrupt's estate, but only for 6 months' rent accrued due before the commencement of the bankruptcy.

⁴⁶⁵ Words substituted by Courts Act 2003 c. 39 Sch.8 para.297(3) (March 15, 2004)

⁴⁶⁶ Added by Courts Act 2003 c. 39 Sch.8 para.297(4) (March 15, 2004)

⁴⁶⁷ Words inserted by Insolvency Act 2000 c. 39 Sch.3 para.14(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

(2) Where a landlord or other person to whom rent is payable has distrained for rent upon the goods and effects of an individual to whom a bankruptcy petition relates and a bankruptcy order is subsequently made on that petition, any amount recovered by way of that distress which—

(a) is in excess of the amount which by virtue of subsection (1) would have been recoverable after the commencement of the bankruptcy, or

(b) is in respect of rent for a period or part of a period after the distress was levied, shall be held for the bankrupt as part of his estate.

(3) Where any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual who is adjudged bankrupt before the end of the period of 3 months beginning with the distraint, so much of those goods or effects, or of the proceeds of their sale, as is not held for the bankrupt under subsection (2) shall be charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting those debts.

(4) Where by virtue of any charge under subsection (3) any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or, as the case may be, the amount of the payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate as is available for the payment of preferential creditors by virtue of the surrender or payment.

(5) A landlord or other person to whom rent is payable is not at any time after the discharge of a bankrupt entitled to distrain upon any goods or effects comprised in the bankrupt's estate.

(6) Where in the case of any execution—

(a) a landlord is (apart from this section) entitled under section 1 of the Landlord and Tenant Act 1709 or section 102 of the County Courts Act 1984 (claims for rent where goods seized in execution) to claim for an amount not exceeding one year's rent, and

(b) the person against whom the execution is levied is adjudged bankrupt before the notice of claim is served on the [enforcement officer,]⁴⁶⁸ or other officer charged with the execution,

the right of the landlord to claim under that section is restricted to a right to claim for an amount not exceeding 6 months' rent and does not extend to any rent payable in respect of a period after the notice of claim is so served.

(7) Nothing in subsection (6) imposes any liability on [an enforcement officer]⁴⁶⁹ or other officer charged with an execution to account to the official receiver or the trustee of a bankrupt's estate for any sums paid by him to a landlord at any time before [the enforcement officer]⁴⁷⁰ or other officer was served with notice of the bankruptcy order in question.

But this subsection is without prejudice to the liability of the landlord.

(8) [Subject to sections 252(2)(b) and 254(1) above.]⁴⁷¹ Nothing in this Group of Parts affects any right to distrain otherwise than for rent; and any such right is at any time exercisable without

⁴⁶⁸ Word substituted by Courts Act 2003 c. 39 Sch.8 para.298(2) (March 15, 2004)

⁴⁶⁹ Words substituted by Courts Act 2003 c. 39 Sch.8 para.298(3)(a) (March 15, 2004)

⁴⁷⁰ Words substituted by Courts Act 2003 c. 39 Sch.8 para.298(3)(b) (March 15, 2004)

⁴⁷¹ Words inserted by Insolvency Act 2000 c. 39 Sch.3 para.14(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

restriction against property comprised in a bankrupt's estate, even if that right is expressed by any enactment to be exercisable in like manner as a right to distrain for rent.

(9) Any right to distrain against property comprised in a bankrupt's estate is exercisable notwithstanding that the property has vested in the trustee.

(10) The provisions of this section are without prejudice to a landlord's right in a bankruptcy to prove for any bankruptcy debt in respect of rent.

[(11) In this section “enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003.]⁴⁷²

Amendments Pending

Pt IX c. V s. 347(1): words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 14 para. 44(2) (date to be appointed)

Pt IX c. V s. 347(2): words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 14 para. 44(3)(a) (date to be appointed)

Pt IX c. V s. 347(2): words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 14 para. 44(3)(b) (date to be appointed)

Pt IX c. V s. 347(2): words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 14 para. 44(3)(c) (date to be appointed)

Pt IX c. V s. 347(5): words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 14 para. 44(4) (date to be appointed)

Pt IX c. V s. 347(6): repealed by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 14 para. 44(5) (date to be appointed)

Pt IX c. V s. 347(6): repealed by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 23(4) para. 1 (date to be appointed)

Pt IX c. V s. 347(7): repealed by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 14 para. 44(5) (date to be appointed)

Pt IX c. V s. 347(7): repealed by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 23(4) para. 1 (date to be appointed)

Pt IX c. V s. 347(11): repealed by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 14 para. 44(6) (date to be appointed)

Pt IX c. V s. 347(11): repealed by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 23(4) para. 1 (date to be appointed)

348.— Apprenticeships, etc.

(1) This section applies where—

- (a) a bankruptcy order is made in respect of an individual to whom another individual was an apprentice or articled clerk at the time when the petition on which the order was made was presented, and
- (b) the bankrupt or the apprentice or clerk gives notice to the trustee terminating the apprenticeship or articles.

⁴⁷² Added by Courts Act 2003 c. 39 Sch.8 para.298(4) (March 15, 2004)

- (2) Subject to subsection (6) below, the indenture of apprenticeship or, as the case may be, the articles of agreement shall be discharged with effect from the commencement of the bankruptcy.
- (3) If any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on an application made by or on behalf of the apprentice or clerk, pay such sum to the apprentice or clerk as the trustee thinks reasonable, having regard to—
 - (a) the amount of the fee,
 - (b) the proportion of the period in respect of which the fee was paid that has been served by the apprentice or clerk before the commencement of the bankruptcy, and
 - (c) the other circumstances of the case.
- (4) The power of the trustee to make a payment under subsection (3) has priority over his obligation to distribute the bankrupt's estate.
- (5) Instead of making a payment under subsection (3), the trustee may, if it appears to him expedient to do so on an application made by or on behalf of the apprentice or clerk, transfer the indenture or articles to a person other than the bankrupt.
- (6) Where a transfer is made under subsection (5), subsection (2) has effect only as between the apprentice or clerk and the bankrupt.

349.— Unenforceability of liens on books, etc.

- (1) Subject as follows, a lien or other right to retain possession of any of the books, papers or other records of a bankrupt is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the official receiver or the trustee of the bankrupt's estate.
- (2) Subsection (1) does not apply to a lien on documents which give a title to property and are held as such.

[349A.— Arbitration agreements to which bankrupt is party.

- (1) This section applies where a bankrupt had become party to a contract containing an arbitration agreement before the commencement of his bankruptcy.
- (2) If the trustee in bankruptcy adopts the contract, the arbitration agreement is enforceable by or against the trustee in relation to matters arising from or connected with the contract.
- (3) If the trustee in bankruptcy does not adopt the contract and a matter to which the arbitration agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings—
 - (a) the trustee with the consent of the creditors' committee, or
 - (b) any other party to the agreement,may apply to the court which may, if it thinks fit in all the circumstances of the case, order that the matter be referred to arbitration in accordance with the arbitration agreement.
- (4) In this section—

“arbitration agreement” has the same meaning as in Part I of the Arbitration Act 1996; and
“the court” means the court which has jurisdiction in the bankruptcy proceedings.

] ⁴⁷³

CHAPTER VI

BANKRUPTCY OFFENCES

Preliminary

350.— Scheme of this Chapter.

- (1) Subject to section 360(3) below, this Chapter applies where the court has made a bankruptcy order on a bankruptcy petition.
- (2) This Chapter applies whether or not the bankruptcy order is annulled, but proceedings for an offence under this Chapter shall not be instituted after the annulment.
- (3) Without prejudice to his liability in respect of a subsequent bankruptcy, the bankrupt is not guilty of an offence under this Chapter in respect of anything done after his discharge; but nothing in this Group of Parts prevents the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.
- [(3A) Subsection (3) is without prejudice to any provision of this Chapter which applies to a person in respect of whom a bankruptcy restrictions order is in force.] ⁴⁷⁴
- (4) It is not a defence in proceedings for an offence under this Chapter that anything relied on, in whole or in part, as constituting that offence was done outside England and Wales.
- (5) Proceedings for an offence under this Chapter or under the rules shall not be instituted except by the Secretary of State or by or with the consent of the Director of Public Prosecutions.
- (6) A person guilty of any offence under this Chapter is liable to imprisonment or a fine, or both.

351. Definitions.

In the following provisions of this Chapter—

- (a) references to property comprised in the bankrupt's estate or to property possession of which is required to be delivered up to the official receiver or the trustee of the bankrupt's estate include any property which would be such property if a notice in respect of it were given under section 307 (after-acquired property) [section 308] ⁴⁷⁵ (personal property and effects of bankrupt having more than replacement value) [or section 308A (vesting in trustee of certain tenancies)] ⁴⁷⁶ ;
- (b) “the initial period” means the period between the presentation of the bankruptcy petition and the commencement of the bankruptcy; and
- (c) a reference to a number of months or years before petition is to that period ending with the presentation of the bankruptcy petition

⁴⁷³ Added by Arbitration Act 1996 c. 23 Sch.3 para.46 (January 31, 1997 subject to transitional provisions specified in SI 1996/3146 art.4 and Sch.2)

⁴⁷⁴ Added by Enterprise Act 2002 c. 40 Sch.21 para.2 (April 1, 2004)

⁴⁷⁵ Words substituted by Housing Act 1988 (c.50), s. 140(1), Sch. 17 Pt. I para. 75

⁴⁷⁶ Words inserted by Housing Act 1988 (c.50), s. 140(1), Sch. 17 Pt. I para. 75

352. Defence of innocent intention.

Where in the case of an offence under any provision of this Chapter it is stated that this section applies, a person is not guilty of the offence if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

*Wrongdoing by the bankrupt before and after bankruptcy***353.— Non-disclosure**

- (1) The bankrupt is guilty of an offence if—
 - (a) he does not to the best of his knowledge and belief disclose all the property comprised in his estate to the official receiver or the trustee, or
 - (b) he does not inform the official receiver or the trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of.
- (2) Subsection (1)(b) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.
- (3) Section 352 applies to this offence.

354.— Concealment of property.

- (1) The bankrupt is guilty of an offence if—
 - (a) he does not deliver up possession to the official receiver or trustee, or as the official receiver or trustee may direct, of such part of the property comprised in his estate as is in his possession or under his control and possession of which he is required by law so to deliver up,
 - (b) he conceals any debt due to or from him or conceals any property the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the official receiver or trustee, or
 - (c) in the 12 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (b) above if the bankruptcy order had been made immediately before he did it.

Section 352 applies to this offence.

- (2) The bankrupt is guilty of an offence if he removes, or in the initial period removed, any property the value of which was not less than the prescribed amount and possession of which he has or would have been required to deliver up to the official receiver or the trustee.

Section 352 applies to this offence.

- (3) The bankrupt is guilty of an offence if he without reasonable excuse fails, on being required to do so by the official receiver [, the trustee]⁴⁷⁷ or the court—
 - (a) to account for the loss of any substantial part of his property incurred in the 12 months before petition or in the initial period, or
 - (b) to give a satisfactory explanation of the manner in which such a loss was incurred.

⁴⁷⁷ Words inserted by Enterprise Act 2002 c. 40 Sch.23 para.12 (April 1, 2004)

355.— Concealment of books and papers; falsification.

(1) The bankrupt is guilty of an offence if he does not deliver up possession to the official receiver or the trustee, or as the official receiver or trustee may direct, of all books, papers and other records of which he has possession or control and which relate to his estate or his affairs.

Section 352 applies to this offence.

(2) The bankrupt is guilty of an offence if—

- (a) he prevents, or in the initial period prevented, the production of any books, papers or records relating to his estate or affairs;
- (b) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his estate or affairs;
- (c) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his estate or affairs; or
- (d) in the 12 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (b) or (c) above if the bankruptcy order had been made before he did it.

Section 352 applies to this offence.

(3) The bankrupt is guilty of an offence if—

- (a) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his estate or affairs, or
- (b) in the 12 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (a) if the bankruptcy order had been made before he did it.

Section 352 applies to this offence.

[(4) In their application to a trading record subsections (2)(d) and (3)(b) shall have effect as if the reference to 12 months were a reference to two years.

(5) In subsection (4) “trading record” means a book, document or record which shows or explains the transactions or financial position of a person's business, including—

- (a) a periodic record of cash paid and received,
- (b) a statement of periodic stock-taking, and
- (c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.

]⁴⁷⁸

356.— False statements.

(1) The bankrupt is guilty of an offence if he makes or has made any material omission in any statement made under any provision in this Group of Parts and relating to his affairs.

Section 352 applies to this offence.

(2) The bankrupt is guilty of an offence if—

- (a) knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails to inform the trustee as soon as practicable; or

⁴⁷⁸ Added by Enterprise Act 2002 c. 40 Sch.23 para.13 (April 1, 2004)

- (b) he attempts to account for any part of his property by fictitious losses or expenses; or
- (c) at any meeting of his creditors in the 12 months before petition or (whether or not at such a meeting) at any time in the initial period, he did anything which would have been an offence under paragraph (b) if the bankruptcy order had been made before he did it; or
- (d) he is, or at any time has been, guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

357.— Fraudulent disposal of property.

(1) The bankrupt is guilty of an offence if he makes or causes to be made, or has in the period of 5 years ending with the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on, his property.

Section 352 applies to this offence.

(2) The reference to making a transfer of or charge on any property includes causing or conniving at the levying of any execution against that property.

(3) The bankrupt is guilty of an offence if he conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his property after, or within 2 months before, the date on which a judgment or order for the payment of money has been obtained against him, being a judgment or order which was not satisfied before the commencement of the bankruptcy.

Section 352 applies to this offence.

358. Absconding.

The bankrupt is guilty of an offence if—

- (a) he leaves, or attempts or makes preparations to leave, England and Wales with any property the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the official receiver or the trustee, or
- (b) in the 6 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (a) if the bankruptcy order had been made immediately before he did it.

Section 352 applies to this offence.

359.— Fraudulent dealing with property obtained on credit.

(1) The bankrupt is guilty of an offence if, in the 12 months before petition, or in the initial period, he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for.

Section 352 applies to this offence.

(2) A person is guilty of an offence if, in the 12 months before petition or in the initial period, he acquired or received property from the bankrupt knowing or believing—

- (a) that the bankrupt owed money in respect of the property, and
- (b) that the bankrupt did not intend, or was unlikely to be able, to pay the money he so owed.

(3) A person is not guilty of an offence under subsection (1) or (2) if the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.

(4) In determining for the purpose of this section whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the property.

(5) In this section references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

360.— Obtaining credit; engaging in business.

(1) The bankrupt is guilty of an offence if—

- (a) either alone or jointly with any other person, he obtains credit to the extent of the prescribed amount or more without giving the person from whom he obtains it the relevant information about his status; or
- (b) he engages (whether directly or indirectly) in any business under a name other than that in which he was adjudged bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.

(2) The reference to the bankrupt obtaining credit includes the following cases—

- (a) where goods are bailed to him under a hire-purchase agreement, or agreed to be sold to him under a conditional sale agreement, and
- (b) where he is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) A person whose estate has been sequestrated in Scotland, or who has been adjudged bankrupt in Northern Ireland, is guilty of an offence if, before his discharge, he does anything in England and Wales which would be an offence under subsection (1) if he were an undischarged bankrupt and the sequestration of his estate or the adjudication in Northern Ireland were an adjudication under this Part.

(4) For the purposes of subsection (1)(a), the relevant information about the status of the person in question is the information that he is an undischarged bankrupt or, as the case may be, that his estate has been sequestrated in Scotland and that he has not been discharged.

[(5) This section applies to the bankrupt after discharge while a bankruptcy restrictions order is in force in respect of him.

(6) For the purposes of subsection (1)(a) as it applies by virtue of subsection (5), the relevant information about the status of the person in question is the information that a bankruptcy restrictions order is in force in respect of him.]⁴⁷⁹

361.— [...]⁴⁸⁰

362.— [...]⁴⁸¹

⁴⁷⁹ Added by Enterprise Act 2002 c. 40 Sch.21 para.3 (April 1, 2004)

⁴⁸⁰ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004 as SI 2003/2093)

⁴⁸¹ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004 as SI 2003/2093)

CHAPTER VII

POWERS OF COURT IN BANKRUPTCY

363.— General control of court.

- (1) Every bankruptcy is under the general control of the court and, subject to the provisions in this Group of Parts, the court has full power to decide all questions of priorities and all other questions, whether of law or fact, arising in any bankruptcy.
- (2) Without prejudice to any other provision in this Group of Parts, an undischarged bankrupt or a discharged bankrupt whose estate is still being administered under Chapter IV of this Part shall do all such things as he may be directed to do by the court for the purposes of his bankruptcy or, as the case may be, the administration of that estate.
- (3) The official receiver or the trustee of a bankrupt's estate may at any time apply to the court for a direction under subsection (2).
- (4) If any person without reasonable excuse fails to comply with any obligation imposed on him by subsection (2), he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

364.— Power of arrest.

- (1) In the cases specified in the next subsection the court may cause a warrant to be issued to a constable or prescribed officer of the court—
 - (a) for the arrest of a debtor to whom a bankruptcy petition relates or of an undischarged bankrupt, or of a discharged bankrupt whose estate is still being administered under Chapter IV of this Part, and
 - (b) for the seizure of any books, papers, records, money or goods in the possession of a person arrested under the warrant,and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.
- (2) The powers conferred by subsection (1) are exercisable in relation to a debtor or undischarged or discharged bankrupt if, at any time after the presentation of the bankruptcy petition relating to him or the making of the bankruptcy order against him, it appears to the court—
 - (a) that there are reasonable grounds for believing that he has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his debts or his appearance to a bankruptcy petition or to avoiding, delaying or disrupting any proceedings in bankruptcy against him or any examination of his affairs, or
 - (b) that he is about to remove his goods with a view to preventing or delaying possession being taken of them by the official receiver or the trustee of his estate, or
 - (c) that there are reasonable grounds for believing that he has concealed or destroyed, or is about to conceal or destroy, any of his goods or any books, papers or records which might be of use to his creditors in the course of his bankruptcy or in connection with the administration of his estate, or

- (d) that he has, without the leave of the official receiver or the trustee of his estate, removed any goods in his possession which exceed in value such sum as may be prescribed for the purposes of this paragraph, or
- (e) that he has failed, without reasonable excuse, to attend any examination ordered by the court.

365.— Seizure of bankrupt's property.

- (1) At any time after a bankruptcy order has been made, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, issue a warrant authorising the person to whom it is directed to seize any property comprised in the bankrupt's estate which is, or any books, papers or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of the bankrupt or any other person who is required to deliver the property, books, papers or records to the official receiver or trustee.
- (2) Any person executing a warrant under this section may, for the purpose of seizing any property comprised in the bankrupt's estate or any books, papers or records relating to the bankrupt's estate or affairs, break open any premises where the bankrupt or anything that may be seized under the warrant is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.
- (3) If, after a bankruptcy order has been made, the court is satisfied that any property comprised in the bankrupt's estate is, or any books, papers or records relating to the bankrupt's estate or affairs are, concealed in any premises not belonging to him, it may issue a warrant authorising any constable or prescribed officer of the court to search those premises for the property, books, papers or records.
- (4) A warrant under subsection (3) shall not be executed except in the prescribed manner and in accordance with its terms.

366.— Inquiry into bankrupt's dealings and property.

- (1) At any time after a bankruptcy order has been made the court may, on the application of the official receiver or the trustee of the bankrupt's estate, summon to appear before it—
 - (a) the bankrupt or the bankrupt's spouse or former spouse [or civil partner or former civil partner]⁴⁸² ,
 - (b) any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt,
 - (c) any person appearing to the court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property.

The court may require any such person as is mentioned in paragraph (b) or (c) to submit an affidavit to the court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.

- (2) Without prejudice to section 364, the following applies in a case where—
 - (a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or

⁴⁸² Words inserted by Civil Partnership Act 2004 c. 33 Sch.27 para.120 (December 5, 2005)

- (b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.
- (3) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—
 - (a) for the arrest of that person, and
 - (b) for the seizure of any books, papers, records, money or goods in that person's possession.
- (4) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

Amendments Pending

Pt IX c. VII s. 366(1): words substituted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 5(7) (April 6, 2010: substitution has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

367.— Court's enforcement powers under s. 366.

- (1) If it appears to the court, on consideration of any evidence obtained under section 366 or this section, that any person has in his possession any property comprised in the bankrupt's estate, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to deliver the whole or any part of the property to the official receiver or the trustee at such time, in such manner and on such terms as the court thinks fit.
- (2) If it appears to the court, on consideration of any evidence obtained under section 366 or this section, that any person is indebted to the bankrupt, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to pay to the official receiver or trustee, at such time and in such manner as the court may direct, the whole or part of the amount due, whether in full discharge of the debt or otherwise as the court thinks fit.
- (3) The court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under section 366 shall be examined in any part of the United Kingdom where he may be for the time being, or in any place outside the United Kingdom.
- (4) Any person who appears or is brought before the court under section 366 or this section may be examined on oath, either orally or by interrogatories, concerning the bankrupt or the bankrupt's dealings, affairs and property.

368. Provision corresponding to s. 366, where interim receiver appointed.

Sections 366 and 367 apply where an interim receiver has been appointed under section 286 as they apply where a bankruptcy order has been made, as if—

- (a) references to the official receiver or the trustee were to the interim receiver, and
- (b) references to the bankrupt and to his estate were (respectively) to the debtor and his property.

369.— Order for production of documents by inland revenue.

(1) For the purpose of an examination under section 290 (public examination of bankrupt) or proceedings under section 366 to 368, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order an inland revenue official to produce to the court—

- (a) any return, account or accounts submitted (whether before or after the commencement of the bankruptcy) by the bankrupt to any inland revenue official,
- (b) any assessment or determination made (whether before or after the commencement of the bankruptcy) in relation to the bankrupt by any inland revenue official, or
- (c) any correspondence (whether before or after the commencement of the bankruptcy) between the bankrupt and any inland revenue official.

(2) Where the court has made an order under subsection (1) for the purposes of any examination or proceedings, the court may, at any time after the document to which the order relates is produced to it, by order authorise the disclosure of the document, or of any part of its contents, to the official receiver, the trustee of the bankrupt's estate or the bankrupt's creditors.

(3) The court shall not address an order under subsection (1) to an inland revenue official unless it is satisfied that that official is dealing, or has dealt, with the affairs of the bankrupt.

(4) Where any document to which an order under subsection (1) relates is not in the possession of the official to whom the order is addressed, it is the duty of that official to take all reasonable steps to secure possession of it and, if he fails to do so, to report the reasons for his failure to the court.

(5) Where any document to which an order under subsection (1) relates is in the possession of an inland revenue official other than the one to whom the order is addressed, it is the duty of the official in possession of the document, at the request of the official to whom the order is addressed, to deliver it to the official making the request.

(6) In this section “inland revenue official” means any inspector or collector of taxes appointed by the Commissioners of Inland Revenue or any person appointed by the Commissioners to serve in any other capacity.

(7) This section does not apply for the purposes of an examination under sections 366 and 367 which takes place by virtue of section 368 (interim receiver).

370.— Power to appoint special manager

(1) The court may, on an application under this section, appoint any person to be the special manager—

- (a) of a bankrupt's estate, or
- (b) of the business of an undischarged bankrupt, or
- (c) of the property or business of a debtor in whose case the official receiver has been appointed interim receiver under section 286.

(2) An application under this section may be made by the official receiver or the trustee of the bankrupt's estate in any case where it appears to the official receiver or trustee that the nature of the estate, property or business, or the interests of the creditors generally, require the appointment of another person to manage the estate, property or business.

(3) A special manager appointed under this section has such powers as may be entrusted to him by the court.

(4) The power of the court under subsection (3) to entrust powers to a special manager includes power to direct that any provision in this Group of Parts that has effect in relation to the official receiver, interim receiver or trustee shall have the like effect in relation to the special manager for the purposes of the carrying out by the special manager of any of the functions of the official receiver, interim receiver or trustee.

(5) A special manager appointed under this section shall—

- (a) give such security as may be prescribed,
- (b) prepare and keep such accounts as may be prescribed, and
- (c) produce those accounts in accordance with the rules to the Secretary of State or to such other persons as may be prescribed.

371.— Re-direction of bankrupt's letters, etc.

(1) Where a bankruptcy order has been made, the court may from time to time, on the application of the official receiver or the trustee of the bankrupt's estate, order [a postal operator (within the meaning of the Postal Services Act 2000)]⁴⁸³ to re-direct and send or deliver to the official receiver or trustee or otherwise any postal packet (within the meaning of [that Act]⁴⁸⁴) which would otherwise be sent or delivered by [the operator concerned]⁴⁸⁵ to the bankrupt at such place or places as may be specified in the order.

(2) An order under this section has effect for such period, not exceeding 3 months, as may be specified in the order.

PART X

INDIVIDUAL INSOLVENCY: GENERAL PROVISIONS

372.— Supplies of gas, water, electricity, etc.

(1) This section applies where on any day (“the relevant day”)—

- (a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or
- (b) a voluntary arrangement proposed by an individual is approved under Part VIII, or
- (c) a deed of arrangement is made for the benefit of an individual's creditors;

and in this section “the office-holder” means the official receiver, the trustee in bankruptcy, the interim receiver, the supervisor of the voluntary arrangement or the trustee under the deed of arrangement, as the case may be.

⁴⁸³ Words substituted by Postal Services Act 2000 c. 26 Sch.8(II) para.20(a) (March 26, 2001 subject to transitional provisions specified in SI 2001/1148 arts.3-42, this section was originally commenced by SI 2000/2957 and was subsequently amended by SI 2001/1148)

⁴⁸⁴ Words substituted by Postal Services Act 2000 c. 26 Sch.8(II) para.20(b) (March 26, 2001 subject to transitional provisions specified in SI 2001/1148 arts.3-42, this section was originally commenced by SI 2000/2957 and was subsequently amended by SI 2001/1148)

⁴⁸⁵ Words substituted by Postal Services Act 2000 c. 26 Sch.8(II) para.20(c) (March 26, 2001 subject to transitional provisions specified in SI 2001/1148 arts.3-42, this section was originally commenced by SI 2000/2957 and was subsequently amended by SI 2001/1148)

- (2) If a request falling within the next subsection is made for the giving after the relevant day of any of the supplies mentioned in subsection (4), the supplier—
- (a) may make it a condition of the giving of the supply that the office-holder personally guarantees the payment of any charges in respect of the supply, but
 - (b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the individual before the relevant day are paid.
- (3) A request falls within this subsection if it is made—
- (a) by or with the concurrence of the office-holder, and
 - (b) for the purposes of any business which is or has been carried on by the individual, by a firm or partnership of which the individual is or was a member, or by an agent or manager for the individual or for such a firm or partnership.
- (4) The supplies referred to in subsection (2) are—
- [(a) a supply of gas by a gas supplier within the meaning of Part I of the Gas Act 1986;]⁴⁸⁶
 - [(b) a supply of electricity by an electricity supplier within the meaning of Part I of the Electricity Act 1989,]⁴⁸⁷
 - (c) a supply of water by [a water undertaker]⁴⁸⁸,
 - [(d) a supply of communications services by a provider of a public electronic communications service.]⁴⁸⁹
- (5) The following applies to expressions used in subsection (4)—
- (a) [...] ⁴⁹⁰
 - (b) [...] ⁴⁹¹
 - [(c) 'communications services' do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003).]⁴⁹²

373.— Jurisdiction in relation to insolvent individuals.

- (1) The High Court and the county courts have jurisdiction throughout England and Wales for the purposes of the Parts in this Group.

⁴⁸⁶ Substituted by Gas Act 1995 c. 45 Sch.4 para.14(3) (March 1, 1996)

⁴⁸⁷ Substituted by Utilities Act 2000 c. 27 Sch.6(III) para.47(3)(a) (October 1, 2001 subject to transitional provisions as specified in SI 2001/3266 arts 3-20)

⁴⁸⁸ Words substituted by Water Act 1989 (c.15), s. 190, Sch. 25 para. 78(1) (with ss. 58(7), 101(1), 141(6), 160(1)(2) (4), 163, 189(4) and 2013(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

⁴⁸⁹ Substituted by Communications Act 2003 c. 21 Sch.17 para.82(3)(a) (July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2))

⁴⁹⁰ Repealed by Gas Act 1995 c. 45 Sch.6 para.1 (March 1, 1996 as SI 1996/218)

⁴⁹¹ Repealed by Utilities Act 2000 c. 27 Sch.6(III) para.47(3)(b) (October 1, 2001 subject to transitional provisions as specified in SI 2001/3266 arts 3-20)

⁴⁹² Substituted by Communications Act 2003 c. 21 Sch.17 para.82(3)(b) (July 25, 2003 subject to transitional provisions specified in SI 2003/1900 art.3(1); December 29, 2003 being the date on which the transitional provisions cease to have effect as specified in SI 2003/3142 art.3(2))

(2) For the purposes of those Parts, a county court has, in addition to its ordinary jurisdiction, all the powers and jurisdiction of the High Court; and the orders of the court may be enforced accordingly in the prescribed manner.

(3) Jurisdiction for the purposes of those Parts is exercised—

- (a) by the High Court in relation to the proceedings which, in accordance with the rules, are allocated to the London insolvency district, and
- (b) by each county court in relation to the proceedings which are so allocated to the insolvency district of that court.

(4) Subsection (3) is without prejudice to the transfer of proceedings from one court to another in the manner prescribed by the rules; and nothing in that subsection invalidates any proceedings on the grounds that they were initiated or continued in the wrong court.

374.— Insolvency districts.

(1) The Lord Chancellor may [, with the concurrence of the Lord Chief Justice,]⁴⁹³ by order designate the areas which are for the time being to be comprised, for the purposes of the Parts in this Group, in the London insolvency district and the insolvency district of each county court; and an order under this section may—

- (a) exclude any county court from having jurisdiction for the purposes of those Parts, or
- (b) confer jurisdiction for those purposes on any county court which has not previously had that jurisdiction.

(2) An order under this section may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor [and the Lord Chief Justice]⁴⁹⁴ necessary or expedient.

(3) An order under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

(4) Subject to any order under this section—

- (a) the district which, immediately before the appointed day, is the London bankruptcy district becomes, on that day, the London insolvency district;
- (b) any district which immediately before that day is the bankruptcy district of a county court becomes, on that day, the insolvency district of that court, and
- (c) any county court which immediately before that day is excluded from having jurisdiction in bankruptcy is excluded, on and after that day, from having jurisdiction for the purposes of the Parts in this Group.

[(5) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]⁴⁹⁵

⁴⁹³ Words inserted by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.187(2) (April 3, 2006)

⁴⁹⁴ Words inserted by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.187(3) (April 3, 2006)

⁴⁹⁵ Added by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.187(4) (April 3, 2006)

375.— Appeals etc. from courts exercising insolvency jurisdiction.

(1) Every court having jurisdiction for the purposes of the Parts in this Group may review, rescind or vary any order made by it in the exercise of that jurisdiction.

(2) An appeal from a decision made in the exercise of jurisdiction for the purposes of those Parts by a county court or by a registrar in bankruptcy of the High Court lies to a single judge of the High Court; and an appeal from a decision of that judge on such an appeal lies [...] ⁴⁹⁶ to the Court of Appeal.

(3) A county court is not, in the exercise of its jurisdiction for the purposes of those Parts, to be subject to be restrained by the order of any other court, and no appeal lies from its decision in the exercise of that jurisdiction except as provided by this section.

376. Time-limits.

Where by any provision in this Group of Parts or by the rules the time for doing anything is limited, the court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.

377. Formal defects.

The acts of a person as the trustee of a bankrupt's estate or as a special manager, and the acts of the creditors' committee established for any bankruptcy, are valid notwithstanding any defect in the appointment, election or qualifications of the trustee or manager or, as the case may be, of any member of the committee.

378. Exemption from stamp duty.

Stamp duty shall not be charged on—

- (a) any document, being a deed, conveyance, assignment, surrender, admission or other assurance relating solely to property which is comprised in a bankrupt's estate and which, after the execution of that document, is or remains at law or in equity the property of the bankrupt or of the trustee of that estate.
- (b) any writ, order, certificate or other instrument relating solely to the property of a bankrupt or to any bankruptcy proceedings.

379. Annual report.

As soon as practicable after the end of 1986 and each subsequent calendar year, the Secretary of State shall prepare and lay before each House of Parliament a report about the operation during that year of so much of this Act as is comprised in this Group of Parts, and about proceedings in the course of that year under the Deeds of Arrangement Act 1914.

⁴⁹⁶ Words repealed by Access to Justice Act 1999 c. 22 Sch.15(III) para.1 (September 27, 1999)

PART XI

INTERPRETATION FOR SECOND GROUP OF PARTS

380. Introductory.

The next five sections have effect for the interpretation of the provisions of this Act which are comprised in this Group of Parts; and where a definition is provided for a particular expression, it applies except so far as the context otherwise requires.

381.— “Bankrupt” and associated terminology.

- (1) “Bankrupt” means an individual who has been adjudged bankrupt and, in relation to a bankruptcy order, it means the individual adjudged bankrupt by that order.
- (2) “Bankruptcy order” means an order adjudging an individual bankrupt.
- (3) “Bankruptcy petition” means a petition to the court for a bankruptcy order.

382.— “Bankruptcy debt”, etc.

- (1) “Bankruptcy debt”, in relation to a bankrupt, means (subject to the next subsection) any of the following—
 - (a) any debt or liability to which he is subject at the commencement of the bankruptcy,
 - (b) any debt or liability to which he may become subject after the commencement of the bankruptcy (including after his discharge from bankruptcy) by reason of any obligation incurred before the commencement of the bankruptcy,
 - (c) any amount specified in pursuance of section 39(3)(c) of the Powers of Criminal Courts Act 1973 in any criminal bankruptcy order made against him before the commencement of the bankruptcy, and
 - (d) any interest provable as mentioned in section 322(2) in Chapter IV of Part IX
 - (2) In determining for the purposes of any provision in this Group of Parts whether any liability in tort is a bankruptcy debt, the bankrupt is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued.
 - (3) For the purposes of references in this Group of Parts to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in this Group of Parts to owing a debt are to be read accordingly.
 - (4) In this Group of Parts, except in so far as the context otherwise requires, “liability” means (subject to subsection (3) above) a liability to pay money or money's worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation to make restitution.
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Amendments Pending

Pt XI s. 382(1)(c): repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

383.— “Creditor”, “security”, etc.**(1) “Creditor”—**

- (a) in relation to a bankrupt, means a person to whom any of the bankruptcy debts is owed (being, in the case of an amount falling within paragraph (c) of the definition in section 382(1) of “bankruptcy debt”, the person in respect of whom that amount is specified in the criminal bankruptcy order in question), and
- (b) in relation to an individual to whom a bankruptcy petition relates, means a person who would be a creditor in the bankruptcy if a bankruptcy order were made on that petition

(2) Subject to the next two subsections and any provision of the rules requiring a creditor to give up his security for the purposes of proving a debt, a debt is secured for the purposes of this Group of Parts to the extent that the person to whom the debt is owed holds any security for the debt (whether a mortgage, charge, lien or other security) over any property of the person by whom the debt is owed.

(3) Where a statement such as is mentioned in section 269(1)(a) in Chapter I of Part IX has been made by a secured creditor for the purposes of any bankruptcy petition and a bankruptcy order is subsequently made on that petition, the creditor is deemed for the purposes of the Parts in this Group to have given up the security specified in the statement.

(4) In subsection (2) the reference to a security does not include a lien on books, papers or other records, except to the extent that they consist of documents which give a title to property and are held as such.

Amendments Pending

Pt XI s. 383(1)(a): words repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

384.— “Prescribed” and “the rules”.

(1) Subject to the next subsection [and sections 342C(7) and 342F(9) in Chapter V of Part IX]⁴⁹⁷, “prescribed” means prescribed by the rules; and “the rules” means rules made under section 412 in Part XV.

(2) References in this Group of Parts to the amount prescribed for the purposes of any of the following provisions—

[section 251S(4);]⁴⁹⁸

⁴⁹⁷ Words added by Welfare Reform and Pensions Act 1999 c. 30 Sch.12(II) para.72 (April 6, 2002 as SI 2002/153 as amended by SI 2002/818)

section 273;
 [section 313A;]⁴⁹⁹
 section 346(3);
 section 354(1) and (2);
 section 358;
 section 360(1);
 section 361(2) ; [...] ⁵⁰⁰
 section 364(2)(d),
 [paragraphs 6 to 8 of Schedule 4ZA,]⁵⁰¹

and references in those provisions to the prescribed amount are to be read in accordance with section 418 in Part XV and orders made under that section.

385.— Miscellaneous definitions.

(1) The following definitions have effect—

“the court”, in relation to any matter, means the court to which, in accordance with section 373 in Part X and the rules, proceedings with respect to that matter are allocated or transferred;

“creditor's petition” means a bankruptcy petition under section 264(1)(a);

“criminal bankruptcy order” means an order under section 39(1) of the Powers of Criminal Courts Act 1973;

“debt” is to be construed in accordance with section 382(3);

“the debtor”—

[(za) in relation to a debt relief order or an application for such an order, has the same meaning as in Part 7A,]⁵⁰²

(a) in relation to a proposal for the purposes of Part VIII, means the individual making or intending to make that proposal, and

(b) in relation to a bankruptcy petition, means the individual to whom the petition relates

;

“debtor's petition” means a bankruptcy petition presented by the debtor himself under section 264(1)(b);

[“debt relief order” means an order made by the official receiver under Part 7A;]⁵⁰³

“dwelling house” includes any building or part of a building which is occupied as a dwelling and any yard, garden, garage or outhouse belonging to the dwelling house and occupied with it;

⁴⁹⁸ Words inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.4(a) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁴⁹⁹ Words inserted by Enterprise Act 2002 c. 40 Pt 10 s.261(5) (April 1, 2004)

⁵⁰⁰ Word repealed by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.4(b) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁵⁰¹ Words inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.4(c) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁵⁰² Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.5(2) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁵⁰³ Definition inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.5(3) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

“estate”, in relation to a bankrupt is to be construed in accordance with section 283 in Chapter II of Part IX;

“family”, in relation to a bankrupt, means the persons (if any) who are living with him and are dependent on him;

“secured” and related expressions are to be construed in accordance with section 383; and

“the trustee”, in relation to a bankruptcy and the bankrupt, means the trustee of the bankrupt's estate.

[“insolvency administration order” means an order for the administration in bankruptcy of the insolvent estate of a deceased debtor (being an individual at the date of his death);

“insolvency administration petition” means a petition for an insolvency administration order; and

“the Rules” means the Insolvency Rules 1986.]⁵⁰⁴

(2) References in this Group of Parts to a person's affairs include his business, if any.

Amendments Pending

Pt XI s. 385(1) definition of "criminal bankruptcy order": definition of "criminal bankruptcy order" repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

PART XII

PREFERENTIAL DEBTS IN COMPANY AND INDIVIDUAL INSOLVENCY

386.— Categories of preferential debts.

(1) A reference in this Act to the preferential debts of a company or an individual is to the debts listed in Schedule 6 to this Act [(contributions to occupational pension schemes; remuneration, &c. of employees; levies on coal and steel production)]⁵⁰⁵ ; and references to preferential creditors are to be read accordingly.

(2) In that Schedule “the debtor” means the company or the individual concerned.

(3) Schedule 6 is to be read with [Schedule 4 to the Pension Schemes Act 1993]⁵⁰⁶ (occupational pension scheme contributions).

Commencement

Pt XII s. 386(1)-(3): June 1, 1991

⁵⁰⁴ Definitions inserted by S.I. 1986/1999, arts. 2, 6

⁵⁰⁵ Words substituted subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Pt 10 s.251(3) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.4)

⁵⁰⁶ Words substituted by Pension Schemes Act 1993 c. 48 Sch.8 para.18 (February 7, 1994)

387.— “The relevant date”.

(1) This section explains references in Schedule 6 to the relevant date (being the date which determines the existence and amount of a preferential debt).

(2) For the purposes of section 4 in Part I (meetings to consider company voluntary arrangement), the relevant date in relation to a company which is not being wound up is—

- [(a) if the company is in administration, the date on which it entered administration, and
- (b) if the company is not in administration, the date on which the voluntary arrangement takes effect.]⁵⁰⁷

[(2A) For the purposes of paragraph 31 of Schedule A1 (meetings to consider company voluntary arrangement where a moratorium under section 1A is in force), the relevant date in relation to a company is the date of filing.]⁵⁰⁸

(3) In relation to a company which is being wound up, the following applies—

- (a) if the winding up is by the court, and the winding-up order was made immediately upon the discharge of an administration order, the relevant date is [the date on which the company entered administration]⁵⁰⁹ ;

[(aa) if the winding up is by the court and the winding-up order was made following conversion of administration into winding up by virtue of Article 37 of the EC Regulation, the relevant date is [the date on which the company entered administration]⁵⁰⁹ ;

- (ab) if the company is deemed to have passed a resolution for voluntary winding up by virtue of an order following conversion of administration into winding up under Article 37 of the EC Regulation, the relevant date is [the date on which the company entered administration]⁵⁰⁹ ;]⁵¹⁰

- (b) if the case does not fall within paragraph (a) [, (aa) or (ab)]⁵¹¹ and the company—

- (i) is being wound up by the court, and

- (ii) had not commenced to be wound up voluntarily before the date of the making of the winding-up order,

the relevant date is the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment has been made, the date of the winding-up order;

- [(ba) if the case does not fall within paragraph (a), (aa), (ab) or (b) and the company is being wound up following administration pursuant to paragraph 83 of Schedule B1, the relevant date is the date on which the company entered administration;]⁵¹²

⁵⁰⁷ Substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.34(2) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

⁵⁰⁸ Added by Insolvency Act 2000 c. 39 Sch.1 para.9 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

⁵⁰⁹ Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.34(3)(a) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

⁵¹⁰ Added by Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002/1240 reg.16(a) (May 31, 2002)

⁵¹¹ Words inserted by Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002/1240 reg.16(b) (May 31, 2002)

⁵¹² Added subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.34(3)(b) (September 15, 2003: addition has effect subject to transitional provisions specified in SI 2003/2093 art.3)

(c) if the case does not fall within [paragraph (a), (aa), (ab), (b) or (ba)]⁵¹³, the relevant date is the date of the passing of the resolution for the winding up of the company.

[(3A) In relation to a company which is in administration (and to which no other provision of this section applies) the relevant date is the date on which the company enters administration.]⁵¹⁴

(4) In relation to a company in receivership (where section 40 or, as the case may be, section 59 applies), the relevant date is—

- (a) in England and Wales, the date of the appointment of the receiver by debenture-holders, and
- (b) in Scotland, the date of the appointment of the receiver under section 53(6) or (as the case may be) 54(5).

[(5) For the purposes of section 258 in Part VIII (individual voluntary arrangements), the relevant date is, in relation to a debtor who is not an undischarged bankrupt

- (a) where an interim order has been made under section 252 with respect to his proposal, the date of that order, and
- (b) in any other case, the date on which the voluntary arrangement takes effect.

] ⁵¹⁵

(6) In relation to a bankrupt, the following applies—

- (a) where at the time the bankruptcy order was made there was an interim receiver appointed under section 286, the relevant date is the date on which the interim receiver was first appointed after the presentation of the bankruptcy petition;
- (b) otherwise, the relevant date is the date of the making of the bankruptcy order.

Commencement

Pt XII s. 387(1)-(6)(b): June 1, 1991

PART XIII

INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

Restrictions on unqualified persons acting as liquidator, trustee in bankruptcy, etc.

388.— Meaning of “act as insolvency practitioner”

(1) A person acts as an insolvency practitioner in relation to a company by acting—

- (a) as its liquidator, provisional liquidator, administrator or administrative receiver, or

⁵¹³ Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.34(3)(c) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

⁵¹⁴ Added subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.34(4) (September 15, 2003: addition has effect subject to transitional provisions specified in SI 2003/2093 art.3)

⁵¹⁵ Words substituted by Insolvency Act 2000 c. 39 Sch.3 para.15 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

[(b) where a voluntary arrangement in relation to the company is proposed or approved under Part I, as nominee or supervisor]⁵¹⁶

- (2) A person acts as an insolvency practitioner in relation to an individual by acting—
- (a) as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate; or
 - (b) as trustee under a deed which is a deed of arrangement made for the benefit of his creditors or, in Scotland, a trust deed for his creditors; or
 - [(c) where a voluntary arrangement in relation to the individual is proposed or approved under Part VIII, as nominee or supervisor]⁵¹⁷
 - (d) in the case of a deceased individual to the administration of whose estate this section applies by virtue of an order under section 421 (application of provisions of this Act to insolvent estates of deceased persons), as administrator of that estate.

- [(2A) A person acts as an insolvency practitioner in relation to an insolvent partnership by acting—
- (a) as its liquidator, provisional liquidator or administrator, or
 - (b) as trustee of the partnership under article 11 of the Insolvent Partnerships Order 1994, or
 - (c) as supervisor of a voluntary arrangement approved in relation to it under Part I of this Act.

] ⁵¹⁸

[(2B) In relation to a voluntary arrangement proposed under Part I or VIII, a person acts as nominee if he performs any of the functions conferred on nominees under the Part in question.]⁵¹⁹

(3) References in this section to an individual include, except in so far as the context otherwise requires, references [...] ⁵²⁰ to any debtor within the meaning of the Bankruptcy (Scotland) Act 1985.

(4) In this section—

“administrative receiver” has the meaning given by section 251 in Part VII;

[“company” means—

- (a) a company registered under the Companies Act 2006 in England and Wales or Scotland, or
- (b) a company that may be wound up under Part 5 of this Act (unregistered companies);

] ⁵²¹

“interim trustee” and “permanent trustee” mean the same as in the Bankruptcy (Scotland) Act 1985.

⁵¹⁶ Substituted by Insolvency Act 2000 c. 39 s.4(2)(a) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

⁵¹⁷ Substituted by Insolvency Act 2000 c. 39 s.4(2)(b) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

⁵¹⁸ Added by Insolvent Partnerships Order 1994/2421 Pt VI art.15(1) (December 1, 1994)

⁵¹⁹ Added by Insolvency Act 2000 c. 39 s.4(2)(c) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

⁵²⁰ Words repealed by Insolvent Partnerships Order 1994/2421 Pt VI art.15(2) (December 1, 1994)

⁵²¹ Definition substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.78(2) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

[(5) Nothing in this section applies to anything done by—
 (a) the official receiver; or
 (b) the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985).
]⁵²²

[(6) Nothing in this section applies to anything done (whether in the United Kingdom or elsewhere) in relation to insolvency proceedings under the EC Regulation in a member State other than the United Kingdom.[⁵²³]⁵²⁴]⁵²⁵

Commencement

Pt XIII s. 388(1)-(5): June 1, 1991

389.— Acting without qualification an offence.

(1) A person who acts as an insolvency practitioner in relation to a company or an individual at a time when he is not qualified to do so is liable to imprisonment or a fine, or to both.

[(1A) This section is subject to section 389A.]⁵²⁶

(2) This section does not apply to the official receiver [or the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985)]⁵²⁷ .

Commencement

Pt XIII s. 389(1)-(2): June 1, 1991

[389A.— Authorisation of nominees and supervisors.

(1) Section 389 does not apply to a person acting, in relation to a voluntary arrangement proposed or approved under Part I or Part VIII, as nominee or supervisor if he is authorised so to act.

(2) For the purposes of subsection (1) and those Parts, an individual to whom subsection (3) does not apply is authorised to act as nominee or supervisor in relation to such an arrangement if—

(a) he is a member of a body recognised for the purpose by the Secretary of State [or of a body recognised for the purpose of Article 348A(2)(a) of the Insolvency (Northern Ireland)

⁵²² Substituted by Bankruptcy (Scotland) Act 1993 c. 6 s.11(1) (April 1, 1993 subject to savings specified in SI 1993/438 arts.4-5)

⁵²³ In relation to England and Wales: s. 388 is modified: [See Westlaw UK].

⁵²⁴ Substituted by Insolvent Partnerships (Amendment) (No. 2) Order 2002/2708 art.3 (January 1, 2003)

⁵²⁵ Added by Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002/1240 reg.17 (May 31, 2002)

⁵²⁶ Added by Insolvency Act 2000 c. 39 s.4(3) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

⁵²⁷ Words inserted by Bankruptcy (Scotland) Act 1993 c. 6 s.11(2) (April 1, 1993 subject to savings specified in SI 1993/438 arts.4-5)

- Order 1989⁵²⁸ by the Department of Enterprise, Trade and Investment for Northern Ireland]⁵²⁹, and
- (b) there is in force security (in Scotland, caution) for the proper performance of his functions and that security or caution meets the prescribed requirements with respect to his so acting in relation to the arrangement.
- (3) This subsection applies to a person if—
- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
 - [(b) he is subject to a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002,]⁵³⁰
 - (c) he is a patient within the meaning of [...] ⁵³¹ [section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003]⁵³² [; or]⁵³³
 - [(d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as nominee or supervisor.]⁵³⁴
- (4) The Secretary of State may by order declare a body which appears to him to fall within subsection (5) to be a recognised body for the purposes of subsection (2)(a).
- (5) A body may be recognised if it maintains and enforces rules for securing that its members—
- (a) are fit and proper persons to act as nominees or supervisors, and
 - (b) meet acceptable requirements as to education and practical training and experience.
- (6) For the purposes of this section, a person is a member of a body only if he is subject to its rules when acting as nominee or supervisor (whether or not he is in fact a member of the body).
- (7) An order made under subsection (4) in relation to a body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within subsection (5).
- (8) An order of the Secretary of State under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision for members of the body in question to continue to be treated as members of a recognised body for a specified period after the revocation takes effect. [...] ⁵³²
]⁵³⁴

⁵²⁸ S.I. 1989/2405 (N.I. 19). Article 348A was inserted by Article 6 of S.I. 2002/3152 (N.I. 6).

⁵²⁹ Words inserted by Provision of Services (Insolvency Practitioners) Regulations 2009/3081 reg.2(2) (December 28, 2009)

⁵³⁰ Substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.78(3) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁵³¹ Words repealed by Mental Capacity Act 2005 c. 9 Sch.7 para.1 (October 1, 2007)

⁵³² Words substituted by Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005/2078 Sch.1 para.3(2) (October 5, 2005)

⁵³³ Added by Mental Capacity Act 2005 c. 9 Sch.6 para.31(2)(c) (October 1, 2007)

⁵³⁴ Added by Insolvency Act 2000 c. 39 s.4(4) (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

[389B Official receiver as nominee or supervisor

- (1) The official receiver is authorised to act as nominee or supervisor in relation to a voluntary arrangement approved under Part VIII provided that the debtor is an undischarged bankrupt when the arrangement is proposed.
- (2) The Secretary of State may by order repeal the proviso in subsection (1).
- (3) An order under subsection (2)—
 - (a) must be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

] ⁵³⁵*The requisite qualification, and the means of obtaining it***390.— Persons not qualified to act as insolvency practitioners.**

- (1) A person who is not an individual is not qualified to act as an insolvency practitioner.
- (2) A person is not qualified to act as an insolvency practitioner at any time unless at that time—
 - (a) he is authorised so to act by virtue of membership of a professional body recognised under section 391 below, being permitted so to act by or under the rules of that body, or
 - (b) he holds an authorisation granted by a competent authority under section 393 [; or] ⁵³⁶
 - [(c) he holds an authorisation granted by the Department of Enterprise, Trade and Investment for Northern Ireland under Article 352 of the Insolvency (Northern Ireland) Order 1989.] ⁵³⁶
- (3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless—
 - (a) there is in force at that time security or, in Scotland, caution for the proper performance of his functions, and
 - (b) that security or caution meets the prescribed requirements with respect to his so acting in relation to that other person.
- (4) A person is not qualified to act as an insolvency practitioner at any time if at that time—
 - (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
 - [(aa) a moratorium period under a debt relief order applies in relation of him,] ⁵³⁷
 - [(b) he is subject to a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002,] ⁵³⁸

⁵³⁵ Added by Enterprise Act 2002 c. 40 Sch.22 para.3 (April 1, 2004)

⁵³⁶ Added by Provision of Services (Insolvency Practitioners) Regulations 2009/3081 reg.2(3) (December 28, 2009)

⁵³⁷ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.6(2) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁵³⁸ Substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.78(4) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

(c) he is a patient within the meaning of [...] ⁵³⁹ [section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003] ⁵⁴⁰ [or has had a guardian appointed to him under the Adults with Incapacity (Scotland) Act 2000 (asp 4) [, or] ⁵⁴¹] ⁵⁴² [...] ⁵⁴³
 [(d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as an insolvency practitioner.] ⁵⁴¹

[(5) A person is not qualified to act as an insolvency practitioner while a bankruptcy restrictions order [or a debt relief restrictions order] ⁵⁴⁴ is in force in respect of him. [...] ⁵⁴⁰] ⁵⁴³

Commencement

Pt XIII s. 390(1)-(4)(c): June 1, 1991

391.— Recognised professional bodies.

(1) The Secretary of State may by order declare a body which appears to him to fall within subsection (2) below to be a recognised professional body for the purposes of this section.

(2) A body may be recognised if it regulates the practice of a profession and maintains and enforces rules for securing that such of its members as are permitted by or under the rules to act as insolvency practitioners—

- (a) are fit and proper persons so to act, and
- (b) meet acceptable requirements as to education and practical training and experience.

(3) References to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question.

The reference in section 390(2) above to membership of a professional body recognised under this section is to be read accordingly.

(4) An order made under subsection (1) in relation to a professional body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within subsection (2).

(5) An order of the Secretary of State under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision whereby members of the body in question continue to be treated as authorised to act as insolvency practitioners for a specified period after the revocation takes effect.

Commencement

Pt XIII s. 391(1)-(5): June 1, 1991

⁵³⁹ Words repealed by Mental Capacity Act 2005 c. 9 Sch.7 para.1 (October 1, 2007)

⁵⁴⁰ Words substituted by Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005/2078 Sch.1 para.3(3) (October 5, 2005)

⁵⁴¹ Added by Mental Capacity Act 2005 c. 9 Sch.6 para.31(3)(c) (October 1, 2007)

⁵⁴² Words inserted by Adults with Incapacity (Scotland) Act 2000 asp 4 (Scottish Act) Sch.5 para.18 (April 1, 2002)

⁵⁴³ Added by Enterprise Act 2002 c. 40 Sch.21 para.4 (April 1, 2004)

⁵⁴⁴ Words inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.6(3) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

392.— Authorisation by competent authority.

(1) Application may be made to a competent authority for authorisation to act as an insolvency practitioner.

(2) The competent authorities for this purpose are—

- (a) in relation to a case of any description specified in directions given by the Secretary of State, the body or person so specified in relation to cases of that description, and
- (b) in relation to a case not falling within paragraph (a), the Secretary of State.

(3) The application—

- (a) shall be made in such manner as the competent authority may direct,
- (b) shall contain or be accompanied by such information as that authority may reasonably require for the purpose of determining the application, and
- (c) shall be accompanied by the prescribed fee;

and the authority may direct that notice of the making of the application shall be published in such manner as may be specified in the direction.

(4) At any time after receiving the application and before determining it the authority may require the applicant to furnish additional information.

(5) Directions and requirements given or imposed under subsection (3) or (4) may differ as between different applications.

(6) Any information to be furnished to the competent authority under this section shall, if it so requires, be in such form or verified in such manner as it may specify.

(7) An application may be withdrawn before it is granted or refused.

(8) Any sums received under this section by a competent authority other than the Secretary of State may be retained by the authority; and any sums so received by the Secretary of State shall be paid into the Consolidated Fund.

[(9) Subsection (3)(c) shall not have effect in respect of an application made to the Secretary of State (but this subsection is without prejudice to section 415A).]⁵⁴⁵

Commencement

Pt XIII s. 392(1)-(8): June 1, 1991

393.— Grant, refusal and withdrawal of authorisation.

(1) The competent authority may, on an application duly made in accordance with section 392 and after being furnished with all such information as it may require under that section, grant or refuse the application.

(2) The authority shall grant the application if it appears to it from the information furnished by the applicant and having regard to such other information, if any, as it may have—

- (a) that the applicant is a fit and proper person to act as an insolvency practitioner, and
- (b) that the applicant meets the prescribed requirements with respect to education and practical training and experience.

⁵⁴⁵ Added by Enterprise Act 2002 c. 40 Pt 10 s.270(3) (April 1, 2004)

[(3) An authorisation granted under this section, if not previously withdrawn, continues in force for one year.

(3A) But where an authorisation is granted under this section the competent authority must, before its expiry (and without a further application made in accordance with section 392) grant a further authorisation under this section taking effect immediately after the expiry of the previous authorisation, unless it appears to the authority that the subject of the authorisation no longer complies with subsection (2)(a) and (b);]⁵⁴⁶

(4) An authorisation [granted under this section]⁵⁴⁷ may be withdrawn by the competent authority if it appears to it—

- (a) that the holder of the authorisation is no longer a fit and proper person to act as an insolvency practitioner, or
- (b) without prejudice to paragraph (a), that the holder—
 - (i) has failed to comply with any provision of this Part or of any regulations made under this Part or Part XV, or
 - (ii) in purported compliance with any such provision, has furnished the competent authority with false, inaccurate or misleading information.

(5) An authorisation granted under this section may be withdrawn by the competent authority at the request or with the consent of the holder of the authorisation.

[(6) Where an authorisation granted under this section is withdrawn—

- (a) subsection (3A) does not require a further authorisation to be granted, or
- (b) if a further authorisation has already been granted at the time of the withdrawal, the further authorisation is also withdrawn.

] ⁵⁴⁸

Commencement

Pt XIII s. 393(1)-(5): June 1, 1991

394.— Notices.

(1) Where a competent authority grants an authorisation under section 393, it shall give written notice of that fact to the applicant, specifying the date on which the authorisation takes effect.

(2) Where the authority proposes to refuse an application, or to withdraw an authorisation under section 393(4), it shall give the applicant or holder of the authorisation written notice of its intention to do so, setting out particulars of the grounds on which it proposes to act.

(3) In the case of a proposed withdrawal the notice shall state the date on which it is proposed that the withdrawal should take effect.

(4) A notice under subsection (2) shall give particulars of the rights exercisable under the next two sections by a person on whom the notice is served.

⁵⁴⁶ S.393(3) and (3A) substituted for s.393(3) by Provision of Services (Insolvency Practitioners) Regulations 2009/3081 reg.2(4)(a) (December 28, 2009)

⁵⁴⁷ Words substituted by Provision of Services (Insolvency Practitioners) Regulations 2009/3081 reg.2(4)(b) (December 28, 2009)

⁵⁴⁸ Added by Provision of Services (Insolvency Practitioners) Regulations 2009/3081 reg.2(4)(c) (December 28, 2009)

Commencement

Pt XIII s. 394(1)-(4): June 1, 1991

395.— Right to make representations.

- (1) A person on whom a notice is served under section 394(2) may within 14 days after the date of service make written representations to the competent authority.
- (2) The competent authority shall have regard to any representations so made in determining whether to refuse the application or withdraw the authorisation, as the case may be.

Commencement

Pt XIII s. 395(1)-(2): June 1, 1991

396.— Reference to Tribunal.

- (1) The Insolvency Practitioners Tribunal (“the Tribunal”) continues in being; and the provisions of Schedule 7 apply to it.
- (2) Where a person is served with a notice under section 394(2), he may—
 - (a) at any time within 28 days after the date of service of the notice, or
 - (b) at any time after the making by him of representations under section 395 and before the end of the period of 28 days after the date of the service on him of a notice by the competent authority that the authority does not propose to alter its decision in consequence of the representations,give written notice to the authority requiring the case to be referred to the Tribunal.
- (3) Where a requirement is made under subsection (2), then, unless the competent authority—
 - (a) has decided or decides to grant the application or, as the case may be, not to withdraw the authorisation, and
 - (b) within 7 days after the date of the making of the requirement, gives written notice of that decision to the person by whom the requirement was made,it shall refer the case to the Tribunal.

Commencement

Pt XIII s. 396(1)-(3)(b): June 1, 1991

397.— Action of Tribunal on reference.

- (1) On a reference under section 396 the Tribunal shall—
 - (a) investigate the case, and
 - (b) make a report to the competent authority stating what would in their opinion be the appropriate decision in the matter and the reasons for that opinion,and it is the duty of the competent authority to decide the matter accordingly.

(2) The Tribunal shall send a copy of the report to the applicant or, as the case may be, the holder of the authorisation; and the competent authority shall serve him with a written notice of the decision made by it in accordance with the report.

(3) The competent authority may, if he thinks fit, publish the report of the Tribunal.

Commencement

Pt XIII s. 397(1)-(3): June 1, 1991

398. Refusal or withdrawal without reference to Tribunal.

Where in the case of any proposed refusal or withdrawal of an authorisation either—

(a) the period mentioned in section 396(2)(a) has expired without the making of any requirement under that subsection or of any representations under section 395, or

(b) the competent authority has given a notice such as is mentioned in section 396(2)(b) and the period so mentioned has expired without the making of any such requirement,

the competent authority may give written notice of the refusal or withdrawal to the person concerned in accordance with the proposal in the notice given under section 394(2).

Commencement

Pt XIII s. 398(a)-(b): June 1, 1991

PART XIV

PUBLIC ADMINISTRATION (ENGLAND AND WALES)

Official Receivers

399.— Appointment, etc. of official receivers.

(1) For the purposes of this Act the official receiver, in relation to any bankruptcy [, winding up [, individual voluntary arrangement, debt relief order or application for such an order]⁵⁴⁹]⁵⁵⁰ , is any person who by virtue of the following provisions of this section or section 401 below is authorised to act as the official receiver in relation to that bankruptcy [, winding up [, individual voluntary arrangement, debt relief order or application for such an order]⁵⁴⁹]⁵⁵⁰ .

(2) The Secretary of State may (subject to the approval of the Treasury as to numbers) appoint persons to the office of official receiver, and a person appointed to that office (whether under this section or section 70 of the Bankruptcy Act 1914)—

(a) shall be paid out of money provided by Parliament such salary as the Secretary of State may with the concurrence of the Treasury direct,

⁵⁴⁹ Words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.7(2) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁵⁵⁰ Words substituted by Enterprise Act 2002 c. 40 Sch.23 para.14(a) (April 1, 2004)

- (b) shall hold office on such other terms and conditions as the Secretary of State may with the concurrence of the Treasury direct, and
 - (c) may be removed from office by a direction of the Secretary of State.
- (3) Where a person holds the office of official receiver, the Secretary of State shall from time to time attach him either to the High Court or to a county court having jurisdiction for the purposes of the second Group of Parts of this Act.
- (4) Subject to any directions under subsection (6) below, an official receiver attached to a particular court is the person authorised to act as the official receiver in relation to every bankruptcy [, winding up [, individual voluntary arrangement, debt relief order or application for such an order]⁵⁵¹]⁵⁵² falling within the jurisdiction of that court.
- (5) The Secretary of State shall ensure that there is, at all times, at least one official receiver attached to the High Court and at least one attached to each county court having jurisdiction for the purposes of the second Group of Parts; but he may attach the same official receiver to two or more different courts.
- (6) The Secretary of State may give directions with respect to the disposal of the business of official receivers, and such directions may, in particular—
- (a) authorise an official receiver attached to one court to act as the official receiver in relation to any case or description of cases falling within the jurisdiction of another court;
 - (b)
 - provide, where there is more than one official receiver authorised to act as the official receiver in relation to cases falling within the jurisdiction of any court, for the distribution of their business between or among themselves.
- (7) A person who at the coming into force of section 222 of the Insolvency Act 1985 (replaced by this section) is an official receiver attached to a court shall continue in office after the coming into force of that section as an official receiver attached to that court under this section.

400.— Functions and status of official receivers.

- (1) In addition to any functions conferred on him by this Act, a person holding the office of official receiver shall carry out such other functions as may from time to time be conferred on him by the Secretary of State.
- (2) In the exercise of the functions of his office a person holding the office of official receiver shall act under the general directions of the Secretary of State and shall also be an officer of the court in relation to which he exercises those functions.
- (3) Any property vested in his official capacity in a person holding the office of official receiver shall, on his dying, ceasing to hold office or being otherwise succeeded in relation to the bankruptcy or winding up in question by another official receiver, vest in his successor without any conveyance, assignment or transfer.

⁵⁵¹ Words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.7(3) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁵⁵² Words substituted by Enterprise Act 2002 c. 40 Sch.23 para.14(b) (April 1, 2004)

401.— Deputy official receivers and staff.

(1) The Secretary of State may, if he thinks it expedient to do so in order to facilitate the disposal of the business of the official receiver attached to any court, appoint an officer of his department to act as deputy to that official receiver.

(2) Subject to any directions given by the Secretary of State under section 399 or 400, a person appointed to act as deputy to an official receiver has, on such conditions and for such period as may be specified in the terms of his appointment, the same status and functions as the official receiver to whom he is appointed deputy.

Accordingly, references in this Act (except section 399(1) to (5)) to an official receiver include a person appointed to act as his deputy.

(3) An appointment made under subsection (1) may be terminated at any time by the Secretary of State.

(4) The Secretary of State may, subject to the approval of the Treasury as to numbers and remuneration and as to the other terms and conditions of the appointments, appoint officers of his department to assist official receivers in the carrying out of their functions.

*The Official Petitioner***402.— Official Petitioner.**

(1) There continues to be an officer known as the Official Petitioner for the purpose of discharging, in relation to cases in which a criminal bankruptcy order is made, the functions assigned to him by or under this Act; and the Director of Public Prosecutions continues, by virtue of his office, to be the Official Petitioner.

(2) The functions of the Official Petitioner include the following—

- (a) to consider whether, in a case in which a criminal bankruptcy order is made, it is in the public interest that he should himself present a petition under section 264(1)(d) of this Act;
- (b) to present such a petition in any case where he determines that it is in the public interest for him to do so;
- (c) to make payments, in such cases as he may determine, towards expenses incurred by other persons in connection with proceedings in pursuance of such a petition; and
- (d) to exercise, so far as he considers it in the public interest to do so, any of the powers conferred on him by or under this Act.

(3) Any functions of the Official Petitioner may be discharged on his behalf by any person acting with his authority.

(4) Neither the Official Petitioner nor any person acting with his authority is liable to any action or proceeding in respect of anything done or omitted to be done in the discharge, or purported discharge, of the functions of the Official Petitioner.

(5) In this section “criminal bankruptcy order” means an order under section 39(1) of the Powers of Criminal Courts Act 1973.

Amendments Pending

Pt XIV s. 402: repealed by Criminal Justice Act 1988 c. 33 Sch. 16 para. (date to be appointed: commencement order)

*Insolvency Service finance, accounting and investment***403.— Insolvency Services Account.**

(1) All money received by the Secretary of State in respect of proceedings under this Act as it applies to England and Wales shall be paid into the Insolvency Services Account kept by the Secretary of State with the Bank of England; and all payments out of money standing to the credit of the Secretary of State in that account shall be made by the Bank of England in such manner as he may direct.

(2) Whenever the cash balance standing to the credit of the Insolvency Services Account is in excess of the amount which in the opinion of the Secretary of State is required for the time being to answer demands in respect of bankrupts' estates or companies' estates, the Secretary of State shall—

- (a) notify the excess to the National Debt Commissioners, and
- (b) pay into the Insolvency Services Investment Account (“the Investment Account”) kept by the Commissioners with the Bank of England the whole or any part of the excess as the Commissioners may require for investment in accordance with the following provisions of this Part.

(3) Whenever any part of the money so invested is, in the opinion of the Secretary of State, required to answer any demand in respect of bankrupt's estates or companies' estates, he shall notify to the National Debt Commissioners the amount so required and the Commissioners—

- (a) shall thereupon repay to the Secretary of State such sum as may be required to the credit of the Insolvency Services Account, and
- (b) for that purpose may direct the sale of such part of the securities in which the money has been invested as may be necessary.

404. Investment Account.

Any money standing to the credit of the Investment Account (including any money received by the National Debt Commissioners by way of interest on or proceeds of any investment under this section) may be invested by the Commissioners, in accordance with such directions as may be given by the Treasury, in any manner for the time being specified in Part II of Schedule 1 to the Trustee Investments Act 1961.

405.— [...]⁵⁵³

⁵⁵³ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004 as SI 2003/2093)

406. [Interest on money received by liquidators or trustees in bankruptcy and invested]⁵⁵⁴

Where under rules made by virtue of paragraph 16 of Schedule 8 to this Act (investment of money received by company liquidators) [or paragraph 21 of Schedule 9 to this Act (investment of money received by trustee in bankruptcy) a company or a bankrupt's estate]⁵⁵⁵ has become entitled to any sum by way of interest, the Secretary of State shall certify that sum and the amount of tax payable on it to the National Debt Commissioners; and the Commissioners shall pay, out of the Investment Account—

- (a) into the Insolvency Services Account, the sum so certified less the amount of tax so certified, and
- (b) to the Commissioners of Inland Revenue, the amount of tax so certified.

407.— Unclaimed dividends and undistributed balances.

(1) The Secretary of State shall from time to time pay into the Consolidated Fund out of the Insolvency Services Account so much of the sums standing to the credit of that Account as represents—

- (a) dividends which were declared before such date as the Treasury may from time to time determine and have not been claimed, and
- (b) balances ascertained before that date which are too small to be divided among the persons entitled to them.

(2) For the purposes of this section the sums standing to the credit of the Insolvency Services Account are deemed to include any sums paid out of that Account and represented by any sums or securities standing to the credit of the Investment Account.

(3) The Secretary of State may require the National Debt Commissioners to pay out of the Investment Account into the Insolvency Services Account the whole or part of any sum which he is required to pay out of that account under subsection (1); and the Commissioners may direct the sale of such securities standing to the credit of the Investment Account as may be necessary for that purpose.

[408 Adjustment of balances

(1) The Treasury may direct the payment out of the Consolidated Fund of sums into—

- (a) the Insolvency Services Account;
- (b) the Investment Account.

(2) The Treasury shall certify to the House of Commons the reason for any payment under subsection (1).

(3) The Secretary of State may pay sums out of the Insolvency Services Account into the Consolidated Fund.

(4) The National Debt Commissioners may pay sums out of the Investment Account into the Consolidated Fund.

]⁵⁵⁶

⁵⁵⁴ Words substituted by Insolvency Act 2000 c. 39 s.13(2)(b) (April 2, 2001)

⁵⁵⁵ Words substituted by Insolvency Act 2000 c. 39 s.13(2)(a) (April 2, 2001)

⁵⁵⁶ Substituted by Enterprise Act 2002 c. 40 Pt 10 s.272(2) (April 1, 2004)

409.— Annual financial statement and audit.

- (1) The National Debt Commissioners shall for each year ending on 31st March prepare a statement of the sums credited and debited to the Investment Account in such form and manner as the Treasury may direct and shall transmit it to the Comptroller and Auditor General before the end of November next following the year.
- (2) The Secretary of State shall for each year ending 31st March prepare a statement of the sums received or paid by him under section 403 above in such form and manner as the Treasury may direct and shall transmit each statement to the Comptroller and Auditor General before the end of November next following the year.
- (3) Every such statement shall include such additional information as the Treasury may direct.
- (4) The Comptroller and Auditor General shall examine, certify and report on every such statement and shall lay copies of it, and of his report, before Parliament.

*Supplementary***410. Extent of this Part.**

This part of this Act extends to England and Wales only.

PART XV**SUBORDINATE LEGISLATION***General insolvency rules***411.— Company insolvency rules.**

- (1) Rules may be made—
- (a) in relation to England and Wales, by the Lord Chancellor with the concurrence of the Secretary of State [and, in the case of rules that affect court procedure, with the concurrence of the Lord Chief Justice]⁵⁵⁷ , or
 - (b) in relation to Scotland, by the Secretary of State,
- for the purpose of giving effect to Parts I to VII of this Act [or the EC Regulation]⁵⁵⁸ .
- [(1A) Rules may also be made for the purpose of giving effect to Part 2 of the Banking Act 2009 (bank insolvency orders); and rules for that purpose shall be made—
- (a) in relation to England and Wales, by the Lord Chancellor with the concurrence of—
 - (i) the Treasury, and
 - (ii) in the case of rules that affect court procedure, the Lord Chief Justice, or
 - (b) in relation to Scotland, by the Treasury.
-]⁵⁵⁹

⁵⁵⁷ Words inserted by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.188(2) (April 3, 2006)

⁵⁵⁸ Words inserted by Insolvency Act 1986 (Amendment) Regulations 2002/1037 reg.3(1) (May 3, 2002)

[(1B) Rules may also be made for the purpose of giving effect to Part 3 of the Banking Act 2009 (bank administration); and rules for that purpose shall be made—

- (a) in relation to England and Wales, by the Lord Chancellor with the concurrence of—
 - (i) the Treasury, and
 - (ii) in the case of rules that affect court procedure, the Lord Chief Justice, or
- (b) in relation to Scotland, by the Treasury.

]⁵⁶⁰

(2) Without prejudice to the generality of subsection (1), [(1A)]⁵⁶¹ [or (1B)]⁵⁶² or to any provision of those Parts by virtue of which rules under this section may be made with respect to any matter, rules under this section may contain—

- (a) any such provision as is specified in Schedule 8 to this Act or corresponds to provision contained immediately before the coming into force of section 106 of the Insolvency Act 1985 in rules made, or having effect as if made, under section 663(1) or (2) (old winding-up rules), and
- (b) such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor or, as the case may be, the Secretary of State [or the Treasury]⁵⁶³ necessary or expedient.

[(2A) For the purposes of subsection (2), a reference in Schedule 8 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of the EC Regulation (in so far as the provision of this Act relates to a matter to which the EC Regulation applies).

(2B) Rules under this section for the purpose of giving effect to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.]⁵⁶⁴

[(2C) For the purposes of subsection (2), a reference in Schedule 8 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of Part 2 of the Banking Act 2009.]⁵⁶⁵

[(2D) For the purposes of subsection (2), a reference in Schedule 8 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of Part 3 of the Banking Act 2009.]⁵⁶⁶

⁵⁵⁹ Added by Banking Act 2009 c. 1 Pt 2 s.125(2) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

⁵⁶⁰ Added by Banking Act 2009 c. 1 Pt 3 s.160(2) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

⁵⁶¹ Word inserted by Banking Act 2009 c. 1 Pt 2 s.125(3)(a) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

⁵⁶² Words inserted by Banking Act 2009 c. 1 Pt 3 s.160(3) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

⁵⁶³ Words inserted by Banking Act 2009 c. 1 Pt 2 s.125(3)(b) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

⁵⁶⁴ Added by Insolvency Act 1986 (Amendment) Regulations 2002/1037 reg.3(2) (May 3, 2002)

⁵⁶⁵ Added by Banking Act 2009 c. 1 Pt 2 s.125(4) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

⁵⁶⁶ Added by Banking Act 2009 c. 1 Pt 3 s.160(4) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

(3) In Schedule 8 to this Act “liquidator” includes a provisional liquidator⁵⁶⁷ [or bank liquidator]⁵⁶⁷ [or administrator]⁵⁶⁸ ; and references above in this section to Parts I to VII of this Act [or [Part 2 or 3 of the Banking Act 2009]⁵⁶⁹]⁵⁷⁰ are to be read as including [the Companies Acts]⁵⁷¹ so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

[(3A) In this section references to Part 2 or 3 of the Banking Act 2009 include references to those Parts as applied to building societies (see section 90C of the Building Societies Act 1986).]⁵⁷²

(4) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Regulations made by the Secretary of State [or the Treasury]⁵⁷³ under a power conferred by rules under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

(6) Nothing in this section prejudices any power to make rules of court.

[(7) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]⁵⁷⁴

412.— Individual insolvency rules (England and Wales).

(1) The Lord Chancellor may, with the concurrence of the Secretary of State [and, in the case of rules that affect court procedure, with the concurrence of the Lord Chief Justice]⁵⁷⁵ , make rules for the purpose of giving effect to [Parts 7A to 11]⁵⁷⁶ of this Act [or the EC Regulation]⁵⁷⁷ .

(2) Without prejudice to the generality of subsection (1), or to any provision of those Parts by virtue of which rules under this section may be made with respect to any matter, rules under this section may contain—

⁵⁶⁷ Words inserted by Banking Act 2009 c. 1 Pt 2 s.125(5)(a) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

⁵⁶⁸ Words inserted by Banking Act 2009 c. 1 Pt 3 s.160(5)(a) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

⁵⁶⁹ Words inserted by Banking Act 2009 c. 1 Pt 3 s.160(5)(b) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

⁵⁷⁰ Words inserted by Banking Act 2009 c. 1 Pt 2 s.125(5)(b) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

⁵⁷¹ Words substituted by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007/2194 Sch.4(3) para.44 (October 1, 2007)

⁵⁷² Added by Building Societies (Insolvency and Special Administration) Order 2009/805 art.13 (March 29, 2009)

⁵⁷³ Words inserted by Banking Act 2009 c. 1 Pt 2 s.125(6) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

⁵⁷⁴ Added by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.188(3) (April 3, 2006)

⁵⁷⁵ Words inserted by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.189(2) (April 3, 2006)

⁵⁷⁶ Words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.8 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁵⁷⁷ Words inserted by Insolvency Act 1986 (Amendment) Regulations 2002/1037 reg.3(3) (May 3, 2002)

- (a) any such provision as is specified in Schedule 9 to this Act or corresponds to provision contained immediately before the appointed day in rules made under section 132 of the Bankruptcy Act 1914; and
- (b) such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor necessary or expedient.

[(2A) For the purposes of subsection (2), a reference in Schedule 9 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of the EC Regulation (in so far as the provision of this Act relates to a matter to which the EC Regulation applies).

(2B) Rules under this section for the purpose of giving effect to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.]⁵⁷⁸

(3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Regulations made by the Secretary of State under a power conferred by rules under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

(5) Nothing in this section prejudices any power to make rules of court.

[(6) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]⁵⁷⁹

413.— Insolvency Rules Committee.

(1) The committee established under section 10 of the Insolvency Act 1976 (advisory committee on bankruptcy and winding-up rules) continues to exist for the purpose of being consulted under this section.

(2) The Lord Chancellor shall consult the committee before making any rules under section 411 or 412 [other than rules which contain a statement that the only provision made by the rules is provision applying rules made under section 411, with or without modifications, for the purposes of provision made by [any of sections 23 to 26 of the Water Industry Act 1991 or Schedule 3 to that Act]⁵⁸⁰]⁵⁸¹ [or by any of sections 59 to 65 of, or Schedule 6 or 7 to, the Railways Act 1993]⁵⁸² .

(3) Subject to the next subsection, the committee shall consist of—

- (a) a judge of the High Court attached to the Chancery Division;
- (b) a circuit judge;
- (c) a registrar in bankruptcy of the High Court;

⁵⁷⁸ Added by Insolvency Act 1986 (Amendment) Regulations 2002/1037 reg.3(4) (May 3, 2002)

⁵⁷⁹ Added by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.189(3) (April 3, 2006)

⁵⁸⁰ Words substituted by Water Consolidation (Consequential Provisions) Act 1991 c. 60 Sch.1 para.46 (December 1, 1991)

⁵⁸¹ Words inserted by Water Act 1989 (c.15), s. 190, Sch. 25 para. 78(2) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)\u20132013(10), 193(1), Sch. 26 paras. 3(1)(2)17, 40(4), 57(6), 58)

⁵⁸² Words added by Railways Act 1993 c. 43 Sch.12 para.25 (April 1, 1994)

- (d) the registrar of a county court;
- (e) a practising barrister;
- (f) a practising solicitor; and
- (g) a practising accountant;

and the appointment of any person as a member of the committee shall be made [in accordance with subsection (3A) or (3B)]⁵⁸³ .

[(3A) The Lord Chief Justice must appoint the persons referred to in paragraphs (a) to (d) of subsection (3), after consulting the Lord Chancellor.

(3B) The Lord Chancellor must appoint the persons referred to in paragraphs (e) to (g) of subsection (3), after consulting the Lord Chief Justice.]⁵⁸⁴

(4) The Lord Chancellor may appoint as additional members of the committee any persons appearing to him to have qualifications or experience that would be of value to the committee in considering any matter with which it is concerned.

[(5) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]⁵⁸⁵

Fees orders

414.— Fees orders (company insolvency proceedings).

(1) There shall be paid in respect of—

- (a) proceedings under any of Parts I to VII of this Act, and
- (b) the performance by the official receiver or the Secretary of State of functions under those Parts,

such fees as the competent authority may with the sanction of the Treasury by order direct.

(2) That authority is—

- (a) in relation to England and Wales, the Lord Chancellor, and
- (b) in relation to Scotland, the Secretary of State.

(3) The Treasury may by order direct by whom and in what manner the fees are to be collected and accounted for.

(4) The Lord Chancellor may, with the sanction of the Treasury, by order provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for fees payable by virtue of this section.

(5) An order under this section may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor, the Secretary of State or (as the case may be) the Treasury necessary or expedient.

(6) An order under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

⁵⁸³ Words substituted by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.190(2) (April 3, 2006)

⁵⁸⁴ Added by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.190(3) (April 3, 2006)

⁵⁸⁵ Added by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.190(4) (April 3, 2006)

(7) Fees payable by virtue of this section shall be paid into the Consolidated Fund.

(8) References in subsection (1) to Parts I to VII of this Act are to be read as including [the Companies Acts]⁵⁸⁶ so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

[(8A) This section applies in relation to Part 2 of the Banking Act 2009 (bank insolvency) as in relation to Parts I to VII of this Act.]⁵⁸⁷

[(8B) This section applies in relation to Part 3 of the Banking Act 2009 (bank administration) as in relation to Parts I to VII of this Act.]⁵⁸⁸

[(8C) In subsections (8A) and (8B) the reference to Parts 2 and 3 of the Banking Act 2009 include references to those Parts as applied to building societies (see section 90C of the Building Societies Act 1986).]⁵⁸⁹

(9) Nothing in this section prejudices any power to make rules of court; and the application of this section to Scotland is without prejudice to section 2 of the Courts of Law Fees (Scotland) Act 1895.

415.— Fees orders (individual insolvency proceedings in England and Wales).

(1) There shall be paid in respect of—

[(za) the costs of persons acting as approved intermediaries under Part 7A,]⁵⁹⁰

(a) proceedings under [Parts 7A to 11]⁵⁹¹ of this Act, and

(b) the performance by the official receiver or the Secretary of State of functions under those Parts,

such fees as the Lord Chancellor may with the sanction of the Treasury by order direct.

(2) The Treasury may by order direct by whom and in what manner the fees are to be collected and accounted for.

(3) The Lord Chancellor may, with the sanction of the Treasury, by order provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for—

(a) fees payable by virtue of this section, and

(b) fees payable to any person who has prepared an insolvency practitioner's report under section 274 in Chapter I of Part IX.

(4) An order under this section may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor or, as the case may be, the Treasury, necessary or expedient.

⁵⁸⁶ Words substituted by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007/2194 Sch.4(3) para.44 (October 1, 2007)

⁵⁸⁷ Added by Banking Act 2009 c. 1 Pt 2 s.126 (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

⁵⁸⁸ Added by Banking Act 2009 c. 1 Pt 3 s.161 (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

⁵⁸⁹ Added by Building Societies (Insolvency and Special Administration) Order 2009/805 art.14 (March 29, 2009)

⁵⁹⁰ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.9(2) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁵⁹¹ Words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.9(3) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

- (5) An order under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.
- (6) Fees payable by virtue of this section shall be paid into the Consolidated Fund.
- (7) Nothing in this section prejudices any power to make rules of court.

[415A Fees orders (general)]

[(A1) The Secretary of State—

- (a) may by order require a person or body to pay a fee in connection with the grant or maintenance of a designation of that person or body as a competent authority under section 251U, and
- (b) may refuse to grant, or may withdraw, any such designation where a fee is not paid.

]⁵⁹²

(1) The Secretary of State—

- (a) may by order require a body to pay a fee in connection with the grant or maintenance of recognition of the body under section 391, and
- (b) may refuse recognition, or revoke an order of recognition under section 391(1) by a further order, where a fee is not paid.

(2) The Secretary of State—

- (a) may by order require a person to pay a fee in connection with the grant or maintenance of authorisation of the person under section 393, and
- (b) may disregard an application or withdraw an authorisation where a fee is not paid.

(3) The Secretary of State may by order require the payment of fees in respect of—

- (a) the operation of the Insolvency Services Account;
- (b) payments into and out of that Account.

(4) The following provisions of section 414 apply to fees under this section as they apply to fees under that section—

- (a) subsection (3) (manner of payment),
- (b) subsection (5) (additional provision),
- (c) subsection (6) (statutory instrument),
- (d) subsection (7) (payment into Consolidated Fund), and
- (e) subsection (9) (saving for rules of court).

]⁵⁹³

⁵⁹² Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.10 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁵⁹³ Added by Enterprise Act 2002 c. 40 Pt 10 s.270(1) (December 18, 2003 as amended by SI 2003/3340; April 1, 2004 was the date originally appointed by SI 2003/2093)

*Specification, increase and reduction of money sums relevant in the operation of this Act***416.— Monetary limits (companies winding up).**

- (1) The Secretary of State may by order in a statutory instrument increase or reduce any of the money sums for the time being specified in the following provisions in the first Group of Parts—
 section 117(2) (amount of company's share capital determining whether county court has jurisdiction to wind it up);
 section 120(3) (the equivalent as respects sheriff court jurisdiction in Scotland);
 section 123(1)(a) (minimum debt for service of demand on company by unpaid creditor);
 section 184(3) (minimum value of judgment, affecting sheriff's duties on levying execution);
 section 206(1)(a) and (b) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer).
- (2) An order under this section may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.
- (3) No order under this section increasing or reducing any of the money sums for the time being specified in section 117(2), 120(3) or 123(1)(a) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (4) A statutory instrument containing an order under this section, other than an order to which subsection (3) applies, is subject to annulment in pursuance of a resolution of either House of Parliament.

417. Money sum in s. 222.

The Secretary of State may by regulations in a statutory instrument increase or reduce the money sum for the time being specified in section 222(1) (minimum debt for service of demand on unregistered company by unpaid creditor); but such regulations shall not be made unless a draft of the statutory instrument containing them has been approved by resolution of each House of Parliament.

418.— Monetary limits (bankruptcy).

- (1) The Secretary of State may by order prescribe amounts for the purposes of the following provisions in the second Group of Parts—
 [section 251S(4) (maximum amount of credit which a person in respect of whom a debt relief order is made may obtain without disclosure of his status);]⁵⁹⁴
 section 273 (minimum value of debtor's estate determining whether immediate bankruptcy order should be made; small bankruptcies level);
 [section 313A (value of property below which application for sale, possession or charge to be dismissed);]⁵⁹⁵
 section 346(3) (minimum amount of judgment, determining whether amount recovered on sale of debtor's goods is to be treated as part of his estate in bankruptcy);

⁵⁹⁴ Words inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.11(a) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁵⁹⁵ Entry inserted by Enterprise Act 2002 c. 40 Pt 10 s.261(6) (April 1, 2004)

section 354(1) and (2) (minimum amount of concealed debt, or value of property concealed or removed, determining criminal liability under the section);
 section 358 (minimum value of property taken by a bankrupt out of England and Wales, determining his criminal liability);
 section 360(1) (maximum amount of credit which bankrupt may obtain without disclosure of his status);
 section 361(2) (exemption of bankrupt from criminal liability for failure to keep proper accounts, if unsecured debts not more than the prescribed minimum);
 section 364(2)(d) (minimum value of goods removed by the bankrupt, determining his liability to arrest);
 [paragraphs 6 to 8 of Schedule 4ZA (maximum amount of a person's debts, monthly surplus income and property for purposes of obtaining a debt relief order);]⁵⁹⁶

and references in the second Group of Parts to the amount prescribed for the purposes of any of those provisions, and references in those provisions to the prescribed amount, are to be construed accordingly.

(2) An order under this section may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.

(3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

[417A.— Money sums (company moratorium).

(1) The Secretary of State may by order increase or reduce any of the money sums for the time being specified in the following provisions of Schedule A1 to this Act—

paragraph 17(1) (maximum amount of credit which company may obtain without disclosure of moratorium);
 paragraph 41(4) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer).

(2) An order under this section may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.

(3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

]⁵⁹⁷

⁵⁹⁶ Words inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.11(b) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁵⁹⁷ Added by Insolvency Act 2000 c. 39 Sch.1 para.10 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

*Insolvency practice***419.— Regulations for purposes of Part XIII.**

- (1) The Secretary of State may make regulations for the purpose of giving effect to Part XIII of this Act; and “prescribed” in that Part means prescribed by regulations made by the Secretary of State.
- (2) Without prejudice to the generality of subsection (1) or to any provision of that Part by virtue of which regulations may be made with respect to any matter, regulations under this section may contain—
- (a) provision as to the matters to be taken into account in determining whether a person is a fit and proper person to act as an insolvency practitioner;
 - (b) provision prohibiting a person from so acting in prescribed cases, being cases in which a conflict of interest will or may arise;
 - (c) provision imposing requirements with respect to—
 - (i) the preparation and keeping by a person who acts as an insolvency practitioner of prescribed books, accounts and other records, and
 - (ii) the production of those books, accounts and records to prescribed persons;
 - (d) provision conferring power on prescribed persons—
 - (i) to require any person who acts or has acted as an insolvency practitioner to answer any inquiry in relation to a case in which he is so acting or has so acted, and
 - (ii) to apply to a court to examine such a person or any other person on oath concerning such a case;
 - (e) provision making non-compliance with any of the regulations a criminal offence; and
 - (f) such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient.
- (3) Any power conferred by Part XIII or this Part to make regulations, rules or orders is exercisable by statutory instrument subject to annulment by resolution of either House of Parliament.
- (4) Any rule or regulation under Part XIII or this Part may make different provision with respect to different cases or descriptions of cases, including different provision for different areas.

*Other order-making powers***420.— Insolvent partnerships.**

- (1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State [and the Lord Chief Justice]⁵⁹⁸, provide that such provisions of this Act as may be specified in the order shall apply in relation to insolvent partnerships with such modifications as may be so specified.

[(1A) An order under this section may make provision in relation to the EC Regulation.

(1B) But provision made by virtue of this section in relation to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.]⁵⁹⁹

⁵⁹⁸ Words inserted by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.191(2) (April 3, 2006)

(2) An order under this section may make different provision for different cases and may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor [and the Lord Chief Justice]⁶⁰⁰ necessary or expedient.

(3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

[(4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]⁶⁰¹

421.— Insolvent estates of deceased persons.

(1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State [and the Lord Chief Justice]⁶⁰² , provide that such provisions of this Act as may be specified in the order shall apply [in relation]⁶⁰³ to the administration of the insolvent estates of deceased persons with such modifications as may be so specified.

[(1A) An order under this section may make provision in relation to the EC Regulation.

(1B) But provision made by virtue of this section in relation to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.]⁶⁰⁴

(2) An order under this section may make different provision for different cases and may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor [and the Lord Chief Justice]⁶⁰⁵ necessary or expedient.

(3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) For the purposes of this section the estate of a deceased person is insolvent if, when realised, it will be insufficient to meet in full all the debts and other liabilities to which it is subject.

[(5) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]⁶⁰⁶

[421A.— Insolvent estates: joint tenancies.

(1) This section applies where—

- (a) an insolvency administration order has been made in respect of the insolvent estate of a deceased person,

⁵⁹⁹ Added by Insolvency Act 1986 (Amendment) Regulations 2002/1037 reg.3(5) (May 3, 2002)

⁶⁰⁰ Words inserted by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.191(3) (April 3, 2006)

⁶⁰¹ Added by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.191(4) (April 3, 2006)

⁶⁰² Words inserted by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.192(2) (April 3, 2006)

⁶⁰³ Words inserted by Insolvency Act 2000 c. 39 s.12(2) (April 2, 2001)

⁶⁰⁴ Added by Insolvency Act 1986 (Amendment) Regulations 2002/1037 reg.3(6) (May 3, 2002)

⁶⁰⁵ Words inserted by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.192(3) (April 3, 2006)

⁶⁰⁶ Added by Constitutional Reform Act 2005 c. 4 Sch.4(1) para.192(4) (April 3, 2006)

- (b) the petition for the order was presented after the commencement of this section and within the period of five years beginning with the day on which he died, and
 - (c) immediately before his death he was beneficially entitled to an interest in any property as joint tenant.
- (2) For the purpose of securing that debts and other liabilities to which the estate is subject are met, the court may, on an application by the trustee appointed pursuant to the insolvency administration order, make an order under this section requiring the survivor to pay to the trustee an amount not exceeding the value lost to the estate.
- (3) In determining whether to make an order under this section, and the terms of such an order, the court must have regard to all the circumstances of the case, including the interests of the deceased's creditors and of the survivor; but, unless the circumstances are exceptional, the court must assume that the interests of the deceased's creditors outweigh all other considerations.
- (4) The order may be made on such terms and conditions as the court thinks fit.
- (5) Any sums required to be paid to the trustee in accordance with an order under this section shall be comprised in the estate.
- (6) The modifications of this Act which may be made by an order under section 421 include any modifications which are necessary or expedient in consequence of this section.
- (7) In this section, “survivor” means the person who, immediately before the death, was beneficially entitled as joint tenant with the deceased or, if the person who was so entitled dies after the making of the insolvency administration order, his personal representatives.
- (8) If there is more than one survivor—
- (a) an order under this section may be made against all or any of them, but
 - (b) no survivor shall be required to pay more than so much of the value lost to the estate as is properly attributable to him.
- (9) In this section—
- “insolvency administration order” has the same meaning as in any order under section 421 having effect for the time being,
 - “value lost to the estate” means the amount which, if paid to the trustee, would in the court's opinion restore the position to what it would have been if the deceased had been adjudged bankrupt immediately before his death.

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422.— [Formerly authorised banks]⁶⁰⁸

- [(1) The Secretary of State may by order made with the concurrence of the Treasury and after consultation with the Financial Services Authority provide that specified provisions in the first Group of Parts shall apply with specified modifications in relation to any person who—
- (a) has a liability in respect of a deposit which he accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22), but

⁶⁰⁷ Added by Insolvency Act 2000 c. 39 s.12(1) (April 2, 2001)

⁶⁰⁸ Heading substituted by Financial Services and Markets Act 2000 (Consequential Amendments) Order 2002/1555 Pt 2 art.16(2) (July 3, 2002)

(b) does not have permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) (regulated activities) to accept deposits.

(1A) Subsection (1)(b) shall be construed in accordance with—

- (a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),
- (b) any relevant order under that section, and
- (c) Schedule 2 to that Act (regulated activities).

]⁶⁰⁹

(1A) [...] ⁶¹⁰

(2) An order under this section may make different provision for different cases and may contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient.

(3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

PART XVI

PROVISIONS AGAINST DEBT AVOIDANCE (ENGLAND AND WALES ONLY)

423.— Transactions defrauding creditors.

(1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—

- (a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;
- (b) he enters into a transaction with the other in consideration of marriage [or the formation of a civil partnership] ⁶¹¹ ; or
- (c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself.

(2) Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for—

- (a) restoring the position to what it would have been if the transaction had not been entered into, and
- (b) protecting the interests of persons who are victims of the transaction.

(3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose—

⁶⁰⁹ S.422(1)-(1A) substituted for s.422(1) subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.35 (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

⁶¹⁰ Repealed by Enterprise Act 2002 (Insolvency) Order 2003/2096 Sch.1(1) para.11 (September 15, 2003)

⁶¹¹ Words inserted by Civil Partnership Act 2004 c. 33 Sch.27 para.121 (December 5, 2005)

- (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or
 - (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.
- (4) In this section “the court” means the High Court or—
- (a) if the person entering into the transaction is an individual, any other court which would have jurisdiction in relation to a bankruptcy petition relating to him;
 - (b) if that person is a body capable of being wound up under Part IV or V of this Act, any other court having jurisdiction to wind it up
- .
- (5) In relation to a transaction at an undervalue, references here and below to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in the following two sections the person entering into the transaction is referred to as “the debtor”.

424.— Those who may apply for an order under s. 423.

- (1) An application for an order under section 423 shall not be made in relation to a transaction except—
- (a) in a case where the debtor has been adjudged bankrupt or is a body corporate which is being wound up or [is in administration]⁶¹², by the official receiver, by the trustee of the bankrupt's estate or the liquidator or administrator of the body corporate or (with the leave of the court) by a victim of the transaction;
 - (b) in a case where a victim of the transaction is bound by a voluntary arrangement approved under Part I or Part VIII of this Act, by the supervisor of the voluntary arrangement or by any person who (whether or not so bound) is such a victim; or
 - (c) in any other case, by a victim of the transaction.
- (2) An application made under any of the paragraphs of subsection (1) is to be treated as made on behalf of every victim of the transaction.

425.— Provision which may be made by order under s. 423.

- (1) Without prejudice to the generality of section 423, an order made under that section with respect to a transaction may (subject as follows)—
- (a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;
 - (b) require any property to be so vested if it represents, in any person's hands, the application either of the proceeds of sale of property so transferred or of money so transferred;
 - (c) release or discharge (in whole or in part) any security given by the debtor;
 - (d) require any person to pay to any other person in respect of benefits received from the debtor such sums as the court may direct;

⁶¹² Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.36 (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

- (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction to be under such new or revived obligations as the court thinks appropriate;
 - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.
- (2) An order under section 423 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order—
- (a) shall not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and
 - (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.
- (3) For the purposes of this section the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under section 423 may be made in respect of the transaction.
- (4) In this section “security” means any mortgage, charge, lien or other security.

PART XVII

MISCELLANEOUS AND GENERAL

426.— Co-operation between courts exercising jurisdiction in relation to insolvency.

- (1) An order made by a court in any part of the United Kingdom in the exercise of jurisdiction in relation to insolvency law shall be enforced in any other part of the United Kingdom as if it were made by a court exercising the corresponding jurisdiction in that other part.
- (2) However, without prejudice to the following provisions of this section, nothing in subsection (1) requires a court in any part of the United Kingdom to enforce, in relation to property situated in that part, any order made by a court in any other part of the United Kingdom.
- (3) The Secretary of State, with the concurrence in relation to property situated in England and Wales of the Lord Chancellor, may by order make provision for securing that a trustee or assignee under the insolvency law of any part of the United Kingdom has, with such modifications as may be specified in the order, the same rights in relation to any property situated in another part of the United Kingdom as he would have in the corresponding circumstances if he were a trustee or assignee under the insolvency law of that other part.
- (4) The courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory.
- (5) For the purposes of subsection (4) a request made to a court in any part of the United Kingdom by a court in any other part of the United Kingdom or in a relevant country or territory is authority

for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction.

In exercising its discretion under this subsection, a court shall have regard in particular to the rules of private international law.

(6) Where a person who is a trustee or assignee under the insolvency law of any part of the United Kingdom claims property situated in any other part of the United Kingdom (whether by virtue of an order under subsection (3) or otherwise), the submission of that claim to the court exercising jurisdiction in relation to insolvency law in that other part shall be treated in the same manner as a request made by a court for the purpose of subsection (4).

(7) Section 38 of the Criminal Law Act 1977 (execution of warrant of arrest throughout the United Kingdom) applies to a warrant which, in exercise of any jurisdiction in relation to insolvency law, is issued in any part of the United Kingdom for the arrest of a person as it applies to a warrant issued in that part of the United Kingdom for the arrest of a person charged with an offence.

(8) Without prejudice to any power to make rules of court, any power to make provision by subordinate legislation for the purpose of giving effect in relation to companies or individuals to the insolvency law of any part of the United Kingdom includes power to make provision for the purpose of giving effect in that part to any provision made by or under the preceding provisions of this section.

(9) An order under subsection (3) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(10) In this section “insolvency law” means—

(a) in relation to England and Wales, provision [extending to England and Wales and]⁶¹³ made by or under this Act or [sections 1A, 6 to 10, 12 to 15, 19(c) and 20 (with Schedule 1) of the Company Directors Disqualification Act 1986]⁶¹⁴ [and sections 1 to 17 of that Act as they apply for the purposes of those provisions of that Act]⁶¹⁵ ;

(b) in relation to Scotland, provision extending to Scotland and made by or under this Act, sections [1A,]⁶¹⁶ 6 to 10, [12 to 15]⁶¹⁷ , 19(c) and 20 (with Schedule 1) of the Company Directors Disqualification Act 1986 [and sections 1 to 17 of that Act as they apply for the purposes of those provisions of that Act]⁶¹⁸ , Part XVIII of the Companies Act or the Bankruptcy (Scotland) Act 1985;

(c) in relation to Northern Ireland, provision made by or under [the Insolvency (Northern Ireland) Order 1989]⁶¹⁹ [or Part II of the Companies (Northern Ireland) Order 1989]⁶²⁰ ;

⁶¹³ Words inserted by Insolvency Act 2000 c. 39 Sch.4(II) para.16(3)(a)(i) (April 2, 2001)

⁶¹⁴ Words substituted by Insolvency Act 2000 c. 39 Sch.4(II) para.16(3)(a)(iii) (April 2, 2001)

⁶¹⁵ Words substituted by Insolvency Act 2000 c. 39 Sch.4(II) para.16(3)(a)(iv) (April 2, 2001)

⁶¹⁶ Words inserted by Insolvency Act 2000 c. 39 Sch.4(II) para.16(3)(b)(i) (April 2, 2001)

⁶¹⁷ Words substituted by Insolvency Act 2000 c. 39 Sch.4(II) para.16(3)(b)(ii) (April 2, 2001)

⁶¹⁸ Words inserted by Insolvency Act 2000 c. 39 Sch.4(II) para.16(3)(b)(iii) (April 2, 2001)

⁶¹⁹ Words substituted by Insolvency (Northern Ireland) Order 1989/2405 Sch.9 Pt II para.41(a) (October 1, 1991: as SR 1991/411)

⁶²⁰ Words inserted by Companies (Northern Ireland) Order 1989/2404 Sch.4(I) para.1 (October 1, 1991: as SR 1991/410)

(d) in relation to any relevant country or territory, so much of the law of that country or territory as corresponds to provisions falling within any of the foregoing paragraphs; and references in this subsection to any enactment include, in relation to any time before the coming into force of that enactment the corresponding enactment in force at that time.

(11) In this section “relevant country or territory” means—

- (a) any of the Channel Islands or the Isle of Man, or
- (b) any country or territory designated for the purposes of this section by the Secretary of State by order made by statutory instrument.

[(12) In the application of this section to Northern Ireland—

- (a) for any reference to the Secretary of State there is substituted a reference to the Department of Economic Development in Northern Ireland;
- (b) in subsection (3) for the words “another part of the United Kingdom” and the words “that other part” there is substituted the words “Northern Ireland”;
- (c) for subsection (9) there is substituted the following subsection—

“(9) An order made under subsection (3) by the Department of Economic Development in Northern Ireland shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 and shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.”

] ⁶²¹

[(13) Section 129 of the Banking Act 2009 provides for provisions of that Act about bank insolvency to be “insolvency law” for the purposes of this section.] ⁶²²

[(14) Section 165 of the Banking Act 2009 provides for provisions of that Act about bank administration to be “insolvency law” for the purposes of this section.] ⁶²³

[426A Disqualification from Parliament (England and Wales)]

(1) A person in respect of whom a bankruptcy restrictions order [or a debt relief restrictions order] ⁶²⁴ has effect shall be disqualified—

- (a) from membership of the House of Commons,
- (b) from sitting or voting in the House of Lords, and
- (c) from sitting or voting in a committee of the House of Lords or a joint committee of both Houses.

(2) If a member of the House of Commons becomes disqualified under this section, his seat shall be vacated.

(3) If a person who is disqualified under this section is returned as a member of the House of Commons, his return shall be void.

⁶²¹ Added by Insolvency (Northern Ireland) Order 1989/2405 Sch.9 Pt II para.41(b) (October 1, 1991 except for purposes specified in SR 1991/411 art.4(a); not yet in force otherwise)

⁶²² Added by Banking Act 2009 c. 1 Pt 2 s.129(2) (February 21, 2009)

⁶²³ Added by Banking Act 2009 c. 1 Pt 3 s.165(2) (February 21, 2009)

⁶²⁴ Words inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.12(2) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

(4) No writ of summons shall be issued to a member of the House of Lords who is disqualified under this section.

(5) If a court makes a bankruptcy restrictions order or interim order [, or a debt relief restrictions order or an interim debt relief restrictions order,]⁶²⁵ in respect of a member of the House of Commons or the House of Lords the court shall notify the Speaker of that House.

(6) If the Secretary of State accepts a bankruptcy restrictions undertaking [or a debt relief restrictions undertaking]⁶²⁶ made by a member of the House of Commons or the House of Lords, the Secretary of State shall notify the Speaker of that House.

] ⁶²⁷

[426B Devolution

(1) If a court makes a bankruptcy restrictions order or interim order in respect of a member of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales, [or makes a debt relief restrictions order or interim debt relief restrictions order in respect of such a member,]⁶²⁸ the court shall notify the presiding officer of that body.

(2) If the Secretary of State accepts a bankruptcy restrictions undertaking [or a debt relief restrictions undertaking]⁶²⁹ made by a member of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales, the Secretary of State shall notify the presiding officer of that body.

] ⁶³⁰

[426C Irrelevance of privilege

(1) An enactment about insolvency applies in relation to a member of the House of Commons or the House of Lords irrespective of any Parliamentary privilege.

(2) In this section “enactment” includes a provision made by or under—

- (a) an Act of the Scottish Parliament, or
- (b) Northern Ireland legislation.

] ⁶³¹

⁶²⁵ Words inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.12(3) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁶²⁶ Words inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.12(4) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁶²⁷ Added by Enterprise Act 2002 c. 40 Pt 10 s.266(1) (April 1, 2004)

⁶²⁸ Words inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.13(2) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁶²⁹ Words inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.13(3) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

⁶³⁰ Added by Enterprise Act 2002 c. 40 Pt 10 s.266(1) (April 1, 2004)

⁶³¹ Added by Enterprise Act 2002 c. 40 Pt 10 s.266(1) (April 1, 2004)

427.— Parliamentary disqualification.

(1) Where a court in [...] ⁶³² Northern Ireland adjudges an individual bankrupt or a court in Scotland awards sequestration of an individual's estate, the individual is disqualified—

- (a) for sitting or voting in the House of Lords,
- (b) for being elected to, or sitting or voting in, the House of Commons, and
- (c) for sitting or voting in a committee of either House.

(2) Where an individual is disqualified under this section, the disqualification ceases—

- (a) except where the adjudication is annulled or the award recalled or reduced without the individual having been first discharged, on the discharge of the individual, and
- (b) in the excepted case, on the annulment, recall or reduction, as the case may be.

(3) No writ of summons shall be issued to any lord of Parliament who is for the time being disqualified under this section for sitting and voting in the House of Lords.

(4) Where a member of the House of Commons who is disqualified under this section continues to be so disqualified until the end of the period of 6 months beginning with the day of the adjudication or award, his seat shall be vacated at the end of that period.

(5) A court which makes an adjudication or award such as is mentioned in subsection (1) in relation to any lord of Parliament or member of the House of Commons shall forthwith certify the adjudication or award to the Speaker of the House of Lords or, as the case may be, to the Speaker of the House of Commons.

(6) Where a court has certified an adjudication or award to the Speaker of the House of Commons under subsection (5), then immediately after it becomes apparent which of the following certificates is applicable, the court shall certify to the Speaker of the House of Commons—

- (a) that the period of 6 months beginning with the day of the adjudication or award has expired without the adjudication or award having been annulled, recalled or reduced, or
- (b) that the adjudication or award has been annulled, recalled or reduced before the end of that period.

[(6A) Subsections (4) to (6) have effect in relation to member of the Scottish Parliament but as if—

- (a) references to the House of Commons were to the Parliament and references to the Speaker were to the Presiding Officer, and
- (b) in subsection (4), for “under this section” there were substituted “under section 15(1)(b) of the Scotland Act 1998 by virtue of this section”.

]⁶³³

[(6B) Subsections (4) to (6) have effect in relation to a member of the National Assembly for Wales but as if—

- (a) references to the House of Commons were to the Assembly and references to the Speaker were to the presiding officer, and
- (b) in subsection (4), for “under this section” there were substituted [“under section 16(2) of the Government of Wales Act 2006 by virtue of this section”]⁶³⁴ .

⁶³² Words repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004 as SI 2003/2093)

⁶³³ Added by Scotland Act 1998 c. 46 Sch.8 para.23(6) (November 19, 1998)

⁶³⁴ Words substituted by Government of Wales Act 2006 c. 32 Sch.10 para.18 (May 3, 2007 immediately after the ordinary election as specified in 2006 c.32 s.161(1); May 25, 2007 immediately after the end of the initial period

]⁶³⁵

(7) [...] ⁶³⁶

Amendments Pending

Pt XVII s. 427(6C): added by Northern Ireland Act 1998 c. 47 Sch. 13 para. 6 (date to be appointed: commencement order)

428. Exemptions from Restrictive Trade Practices Act.

(1)-(2) [...] ⁶³⁷

(3) In this section “insolvency services” means the services of persons acting as insolvency practitioners or carrying out under the law of Northern Ireland functions corresponding to those mentioned in section 388(1) or (2) in Part XIII, in their capacity as such [...] ⁶³⁸.

429.— Disabilities on revocation of administration order against an individual.

(1) The following applies where a person fails to make any payment which he is required to make by virtue of an administration order under Part VI of the County Courts Act 1984.

(2) The court which is administering that person's estate under the order may, if it thinks fit—

(a) revoke the administration order, and

(b) make an order directing that this section and section 12 of the Company Directors Disqualification Act 1986 shall apply to the person for such period, [not exceeding one year] ⁶³⁹, as may be specified in the order.

(3) A person to whom this section so applies shall not—

(a) either alone or jointly with another person, obtain credit to the extent of the amount prescribed for the purposes of section 360(1)(a) or more, or

(b) enter into any transaction in the course of or for the purposes of any business in which he is directly or indirectly engaged,

without disclosing to the person from whom he obtains the credit, or (as the case may be) with whom the transaction is entered into, the fact that this section applies to him.

(4) The reference in subsection (3) to a person obtaining credit includes—

(a) a case where goods are bailed or hired to him under a hire-purchase agreement or agreed to be sold to him under a conditional sale agreement, and

for purposes of functions of the Welsh Ministers, the First Minister, the Counsel General and the Assembly Commission and in relation to the Auditor General and the Comptroller and Auditor General as specified in 2006 c.32 s.161(4)-(5))

⁶³⁵ Added by Government of Wales Act 1998 c. 38 Sch.12 para.24 (April 1, 1999: as in SI 1999/782)

⁶³⁶ Repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004 as SI 2003/2093)

⁶³⁷ Repealed by Competition Act 1998 (Transitional, Consequential and Supplemental Provisions) Order 2000/311 art.19(2) (March 1, 2000)

⁶³⁸ Words repealed by Competition Act 1998 (Transitional, Consequential and Supplemental Provisions) Order 2000/311 art.19(2) (March 1, 2000)

⁶³⁹ Words substituted by Enterprise Act 2002 c. 40 Sch.23 para.15 (April 1, 2004)

(b) a case where he is paid in advance (whether in money or otherwise) for the supply of goods or services.

(5) A person who contravenes this section is guilty of an offence and liable to imprisonment or a fine, or both.

Amendments Pending

Pt XVII s. 429(1): s.429(1)-(2A) substituted for s.429(1) and (2) by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 16 para. 3(2) (date to be appointed)

Pt XVII s. 429(2): s.429(1)-(2A) substituted for s.429(1) and (2) by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 16 para. 3(2) (date to be appointed)

Pt XVII s. 429(3): words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 16 para. 3(3) (date to be appointed)

Pt XVII s. 429(4): words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 16 para. 3(4) (date to be appointed)

Pt XVII s. 429(5): word substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 16 para. 3(5) (date to be appointed)

430.— Provision introducing Schedule of punishments.

(1) Schedule 10 to this Act has effect with respect to the way in which offences under this Act are punishable on conviction.

(2) In relation to an offence under a provision of this Act specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.

(3) The fourth column of the Schedule shows, in relation to an offence, the maximum punishment by way of fine or imprisonment under this Act which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily) a reference to a period of years or months being to a term of imprisonment of that duration.

(4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).

(5) For the purpose of any enactment in this Act whereby an officer of a company who is in default is liable to a fine or penalty, the expression “officer who is in default” means any officer of the company who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

431.— Summary proceedings.

(1) Summary proceedings for any offence under any of Parts I to VII of this Act may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.

(2) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980, an information relating to such an offence which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within 3 years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.

(3) Summary proceedings in Scotland for such an offence shall not be commenced after the expiration of 3 years from the commission of the offence.

Subject to this (and notwithstanding anything in [section 136 of the Criminal Procedure (Scotland) Act 1995]⁶⁴⁰), such proceedings may (in Scotland) be commenced at any time within 12 months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge or, where such evidence was reported to him by the Secretary of State, within 12 months after the date on which it came to the knowledge of the latter; and subsection (3) of that section applies for the purpose of this subsection as it applies for the purpose of that section.

(4) For purposes of this section, a certificate of the Director of Public Prosecutions, the Lord Advocate or the Secretary of State (as the case may be) as to the date on which such evidence as is referred to above came to his knowledge is conclusive evidence.

432.— Offences by bodies corporate.

(1) This section applies to offences under this Act other than those excepted by subsection (4).

(2) Where a body corporate is guilty of an offence to which this section applies and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) The offences excepted from this section are those under sections 30, 39, 51, 53, 54, 62, 64, 66, 85, 89, 164, 188, 201, 206, 207, 208, 209, 210 and 211 [, and those under paragraphs 16(2), 17(3)(a), 18(3)(a), 19(3)(a), 22(1) and 23(1)(a) of Schedule A1]⁶⁴¹

⁶⁴⁰ Words substituted by Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 c. 40 Sch.4 para.61 (April 1, 1996 subject to transitional provisions, transitory modifications and savings specified in 1995 c.40 Sch.3)

⁶⁴¹ Words inserted by Insolvency Act 2000 c. 39 Sch.1 para.11 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

[433. Admissibility in evidence of statements of affairs, etc.]

- (1) In any proceedings (whether or not under this Act)—
- (a) a statement of affairs prepared for the purposes of any provision of this Act which is derived from the Insolvency Act 1985 , [...] ⁶⁴²
 - [(aa) a statement made in pursuance of a requirement imposed by or under Part 2 of the Banking Act 2009 (bank insolvency), [...] ⁶⁴³] ⁶⁴²
 - [(ab) a statement made in pursuance of a requirement imposed by or under Part 3 of that Act (bank administration), and] ⁶⁴³
 - (b) any other statement made in pursuance of a requirement imposed by or under any such provision or by or under rules made under this Act,
- may be used in evidence against any person making or concurring in making the statement.
- (2) However, in criminal proceedings in which any such person is charged with an offence to which this subsection applies—
- (a) no evidence relating to the statement may be adduced, and
 - (b) no question relating to it may be asked,
- by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.
- (3) Subsection (2) applies to any offence other than—
- (a) an offence under section 22(6), 47(6), 48(8), 66(6), 67(8), 95(8), 98(6), 99(3)(a), 131(7), 192(2), 208(1)(a) or (d) or (2), 210, 235(5), 353(1), 354(1)(b) or (3) or 356(1) or (2)(a) or (b) or paragraph 4(3)(a) of Schedule 7;
 - (b) an offence which is—
 - (i) created by rules made under this Act, and
 - (ii) designated for the purposes of this subsection by such rules or by regulations made by the Secretary of State;
 - (c) an offence which is—
 - (i) created by regulations made under any such rules, and
 - (ii) designated for the purposes of this subsection by such regulations;
 - (d) an offence under section 1, 2 or 5 of the Perjury Act 1911 (false statements made on oath or made otherwise than on oath); or
 - (e) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).
- (4) Regulations under subsection (3)(b)(ii) shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

] ⁶⁴⁴**434. Crown application.**

For the avoidance of doubt it is hereby declared that provisions of this Act which derive from the Insolvency Act 1985 bind the Crown so far as affecting or relating to the following matters, namely—

- (a) remedies against, or against the property of, companies or individuals;

⁶⁴² Added by Banking Act 2009 c. 1 Pt 2 s.128 (February 21, 2009)

⁶⁴³ Added by Banking Act 2009 c. 1 Pt 3 s.162 (February 21, 2009)

⁶⁴⁴ Existing text renumbered as s.433(1) and new s.433(2) to (4) inserted by Youth Justice and Criminal Evidence Act 1999 c. 23 Sch.3 para.7 (January 1, 2001: as SSI 2000/445)

- (b) priorities of debts;
- (c) transactions at an undervalue or preferences;
- (d) voluntary arrangements approved under Part I or Part VIII, and
- (e) discharge from bankruptcy.

[PART 17A

SUPPLEMENTARY PROVISIONS

]⁶⁴⁵

[434A. Introductory

The provisions of this Part have effect for the purposes of—

- (a) the First Group of Parts, and
- (b) sections 411, 413, 414, 416 and 417 in Part 15.

]⁶⁴⁶

[434B.— Representation of corporations at meetings

(1) If a corporation is a creditor or debenture-holder, it may by resolution of its directors or other governing body authorise a person or persons to act as its representative or representatives—

- (a) at any meeting of the creditors of a company held in pursuance of this Act or of rules made under it, or
- (b) at any meeting of a company held in pursuance of the provisions contained in a debenture or trust deed.

(2) Where the corporation authorises only one person, that person is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor or debenture-holder.

(3) Where the corporation authorises more than one person, any one of them is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor or debenture-holder.

(4) Where the corporation authorises more than one person and more than one of them purport to exercise a power under subsection (3)—

- (a) if they purport to exercise the power in the same way, the power is treated as exercised in that way;
- (b) if they do not purport to exercise the power in the same way, the power is treated as not exercised.

]⁶⁴⁷

⁶⁴⁵ Inserted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.105 (April 6, 2008)

⁶⁴⁶ Inserted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.105 (April 6, 2008)

⁶⁴⁷ Inserted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.105 (April 6, 2008)

[434C. Legal professional privilege

In proceedings against a person for an offence under this Act nothing in this Act is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege (in Scotland, confidentiality of communications).]⁶⁴⁸

[434D.— Enforcement of company's filing obligations

(1) This section applies where a company has made default in complying with any obligation under this Act—

- (a) to deliver a document to the registrar, or
- (b) to give notice to the registrar of any matter.

(2) The registrar, or any member or creditor of the company, may give notice to the company requiring it to comply with the obligation.

(3) If the company fails to make good the default within 14 days after service of the notice, the registrar, or any member or creditor of the company, may apply to the court for an order directing the company, and any specified officer of it, to make good the default within a specified time.

(4) The court's order may provide that all costs (in Scotland, expenses) of or incidental to the application are to be borne by the company or by any officers of it responsible for the default.

(5) This section does not affect the operation of any enactment imposing penalties on a company or its officers in respect of any such default.

] ⁶⁴⁹

[434E. Application of filing obligations to overseas companies

The provisions of this Act requiring documents to be forwarded or delivered to, or filed with, the registrar of companies apply in relation to an overseas company that is required to register particulars under section 1046 of the Companies Act 2006 as they apply in relation to a company registered under that Act in England and Wales or Scotland.]⁶⁵⁰

PART XVIII**INTERPRETATION****435.— Meaning of “associate”.**

(1) For the purposes of this Act any question whether a person is an associate of another person is to be determined in accordance with the following provisions of this section (any provision that

⁶⁴⁸ Inserted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.105 (April 6, 2008)

⁶⁴⁹ Added by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.81 (October 1, 2009: insertion has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁶⁵⁰ Added by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.81 (October 1, 2009: insertion has effect subject to transitional provisions specified in SI 2009/1941 art.8)

a person is an associate of another person being taken to mean that they are associates of each other).

[(2) A person is an associate of an individual if that person is—

- (a) the individual's husband or wife or civil partner,
- (b) a relative of—
 - (i) the individual, or
 - (ii) the individual's husband or wife or civil partner, or
- (c) the husband or wife or civil partner of a relative of—
 - (i) the individual, or
 - (ii) the individual's husband or wife or civil partner.

] ⁶⁵¹

(3) A person is an associate of any person with whom he is in partnership, and of the husband or wife [or civil partner] ⁶⁵² or a relative of any individual with whom he is in partnership; and a Scottish firm is an associate of any person who is a member of the firm.

(4) A person is an associate of any person whom he employs or by whom he is employed.

(5) A person in his capacity as trustee of a trust other than—

- (a) a trust arising under any of the second Group of Parts or the Bankruptcy (Scotland) Act 1985, or
- (b) a pension scheme or an employees' share scheme [...] ⁶⁵³ ,

is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that other person or an associate of that other person.

(6) A company is an associate of another company—

- (a) if the same person has control of both, or a person has control of one and persons who are his associates, or he and persons who are his associates, have control of the other, or
- (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(7) A company is an associate of another person if that person has control of it or if that person and persons who are his associates together have control of it.

(8) For the purposes of this section a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating—

- (a) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child, and
- (b) an illegitimate child as the legitimate child of his mother and reputed father;

⁶⁵¹ Substituted by Civil Partnership Act 2004 c. 33 Sch.27 para.122(2) (December 5, 2005)

⁶⁵² Words inserted by Civil Partnership Act 2004 c. 33 Sch.27 para.122(3) (December 5, 2005)

⁶⁵³ Words repealed by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.82(2) (October 1, 2009: repeal has effect subject to transitional provisions specified in SI 2009/1941 art.8)

and references in this section to a husband or wife include a former husband or wife and a reputed husband or wife [and references to a civil partner include a former civil partner]⁶⁵⁴ [and a reputed civil partner]⁶⁵⁵ .

(9) For the purposes of this section any director or other officer of a company is to be treated as employed by that company.

(10) For the purposes of this section a person is to be taken as having control of a company if—
 (a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions, or
 (b) he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has control of it;

and where two or more persons together satisfy either of the above conditions, they are to be taken as having control of the company.

(11) In this section “company” includes any body corporate (whether incorporated in Great Britain or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company have effect with any necessary modifications.

436. Expressions used generally.

[(1) In this Act, except in so far as the context otherwise requires (and subject to Parts VII and XI)—

“the appointed day” means the day on which this Act comes into force under section 443;

“associate” has the meaning given by section 435;

“body corporate” includes a body incorporated outside Great Britain, but does not include—

(a) a corporation sole, or

(b) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;

“business” includes a trade or profession;

“the Companies Acts” means the Companies Acts (as defined in section 2 of the Companies Act 2006) as they have effect in Great Britain;

“conditional sale agreement” and “hire-purchase agreement” have the same meanings as in the Consumer Credit Act 1974;

“the EC Regulation” means Council Regulation (EC) No. 1346/2000;

“EEA State” means a state that is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“employees' share scheme” means a scheme for encouraging or facilitating the holding of shares in or debentures of a company by or for the benefit of—

(a) the bona fide employees or former employees of—

(i) the company,

(ii) any subsidiary of the company, or

⁶⁵⁴ Words inserted by Civil Partnership Act 2004 c. 33 Sch.27 para.122(4) (December 5, 2005)

⁶⁵⁵ Words inserted by Civil Partnership Act 2004 (Overseas Relationships and Consequential, etc. Amendments) Order 2005/3129 Sch.4 para.8 (December 5, 2005)

- (iii) the company's holding company or any subsidiary of the company's holding company, or
 - (b) the spouses, civil partners, surviving spouses, surviving civil partners, or minor children or step-children of such employees or former employees;
- “modifications” includes additions, alterations and omissions and cognate expressions shall be construed accordingly;
- “property” includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;
- “records” includes computer records and other non-documentary records;
- “subordinate legislation” has the same meaning as in the Interpretation Act 1978; and
- “transaction” includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.
- (2) The following expressions have the same meaning in this Act as in the Companies Acts—
- “articles”, in relation to a company (see section 18 of the Companies Act 2006);
 - “debenture” (see section 738 of that Act);
 - “holding company” (see sections 1159 and 1160 of, and Schedule 6 to, that Act);
 - “the Joint Stock Companies Acts” (see section 1171 of that Act);
 - “overseas company” (see section 1044 of that Act);
 - “paid up” (see section 583 of that Act);
 - “private company” and “public company” (see section 4 of that Act);
 - “registrar of companies” (see section 1060 of that Act);
 - “share” (see section 540 of that Act);
 - “subsidiary” (see sections 1159 and 1160 of, and Schedule 6 to, that Act).

]⁶⁵⁶

Amendments Pending

Pt XVIII s. 436 definition of “distress”: definition inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 13 para. 85 (date to be appointed)

[436A. Proceedings under EC Regulation: modified definition of property

In the application of this Act to proceedings by virtue of Article 3 of the EC Regulation, a reference to property is a reference to property which may be dealt with in the proceedings.]⁶⁵⁷

⁶⁵⁶ Existing s.436 renumbered as s.436(1) and s.436(2) inserted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.82(3) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁶⁵⁷ Added by Insolvency Act 1986 (Amendment) (No. 2) Regulations 2002/1240 reg.18 (May 31, 2002)

PART XIX

FINAL PROVISIONS

437. Transitional provisions, and savings.

The transitional provisions and savings set out in Schedule 11 to this Act shall have effect, the Schedule comprising the following Parts—

Part I: company insolvency and winding up (matters arising before appointed day, and continuance of proceedings in certain cases as before that day);

Part II: individual insolvency (matters so arising, and continuance of bankruptcy proceedings in certain cases as before that day);

Part III: transactions entered into before the appointed day and capable of being affected by orders of the court under Part XVI of this Act;

Part IV: insolvency practitioners acting as such before the appointed day; and

Part V: general transitional provisions and savings required consequentially on, and in connection with, the repeal and replacement by this Act and the Company Directors Disqualification Act 1986 of provisions of [the Companies Act 1985]⁶⁵⁸, the greater part of the Insolvency Act 1985 and other enactments.

438. Repeals.

The enactments specified in the second column of Schedule 12 to this Act are repealed to the extent specified in the third column of that Schedule.

439.— Amendment of enactments.

(1) The Companies Act is amended as shown in Parts I and II of Schedule 13 to this Act, being amendments consequential on this Act and the Company Directors Disqualification Act 1986.

(2) The enactments specified in the first column of Schedule 14 to this Act (being enactments which refer, or otherwise relate, to those which are repealed and replaced by this Act or the Company Directors Disqualification Act 1986) are amended as shown in the second column of that Schedule.

(3) The Lord Chancellor may by order make such consequential modifications of any provision contained in any subordinate legislation made before the appointed day and such transitional provisions in connection with those modifications as appear to him necessary or expedient in respect of—

- (a) any reference in that subordinate legislation to the Bankruptcy Act 1914;
- (b) any reference in that subordinate legislation to any enactment repealed by Part III or IV of Schedule 10 to the Insolvency Act 1985; or
- (c) any reference in that subordinate legislation to any matter provided for under the Act of 1914 or under any enactment so repealed.

(4) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

⁶⁵⁸ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.83 (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

440.— Extent (Scotland).

(1) Subject to the next subsection, provisions of this Act contained in the first Group of Parts extend to Scotland except where otherwise stated.

(2) The following provisions of this Act do not extend to Scotland—

- (a) in the first Group of Parts—
 - section 43;
 - sections 238 to 241; and
 - section 246;
- (b) the second Group of Parts;
- (c) in the third Group of Parts—
 - sections 399 to 402,
 - [sections 412, 413, 415, 415A(3), 418, 420 and 421]⁶⁵⁹,
 - sections 423 to 425, and
 - section 429(1) and (2); and
- (d) in the Schedules—
 - Parts II and III of Schedule 11; and
 - Schedules 12 and 14 so far as they repeal or amend enactments which extend to England and Wales only.

Amendments Pending

Pt XIX s. 440(2)(a): words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch. 16 para. 4(2) (date to be appointed)

441.— Extent (Northern Ireland).

(1) The following provisions of this Act extend to Northern Ireland—

- (a) sections 197, 426, 427 and 428; and
- (b) so much of section 439 and Schedule 14 as relates to enactments which extend to Northern Ireland.

(2) Subject as above, and to any provision expressly relating to companies incorporated elsewhere than in Great Britain, nothing in this Act extends to Northern Ireland or applies to or in relation to companies registered or incorporated in Northern Ireland.

442. Extent (other territories).

Her Majesty may, by Order in Council, direct that such of the provisions of this Act as are specified in the Order, being provisions formerly contained in the Insolvency Act 1985, shall extend to any of the Channel Islands or any colony with such modifications as may be so specified.

⁶⁵⁹ Word inserted by Enterprise Act 2002 c. 40 Pt 10 s.270(4) (December 18, 2003 as amended by SI 2003/3340; April 1, 2004 was the date originally appointed by SI 2003/2093)

443. Commencement.

This Act comes into force on the day appointed under section 236(2) of the Insolvency Act 1985 for the coming into force of Part III of that Act (individual insolvency and bankruptcy), immediately after that Part of that Act comes into force for England and Wales.

444. Citation.

This Act may be cited as the Insolvency Act 1986.

[SCHEDULE A1**MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT**

] ⁶⁶⁰

[PART I**INTRODUCTORY**

] ⁶⁶¹

[Interpretation] ⁶⁶²

[1.

In this Schedule—

“the beginning of the moratorium” has the meaning given by paragraph 8(1),

“the date of filing” means the date on which the documents for the time being referred to in paragraph 7(1) are filed or lodged with the court,

“hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

“market contract” and “market charge” have the meanings given by Part VII of the Companies Act 1989,

[...] ⁶⁶³

“moratorium” means a moratorium under section 1A,

“the nominee” includes any person for the time being carrying out the functions of a nominee under this Schedule,

[...] ⁶⁶⁴

⁶⁶⁰ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (May 11, 2001 as SI 2001/1751)

⁶⁶¹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (May 11, 2001 as SI 2001/1751)

⁶⁶² Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁶⁶³ Definitions repealed by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003: repeal commenced by an amendment on July 3, 2002 but cannot take effect until the coming into force of Sch.A1 para.1 on January 1, 2003)

⁶⁶⁴ Definition repealed by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003: repeal commenced by an amendment on July 3, 2002 but cannot take effect until the coming into force of Sch.A1 para.1 on January 1, 2003)

“the settlement finality regulations” means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999,
 “system-charge” has the meaning given by the Financial Markets and Insolvency Regulations 1996.

]⁶⁶⁵

*[Eligible Companies]*⁶⁶⁶

[2.—

- (1) A company is eligible for a moratorium if it meets the requirements of paragraph 3, unless—
 - (a) it is excluded from being eligible by virtue of paragraph 4, or
 - (b) it falls within sub-paragraph (2).
- (2) A company falls within this sub-paragraph if—
 - [(a) it effects or carries out contracts of insurance, but is not exempt from the general prohibition, within the meaning of section 19 of the Financial Services and Markets Act 2000, in relation to that activity,
 - (b) it has permission under Part IV of that Act to accept deposits,
 - (bb) it has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22),]⁶⁶⁷
 - (c) it is a party to a market contract [...] ⁶⁶⁸ or any of its property is subject to a market charge [...] ⁶⁶⁸ or a system-charge, or
 - (d) it is a participant (within the meaning of the settlement finality regulations) or any of its property is subject to a collateral security charge (within the meaning of those regulations).
- [(3) Paragraphs (a), (b) and (bb) of sub-paragraph (2) must be read with—
 - (a) section 22 of the Financial Services and Markets Act 2000;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.

]⁶⁶⁹

]⁶⁷⁰

[3.—

- (1) A company meets the requirements of this paragraph if the qualifying conditions are met—
 - (a) in the year ending with the date of filing, or
 - (b) in the financial year of the company which ended last before that date.

⁶⁶⁵ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁶⁶⁶ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (May 11, 2001 as SI 2001/1751)

⁶⁶⁷ Sch.A1 para.2(2)(a)-(bb) substituted for Sch.A1 para.2(2)(a)-(b) by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003: substitution commenced by an amendment on July 3, 2002 but cannot take effect until the coming into force of Sch.A1 para.2 on January 1, 2003)

⁶⁶⁸ Words repealed by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003: repeal commenced by an amendment on July 3, 2002 but cannot take effect until the coming into force of Sch.A1 para.2 on January 1, 2003)

⁶⁶⁹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003: repeal commenced by an amendment on July 3, 2002 but cannot take effect until the coming into force of Sch.A1 para.2 on January 1, 2003)

⁶⁷⁰ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

(2) For the purposes of sub-paragraph (1)—

- (a) the qualifying conditions are met by a company in a period if, in that period, it satisfies two or more of the requirements for being a small company specified for the time being in [section 382(3) of the Companies Act 2006]⁶⁷¹, and
- (b) a company's financial year is to be determined in accordance with that Act.

(3) [Section 382(4), (5) and (6)]⁶⁷² of that Act apply for the purposes of this paragraph as they apply for the purposes of that section.

[(4) A company does not meet the requirements of this paragraph if it is a [parent company]⁶⁷³ of a group of companies which does not qualify as a small group or a medium-sized group [in relation to]⁶⁷⁴ the financial year of the company which ended last before the date of filing.

[(5) For the purposes of sub-paragraph (4)—

- (a) “group” has the same meaning as in Part 15 of the Companies Act 2006 (see section 474(1) of that Act); and
- (b) a group qualifies as small in relation to a financial year if it so qualifies under section 383(2) to (7) of that Act, and qualifies as medium-sized in relation to a financial year if it so qualifies under section 466(2) to (7) of that Act.

]⁶⁷⁵

]⁶⁷⁶

[(6) Expressions used in this paragraph that are defined expressions in Part 15 of the Companies Act 2006 (accounts and reports) have the same meaning in this paragraph as in that Part.]⁶⁷⁷

]⁶⁷⁸

[4.—

(1) A company is excluded from being eligible for a moratorium if, on the date of filing—

- [(a) the company is in administration,]⁶⁷⁹

⁶⁷¹ Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.99(2) (April 6, 2008: substitution has effect in relation to periods, or parts of periods, falling on or after April 6, 2008)

⁶⁷² Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.99(3) (April 6, 2008: substitution has effect in relation to periods, or parts of periods, falling on or after April 6, 2008)

⁶⁷³ Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.99(4)(a) (April 6, 2008: substitution has effect in relation to periods, or parts of periods, falling on or after April 6, 2008)

⁶⁷⁴ Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.99(4)(b) (April 6, 2008: substitution has effect in relation to periods, or parts of periods, falling on or after April 6, 2008)

⁶⁷⁵ Substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.99(5) (April 6, 2008: substitution has effect in relation to periods, or parts of periods, falling on or after April 6, 2008)

⁶⁷⁶ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(2) (January 1, 2003 being the commencement date for SI 2002/1990)

⁶⁷⁷ Added by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.71(4)(a) (October 1, 2009: insertion has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁶⁷⁸ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

- (b) the company is being wound up,
- (c) there is an administrative receiver of the company,
- (d) a voluntary arrangement has effect in relation to the company,
- (e) there is a provisional liquidator of the company,
- (f) a moratorium has been in force for the company at any time during the period of 12 months ending with the date of filing and—
 - (i) no voluntary arrangement had effect at the time at which the moratorium came to an end, or
 - (ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely, [...] ⁶⁸⁰
- [(fa) an administrator appointed under paragraph 22 of Schedule B1 has held office in the period of 12 months ending with the date of filing, or] ⁶⁸⁰
- (g) a voluntary arrangement in relation to the company which had effect in pursuance of a proposal under section 1(3) has come to an end prematurely and, during the period of 12 months ending with the date of filing, an order under section 5(3)(a) has been made.

(2) Sub-paragraph (1)(b) does not apply to a company which, by reason of a winding-up order made after the date of filing, is treated as being wound up on that date.

] ⁶⁸¹

[5.

[Sch.A1 Part I para.5 is not repealed but has been moved as part of the amendment inserting Sch.A1 Part I paras.4A-4K.] ⁶⁸²

] ⁶⁸³

[Capital market arrangement] ⁶⁸⁴

[4A.

A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a party to an agreement which is or forms part of a capital market arrangement under which—

- (i) a party has incurred, or when the agreement was entered into was expected to incur, a debt of at least £10 million under the arrangement, and
- (ii) the arrangement involves the issue of a capital market investment.

⁶⁷⁹ Substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.37(2)(a) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

⁶⁸⁰ Added subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.37(2)(b) (September 15, 2003: addition has effect subject to transitional provisions specified in SI 2003/2093 art.3)

⁶⁸¹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁶⁸² Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁶⁸³ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (May 11, 2001 as SI 2001/1751)

⁶⁸⁴ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

] ⁶⁸⁵*[Public private partnership]*⁶⁸⁶**[4B.**

A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a project company of a project which—

- (i) is a public-private partnership project, and
- (ii) includes step-in rights.

] ⁶⁸⁷*[Liability under an arrangement]*⁶⁸⁸**[4C.—**

(1) A company is also excluded from being eligible for a moratorium if, on the date of filing, it has incurred a liability under an agreement of £10 million or more.

(2) Where the liability in sub-paragraph (1) is a contingent liability under or by virtue of a guarantee or an indemnity or security provided on behalf of another person, the amount of that liability is the full amount of the liability in relation to which the guarantee, indemnity or security is provided.

(3) In this paragraph—

- (a) the reference to “liability” includes a present or future liability whether, in either case, it is certain or contingent,
- (b) the reference to “liability” includes a reference to a liability to be paid wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the liability is incurred).

] ⁶⁸⁹*[Interpretation of capital market arrangement]*⁶⁹⁰**[4D.—**

(1) For the purposes of paragraph 4A an arrangement is a capital market arrangement if—

⁶⁸⁵ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁶⁸⁶ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁶⁸⁷ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁶⁸⁸ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁶⁸⁹ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁶⁹⁰ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

- (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or
 - (b) at least one party guarantees the performance of obligations of another party, or
 - (c) at least one party provides security in respect of the performance of obligations of another party, or
 - (d) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (options, futures and contracts for differences).
- (2) For the purposes of sub-paragraph (1)—
- (a) a reference to holding as trustee includes a reference to holding as nominee or agent,
 - (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
 - (c) a person holds a capital market investment if he has a legal or beneficial interest in it.
- (3) In paragraph 4A, 4C, 4J and this paragraph—
- “agreement” includes an agreement or undertaking effected by—
- (a) contract,
 - (b) deed, or
 - (c) any other instrument intended to have effect in accordance with the law of England and Wales, Scotland or another jurisdiction, and
- “party” to an arrangement includes a party to an agreement which—
- (a) forms part of the arrangement,
 - (b) provides for the raising of finance as part of the arrangement, or
 - (c) is necessary for the purposes of implementing the arrangement.

]⁶⁹¹

*[Capital market investment]*⁶⁹²

[4E.—

- (1) For the purposes of paragraphs 4A and 4D, an investment is a capital market investment if—
- (a) it is within [article 77 or 77A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001]⁶⁹³ (S.I. 2001/544) (debt instruments) and
 - (b) it is rated, listed or traded or designed to be rated, listed or traded.
- (2) In sub-paragraph (1)—
- “listed” means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation),
- “rated” means rated for the purposes of investment by an internationally recognised rating agency,

⁶⁹¹ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁶⁹² Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁶⁹³ Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010/86 Sch.1 para.1(a) (February 24, 2010)

“traded” means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

(3) In sub-paragraph (2)—

“foreign market” has the same meaning as “relevant market” in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335) (foreign markets),

“recognised investment exchange” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange).

]⁶⁹⁴

[4F.—

(1) For the purposes of paragraphs 4A and 4D an investment is also a capital market investment if it consists of a bond or commercial paper issued to one or more of the following—

- (a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,
- (b) a person who is, when the agreement mentioned in paragraph 4A is entered into, a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that order,
- (c) a person to whom article 49(2) of that order applies (high net worth company, &c.),
- (d) a person who is, when the agreement mentioned in paragraph 4A is entered into, a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that order, and
- (e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(2) For the purposes of sub-paragraph (1)—

- (a) in applying article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 for the purposes of sub-paragraph (1)(a)—
 - (i) in article 19(5)(b), ignore the words after “exempt person”,
 - (ii) in article 19(5)(c)(i), for the words from “the controlled activity” to the end substitute “a controlled activity”, and
 - (iii) in article 19(5)(e) ignore the words from “where the communication” to the end, and
- (b) in applying article 49(2) of that order for the purposes of sub-paragraph (1)(c), ignore article 49(2)(e).

(3) In sub-paragraph (1)—

“bond” shall be construed in accordance with article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 [, and includes any instrument falling within article 77A of that Order]⁶⁹⁵ (S.I. 2001/544), and

“commercial paper” has the meaning given by article 9(3) of that order.

⁶⁹⁴ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁶⁹⁵ Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010/86 Sch.1 para.1(b) (February 24, 2010)

] ⁶⁹⁶*[Debt]* ⁶⁹⁷**[4G.**

The debt of at least £10 million referred to in paragraph 4A—

- (a) may be incurred at any time during the life of the capital market arrangement, and
- (b) may be expressed wholly or partly in a foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into).

] ⁶⁹⁸*[Interpretation of project company]* ⁶⁹⁹**[4H.—**

- (1) For the purposes of paragraph 4B a company is a “project company” of a project if—
 - (a) it holds property for the purpose of the project,
 - (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,
 - (c) it is one of a number of companies which together carry out the project,
 - (d) it has the purpose of supplying finance to enable the project to be carried out, or
 - (e) it is the holding company of a company within any of paragraphs (a) to (d).
- (2) But a company is not a “project company” of a project if—
 - (a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but
 - (b) it also performs a function which is not—
 - (i) within sub-paragraph (1)(a) to (d),
 - (ii) related to a function within sub-paragraph (1)(a) to (d), or
 - (iii) related to the project.
- (3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

] ⁷⁰⁰

⁶⁹⁶ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁶⁹⁷ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁶⁹⁸ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁶⁹⁹ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁷⁰⁰ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

*[Public-private partnership project]*⁷⁰¹

[4I.—

- (1) In paragraph 4B “public-private partnership project” means a project—
 - (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
 - (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.
- (2) In sub-paragraph (1) “resources” includes—
 - (a) funds (including payment for the provision of services or facilities),
 - (b) assets,
 - (c) professional skill,
 - (d) the grant of a concession or franchise, and
 - (e) any other commercial resource.
- (3) In sub-paragraph (1) “public body” means—
 - (a) a body which exercises public functions,
 - (b) a body specified for the purposes of this paragraph by the Secretary of State, and
 - (c) a body within a class specified for the purposes of this paragraph by the Secretary of State.
- (4) A specification under sub-paragraph (3) may be—
 - (a) general, or
 - (b) for the purpose of the application of paragraph 4B to a specified case.

]

*[Step-in rights]*⁷⁰³

[4J.—

- (1) For the purposes of paragraph 4B a project has “step-in rights” if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—
 - (i) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or
 - (ii) make arrangements for carrying out all or part of the project.
- (2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

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⁷⁰¹ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁷⁰² Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁷⁰³ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁷⁰⁴ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

[“Person”]⁷⁰⁵

[4K.

For the purposes of paragraphs 4A to 4J, a reference to a person includes a reference to a partnership or another unincorporated group of persons.

]⁷⁰⁶

[5.

The Secretary of State may by regulations modify the qualifications for eligibility of a company for a moratorium.

]⁷⁰⁷

[PART II

OBTAINING A MORATORIUM

]⁷⁰⁸

[*Nominee's statement*]⁷⁰⁹

[6.—

(1) Where the directors of a company wish to obtain a moratorium, they shall submit to the nominee—

- (a) a document setting out the terms of the proposed voluntary arrangement,
- (b) a statement of the company's affairs containing—
 - (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and
 - (ii) such other information as may be prescribed, and
- (c) any other information necessary to enable the nominee to comply with sub-paragraph (2) which he requests from them.

(2) The nominee shall submit to the directors a statement in the prescribed form indicating whether or not, in his opinion—

- (a) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
- (b) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and

⁷⁰⁵ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁷⁰⁶ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁷⁰⁷ Added by Insolvency Act 1986 (Amendment) (No. 3) Regulations 2002/1990 reg.3(3) (January 1, 2003 being the commencement date for SI 2002/1990)

⁷⁰⁸ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁰⁹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

(c) meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(3) In forming his opinion on the matters mentioned in sub-paragraph (2), the nominee is entitled to rely on the information submitted to him under sub-paragraph (1) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (2)(b) to the company's business is to that business as the company proposes to carry it on during the moratorium.

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*[Documents to be submitted to court]*⁷¹¹

[7.—

(1) To obtain a moratorium the directors of a company must file (in Scotland, lodge) with the court—

- (a) a document setting out the terms of the proposed voluntary arrangement,
- (b) a statement of the company's affairs containing—
 - (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and
 - (ii) such other information as may be prescribed,
- (c) a statement that the company is eligible for a moratorium,
- (d) a statement from the nominee that he has given his consent to act, and
- (e) a statement from the nominee that, in his opinion—
 - (i) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
 - (ii) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and
 - (iii) meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(2) Each of the statements mentioned in sub-paragraph (1)(b) to (e), except so far as it contains the particulars referred to in paragraph (b)(i), must be in the prescribed form.

(3) The reference in sub-paragraph (1)(e)(ii) to the company's business is to that business as the company proposes to carry it on during the moratorium.

(4) The Secretary of State may by regulations modify the requirements of this paragraph as to the documents required to be filed (in Scotland, lodged) with the court in order to obtain a moratorium.

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⁷¹⁰ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷¹¹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷¹² Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

*[Duration of moratorium]*⁷¹³

[8.—

- (1) A moratorium comes into force when the documents for the time being referred to in paragraph 7(1) are filed or lodged with the court and references in this Schedule to “the beginning of the moratorium” shall be construed accordingly.
- (2) A moratorium ends at the end of the day on which the meetings summoned under paragraph 29(1) are first held (or, if the meetings are held on different days, the later of those days), unless it is extended under paragraph 32.
- (3) If either of those meetings has not first met before the end of the period of 28 days beginning with the day on which the moratorium comes into force, the moratorium ends at the end of the day on which those meetings were to be held (or, if those meetings were summoned to be held on different days, the later of those days), unless it is extended under paragraph 32.
- (4) If the nominee fails to summon either meeting within the period required by paragraph 29(1), the moratorium ends at the end of the last day of that period.
- (5) If the moratorium is extended (or further extended) under paragraph 32, it ends at the end of the day to which it is extended (or further extended).
- (6) Sub-paragraphs (2) to (5) do not apply if the moratorium comes to an end before the time concerned by virtue of—
 - (a) paragraph 25(4) (effect of withdrawal by nominee of consent to act),
 - (b) an order under paragraph 26(3), 27(3) or 40 (challenge of actions of nominee or directors), or
 - (c) a decision of one or both of the meetings summoned under paragraph 29.
- (7) If the moratorium has not previously come to an end in accordance with sub-paragraphs (2) to (6), it ends at the end of the day on which a decision under paragraph 31 to approve a voluntary arrangement takes effect under paragraph 36.
- (8) The Secretary of State may by order increase or reduce the period for the time being specified in sub-paragraph (3).

]

[Notification of beginning of moratorium]

]

[9.—

- (1) When a moratorium comes into force, the directors shall notify the nominee of that fact forthwith.
- (2) If the directors without reasonable excuse fail to comply with sub-paragraph (1), each of them is liable to imprisonment or a fine, or both.

⁷¹³ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷¹⁴ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷¹⁵ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

]⁷¹⁶

[10.—

- (1) When a moratorium comes into force, the nominee shall, in accordance with the rules—
 - (a) advertise that fact forthwith, and
 - (b) notify the registrar of companies, the company and any petitioning creditor of the company of whose claim he is aware of that fact.
- (2) In sub-paragraph (1)(b), “petitioning creditor” means a creditor by whom a winding-up petition has been presented before the beginning of the moratorium, as long as the petition has not been dismissed or withdrawn.
- (3) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he is liable to a fine.

]⁷¹⁷

*[Notification of end of moratorium]*⁷¹⁸

[11.—

- (1) When a moratorium comes to an end, the nominee shall, in accordance with the rules—
 - (a) advertise that fact forthwith, and
 - (b) notify the court, the registrar of companies, the company and any creditor of the company of whose claim he is aware of that fact.
- (2) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he is liable to a fine.

]⁷¹⁹

[PART III

EFFECTS OF MORATORIUM

]⁷²⁰

*[Effect on creditors, etc.]*⁷²¹

[12.—

- (1) During the period for which a moratorium is in force for a company—
 - (a) no petition may be presented for the winding up of the company,

⁷¹⁶ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷¹⁷ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷¹⁸ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷¹⁹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷²⁰ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷²¹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

- (b) no meeting of the company may be called or requisitioned except with the consent of the nominee or the leave of the court and subject (where the court gives leave) to such terms as the court may impose,
 - (c) no resolution may be passed or order made for the winding up of the company,
 - [(d) no administration application may be made in respect of the company,
 - (da) no administrator of the company may be appointed under paragraph 14 or 22 of Schedule B1,]⁷²²
 - (e) no administrative receiver of the company may be appointed,
 - (f) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose,
 - (g) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the court and subject to such terms as the court may impose, and
 - (h) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the court and subject to such terms as the court may impose.
- (2) Where a petition, other than an excepted petition, for the winding up of the company has been presented before the beginning of the moratorium, section 127 shall not apply in relation to any disposition of property, transfer of shares or alteration in status made during the moratorium or at a time mentioned in paragraph 37(5)(a).
- (3) In the application of sub-paragraph (1)(h) to Scotland, the reference to execution being commenced or continued includes a reference to diligence being carried out or continued, and the reference to distress being levied is omitted.
- (4) Paragraph (a) of sub-paragraph (1) does not apply to an excepted petition and, where such a petition has been presented before the beginning of the moratorium or is presented during the moratorium, paragraphs (b) and (c) of that sub-paragraph do not apply in relation to proceedings on the petition.
- (5) For the purposes of this paragraph; “excepted petition” means a petition under—
- (a) [section 124A or 124B]⁷²³ of this Act,
 - (b) section 72 of the Financial Services Act 1986 on the ground mentioned in subsection (1)(b) of that section, [...] ⁷²⁴
 - (c) section 92 of the Banking Act 1987 on the ground mentioned in subsection (1)(b) of that section [, or] ⁷²⁴
 - [(d) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.]⁷²⁴

⁷²² Sch.A1 para.4(1)(d)-(da) substituted for Sch.A1 para.4(1)(d) subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.37(3) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

⁷²³ Words inserted by European Public Limited-Liability Company Regulations 2004/2326 Pt 5 reg.73(4)(b) (October 8, 2004)

⁷²⁴ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003: insertion commenced by an amendment on July 3, 2002 but cannot take effect until the coming into force of Sch.A1 para.12 on January 1, 2003)

] ⁷²⁵**[13.—**

- (1) This paragraph applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.
- (2) If the conditions for the holder of the charge to give a notice having the effect mentioned in sub-paragraph (4) are met at any time, the notice may not be given at that time but may instead be given as soon as practicable after the moratorium has come to an end.
- (3) If any other event occurs at any time which (apart from this sub-paragraph) would have the effect mentioned in sub-paragraph (4), then—
- (a) the event shall not have the effect in question at that time, but
 - (b) if notice of the event is given to the company by the holder of the charge as soon as is practicable after the moratorium has come to an end, the event is to be treated as if it had occurred when the notice was given.
- (4) The effect referred to in sub-paragraphs (2) and (3) is—
- (a) causing the crystallisation of the floating charge, or
 - (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.
- (5) Application may not be made for leave under paragraph 12(1)(g) or (h) with a view to obtaining—
- (a) the crystallisation of the floating charge, or
 - (b) the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.

] ⁷²⁶**[14.**

Security granted by a company at a time when a moratorium is in force in relation to the company may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the company.

] ⁷²⁷

[Effect on company] ⁷²⁸

[15.—

- (1) Paragraphs 16 to 23 apply in relation to a company for which a moratorium is in force.
- (2) The fact that a company enters into a transaction in contravention of any of paragraphs 16 to 22 does not—
- (a) make the transaction void, or
 - (b) make it to any extent unenforceable against the company.

⁷²⁵ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷²⁶ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷²⁷ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷²⁸ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

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⁷²⁹

*[Company invoices, etc.]*⁷³⁰

[16.—

[(1) Every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, and all the company's websites, must also contain the nominee's name and a statement that the moratorium is in force for the company.]⁷³¹

(2) If default is made in complying with sub-paragraph (1), the company and (subject to sub-paragraph (3)) any officer of the company is liable to a fine.

(3) An officer of the company is only liable under sub-paragraph (2) if, without reasonable excuse, he authorises or permits the default.

]

⁷³²

*[Obtaining credit during moratorium]*⁷³³

[17.—

(1) The company may not obtain credit to the extent of £250 or more from a person who has not been informed that a moratorium is in force in relation to the company.

(2) The reference to the company obtaining credit includes the following cases—

- (a) where goods are bailed (in Scotland, hired) to the company under a hire-purchase agreement, or agreed to be sold to the company under a conditional sale agreement, and
- (b) where the company is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) Where the company obtains credit in contravention of sub-paragraph (1)—

- (a) the company is liable to a fine, and
- (b) if any officer of the company knowingly and willfully authorised or permitted the contravention, he is liable to imprisonment or a fine, or both.

(4) The money sum specified in sub-paragraph (1) is subject to increase or reduction by order under section 417A in Part XV.

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⁷²⁹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷³⁰ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷³¹ Substituted by Companies (Trading Disclosures) (Insolvency) Regulations 2008/1897 reg.3(1) (October 1, 2008)

⁷³² Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷³³ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷³⁴ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

*[Disposals and payments]*⁷³⁵**[18.—**

- (1) Subject to sub-paragraph (2), the company may only dispose of any of its property if—
- (a) there are reasonable grounds for believing that the disposal will benefit the company, and
 - (b) the disposal is approved by the committee established under paragraph 35(1) or, where there is no such committee, by the nominee.
- (2) Sub-paragraph (1) does not apply to a disposal made in the ordinary way of the company's business.
- (3) If the company makes a disposal in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the court—
- (a) the company is liable to a fine, and
 - (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he is liable to imprisonment or a fine, or both.

] ⁷³⁶**[19.—**

- (1) Subject to sub-paragraph (2), the company may only make any payment in respect of any debt or other liability of the company in existence before the beginning of the moratorium if—
- (a) there are reasonable grounds for believing that the payment will benefit the company, and
 - (b) the payment is approved by the committee established under paragraph 35(1) or, where there is no such committee, by the nominee.
- (2) Sub-paragraph (1) does not apply to a payment required by paragraph 20(6).
- (3) If the company makes a payment in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the court—
- (a) the company is liable to a fine, and
 - (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he is liable to imprisonment or a fine, or both.

] ⁷³⁷*[Disposal of charged property, etc.]*⁷³⁸**[20.—**

- (1) This paragraph applies where—
- (a) any property of the company is subject to a security, or
 - (b) any goods are in the possession of the company under a hire-purchase agreement.

⁷³⁵ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷³⁶ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷³⁷ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷³⁸ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

(2) If the holder of the security consents, or the court gives leave, the company may dispose of the property as if it were not subject to the security.

(3) If the owner of the goods consents, or the court gives leave, the company may dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.

(4) Where property subject to a security which, as created, was a floating charge is disposed of under sub-paragraph (2), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) Sub-paragraph (6) applies to the disposal under sub-paragraph (2) or (as the case may be) sub-paragraph (3) of—

- (a) any property subject to a security other than a security which, as created, was a floating charge, or
- (b) any goods in the possession of the company under a hire-purchase agreement.

(6) It shall be a condition of any consent or leave under sub-paragraph (2) or (as the case may be) sub-paragraph (3) that—

- (a) the net proceeds of the disposal, and
- (b) where those proceeds are less than such amount as may be agreed, or determined by the court, to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(7) Where a condition imposed in pursuance of sub-paragraph (6) relates to two or more securities, that condition requires—

- (a) the net proceeds of the disposal, and
- (b) where paragraph (b) of sub-paragraph (6) applies, the sums mentioned in that paragraph, to be applied towards discharging the sums secured by those securities in the order of their priorities.

(8) Where the court gives leave for a disposal under sub-paragraph (2) or (3), the directors shall, within 14 days after leave is given, send [a copy]⁷³⁹ of the order giving leave to the registrar of companies.

(9) If the directors without reasonable excuse fail to comply with sub-paragraph (8), they are liable to a fine.

]⁷⁴⁰

[21.—

(1) Where property is disposed of under paragraph 20 in its application to Scotland, the company shall grant to the donee an appropriate document of transfer or conveyance of the property, and

- (a) that document, or

⁷³⁹ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.71(4)(b) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁷⁴⁰ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

(b) where any recording, intimation or registration of the document is a legal requirement for completion of title to the property, that recording, intimation or registration, has the effect of disencumbering the property of, or (as the case may be) freeing the property from, the security.

(2) Where goods in the possession of the company under a hire-purchase agreement are disposed of under paragraph 20 in its application to Scotland, the disposal has the effect of extinguishing, as against the disponee, all rights of the owner of the goods under the agreement.

]⁷⁴¹

[22.—

(1) If the company—

(a) without any consent or leave under paragraph 20, disposes of any of its property which is subject to a security otherwise than in accordance with the terms of the security,

(b) without any consent or leave under paragraph 20, disposes of any goods in the possession of the company under a hire-purchase agreement otherwise than in accordance with the terms of the agreement, or

(c) fails to comply with any requirement imposed by paragraph 20 or 21,
it is liable to a fine.

(2) If any officer of the company, without reasonable excuse, authorises or permits any such disposal or failure to comply, he is liable to imprisonment or a fine, or both.

]⁷⁴²

*[Market contracts, etc.]*⁷⁴³

[23.—

(1) If the company enters into any transaction to which this paragraph applies—

(a) the company is liable to a fine, and

(b) if any officer of the company, without reasonable excuse, authorised or permitted the company to enter into the transaction, he is liable to imprisonment or a fine, or both.

(2) A company enters into a transaction to which this paragraph applies if it—

(a) enters into a market contract, [...] ⁷⁴⁴

(b) gives a transfer order,

(c) grants a market charge [...] ⁷⁴⁴ or a system-charge, or

(d) provides any collateral security.

(3) The fact that a company enters into a transaction in contravention of this paragraph does not—

(a) make the transaction void, or

(b) make it to any extent unenforceable by or against the company.

⁷⁴¹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁴² Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁴³ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁴⁴ Words repealed by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003; repeal commenced by an amendment on July 3, 2002 but cannot take effect until the coming into force of Sch.A1 para.23 on January 1, 2003)

(4) Where during the moratorium a company enters into a transaction to which this paragraph applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of paragraphs 12(1)(g), 14 or 16 to 22.

(5) Paragraph 20 does not apply in relation to any property which is subject to a market charge, [...] ⁷⁴⁴ a system-charge or a collateral security charge.

(6) In this paragraph, “transfer order”, “collateral security” and “collateral security charge” have the same meanings as in the settlement finality regulations.

] ⁷⁴⁵

[PART IV

NOMINEES

] ⁷⁴⁶

[Monitoring of company's activities] ⁷⁴⁷

[24.—

(1) During a moratorium, the nominee shall monitor the company's affairs for the purpose of forming an opinion as to whether—

- (a) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 31(7), the proposed arrangement with those modifications has a reasonable prospect of being approved and implemented, and
- (b) the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.

(2) The directors shall submit to the nominee any information necessary to enable him to comply with sub-paragraph (1) which he requests from them.

(3) In forming his opinion on the matters mentioned in sub-paragraph (1), the nominee is entitled to rely on the information submitted to him under sub-paragraph (2) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (1)(b) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

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⁷⁴⁵ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁴⁶ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁴⁷ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁴⁸ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

[Withdrawal of consent to act]⁷⁴⁹

[25.—

- (1) The nominee may only withdraw his consent to act in the circumstances mentioned in this paragraph.
- (2) The nominee must withdraw his consent to act if, at any time during a moratorium—
 - (a) he forms the opinion that—
 - (i) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 31(7), the proposed arrangement with those modifications no longer has a reasonable prospect of being approved or implemented, or
 - (ii) the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business,
 - (b) he becomes aware that, on the date of filing, the company was not eligible for a moratorium, or
 - (c) the directors fail to comply with their duty under paragraph 24(2).
- (3) The reference in sub-paragraph (2)(a)(ii) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.
- (4) If the nominee withdraws his consent to act, the moratorium comes to an end.
- (5) If the nominee withdraws his consent to act he must, in accordance with the rules, notify the court, the registrar of companies, the company and any creditor of the company of whose claim he is aware of his withdrawal and the reason for it.
- (6) If the nominee without reasonable excuse fails to comply with sub-paragraph (5), he is liable to a fine.

⁷⁵⁰

[Challenge of nominee's actions, etc.]⁷⁵¹

[26.—

- (1) If any creditor, director or member of the company, or any other person affected by a moratorium, is dissatisfied by any act, omission or decision of the nominee during the moratorium, he may apply to the court.
- (2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.
- (3) On an application under sub-paragraph (1) the court may—
 - (a) confirm, reverse or modify any act or decision of the nominee,
 - (b) give him directions, or
 - (c) make such other order as it thinks fit.

⁷⁴⁹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁵⁰ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁵¹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

(4) An order under sub-paragraph (3) may (among other things) bring the moratorium to an end and make such consequential provision as the court thinks fit.

]⁷⁵²

[27.—

(1) Where there are reasonable grounds for believing that—

(a) as a result of any act, omission or decision of the nominee during the moratorium, the company has suffered loss, but

(b) the company does not intend to pursue any claim it may have against the nominee, any creditor of the company may apply to the court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1) the court may—

(a) order the company to pursue any claim against the nominee,

(b) authorise any creditor to pursue such a claim in the name of the company, or

(c) make such other order with respect to such a claim as it thinks fit,

unless the court is satisfied that the act, omission or decision of the nominee was in all the circumstances reasonable.

(4) An order under sub-paragraph (3) may (among other things)—

(a) impose conditions on any authority given to pursue a claim,

(b) direct the company to assist in the pursuit of a claim,

(c) make directions with respect to the distribution of anything received as a result of the pursuit of a claim,

(d) bring the moratorium to an end and make such consequential provision as the court thinks fit.

(5) On an application under sub-paragraph (1) the court shall have regard to the interests of the members and creditors of the company generally.

]⁷⁵³

*[Replacement of nominee by court]*⁷⁵⁴

[28.—

(1) The court may—

(a) on an application made by the directors in a case where the nominee has failed to comply with any duty imposed on him under this Schedule or has died, or

(b) on an application made by the directors or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

⁷⁵² Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁵³ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁵⁴ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

(2) A person may only be appointed as a replacement nominee under this paragraph if he submits to the court a statement indicating his consent to act.

] ⁷⁵⁵

[PART V

CONSIDERATION AND IMPLEMENTATION OF VOLUNTARY ARRANGEMENT

] ⁷⁵⁶

[Summoning of meetings] ⁷⁵⁷

[29.—

(1) Where a moratorium is in force, the nominee shall summon meetings of the company and its creditors for such a time, date (within the period for the time being specified in paragraph 8(3)) and place as he thinks fit.

(2) The persons to be summoned to a creditors' meeting under this paragraph are every creditor of the company of whose claim the nominee is aware.

] ⁷⁵⁸

[Conduct of meetings] ⁷⁵⁹

[30.—

(1) Subject to the provisions of paragraphs 31 to 35, the meetings summoned under paragraph 29 shall be conducted in accordance with the rules.

(2) A meeting so summoned may resolve that it be adjourned (or further adjourned).

(3) After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.

] ⁷⁶⁰

⁷⁵⁵ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁵⁶ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁵⁷ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁵⁸ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁵⁹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁶⁰ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

*[Approval of voluntary arrangement]*⁷⁶¹

[31.—

- (1) The meetings summoned under paragraph 29 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).
- (2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.
- (3) The modifications shall not include one by virtue of which the proposal ceases to be a proposal such as is mentioned in section 1.
- (4) A meeting summoned under paragraph 29 shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.
- (5) Subject to sub-paragraph (6), a meeting so summoned shall not approve any proposal or modification under which—
 - (a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, or
 - (b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.
- (6) The meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.
- (7) The directors of the company may, before the beginning of the period of seven days which ends with the meetings (or either of them) summoned under paragraph 29 being held, give notice to the nominee of any modifications of the proposal for which the directors intend to seek the approval of those meetings.
- (8) References in this paragraph to preferential debts and preferential creditors are to be read in accordance with section 386 in Part XII of this Act.

]

*[Extension of moratorium]*⁷⁶³

[32.—

- (1) Subject to sub-paragraph (2), a meeting summoned under paragraph 29 which resolves that it be adjourned (or further adjourned) may resolve that the moratorium be extended (or further extended), with or without conditions.
- (2) The moratorium may not be extended (or further extended) to a day later than the end of the period of two months which begins—

⁷⁶¹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁶² Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁶³ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

- (a) where both meetings summoned under paragraph 29 are first held on the same day, with that day,
 - (b) in any other case, with the day on which the later of those meetings is first held.
- (3) At any meeting where it is proposed to extend (or further extend) the moratorium, before a decision is taken with respect to that proposal, the nominee shall inform the meeting—
- (a) of what he has done in order to comply with his duty under paragraph 24 and the cost of his actions for the company, and
 - (b) of what he intends to do to continue to comply with that duty if the moratorium is extended (or further extended) and the expected cost of his actions for the company.
- (4) Where, in accordance with sub-paragraph (3)(b), the nominee informs a meeting of the expected cost of his intended actions, the meeting shall resolve whether or not to approve that expected cost.
- (5) If a decision not to approve the expected cost of the nominee's intended actions has effect under paragraph 36, the moratorium comes to an end.
- (6) A meeting may resolve that a moratorium which has been extended (or further extended) be brought to an end before the end of the period of the extension (or further extension).
- (7) The Secretary of State may by order increase or reduce the period for the time being specified in sub-paragraph (2).

] ⁷⁶⁴**[33.—**

- (1) The conditions which may be imposed when a moratorium is extended (or further extended) include a requirement that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.
- (2) A person may only be appointed as a replacement nominee by virtue of sub-paragraph (1) if he submits to the court a statement indicating his consent to act.
- (3) At any meeting where it is proposed to appoint a replacement nominee as a condition of extending (or further extending) the moratorium—
- (a) the duty imposed by paragraph 32(3)(b) on the nominee shall instead be imposed on the person proposed as the replacement nominee, and
 - (b) paragraphs 32(4) and (5) and 36(1)(e) apply as if the references to the nominee were to that person.

] ⁷⁶⁵**[34.—**

- (1) If a decision to extend, or further extend, the moratorium takes effect under paragraph 36, the nominee shall, in accordance with the rules, notify the registrar of companies and the court.

⁷⁶⁴ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁶⁵ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

(2) If the moratorium is extended, or further extended, by virtue of an order under paragraph 36(5), the nominee shall, in accordance with the rules, send [a copy]⁷⁶⁶ of the order to the registrar of companies.

(3) If the nominee without reasonable excuse fails to comply with this paragraph, he is liable to a fine.

] ⁷⁶⁷

*[Moratorium committee]*⁷⁶⁸

[35.—

(1) A meeting summoned under paragraph 29 which resolves that the moratorium be extended (or further extended) may, with the consent of the nominee, resolve that a committee be established to exercise the functions conferred on it by the meeting.

(2) The meeting may not so resolve unless it has approved an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.

(3) Any expenses, not exceeding the amount of the estimate, incurred by the committee in the exercise of its functions shall be reimbursed by the nominee.

(4) The committee shall cease to exist when the moratorium comes to an end.

] ⁷⁶⁹

*[Effectiveness of decisions]*⁷⁷⁰

[36.—

(1) Sub-paragraph (2) applies to references to one of the following decisions having effect, that is, a decision, under paragraph 31, 32 or 35, with respect to—

- (a) the approval of a proposed voluntary arrangement,
- (b) the extension (or further extension) of a moratorium,
- (c) the bringing of a moratorium to an end,
- (d) the establishment of a committee, or
- (e) the approval of the expected cost of a nominee's intended actions.

(2) The decision has effect if, in accordance with the rules—

- (a) it has been taken by both meetings summoned under paragraph 29, or
- (b) (subject to any order made under sub-paragraph (5)) it has been taken by the creditors' meeting summoned under that paragraph.

⁷⁶⁶ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.71(4)(b) (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

⁷⁶⁷ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁶⁸ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁶⁹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁷⁰ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

(3) If a decision taken by the creditors' meeting under any of paragraphs 31, 32 or 35 with respect to any of the matters mentioned in sub-paragraph (1) differs from one so taken by the company meeting with respect to that matter, a member of the company may apply to the court.

(4) An application under sub-paragraph (3) shall not be made after the end of the period of 28 days beginning with—

- (a) the day on which the decision was taken by the creditors' meeting, or
- (b) where the decision of the company meeting was taken on a later day, that day.

(5) On an application under sub-paragraph (3), the court may—

- (a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or
- (b) make such other order as it thinks fit.

] ⁷⁷¹

[Effect of approval of voluntary arrangement] ⁷⁷²

[37.—

(1) This paragraph applies where a decision approving a voluntary arrangement has effect under paragraph 36.

(2) The approved voluntary arrangement—

- (a) takes effect as if made by the company at the creditors' meeting, and
- (b) binds every person who in accordance with the rules—
 - (i) was entitled to vote at that meeting (whether or not he was present or represented at it), or
 - (ii) would have been so entitled if he had had notice of it,
 as if he were a party to the voluntary arrangement.

(3) If—

- (a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of sub-paragraph (2)(b)(ii) has not been paid, and
- (b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement.

(4) Where a petition for the winding up of the company, other than an excepted petition within the meaning of paragraph 12, was presented before the beginning of the moratorium, the court shall dismiss the petition.

(5) The court shall not dismiss a petition under sub-paragraph (4)—

- (a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required by paragraph 30(3) has been made to the court, or
- (b) at any time when an application under paragraph 38 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

⁷⁷¹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁷² Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

] ⁷⁷³*[Challenge of decisions]* ⁷⁷⁴**[38.—**

(1) Subject to the following provisions of this paragraph, any of the persons mentioned in sub-paragraph (2) may apply to the court on one or both of the following grounds—

- (a) that a voluntary arrangement approved at one or both of the meetings summoned under paragraph 29 and which has taken effect unfairly prejudices the interests of a creditor, member or contributory of the company,
- (b) that there has been some material irregularity at or in relation to either of those meetings.

(2) The persons who may apply under this paragraph are—

- (a) a person entitled, in accordance with the rules, to vote at either of the meetings,
- (b) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it, and
- (c) the nominee.

(3) An application under this paragraph shall not be made—

- (a) after the end of the period of 28 days beginning with the first day on which each of the reports required by paragraph 30(3) has been made to the court, or
- (b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within sub-paragraph (2)(b) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on an application under this paragraph the court is satisfied as to either of the grounds mentioned in sub-paragraph (1), it may do any of the following—

- (a) revoke or suspend—
 - (i) any decision approving the voluntary arrangement which has effect under paragraph 36, or
 - (ii) in a case falling within sub-paragraph (1)(b), any decision taken by the meeting in question which has effect under that paragraph,
- (b) give a direction to any person—
 - (i) for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the directors may make, or
 - (ii) in a case falling within sub-paragraph (1)(b), for the summoning of a further company or (as the case may be) creditors' meeting to reconsider the original proposal.

(5) Where at any time after giving a direction under sub-paragraph (4)(b)(i) the court is satisfied that the directors do not intend to submit a revised proposal, the court shall revoke the direction

⁷⁷³ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁷⁴ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

and revoke or suspend any decision approving the voluntary arrangement which has effect under paragraph 36.

(6) Where the court gives a direction under sub-paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect of the moratorium.

(7) Sub-paragraph (8) applies in a case where the court, on an application under this paragraph—
 (a) gives a direction under sub-paragraph (4)(b), or
 (b) revokes or suspends a decision under sub-paragraph (4)(a) or (5).

(8) In such a case, the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

- (a) things done under the voluntary arrangement since it took effect, and
- (b) such things done since that time as could not have been done if a moratorium had been in force in relation to the company when they were done.

(9) Except in pursuance of the preceding provisions of this paragraph, a decision taken at a meeting summoned under paragraph 29 is not invalidated by any irregularity at or in relation to the meeting.

⁷⁷⁵

*[Implementation of voluntary arrangement]*⁷⁷⁶

[39.—

(1) This paragraph applies where a voluntary arrangement approved by one or both of the meetings summoned under paragraph 29 has taken effect.

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—

- (a) by virtue of the approval of the arrangement, on the nominee, or
- (b) by virtue of paragraph 31(2), on a person other than the nominee,

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court.

(4) On an application under sub-paragraph (3) the court may—

- (a) confirm, reverse or modify any act or decision of the supervisor,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(5) The supervisor—

- (a) may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement, and
- (b) is included among the persons who may apply to the court for the winding up of the company or for an administration order to be made in relation to it.

(6) The court may, whenever—

⁷⁷⁵ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁷⁶ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

- (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
- (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,

make an order appointing a person who is qualified to act as an insolvency practitioner, or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

(7) The power conferred by sub-paragraph (6) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

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[PART VI MISCELLANEOUS

]⁷⁷⁸

*[Challenge of directors' actions]*⁷⁷⁹

[40.—

- (1) This paragraph applies in relation to acts or omissions of the directors of a company during a moratorium.
- (2) A creditor or member of the company may apply to the court for an order under this paragraph on the ground—
 - (a) that the company's affairs, business and property are being or have been managed by the directors in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including at least the petitioner), or
 - (b) that any actual or proposed act or omission of the directors is or would be so prejudicial.
- (3) An application for an order under this paragraph may be made during or after the moratorium.
- (4) On an application for an order under this paragraph the court may—
 - (a) make such order as it thinks fit for giving relief in respect of the matters complained of,
 - (b) adjourn the hearing conditionally or unconditionally, or
 - (c) make an interim order or any other order that it thinks fit.
- (5) An order under this paragraph may in particular—
 - (a) regulate the management by the directors of the company's affairs, business and property during the remainder of the moratorium,
 - (b) require the directors to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained they have omitted to do,

⁷⁷⁷ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁷⁸ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (May 11, 2001 as SI 2001/1751)

⁷⁷⁹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

- (c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the court may direct,
 - (d) bring the moratorium to an end and make such consequential provision as the court thinks fit.
- (6) In making an order under this paragraph the court shall have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- [(7) Sub-paragraph (8) applies where—
- [(a) the appointment of an administrator has effect in relation to the company and that appointment was in pursuance of—
 - (i) an administration application made, or
 - (ii) a notice of intention to appoint filed,
 before the moratorium came into force, or⁷⁸⁰
 - (b) the company is being wound up in pursuance of a petition presented before the moratorium came into force.
- (8) No application for an order under this paragraph may be made by a creditor or member of the company; but such an application may be made instead by the administrator or (as the case may be) the liquidator.]⁷⁸¹
-]⁷⁸²

*[Offences]*⁷⁸³

[41.—

- (1) This paragraph applies where a moratorium has been obtained for a company.
- (2) If, within the period of 12 months ending with the day on which the moratorium came into force, a person who was at the time an officer of the company—
- (a) did any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
 - (b) was privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,
- he is to be treated as having committed an offence at that time.
- (3) If, at any time during the moratorium, a person who is an officer of the company—
- (a) does any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
 - (b) is privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,
- he commits an offence.
- (4) Those things are—

⁷⁸⁰ Substituted by Enterprise Act 2002 (Insolvency) Order 2004/2312 art.2 (October 15, 2004)

⁷⁸¹ Sch.A1 para.40(7)-(8) substituted for Sch.A1 para.40(7) subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.37(4) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

⁷⁸² Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁸³ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

- (a) concealing any part of the company's property to the value of £500 or more, or concealing any debt due to or from the company, or
 - (b) fraudulently removing any part of the company's property to the value of £500 or more, or
 - (c) concealing, destroying, mutilating or falsifying any book or paper affecting or relating to the company's property or affairs, or
 - (d) making any false entry in any book or paper affecting or relating to the company's property or affairs, or
 - (e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company's property or affairs, or
 - (f) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).
- (5) For the purposes of this paragraph, "officer" includes a shadow director.
- (6) It is a defence—
- (a) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (a) or (f) of sub-paragraph (4) to prove that he had no intent to defraud, and
 - (b) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (c) or (d) of sub-paragraph (4) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.
- (7) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under sub-paragraph (2) or (3), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in circumstances which—
- (a) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under sub-paragraph (2), or
 - (b) amount to an offence under sub-paragraph (3),
- commits an offence.
- (8) A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.
- (9) The money sums specified in paragraphs (a) and (b) of sub-paragraph (4) are subject to increase or reduction by order under section 417A in Part XV.

]⁷⁸⁴

[42.—

- (1) If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for a company, a person who is an officer of the company—
- (a) makes any false representation, or
 - (b) fraudulently does, or omits to do, anything,
- he commits an offence.
- (2) Sub-paragraph (1) applies even if no moratorium or extension is obtained.
- (3) For the purposes of this paragraph, "officer" includes a shadow director.

⁷⁸⁴ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

(4) A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.
]⁷⁸⁵

*[Void provisions in floating charge documents]*⁷⁸⁶

[43.—

- (1) A provision in an instrument creating a floating charge is void if it provides for—
- (a) obtaining a moratorium, or
 - (b) anything done with a view to obtaining a moratorium (including any preliminary decision or investigation),
- to be an event causing the floating charge to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company or a ground for the appointment of a receiver.
- (2) In sub-paragraph (1), “receiver” includes a manager and a person who is appointed both receiver and manager.

] ⁷⁸⁷

*[Functions of the Financial Services Authority]*⁷⁸⁸

[44.—

- (1) This Schedule has effect in relation to a moratorium for a regulated company with the modifications in sub-paragraphs (2) to (16) below.
- (2) Any notice or other document required by virtue of this Schedule to be sent to a creditor of a regulated company must also be sent to the Authority.
- (3) The Authority is entitled to be heard on any application to the court for leave under paragraph 20(2) or 20(3) (disposal of charged property, etc.).
- (4) Where paragraph 26(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the court include the Authority.
- (5) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.
- (6) Where paragraph 27(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the court include the Authority.
- (7) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.
- (8) The persons to be summoned to a creditors' meeting under paragraph 29 include the Authority.

⁷⁸⁵ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁸⁶ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁸⁷ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁸⁸ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

(9) A person appointed for the purpose by the Authority is entitled to attend and participate in (but not to vote at)—

- (a) any creditors' meeting summoned under that paragraph,
- (b) any meeting of a committee established under paragraph 35 (moratorium committee).

(10) The Authority is entitled to be heard on any application under paragraph 36(3) (effectiveness of decisions).

(11) Where paragraph 38(1) (challenge of decisions) applies, the persons who may apply to the court include the Authority.

(12) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.

(13) Where paragraph 39(3) (implementation of voluntary arrangement) applies, the persons who may apply to the court include the Authority.

(14) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.

(15) Where paragraph 40(2) (challenge of directors' actions) applies, the persons who may apply to the court include the Authority.

(16) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.

(17) This paragraph does not prejudice any right the Authority has (apart from this paragraph) as a creditor of a regulated company.

(18) In this paragraph—

“the Authority” means the Financial Services Authority, and

“regulated company” means a company which—

- (a) is, or has been, an authorised person within the meaning given by section 31 of the Financial Services and Markets Act 2000,
- (b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or
- (c) is carrying on, or has carried on, a regulated activity, within the meaning given by section 22 of that Act, in contravention of the general prohibition within the meaning given by section 19 of that Act.

] ⁷⁸⁹

[Subordinate legislation] ⁷⁹⁰

[45.—

(1) Regulations or an order made by the Secretary of State under this Schedule may make different provision for different cases.

(2) Regulations so made may make such consequential, incidental, supplemental and transitional provision as may appear to the Secretary of State necessary or expedient.

⁷⁸⁹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁹⁰ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (May 11, 2001 as SI 2001/1751)

(3) Any power of the Secretary of State to make regulations under this Schedule may be exercised by amending or repealing any enactment contained in this Act (including one contained in this Schedule) or contained in the Company Directors Disqualification Act 1986.

[(4) Regulations (except regulations under paragraph 5) or an order made by the Secretary of State under this Schedule shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]⁷⁹¹

[(5) Regulations under paragraph 5 of this Schedule are to be made by statutory instrument and shall only be made if a draft containing the regulations has been laid before and approved by resolution of each House of Parliament.]⁷⁹²
]⁷⁹²

[SCHEDULE B1

ADMINISTRATION

] ⁷⁹³

[NATURE OF ADMINISTRATION

] ⁷⁹⁴

*[Administration]*⁷⁹⁵

[1

(1) For the purposes of this Act “administrator” of a company means a person appointed under this Schedule to manage the company's affairs, business and property.

(2) For the purposes of this Act—

- (a) a company is “in administration” while the appointment of an administrator of the company has effect,
- (b) a company “enters administration” when the appointment of an administrator takes effect,
- (c) a company ceases to be in administration when the appointment of an administrator of the company ceases to have effect in accordance with this Schedule, and

⁷⁹¹ Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (January 1, 2003 as SI 2002/2711)

⁷⁹² Added by Insolvency Act 2000 c. 39 Sch.1 para.4 (May 11, 2001 as SI 2001/1751)

⁷⁹³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁷⁹⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁷⁹⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

(d) a company does not cease to be in administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office.

] ⁷⁹⁶

[2

A person may be appointed as administrator of a company—

- (a) by administration order of the court under paragraph 10,
- (b) by the holder of a floating charge under paragraph 14, or
- (c) by the company or its directors under paragraph 22.

] ⁷⁹⁷

[Purpose of administration] ⁷⁹⁸

[3

(1) The administrator of a company must perform his functions with the objective of—

- (a) rescuing the company as a going concern, or
- (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
- (c) realising property in order to make a distribution to one or more secured or preferential creditors.

(2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole.

(3) The administrator must perform his functions with the objective specified in sub-paragraph (1)(a) unless he thinks either—

- (a) that it is not reasonably practicable to achieve that objective, or
- (b) that the objective specified in sub-paragraph (1)(b) would achieve a better result for the company's creditors as a whole.

(4) The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if—

- (a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and
- (b) he does not unnecessarily harm the interests of the creditors of the company as a whole.

] ⁷⁹⁹

⁷⁹⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁷⁹⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁷⁹⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁷⁹⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

[4

The administrator of a company must perform his functions as quickly and efficiently as is reasonably practicable.

] ⁸⁰⁰

*[Status of administrator]*⁸⁰¹

[5

An administrator is an officer of the court (whether or not he is appointed by the court).

] ⁸⁰²

*[General restrictions]*⁸⁰³

[6

A person may be appointed as administrator of a company only if he is qualified to act as an insolvency practitioner in relation to the company.

] ⁸⁰⁴

[7

A person may not be appointed as administrator of a company which is in administration (subject to the provisions of paragraphs 90 to 97 and 100 to 103 about replacement and additional administrators).

] ⁸⁰⁵

[8

(1) A person may not be appointed as administrator of a company which is in liquidation by virtue of—

- (a) a resolution for voluntary winding up, or
- (b) a winding-up order.

⁸⁰⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁰¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁰² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁰³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁰⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁰⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (2) Sub-paragraph (1)(a) is subject to paragraph 38.
- (3) Sub-paragraph (1)(b) is subject to paragraphs 37 and 38.

]

[9

- (1) A person may not be appointed as administrator of a company which—
- (a) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22), but
 - (b) is not an authorised deposit taker.
- (2) A person may not be appointed as administrator of a company which effects or carries out contracts of insurance.
- (3) But sub-paragraph (2) does not apply to a company which—
- (a) is exempt from the general prohibition in relation to effecting or carrying out contracts of insurance, or
 - (b) is an authorised deposit taker effecting or carrying out contracts of insurance in the course of a banking business.
- (4) In this paragraph—
- “authorised deposit taker” means a person with permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, and
 - “the general prohibition” has the meaning given by section 19 of that Act.
- (5) This paragraph shall be construed in accordance with—
- (a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),
 - (b) any relevant order under that section, and
 - (c) Schedule 2 to that Act (regulated activities).

]

[APPOINTMENT OF ADMINISTRATOR BY COURT

]

⁸⁰⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁰⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁰⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

*[Administration order]*⁸⁰⁹**[10]**

An administration order is an order appointing a person as the administrator of a company.

]⁸¹⁰

*[Conditions for making order]*⁸¹¹**[11]**

The court may make an administration order in relation to a company only if satisfied—

- (a) that the company is or is likely to become unable to pay its debts, and
- (b) that the administration order is reasonably likely to achieve the purpose of administration.

]⁸¹²

*[Administration application]*⁸¹³**[12]**

(1) An application to the court for an administration order in respect of a company (an “administration application”) may be made only by—

- (a) the company,
- (b) the directors of the company,
- (c) one or more creditors of the company,
- (d) the [designated officer]⁸¹⁴ for a magistrates' court in the exercise of the power conferred by section 87A of the Magistrates' Courts Act 1980 (c. 43) (fine imposed on company), or
- (e) a combination of persons listed in paragraphs (a) to (d).

(2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify—

- (a) any person who has appointed an administrative receiver of the company,

⁸⁰⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸¹⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸¹¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸¹² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸¹³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸¹⁴ Words substituted by Courts Act 2003 c. 39 Sch.8 para.299 (April 1, 2005)

- (b) any person who is or may be entitled to appoint an administrative receiver of the company,
 - (c) any person who is or may be entitled to appoint an administrator of the company under paragraph 14, and
 - (d) such other persons as may be prescribed.
- (3) An administration application may not be withdrawn without the permission of the court.
- (4) In sub-paragraph (1) “creditor” includes a contingent creditor and a prospective creditor.
- [(5) Sub-paragraph (1) is without prejudice to section 7(4)(b).]⁸¹⁵
-]
- ⁸¹⁶

*[Powers of court]*⁸¹⁷

[13

- (1) On hearing an administration application the court may—
- (a) make the administration order sought;
 - (b) dismiss the application;
 - (c) adjourn the hearing conditionally or unconditionally;
 - (d) make an interim order;
 - (e) treat the application as a winding-up petition and make any order which the court could make under section 125;
 - (f) make any other order which the court thinks appropriate.
- (2) An appointment of an administrator by administration order takes effect—
- (a) at a time appointed by the order, or
 - (b) where no time is appointed by the order, when the order is made.
- (3) An interim order under sub-paragraph (1)(d) may, in particular—
- (a) restrict the exercise of a power of the directors or the company;
 - (b) make provision conferring a discretion on the court or on a person qualified to act as an insolvency practitioner in relation to the company.
- (4) This paragraph is subject to paragraph 39.
-]
- ⁸¹⁸

⁸¹⁵ Words substituted by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: commenced by an amendment)

⁸¹⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸¹⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸¹⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

[APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE

] ⁸¹⁹

[Power to appoint] ⁸²⁰

[14

(1) The holder of a qualifying floating charge in respect of a company's property may appoint an administrator of the company.

(2) For the purposes of sub-paragraph (1) a floating charge qualifies if created by an instrument which—

- (a) states that this paragraph applies to the floating charge,
- (b) purports to empower the holder of the floating charge to appoint an administrator of the company,
- (c) purports to empower the holder of the floating charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by section 29(2), or
- (d) purports to empower the holder of a floating charge in Scotland to appoint a receiver who on appointment would be an administrative receiver.

(3) For the purposes of sub-paragraph (1) a person is the holder of a qualifying floating charge in respect of a company's property if he holds one or more debentures of the company secured—

- (a) by a qualifying floating charge which relates to the whole or substantially the whole of the company's property,
- (b) by a number of qualifying floating charges which together relate to the whole or substantially the whole of the company's property, or
- (c) by charges and other forms of security which together relate to the whole or substantially the whole of the company's property and at least one of which is a qualifying floating charge.

] ⁸²¹

[Restrictions on power to appoint] ⁸²²

[15

(1) A person may not appoint an administrator under paragraph 14 unless—

⁸¹⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸²⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸²¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸²² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (a) he has given at least two business days' written notice to the holder of any prior floating charge which satisfies paragraph 14(2), or
 - (b) the holder of any prior floating charge which satisfies paragraph 14(2) has consented in writing to the making of the appointment.
- (2) One floating charge is prior to another for the purposes of this paragraph if—
- (a) it was created first, or
 - (b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.
- (3) Sub-paragraph (2) shall have effect in relation to Scotland 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 (c. 6),”.

]⁸²³

[16

An administrator may not be appointed under paragraph 14 while a floating charge on which the appointment relies is not enforceable.

]⁸²⁴

[17

An administrator of a company may not be appointed under paragraph 14 if—

- (a) a provisional liquidator of the company has been appointed under section 135, or
- (b) an administrative receiver of the company is in office.

]⁸²⁵

*[Notice of appointment]*⁸²⁶

[18

(1) A person who appoints an administrator of a company under paragraph 14 shall file with the court—

- (a) a notice of appointment, and
- (b) such other documents as may be prescribed.

⁸²³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸²⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸²⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸²⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—
- (a) that the person is the holder of a qualifying floating charge in respect of the company's property,
 - (b) that each floating charge relied on in making the appointment is (or was) enforceable on the date of the appointment, and
 - (c) that the appointment is in accordance with this Schedule.
- (3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—
- (a) that he consents to the appointment,
 - (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
 - (c) giving such other information and opinions as may be prescribed.
- (4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).
- (5) The notice of appointment and any document accompanying it must be in the prescribed form.
- (6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.
- (7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
- (a) which is false, and
 - (b) which he does not reasonably believe to be true.

]⁸²⁷

*[Commencement of appointment]*⁸²⁸

[19]

The appointment of an administrator under paragraph 14 takes effect when the requirements of paragraph 18 are satisfied.

]⁸²⁹

[20]

A person who appoints an administrator under paragraph 14—

- (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 18 are satisfied, and
- (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

⁸²⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸²⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸²⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

]⁸³⁰

*[Invalid appointment: indemnity]*⁸³¹

[21

(1) This paragraph applies where—

- (a) a person purports to appoint an administrator under paragraph 14, and
- (b) the appointment is discovered to be invalid.

(2) The court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

]⁸³²

[APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS

]⁸³³

*[Power to appoint]*⁸³⁴

[22

(1) A company may appoint an administrator.

(2) The directors of a company may appoint an administrator.

]⁸³⁵

⁸³⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸³¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸³² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸³³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸³⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸³⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

*[Restrictions on power to appoint]*⁸³⁶**[23]**

- (1) This paragraph applies where an administrator of a company is appointed—
- (a) under paragraph 22, or
 - (b) on an administration application made by the company or its directors.
- (2) An administrator of the company may not be appointed under paragraph 22 during the period of 12 months beginning with the date on which the appointment referred to in sub-paragraph (1) ceases to have effect.

] ⁸³⁷**[24]**

- (1) If a moratorium for a company under Schedule A1 ends on a date when no voluntary arrangement is in force in respect of the company, this paragraph applies for the period of 12 months beginning with that date.
- (2) This paragraph also applies for the period of 12 months beginning with the date on which a voluntary arrangement in respect of a company ends if—
- (a) the arrangement was made during a moratorium for the company under Schedule A1, and
 - (b) the arrangement ends prematurely (within the meaning of section 7B).
- (3) While this paragraph applies, an administrator of the company may not be appointed under paragraph 22.

] ⁸³⁸**[25]**

An administrator of a company may not be appointed under paragraph 22 if—

- (a) a petition for the winding up of the company has been presented and is not yet disposed of,
- (b) an administration application has been made and is not yet disposed of, or
- (c) an administrative receiver of the company is in office.

] ⁸³⁹

⁸³⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸³⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸³⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸³⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

*[Notice of intention to appoint]*⁸⁴⁰

[26

(1) A person who proposes to make an appointment under paragraph 22 shall give at least five business days' written notice to—

- (a) any person who is or may be entitled to appoint an administrative receiver of the company, and
- (b) any person who is or may be entitled to appoint an administrator of the company under paragraph 14.

(2) A person who proposes to make an appointment under paragraph 22 shall also give such notice as may be prescribed to such other persons as may be prescribed.

(3) A notice under this paragraph must—

- (a) identify the proposed administrator, and
- (b) be in the prescribed form.

]⁸⁴¹

[27

(1) A person who gives notice of intention to appoint under paragraph 26 shall file with the court as soon as is reasonably practicable a copy of—

- (a) the notice, and
- (b) any document accompanying it.

(2) The copy filed under sub-paragraph (1) must be accompanied by a statutory declaration made by or on behalf of the person who proposes to make the appointment—

- (a) that the company is or is likely to become unable to pay its debts,
- (b) that the company is not in liquidation, and
- (c) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by paragraphs 23 to 25, and
- (d) to such additional effect, and giving such information, as may be prescribed.

(3) A statutory declaration under sub-paragraph (2) must—

- (a) be in the prescribed form, and
- (b) be made during the prescribed period.

(4) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

- (a) which is false, and
- (b) which he does not reasonably believe to be true.

⁸⁴⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁴¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

]⁸⁴²

[28

- (1) An appointment may not be made under paragraph 22 unless the person who makes the appointment has complied with any requirement of paragraphs 26 and 27 and—
- (a) the period of notice specified in paragraph 26(1) has expired, or
 - (b) each person to whom notice has been given under paragraph 26(1) has consented in writing to the making of the appointment.

- (2) An appointment may not be made under paragraph 22 after the period of ten business days beginning with the date on which the notice of intention to appoint is filed under paragraph 27(1).

]⁸⁴³

*[Notice of appointment]*⁸⁴⁴

[29

- (1) A person who appoints an administrator of a company under paragraph 22 shall file with the court—

- (a) a notice of appointment, and
- (b) such other documents as may be prescribed.

- (2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—

- (a) that the person is entitled to make an appointment under paragraph 22,
- (b) that the appointment is in accordance with this Schedule, and
- (c) that, so far as the person making the statement is able to ascertain, the statements made and information given in the statutory declaration filed with the notice of intention to appoint remain accurate.

- (3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—

- (a) that he consents to the appointment,
- (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
- (c) giving such other information and opinions as may be prescribed.

- (4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).

- (5) The notice of appointment and any document accompanying it must be in the prescribed form.

⁸⁴² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁴³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁴⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

(6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.

(7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

- (a) which is false, and
- (b) which he does not reasonably believe to be true.

]⁸⁴⁵

[30

In a case in which no person is entitled to notice of intention to appoint under paragraph 26(1) (and paragraph 28 therefore does not apply)—

- (a) the statutory declaration accompanying the notice of appointment must include the statements and information required under paragraph 27(2), and
- (b) paragraph 29(2)(c) shall not apply.

]⁸⁴⁶

*[Commencement of appointment]*⁸⁴⁷

[31

The appointment of an administrator under paragraph 22 takes effect when the requirements of paragraph 29 are satisfied.

]⁸⁴⁸

[32

A person who appoints an administrator under paragraph 22—

- (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 29 are satisfied, and
- (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

]⁸⁴⁹

⁸⁴⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁴⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁴⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁴⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁴⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

[33

If before the requirements of paragraph 29 are satisfied the company enters administration by virtue of an administration order or an appointment under paragraph 14—

- (a) the appointment under paragraph 22 shall not take effect, and
- (b) paragraph 32 shall not apply.

]⁸⁵⁰

[Invalid appointment: indemnity]⁸⁵¹

[34

(1) This paragraph applies where—

- (a) a person purports to appoint an administrator under paragraph 22, and
- (b) the appointment is discovered to be invalid.

(2) The court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

]⁸⁵²

[ADMINISTRATION APPLICATION — SPECIAL CASES

]⁸⁵³

[Application by holder of floating charge]⁸⁵⁴

[35

(1) This paragraph applies where an administration application in respect of a company—

- (a) is made by the holder of a qualifying floating charge in respect of the company's property, and
- (b) includes a statement that the application is made in reliance on this paragraph.

(2) The court may make an administration order—

⁸⁵⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁵¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁵² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁵³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁵⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (a) whether or not satisfied that the company is or is likely to become unable to pay its debts, but
- (b) only if satisfied that the applicant could appoint an administrator under paragraph 14.

]⁸⁵⁵

[Intervention by holder of floating charge]⁸⁵⁶

[36

(1) This paragraph applies where—

- (a) an administration application in respect of a company is made by a person who is not the holder of a qualifying floating charge in respect of the company's property, and
- (b) the holder of a qualifying floating charge in respect of the company's property applies to the court to have a specified person appointed as administrator (and not the person specified by the administration applicant).

(2) The court shall grant an application under sub-paragraph (1)(b) unless the court thinks it right to refuse the application because of the particular circumstances of the case.

]⁸⁵⁷

[Application where company in liquidation]⁸⁵⁸

[37

(1) This paragraph applies where the holder of a qualifying floating charge in respect of a company's property could appoint an administrator under paragraph 14 but for paragraph 8(1)(b).

(2) The holder of the qualifying floating charge may make an administration application.

(3) If the court makes an administration order on hearing an application made by virtue of sub-paragraph (2)—

- (a) the court shall discharge the winding-up order,
- (b) the court shall make provision for such matters as may be prescribed,
- (c) the court may make other consequential provision,
- (d) the court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and
- (e) this Schedule shall have effect with such modifications as the court may specify.

⁸⁵⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁵⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁵⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁵⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

] ⁸⁵⁹**[38**

- (1) The liquidator of a company may make an administration application.
- (2) If the court makes an administration order on hearing an application made by virtue of sub-paragraph (1)—
- (a) the court shall discharge any winding-up order in respect of the company,
 - (b) the court shall make provision for such matters as may be prescribed,
 - (c) the court may make other consequential provision,
 - (d) the court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and
 - (e) this Schedule shall have effect with such modifications as the court may specify.

] ⁸⁶⁰*[Effect of administrative receivership]*⁸⁶¹**[39**

- (1) Where there is an administrative receiver of a company the court must dismiss an administration application in respect of the company unless—
- (a) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order,
 - (b) the court thinks that the security by virtue of which the receiver was appointed would be liable to be released or discharged under sections 238 to 240 (transaction at undervalue and preference) if an administration order were made,
 - (c) the court thinks that the security by virtue of which the receiver was appointed would be avoided under section 245 (avoidance of floating charge) if an administration order were made, or
 - (d) the court thinks that the security by virtue of which the receiver was appointed would be challengeable under section 242 (gratuitous alienations) or 243 (unfair preferences) or under any rule of law in Scotland.
- (2) Sub-paragraph (1) applies whether the administrative receiver is appointed before or after the making of the administration application.

] ⁸⁶²

⁸⁵⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁶⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁶¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁶² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

[EFFECT OF ADMINISTRATION

] ⁸⁶³*[Dismissal of pending winding-up petition]* ⁸⁶⁴

[40

- (1) A petition for the winding up of a company—
 - (a) shall be dismissed on the making of an administration order in respect of the company, and
 - (b) shall be suspended while the company is in administration following an appointment under paragraph 14.
- (2) Sub-paragraph (1)(b) does not apply to a petition presented under—
 - (a) section 124A (public interest), [...] ⁸⁶⁵
 - [(aa) section 124B (SEs), or] ⁸⁶⁵
 - (b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).
- (3) Where an administrator becomes aware that a petition was presented under a provision referred to in sub-paragraph (2) before his appointment, he shall apply to the court for directions under paragraph 63.

] ⁸⁶⁶*[Dismissal of administrative or other receiver]* ⁸⁶⁷

[41

- (1) When an administration order takes effect in respect of a company any administrative receiver of the company shall vacate office.
- (2) Where a company is in administration, any receiver of part of the company's property shall vacate office if the administrator requires him to.
- (3) Where an administrative receiver or receiver vacates office under sub-paragraph (1) or (2)—

⁸⁶³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁶⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁶⁵ Added by European Public Limited-Liability Company Regulations 2004/2326 Pt 5 reg.73(4)(c) (October 8, 2004)

⁸⁶⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁶⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (a) his remuneration shall be charged on and paid out of any property of the company which was in his custody or under his control immediately before he vacated office, and
- (b) he need not take any further steps under section 40 or 59.

(4) In the application of sub-paragraph (3)(a)—

- (a) “remuneration” includes expenses properly incurred and any indemnity to which the administrative receiver or receiver is entitled out of the assets of the company,
- (b) the charge imposed takes priority over security held by the person by whom or on whose behalf the administrative receiver or receiver was appointed, and
- (c) the provision for payment is subject to paragraph 43.

]⁸⁶⁸

*[Moratorium on insolvency proceedings]*⁸⁶⁹

[42

- (1) This paragraph applies to a company in administration.
- (2) No resolution may be passed for the winding up of the company.
- (3) No order may be made for the winding up of the company.
- (4) Sub-paragraph (3) does not apply to an order made on a petition presented under—
 - (a) section 124A (public interest), [...] ⁸⁷⁰
 - [(aa) section 124B (SEs), or] ⁸⁷⁰
 - (b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).
- (5) If a petition presented under a provision referred to in sub-paragraph (4) comes to the attention of the administrator, he shall apply to the court for directions under paragraph 63.

]⁸⁷¹

*[Moratorium on other legal process]*⁸⁷²

[43

- (1) This paragraph applies to a company in administration.

⁸⁶⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁶⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁷⁰ Added by European Public Limited-Liability Company Regulations 2004/2326 Pt 5 reg.73(4)(c) (October 8, 2004)

⁸⁷¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁷² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (2) No step may be taken to enforce security over the company's property except—
 - (a) with the consent of the administrator, or
 - (b) with the permission of the court.
- (3) No step may be taken to repossess goods in the company's possession under a hire-purchase agreement except—
 - (a) with the consent of the administrator, or
 - (b) with the permission of the court.
- (4) A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company except—
 - (a) with the consent of the administrator, or
 - (b) with the permission of the court.
- (5) In Scotland, a landlord may not exercise a right of irritancy in relation to premises let to the company except—
 - (a) with the consent of the administrator, or
 - (b) with the permission of the court.
- (6) No legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the company or property of the company except—
 - (a) with the consent of the administrator, or
 - (b) with the permission of the court.
- [(6A) An administrative receiver of the company may not be appointed.]⁸⁷³
- (7) Where the court gives permission for a transaction under this paragraph it may impose a condition on or a requirement in connection with the transaction.
- (8) In this paragraph “landlord” includes a person to whom rent is payable.
]⁸⁷⁴

*[Interim moratorium]*⁸⁷⁵

[44

- (1) This paragraph applies where an administration application in respect of a company has been made and—
 - (a) the application has not yet been granted or dismissed, or
 - (b) the application has been granted but the administration order has not yet taken effect.
- (2) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator under paragraph 14 is filed with the court until—
 - (a) the appointment of the administrator takes effect, or

⁸⁷³ Added by Enterprise Act 2002 (Insolvency) Order 2003/2096 art.2(3) (September 15, 2003)

⁸⁷⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁷⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (b) the period of five business days beginning with the date of filing expires without an administrator having been appointed.
- (3) Sub-paragraph (2) has effect in relation to a notice of intention to appoint only if it is in the prescribed form.
- (4) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator is filed with the court under paragraph 27(1) until—
 - (a) the appointment of the administrator takes effect, or
 - (b) the period specified in paragraph 28(2) expires without an administrator having been appointed.
- (5) The provisions of paragraphs 42 and 43 shall apply (ignoring any reference to the consent of the administrator).
- (6) If there is an administrative receiver of the company when the administration application is made, the provisions of paragraphs 42 and 43 shall not begin to apply by virtue of this paragraph until the person by or on behalf of whom the receiver was appointed consents to the making of the administration order.
- (7) This paragraph does not prevent or require the permission of the court for—
 - (a) the presentation of a petition for the winding up of the company under a provision mentioned in paragraph 42(4),
 - (b) the appointment of an administrator under paragraph 14,
 - (c) the appointment of an administrative receiver of the company, or
 - (d) the carrying out by an administrative receiver (whenever appointed) of his functions.

] ⁸⁷⁶

*[Publicity]*⁸⁷⁷

[45.—

- (1) While a company is in administration, every business document issued by or on behalf of the company or the administrator, and all the company's websites, must state—
 - (a) the name of the administrator, and
 - (b) that the affairs, business and property of the company are being managed by the administrator.
- (2) Any of the following persons commits an offence if without reasonable excuse the person authorises or permits a contravention of sub-paragraph (1)—
 - (a) the administrator,
 - (b) an officer of the company, and
 - (c) the company.
- (3) In sub-paragraph (1) “business document” means—

⁸⁷⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁷⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (a) an invoice,
- (b) an order for goods or services,
- (c) a business letter, and
- (d) an order form,

whether in hard copy, electronic or any other form.

]⁸⁷⁸

[PROCESS OF ADMINISTRATION

]⁸⁷⁹

*[Announcement of administrator's appointment]*⁸⁸⁰

[46

- (1) This paragraph applies where a person becomes the administrator of a company.
- (2) As soon as is reasonably practicable the administrator shall—
 - (a) send a notice of his appointment to the company, and
 - (b) publish a notice of his appointment in the prescribed manner.
- (3) As soon as is reasonably practicable the administrator shall—
 - (a) obtain a list of the company's creditors, and
 - (b) send a notice of his appointment to each creditor of whose claim and address he is aware.
- (4) The administrator shall send a notice of his appointment to the registrar of companies before the end of the period of 7 days beginning with the date specified in sub-paragraph (6).
- (5) The administrator shall send a notice of his appointment to such persons as may be prescribed before the end of the prescribed period beginning with the date specified in sub-paragraph (6).
- (6) The date for the purpose of sub-paragraphs (4) and (5) is—
 - (a) in the case of an administrator appointed by administration order, the date of the order,
 - (b) in the case of an administrator appointed under paragraph 14, the date on which he receives notice under paragraph 20, and
 - (c) in the case of an administrator appointed under paragraph 22, the date on which he receives notice under paragraph 32.
- (7) The court may direct that sub-paragraph (3)(b) or (5)—
 - (a) shall not apply, or
 - (b) shall apply with the substitution of a different period.

⁸⁷⁸ Substituted by Companies (Trading Disclosures) (Insolvency) Regulations 2008/1897 reg.4(1) (October 1, 2008)

⁸⁷⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁸⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (8) A notice under this paragraph must—
- (a) contain the prescribed information, and
 - (b) be in the prescribed form.
- (9) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

]⁸⁸¹

*[Statement of company's affairs]*⁸⁸²

[47

(1) As soon as is reasonably practicable after appointment the administrator of a company shall by notice in the prescribed form require one or more relevant persons to provide the administrator with a statement of the affairs of the company.

(2) The statement must—

- (a) be verified by a statement of truth in accordance with Civil Procedure Rules,
- (b) be in the prescribed form,
- (c) give particulars of the company's property, debts and liabilities,
- (d) give the names and addresses of the company's creditors,
- (e) specify the security held by each creditor,
- (f) give the date on which each security was granted, and
- (g) contain such other information as may be prescribed.

(3) In sub-paragraph (1) “relevant person” means—

- (a) a person who is or has been an officer of the company,
- (b) a person who took part in the formation of the company during the period of one year ending with the date on which the company enters administration,
- (c) a person employed by the company during that period, and
- (d) a person who is or has been during that period an officer or employee of a company which is or has been during that year an officer of the company.

(4) For the purpose of sub-paragraph (3) a reference to employment is a reference to employment through a contract of employment or a contract for services.

(5) In Scotland, a statement of affairs under sub-paragraph (1) must be a statutory declaration made in accordance with the Statutory Declarations Act 1835 (c. 62) (and sub-paragraph (2)(a) shall not apply).

]⁸⁸³

⁸⁸¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁸² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁸³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

[48]

- (1) A person required to submit a statement of affairs must do so before the end of the period of 11 days beginning with the day on which he receives notice of the requirement.
- (2) The administrator may—
 - (a) revoke a requirement under paragraph 47(1), or
 - (b) extend the period specified in sub-paragraph (1) (whether before or after expiry).
- (3) If the administrator refuses a request to act under sub-paragraph (2)—
 - (a) the person whose request is refused may apply to the court, and
 - (b) the court may take action of a kind specified in sub-paragraph (2).
- (4) A person commits an offence if he fails without reasonable excuse to comply with a requirement under paragraph 47(1).

] ⁸⁸⁴*[Administrator's proposals]* ⁸⁸⁵**[49]**

- (1) The administrator of a company shall make a statement setting out proposals for achieving the purpose of administration.
- (2) A statement under sub-paragraph (1) must, in particular—
 - (a) deal with such matters as may be prescribed, and
 - (b) where applicable, explain why the administrator thinks that the objective mentioned in paragraph 3(1)(a) or (b) cannot be achieved.
- (3) Proposals under this paragraph may include—
 - (a) a proposal for a voluntary arrangement under Part I of this Act (although this paragraph is without prejudice to section 4(3));
 - (b) a proposal for a compromise or arrangement to be sanctioned under [Part 26 of the Companies Act 2006 (arrangements and reconstructions)] ⁸⁸⁶.
- (4) The administrator shall send a copy of the statement of his proposals—
 - (a) to the registrar of companies,
 - (b) to every creditor of the company of whose claim and address he is aware, and
 - (c) to every member of the company of whose address he is aware.
- (5) The administrator shall comply with sub-paragraph (4)—
 - (a) as soon as is reasonably practicable after the company enters administration, and
 - (b) in any event, before the end of the period of eight weeks beginning with the day on which the company enters administration.

⁸⁸⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁸⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁸⁶ Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.100(a) (April 6, 2008)

(6) The administrator shall be taken to comply with sub-paragraph (4)(c) if he publishes in the prescribed manner a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.

(7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

(8) A period specified in this paragraph may be varied in accordance with paragraph 107.
⁸⁸⁷

[Creditors' meeting]⁸⁸⁸

[50]

(1) In this Schedule “creditors' meeting” means a meeting of creditors of a company summoned by the administrator—

- (a) in the prescribed manner, and
- (b) giving the prescribed period of notice to every creditor of the company of whose claim and address he is aware.

(2) A period prescribed under sub-paragraph (1)(b) may be varied in accordance with paragraph 107.

(3) A creditors' meeting shall be conducted in accordance with the rules.
⁸⁸⁹

[Requirement for initial creditors' meeting]⁸⁹⁰

[51]

(1) Each copy of an administrator's statement of proposals sent to a creditor under paragraph 49(4)(b) must be accompanied by an invitation to a creditors' meeting (an “initial creditors' meeting”).

(2) The date set for an initial creditors' meeting must be—

- (a) as soon as is reasonably practicable after the company enters administration, and
- (b) in any event, within the period of ten weeks beginning with the date on which the company enters administration.

⁸⁸⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁸⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁸⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁹⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

(3) An administrator shall present a copy of his statement of proposals to an initial creditors' meeting.

(4) A period specified in this paragraph may be varied in accordance with paragraph 107.

(5) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

]⁸⁹¹

[52

(1) Paragraph 51(1) shall not apply where the statement of proposals states that the administrator thinks—

(a) that the company has sufficient property to enable each creditor of the company to be paid in full,

(b) that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a), or

(c) that neither of the objectives specified in paragraph 3(1)(a) and (b) can be achieved.

(2) But the administrator shall summon an initial creditors' meeting if it is requested—

(a) by creditors of the company whose debts amount to at least 10% of the total debts of the company,

(b) in the prescribed manner, and

(c) in the prescribed period.

(3) A meeting requested under sub-paragraph (2) must be summoned for a date in the prescribed period.

(4) The period prescribed under sub-paragraph (3) may be varied in accordance with paragraph 107.

]⁸⁹²

*[Business and result of initial creditors' meeting]*⁸⁹³

[53

(1) An initial creditors' meeting to which an administrator's proposals are presented shall consider them and may—

(a) approve them without modification, or

(b) approve them with modification to which the administrator consents.

⁸⁹¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁹² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁹³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

(2) After the conclusion of an initial creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—

- (a) the court,
- (b) the registrar of companies, and
- (c) such other persons as may be prescribed.

(3) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (2).

⁸⁹⁴

[Revision of administrator's proposals]⁸⁹⁵

[54

(1) This paragraph applies where—

- (a) an administrator's proposals have been approved (with or without modification) at an initial creditors' meeting,
- (b) the administrator proposes a revision to the proposals, and
- (c) the administrator thinks that the proposed revision is substantial.

(2) The administrator shall—

- (a) summon a creditors' meeting,
- (b) send a statement in the prescribed form of the proposed revision with the notice of the meeting sent to each creditor,
- (c) send a copy of the statement, within the prescribed period, to each member of the company of whose address he is aware, and
- (d) present a copy of the statement to the meeting.

(3) The administrator shall be taken to have complied with sub-paragraph (2)(c) if he publishes a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to a specified address.

(4) A notice under sub-paragraph (3) must be published—

- (a) in the prescribed manner, and
- (b) within the prescribed period.

(5) A creditors' meeting to which a proposed revision is presented shall consider it and may—

- (a) approve it without modification, or
- (b) approve it with modification to which the administrator consents.

(6) After the conclusion of a creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—

- (a) the court,
- (b) the registrar of companies, and

⁸⁹⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁹⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

(c) such other persons as may be prescribed.

(7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (6).

]⁸⁹⁶

[Failure to obtain approval of administrator's proposals]⁸⁹⁷

[55

(1) This paragraph applies where an administrator reports to the court that—

- (a) an initial creditors' meeting has failed to approve the administrator's proposals presented to it, or
- (b) a creditors' meeting has failed to approve a revision of the administrator's proposals presented to it.

(2) The court may—

- (a) provide that the appointment of an administrator shall cease to have effect from a specified time;
- (b) adjourn the hearing conditionally or unconditionally;
- (c) make an interim order;
- (d) make an order on a petition for winding up suspended by virtue of paragraph 40(1)(b);
- (e) make any other order (including an order making consequential provision) that the court thinks appropriate.

]⁸⁹⁸

[Further creditors' meetings]⁸⁹⁹

[56

(1) The administrator of a company shall summon a creditors' meeting if—

- (a) it is requested in the prescribed manner by creditors of the company whose debts amount to at least 10% of the total debts of the company, or
- (b) he is directed by the court to summon a creditors' meeting.

(2) An administrator commits an offence if he fails without reasonable excuse to summon a creditors' meeting as required by this paragraph.

⁸⁹⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁹⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁹⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁸⁹⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

]⁹⁰⁰

*[Creditors' committee]*⁹⁰¹

[57

- (1) A creditors' meeting may establish a creditors' committee.
- (2) A creditors' committee shall carry out functions conferred on it by or under this Act.
- (3) A creditors' committee may require the administrator—
 - (a) to attend on the committee at any reasonable time of which he is given at least seven days' notice, and
 - (b) to provide the committee with information about the exercise of his functions.

]⁹⁰²

*[Correspondence instead of creditors' meeting]*⁹⁰³

[58

- (1) Anything which is required or permitted by or under this Schedule to be done at a creditors' meeting may be done by correspondence between the administrator and creditors—
 - (a) in accordance with the rules, and
 - (b) subject to any prescribed condition.
- (2) A reference in this Schedule to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in reliance on sub-paragraph (1).
- (3) A requirement to hold a creditors' meeting is satisfied by conducting correspondence in accordance with this paragraph.

]⁹⁰⁴

⁹⁰⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁰¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁰² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁰³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁰⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

[FUNCTIONS OF ADMINISTRATOR

] ⁹⁰⁵

[General powers] ⁹⁰⁶

[59

(1) The administrator of a company may do anything necessary or expedient for the management of the affairs, business and property of the company.

(2) A provision of this Schedule which expressly permits the administrator to do a specified thing is without prejudice to the generality of sub-paragraph (1).

(3) A person who deals with the administrator of a company in good faith and for value need not inquire whether the administrator is acting within his powers.

] ⁹⁰⁷

[60

The administrator of a company has the powers specified in Schedule 1 to this Act.

] ⁹⁰⁸

[61

The administrator of a company—

(a) may remove a director of the company, and

(b) may appoint a director of the company (whether or not to fill a vacancy).

] ⁹⁰⁹

[62

The administrator of a company may call a meeting of members or creditors of the company.

] ⁹¹⁰

⁹⁰⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁰⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁰⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁰⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁰⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹¹⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

[63]

The administrator of a company may apply to the court for directions in connection with his functions.

]⁹¹¹

[64]

(1) A company in administration or an officer of a company in administration may not exercise a management power without the consent of the administrator.

(2) For the purpose of sub-paragraph (1)—

- (a) “management power” means a power which could be exercised so as to interfere with the exercise of the administrator's powers,
- (b) it is immaterial whether the power is conferred by an enactment or an instrument, and
- (c) consent may be general or specific.

]⁹¹²

*[Distribution]*⁹¹³

[65]

(1) The administrator of a company may make a distribution to a creditor of the company.

(2) Section 175 shall apply in relation to a distribution under this paragraph as it applies in relation to a winding up.

(3) A payment may not be made by way of distribution under this paragraph to a creditor of the company who is neither secured nor preferential unless the court gives permission.

]⁹¹⁴

[66]

The administrator of a company may make a payment otherwise than in accordance with paragraph 65 or paragraph 13 of Schedule 1 if he thinks it likely to assist achievement of the purpose of administration.

]⁹¹⁵

⁹¹¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹¹² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹¹³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹¹⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹¹⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

*[General duties]⁹¹⁶***[67]**

The administrator of a company shall on his appointment take custody or control of all the property to which he thinks the company is entitled.

]⁹¹⁷

[68]

(1) Subject to sub-paragraph (2), the administrator of a company shall manage its affairs, business and property in accordance with—

- (a) any proposals approved under paragraph 53,
- (b) any revision of those proposals which is made by him and which he does not consider substantial, and
- (c) any revision of those proposals approved under paragraph 54.

(2) If the court gives directions to the administrator of a company in connection with any aspect of his management of the company's affairs, business or property, the administrator shall comply with the directions.

(3) The court may give directions under sub-paragraph (2) only if—

- (a) no proposals have been approved under paragraph 53,
- (b) the directions are consistent with any proposals or revision approved under paragraph 53 or 54,
- (c) the court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under paragraph 53 or 54, or
- (d) the court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under paragraph 53 or 54.

]⁹¹⁸

*[Administrator as agent of company]⁹¹⁹***[69]**

In exercising his functions under this Schedule the administrator of a company acts as its agent.

⁹¹⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹¹⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹¹⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹¹⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

]⁹²⁰

[Charged property: floating charge]⁹²¹

[70]

- (1) The administrator of a company may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge.
- (2) Where property is disposed of in reliance on sub-paragraph (1) the holder of the floating charge shall have the same priority in respect of acquired property as he had in respect of the property disposed of.
- (3) In sub-paragraph (2) “acquired property” means property of the company which directly or indirectly represents the property disposed of.

]⁹²²

[Charged property: non-floating charge]⁹²³

[71]

- (1) The court may by order enable the administrator of a company to dispose of property which is subject to a security (other than a floating charge) as if it were not subject to the security.
- (2) An order under sub-paragraph (1) may be made only—
 - (a) on the application of the administrator, and
 - (b) where the court thinks that disposal of the property would be likely to promote the purpose of administration in respect of the company.
- (3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums secured by the security—
 - (a) the net proceeds of disposal of the property, and
 - (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property at market value.
- (4) If an order under this paragraph relates to more than one security, application of money under sub-paragraph (3) shall be in the order of the priorities of the securities.

⁹²⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹²¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹²² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹²³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

(5) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar of companies before the end of the period of 14 days starting with the date of the order.

(6) An administrator commits an offence if he fails to comply with sub-paragraph (5) without reasonable excuse.

]⁹²⁴

*[Hire-purchase property]*⁹²⁵

[72

(1) The court may by order enable the administrator of a company to dispose of goods which are in the possession of the company under a hire-purchase agreement as if all the rights of the owner under the agreement were vested in the company.

(2) An order under sub-paragraph (1) may be made only—

- (a) on the application of the administrator, and
- (b) where the court thinks that disposal of the goods would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums payable under the hire-purchase agreement—

- (a) the net proceeds of disposal of the goods, and
- (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the goods at market value.

(4) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar of companies before the end of the period of 14 days starting with the date of the order.

(5) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (4).

]⁹²⁶

⁹²⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹²⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹²⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

*[Protection for secured or preferential creditor]*⁹²⁷**[73]**

- (1) An administrator's statement of proposals under paragraph 49 may not include any action which—
- (a) affects the right of a secured creditor of the company to enforce his security,
 - (b) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts, or
 - (c) would result in one preferential creditor of the company being paid a smaller proportion of his debt than another.
- (2) Sub-paragraph (1) does not apply to—
- (a) action to which the relevant creditor consents,
 - (b) a proposal for a voluntary arrangement under Part I of this Act (although this sub-paragraph is without prejudice to section 4(3)), [...] ⁹²⁸
 - (c) a proposal for a compromise or arrangement to be sanctioned under [Part 26 of the Companies Act 2006 (arrangements and reconstructions)] ⁹²⁹ [, or] ⁹³⁰
 - [(d) a proposal for a cross-border merger within the meaning of regulation 2 of the Companies (Cross-Border Mergers) Regulations 2007.] ⁹³¹
- (3) The reference to a statement of proposals in sub-paragraph (1) includes a reference to a statement as revised or modified.

*[Challenge to administrator's conduct of company]*⁹³²**[74]**

- (1) A creditor or member of a company in administration may apply to the court claiming that—
- (a) the administrator is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors), or
 - (b) the administrator proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors).
- (2) A creditor or member of a company in administration may apply to the court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.

⁹²⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹²⁸ Word repealed by Companies (Cross-Border Mergers) Regulations 2007/2974 Pt 5 reg.65(2) (December 15, 2007)

⁹²⁹ Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.100(a) (April 6, 2008)

⁹³⁰ Added by Companies (Cross-Border Mergers) Regulations 2007/2974 Pt 5 reg.65(3) (December 15, 2007)

⁹³¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹³² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (3) The court may—
- (a) grant relief;
 - (b) dismiss the application;
 - (c) adjourn the hearing conditionally or unconditionally;
 - (d) make an interim order;
 - (e) make any other order it thinks appropriate.
- (4) In particular, an order under this paragraph may—
- (a) regulate the administrator's exercise of his functions;
 - (b) require the administrator to do or not do a specified thing;
 - (c) require a creditors' meeting to be held for a specified purpose;
 - (d) provide for the appointment of an administrator to cease to have effect;
 - (e) make consequential provision.
- (5) An order may be made on a claim under sub-paragraph (1) whether or not the action complained of—
- (a) is within the administrator's powers under this Schedule;
 - (b) was taken in reliance on an order under paragraph 71 or 72.
- (6) An order may not be made under this paragraph if it would impede or prevent the implementation of—
- (a) a voluntary arrangement approved under Part I,
 - (b) a compromise or arrangement sanctioned under [Part 26 of the Companies Act 2006 (arrangements and reconstructions)]⁹³³, [...] ⁹³⁴
 [(ba) a cross-border merger within the meaning of regulation 2 of the Companies (Cross-Border Mergers) Regulations 2007, or]⁹³⁵
 - (c) proposals or a revision approved under paragraph 53 or 54 more than 28 days before the day on which the application for the order under this paragraph is made.

]⁹³⁶

*[Misfeasance]*⁹³⁷

[75

- (1) The court may examine the conduct of a person who—
- (a) is or purports to be the administrator of a company, or
 - (b) has been or has purported to be the administrator of a company.
- (2) An examination under this paragraph may be held only on the application of—

⁹³³ Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.100(b) (April 6, 2008)

⁹³⁴ Word repealed by Companies (Cross-Border Mergers) Regulations 2007/2974 Pt 5 reg.65(4) (December 15, 2007)

⁹³⁵ Added by Companies (Cross-Border Mergers) Regulations 2007/2974 Pt 5 reg.65(5) (December 15, 2007)

⁹³⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹³⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (a) the official receiver,
 - (b) the administrator of the company,
 - (c) the liquidator of the company,
 - (d) a creditor of the company, or
 - (e) a contributory of the company.
- (3) An application under sub-paragraph (2) must allege that the administrator—
- (a) has misapplied or retained money or other property of the company,
 - (b) has become accountable for money or other property of the company,
 - (c) has breached a fiduciary or other duty in relation to the company, or
 - (d) has been guilty of misfeasance.
- (4) On an examination under this paragraph into a person's conduct the court may order him—
- (a) to repay, restore or account for money or property;
 - (b) to pay interest;
 - (c) to contribute a sum to the company's property by way of compensation for breach of duty or misfeasance.
- (5) In sub-paragraph (3) “administrator” includes a person who purports or has purported to be a company's administrator.
- (6) An application under sub-paragraph (2) may be made in respect of an administrator who has been discharged under paragraph 98 only with the permission of the court.

] ⁹³⁸

[ENDING ADMINISTRATION

] ⁹³⁹

[Automatic end of administration] ⁹⁴⁰

[76

- (1) The appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.
- (2) But—
- (a) on the application of an administrator the court may by order extend his term of office for a specified period, and
 - (b) an administrator's term of office may be extended for a specified period not exceeding six months by consent.

⁹³⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹³⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁴⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

] ⁹⁴¹**[77**

- (1) An order of the court under paragraph 76—
 - (a) may be made in respect of an administrator whose term of office has already been extended by order or by consent, but
 - (b) may not be made after the expiry of the administrator's term of office.
- (2) Where an order is made under paragraph 76 the administrator shall as soon as is reasonably practicable notify the registrar of companies.
- (3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

] ⁹⁴²**[78**

- (1) In paragraph 76(2)(b) "consent" means consent of—
 - (a) each secured creditor of the company, and
 - (b) if the company has unsecured debts, creditors whose debts amount to more than 50% of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (2) But where the administrator has made a statement under paragraph 52(1)(b) "consent" means—
 - (a) consent of each secured creditor of the company, or
 - (b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—
 - (i) each secured creditor of the company, and
 - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (3) Consent for the purposes of paragraph 76(2)(b) may be—
 - (a) written, or
 - (b) signified at a creditors' meeting.
- (4) An administrator's term of office—
 - (a) may be extended by consent only once,
 - (b) may not be extended by consent after extension by order of the court, and
 - (c) may not be extended by consent after expiry.
- (5) Where an administrator's term of office is extended by consent he shall as soon as is reasonably practicable—
 - (a) file notice of the extension with the court, and
 - (b) notify the registrar of companies.

⁹⁴¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁴² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

(6) An administrator who fails without reasonable excuse to comply with sub-paragraph (5) commits an offence.

]⁹⁴³

*[Court ending administration on application of administrator]*⁹⁴⁴

[79]

(1) On the application of the administrator of a company the court may provide for the appointment of an administrator of the company to cease to have effect from a specified time.

(2) The administrator of a company shall make an application under this paragraph if—

- (a) he thinks the purpose of administration cannot be achieved in relation to the company,
- (b) he thinks the company should not have entered administration, or
- (c) a creditors' meeting requires him to make an application under this paragraph.

(3) The administrator of a company shall make an application under this paragraph if—

- (a) the administration is pursuant to an administration order, and
- (b) the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company.

(4) On an application under this paragraph the court may—

- (a) adjourn the hearing conditionally or unconditionally;
- (b) dismiss the application;
- (c) make an interim order;
- (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

]⁹⁴⁵

*[Termination of administration where objective achieved]*⁹⁴⁶

[80]

(1) This paragraph applies where an administrator of a company is appointed under paragraph 14 or 22.

(2) If the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company he may file a notice in the prescribed form—

⁹⁴³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁴⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁴⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁴⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (a) with the court, and
- (b) with the registrar of companies.

(3) The administrator's appointment shall cease to have effect when the requirements of sub-paragraph (2) are satisfied.

(4) Where the administrator files a notice he shall within the prescribed period send a copy to every creditor of the company of whose claim and address he is aware.

(5) The rules may provide that the administrator is taken to have complied with sub-paragraph (4) if before the end of the prescribed period he publishes in the prescribed manner a notice undertaking to provide a copy of the notice under sub-paragraph (2) to any creditor of the company who applies in writing to a specified address.

(6) An administrator who fails without reasonable excuse to comply with sub-paragraph (4) commits an offence.

]⁹⁴⁷

*[Court ending administration on application of creditor]*⁹⁴⁸

[81

(1) On the application of a creditor of a company the court may provide for the appointment of an administrator of the company to cease to have effect at a specified time.

- (2) An application under this paragraph must allege an improper motive—
- (a) in the case of an administrator appointed by administration order, on the part of the applicant for the order, or
 - (b) in any other case, on the part of the person who appointed the administrator.

- (3) On an application under this paragraph the court may—
- (a) adjourn the hearing conditionally or unconditionally;
 - (b) dismiss the application;
 - (c) make an interim order;
 - (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

]⁹⁴⁹

⁹⁴⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁴⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁴⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

*[Public interest winding-up]*⁹⁵⁰**[82**

- (1) This paragraph applies where a winding-up order is made for the winding up of a company in administration on a petition presented under—
- (a) section 124A (public interest), [...] ⁹⁵¹
 - [(aa) section 124B (SEs), or] ⁹⁵¹
 - (b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).
- (2) This paragraph also applies where a provisional liquidator of a company in administration is appointed following the presentation of a petition under any of the provisions listed in sub-paragraph (1).
- (3) The court shall order—
- (a) that the appointment of the administrator shall cease to have effect, or
 - (b) that the appointment of the administrator shall continue to have effect.
- (4) If the court makes an order under sub-paragraph (3)(b) it may also—
- (a) specify which of the powers under this Schedule are to be exercisable by the administrator, and
 - (b) order that this Schedule shall have effect in relation to the administrator with specified modifications.

] ⁹⁵²*[Moving from administration to creditors' voluntary liquidation]*⁹⁵³**[83**

- (1) This paragraph applies in England and Wales where the administrator of a company thinks—
- (a) that the total amount which each secured creditor of the company is likely to receive has been paid to him or set aside for him, and
 - (b) that a distribution will be made to unsecured creditors of the company (if there are any).
- (2) This paragraph applies in Scotland where the administrator of a company thinks—
- (a) that each secured creditor of the company will receive payment in respect of his debt, and
 - (b) that a distribution will be made to unsecured creditors (if there are any).

⁹⁵⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁵¹ Added by European Public Limited-Liability Company Regulations 2004/2326 Pt 5 reg.73(4)(c) (October 8, 2004)

⁹⁵² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁵³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (3) The administrator may send to the registrar of companies a notice that this paragraph applies.
- (4) On receipt of a notice under sub-paragraph (3) the registrar shall register it.
- (5) If an administrator sends a notice under sub-paragraph (3) he shall as soon as is reasonably practicable—
 - (a) file a copy of the notice with the court, and
 - (b) send a copy of the notice to each creditor of whose claim and address he is aware.
- (6) On the registration of a notice under sub-paragraph (3)—
 - (a) the appointment of an administrator in respect of the company shall cease to have effect, and
 - (b) the company shall be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the notice is registered.
- (7) The liquidator for the purposes of the winding up shall be—
 - (a) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period, or
 - (b) if no person is nominated under paragraph (a), the administrator.
- (8) In the application of Part IV to a winding up by virtue of this paragraph—
 - (a) section 85 shall not apply,
 - (b) section 86 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (3),
 - (c) section 89 does not apply,
 - (d) sections 98, 99 and 100 shall not apply,
 - (e) section 129 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (3), and
 - (f) any creditors' committee which is in existence immediately before the company ceases to be in administration shall continue in existence after that time as if appointed as a liquidation committee under section 101.

]⁹⁵⁴

*[Moving from administration to dissolution]*⁹⁵⁵

[84

- (1) If the administrator of a company thinks that the company has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the registrar of companies.
- (2) The court may on the application of the administrator of a company disapply sub-paragraph (1) in respect of the company.

⁹⁵⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁵⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (3) On receipt of a notice under sub-paragraph (1) the registrar shall register it.
- (4) On the registration of a notice in respect of a company under sub-paragraph (1) the appointment of an administrator of the company shall cease to have effect.
- (5) If an administrator sends a notice under sub-paragraph (1) he shall as soon as is reasonably practicable—
 - (a) file a copy of the notice with the court, and
 - (b) send a copy of the notice to each creditor of whose claim and address he is aware.
- (6) At the end of the period of three months beginning with the date of registration of a notice in respect of a company under sub-paragraph (1) the company is deemed to be dissolved.
- (7) On an application in respect of a company by the administrator or another interested person the court may—
 - (a) extend the period specified in sub-paragraph (6),
 - (b) suspend that period, or
 - (c) disapply sub-paragraph (6).
- (8) Where an order is made under sub-paragraph (7) in respect of a company the administrator shall as soon as is reasonably practicable notify the registrar of companies.
- (9) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

]⁹⁵⁶

*[Discharge of administration order where administration ends]*⁹⁵⁷

[85

- (1) This paragraph applies where—
 - (a) the court makes an order under this Schedule providing for the appointment of an administrator of a company to cease to have effect, and
 - (b) the administrator was appointed by administration order.
- (2) The court shall discharge the administration order.

]⁹⁵⁸

⁹⁵⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁵⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁵⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

*[Notice to Companies Registrar where administration ends]⁹⁵⁹***[86**

- (1) This paragraph applies where the court makes an order under this Schedule providing for the appointment of an administrator to cease to have effect.
- (2) The administrator shall send a copy of the order to the registrar of companies within the period of 14 days beginning with the date of the order.
- (3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

] ⁹⁶⁰**[REPLACING ADMINISTRATOR**] ⁹⁶¹*[Resignation of administrator]⁹⁶²***[87**

- (1) An administrator may resign only in prescribed circumstances.
- (2) Where an administrator may resign he may do so only—
 - (a) in the case of an administrator appointed by administration order, by notice in writing to the court,
 - (b) in the case of an administrator appointed under paragraph 14 , by notice in writing to the [holder of the floating charge by virtue of which the appointment was made]⁹⁶³ ,
 - (c) in the case of an administrator appointed under paragraph 22(1), by notice in writing to the company, or
 - (d) in the case of an administrator appointed under paragraph 22(2), by notice in writing to the directors of the company.

] ⁹⁶⁴

⁹⁵⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁶⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁶¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁶² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁶³ Words substituted by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: commenced by an amendment)

⁹⁶⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

*[Removal of administrator from office]⁹⁶⁵***[88**

The court may by order remove an administrator from office.

]⁹⁶⁶

*[Administrator ceasing to be qualified]⁹⁶⁷***[89**

(1) The administrator of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(2) Where an administrator vacates office by virtue of sub-paragraph (1) he shall give notice in writing—

- (a) in the case of an administrator appointed by administration order, to the court,
- (b) in the case of an administrator appointed under paragraph 14 , to the [holder of the floating charge by virtue of which the appointment was made]⁹⁶⁸ ,
- (c) in the case of an administrator appointed under paragraph 22(1), to the company, or
- (d) in the case of an administrator appointed under paragraph 22(2), to the directors of the company.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

]⁹⁶⁹

*[Supplying vacancy in office of administrator]⁹⁷⁰***[90**

Paragraphs 91 to 95 apply where an administrator—

- (a) dies,
- (b) resigns,

⁹⁶⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁶⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁶⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁶⁸ Words substituted by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: commenced by an amendment)

⁹⁶⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁷⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (c) is removed from office under paragraph 88, or
- (d) vacates office under paragraph 89.

]⁹⁷¹

[91

(1) Where the administrator was appointed by administration order, the court may replace the administrator on an application under this sub-paragraph made by—

- (a) a creditors' committee of the company,
- (b) the company,
- (c) the directors of the company,
- (d) one or more creditors of the company, or
- (e) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remains in office.

(2) But an application may be made in reliance on sub-paragraph (1)(b) to (d) only where—

- (a) there is no creditors' committee of the company,
- (b) the court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement, or
- (c) the court is satisfied that for another reason it is right for the application to be made.

]⁹⁷²

[92

Where the administrator was appointed under paragraph 14 the holder of the floating charge by virtue of which the appointment was made may replace the administrator.

]⁹⁷³

[93

(1) Where the administrator was appointed under paragraph 22(1) by the company it may replace the administrator.

(2) A replacement under this paragraph may be made only—

- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
- (b) where consent is withheld, with the permission of the court.

]⁹⁷⁴

⁹⁷¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁷² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁷³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁷⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

[94

- (1) Where the administrator was appointed under paragraph 22(2) the directors of the company may replace the administrator.
- (2) A replacement under this paragraph may be made only—
- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
 - (b) where consent is withheld, with the permission of the court.

] ⁹⁷⁵**[95**

The court may replace an administrator on the application of a person listed in paragraph 91(1) if the court—

- (a) is satisfied that a person who is entitled to replace the administrator under any of paragraphs 92 to 94 is not taking reasonable steps to make a replacement, or
- (b) that for another reason it is right for the court to make the replacement.

] ⁹⁷⁶

*[Substitution of administrator: competing floating charge-holder]*⁹⁷⁷

[96

- (1) This paragraph applies where an administrator of a company is appointed under paragraph 14 by the holder of a qualifying floating charge in respect of the company's property.
- (2) The holder of a prior qualifying floating charge in respect of the company's property may apply to the court for the administrator to be replaced by an administrator nominated by the holder of the prior floating charge.
- (3) One floating charge is prior to another for the purposes of this paragraph if—
- (a) it was created first, or
 - (b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.
- (4) Sub-paragraph (3) shall have effect in relation to Scotland 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 (c. 6),”.

⁹⁷⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁷⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁷⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

] ⁹⁷⁸

*[Substitution of administrator appointed by company or directors: creditors' meeting]*⁹⁷⁹

[97

- (1) This paragraph applies where—
 - (a) an administrator of a company is appointed by a company or directors under paragraph 22, and
 - (b) there is no holder of a qualifying floating charge in respect of the company's property.
- (2) A creditors' meeting may replace the administrator.
- (3) A creditors' meeting may act under sub-paragraph (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.

] ⁹⁸⁰

*[Vacation of office: discharge from liability]*⁹⁸¹

[98

- (1) Where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.
- (2) The discharge provided by sub-paragraph (1) takes effect—
 - (a) in the case of an administrator who dies, on the filing with the court of notice of his death,
 - (b) in the case of an administrator appointed under paragraph 14 or 22, at a time appointed by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors, or
 - (c) in any case, at a time specified by the court.
- (3) For the purpose of the application of sub-paragraph (2)(b) in a case where the administrator has made a statement under paragraph 52(1)(b), a resolution shall be taken as passed if (and only if) passed with the approval of—
 - (a) each secured creditor of the company, or

⁹⁷⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁷⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁸⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁸¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

(b) if the administrator has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors—

- (i) each secured creditor of the company, and
- (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(4) Discharge—

- (a) applies to liability accrued before the discharge takes effect, and
- (b) does not prevent the exercise of the court's powers under paragraph 75.

⁹⁸²

[Vacation of office: charges and liabilities]⁹⁸³

[99]

(1) This paragraph applies where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect).

(2) In this paragraph—

- “the former administrator” means the person referred to in sub-paragraph (1), and
- “cessation” means the time when he ceases to be the company's administrator.

(3) The former administrator's remuneration and expenses shall be—

- (a) charged on and payable out of property of which he had custody or control immediately before cessation, and
- (b) payable in priority to any security to which paragraph 70 applies.

(4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—

- (a) charged on and payable out of property of which the former administrator had custody or control immediately before cessation, and
- (b) payable in priority to any charge arising under sub-paragraph (3).

(5) Sub-paragraph (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—

- (a) action taken within the period of 14 days after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract,
- (b) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment, and
- (c) no account shall be taken of a liability to make a payment other than wages or salary.

⁹⁸² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁸³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (6) In sub-paragraph (5)(c) “wages or salary” includes—
- (a) a sum payable in respect of a period of holiday (for which purpose the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued),
 - (b) a sum payable in respect of a period of absence through illness or other good cause,
 - (c) a sum payable in lieu of holiday,
 - (d) in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security, and
 - (e) a contribution to an occupational pension scheme.
-]⁹⁸⁴

[GENERAL

]⁹⁸⁵

*[Joint and concurrent administrators]*⁹⁸⁶

[100

- (1) In this Schedule—
- (a) a reference to the appointment of an administrator of a company includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator of a company, and
 - (b) a reference to the appointment of a person as administrator of a company includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator of a company.
- (2) The appointment of a number of persons to act as administrator of a company must specify—
- (a) which functions (if any) are to be exercised by the persons appointed acting jointly, and
 - (b) which functions (if any) are to be exercised by any or all of the persons appointed.
-]⁹⁸⁷

[101

- (1) This paragraph applies where two or more persons are appointed to act jointly as the administrator of a company.

⁹⁸⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁸⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁸⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁸⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (2) A reference to the administrator of the company is a reference to those persons acting jointly.
- (3) But a reference to the administrator of a company in paragraphs 87 to 99 of this Schedule is a reference to any or all of the persons appointed to act jointly.
- (4) Where an offence of omission is committed by the administrator, each of the persons appointed to act jointly—
- (a) commits the offence, and
 - (b) may be proceeded against and punished individually.
- (5) The reference in paragraph 45(1)(a) to the name of the administrator is a reference to the name of each of the persons appointed to act jointly.
- (6) Where persons are appointed to act jointly in respect of only some of the functions of the administrator of a company, this paragraph applies only in relation to those functions.
-]⁹⁸⁸

[102

- (1) This paragraph applies where two or more persons are appointed to act concurrently as the administrator of a company.
- (2) A reference to the administrator of a company in this Schedule is a reference to any of the persons appointed (or any combination of them).
-]⁹⁸⁹

[103

- (1) Where a company is in administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the company.
- (2) Where a company entered administration by administration order, an appointment under sub-paragraph (1) must be made by the court on the application of—
- (a) a person or group listed in paragraph 12(1)(a) to (e), or
 - (b) the person or persons acting as the administrator of the company.
- (3) Where a company entered administration by virtue of an appointment under paragraph 14, an appointment under sub-paragraph (1) must be made by—
- (a) the holder of the floating charge by virtue of which the appointment was made, or
 - (b) the court on the application of the person or persons acting as the administrator of the company.
- (4) Where a company entered administration by virtue of an appointment under paragraph 22(1), an appointment under sub-paragraph (1) above must be made either by the court on the application of the person or persons acting as the administrator of the company or—
- (a) by the company, and

⁹⁸⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁸⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

(b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the court.

(5) Where a company entered administration by virtue of an appointment under paragraph 22(2), an appointment under sub-paragraph (1) must be made either by the court on the application of the person or persons acting as the administrator of the company or—

(a) by the directors of the company, and

(b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the court.

(6) An appointment under sub-paragraph (1) may be made only with the consent of the person or persons acting as the administrator of the company.

]⁹⁹⁰

[Presumption of validity]⁹⁹¹

[104

An act of the administrator of a company is valid in spite of a defect in his appointment or qualification.

]⁹⁹²

[Majority decision of directors]⁹⁹³

[105

A reference in this Schedule to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company.

]⁹⁹⁴

⁹⁹⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁹¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁹² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁹³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁹⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

*[Penalties]⁹⁹⁵***[106]**

(1) A person who is guilty of an offence under this Schedule is liable to a fine (in accordance with section 430 and Schedule 10).

(2) A person who is guilty of an offence under any of the following paragraphs of this Schedule is liable to a daily default fine (in accordance with section 430 and Schedule 10)—

- (a) paragraph 20,
- (b) paragraph 32,
- (c) paragraph 46,
- (d) paragraph 48,
- (e) paragraph 49,
- (f) paragraph 51,
- (g) paragraph 53,
- (h) paragraph 54,
- (i) paragraph 56,
- (j) paragraph 71,
- (k) paragraph 72,
- (l) paragraph 77,
- (m) paragraph 78,
- (n) paragraph 80,
- (o) paragraph 84,
- (p) paragraph 86, and
- (q) paragraph 89.

⁹⁹⁶

*[Extension of time limit]⁹⁹⁷***[107]**

(1) Where a provision of this Schedule provides that a period may be varied in accordance with this paragraph, the period may be varied in respect of a company—

- (a) by the court, and
- (b) on the application of the administrator.

(2) A time period may be extended in respect of a company under this paragraph—

- (a) more than once, and
- (b) after expiry.

⁹⁹⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁹⁶ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁹⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

] ⁹⁹⁸**[108**

- (1) A period specified in paragraph 49(5), 50(1)(b) or 51(2) may be varied in respect of a company by the administrator with consent.
- (2) In sub-paragraph (1) “consent” means consent of—
- (a) each secured creditor of the company, and
 - (b) if the company has unsecured debts, creditors whose debts amount to more than 50% of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (3) But where the administrator has made a statement under paragraph 52(1)(b) “consent” means—
- (a) consent of each secured creditor of the company, or
 - (b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—
 - (i) each secured creditor of the company, and
 - (ii) preferential creditors whose debts amount to more than 50% of the total preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (4) Consent for the purposes of sub-paragraph (1) may be—
- (a) written, or
 - (b) signified at a creditors' meeting.
- (5) The power to extend under sub-paragraph (1)—
- (a) may be exercised in respect of a period only once,
 - (b) may not be used to extend a period by more than 28 days,
 - (c) may not be used to extend a period which has been extended by the court, and
 - (d) may not be used to extend a period after expiry.

] ⁹⁹⁹**[109**

Where a period is extended under paragraph 107 or 108, a reference to the period shall be taken as a reference to the period as extended.

] ¹⁰⁰⁰

⁹⁹⁸ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

⁹⁹⁹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

¹⁰⁰⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

*[Amendment of provision about time]¹⁰⁰¹***[110]**

- (1) The Secretary of State may by order amend a provision of this Schedule which—
- (a) requires anything to be done within a specified period of time,
 - (b) prevents anything from being done after a specified time, or
 - (c) requires a specified minimum period of notice to be given.
- (2) An order under this paragraph—
- (a) must be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

¹⁰⁰²*[Interpretation]¹⁰⁰³***[111]**

- (1) In this Schedule—
- “administrative receiver” has the meaning given by section 251,
 - “administrator” has the meaning given by paragraph 1 and, where the context requires, includes a reference to a former administrator,
 - [...] ¹⁰⁰⁴
 - “correspondence” includes correspondence by telephonic or other electronic means,
 - “creditors' meeting” has the meaning given by paragraph 50,
 - “enters administration” has the meaning given by paragraph 1,
 - “floating charge” means a charge which is a floating charge on its creation,
 - “in administration” has the meaning given by paragraph 1,
 - “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,
 - “holder of a qualifying floating charge” in respect of a company's property has the meaning given by paragraph 14,
 - “market value” means the amount which would be realised on a sale of property in the open market by a willing vendor,
 - “the purpose of administration” means an objective specified in paragraph 3, and
 - “unable to pay its debts” has the meaning given by section 123.

[(1A) In this Schedule, “company” means—

¹⁰⁰¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

¹⁰⁰² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

¹⁰⁰³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

¹⁰⁰⁴ Definition repealed by Insolvency Act 1986 (Amendment) Regulations 2005/879 reg.2(4)(a) (April 13, 2005)

- [(a) a company registered under the Companies Act 2006 in England and Wales or Scotland,]¹⁰⁰⁵
- (b) a company incorporated in an EEA State other than the United Kingdom, or
- (c) a company not incorporated in an EEA State but having its centre of main interests in a member State other than Denmark.

(1B) In sub-paragraph (1A), in relation to a company, “centre of main interests” has the same meaning as in the EC Regulation and, in the absence of proof to the contrary, is presumed to be the place of its registered office (within the meaning of that Regulation).]¹⁰⁰⁶

(2) A reference in this Schedule to a thing in writing includes a reference to a thing in electronic form.

(3) In this Schedule a reference to action includes a reference to inaction.
] ¹⁰⁰⁷

Amendments Pending

Sch. B1(11) para. 111(2): repealed by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 4(2) (April 6, 2010: repeal has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

*[Non-UK companies]*¹⁰⁰⁸

[111A.

A company incorporated outside the United Kingdom that has a principal place of business in Northern Ireland may not enter administration under this Schedule unless it also has a principal place of business in England and Wales or Scotland (or both in England and Wales and in Scotland).
] ¹⁰⁰⁹

*[Scotland]*¹⁰¹⁰

[112

In the application of this Schedule to Scotland—

- (a) a reference to filing with the court is a reference to lodging in court, and
- (b) a reference to a charge is a reference to a right in security.

¹⁰⁰⁵ Substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.72 (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹⁰⁰⁶ Added by Insolvency Act 1986 (Amendment) Regulations 2005/879 reg.2(4)(b) (April 13, 2005)

¹⁰⁰⁷ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

¹⁰⁰⁸ Added by Insolvency Act 1986 (Amendment) Regulations 2005/879 reg.2(4)(c) (April 13, 2005)

¹⁰⁰⁹ Added by Insolvency Act 1986 (Amendment) Regulations 2005/879 reg.2(4)(c) (April 13, 2005)

¹⁰¹⁰ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

]¹⁰¹¹

[113

Where property in Scotland is disposed of under paragraph 70 or 71, the administrator shall grant to the donee an appropriate document of transfer or conveyance of the property, and—

(a) that document, or

(b) recording, intimation or registration of that document (where recording, intimation or registration of the document is a legal requirement for completion of title to the property),

has the effect of disencumbering the property of or, as the case may be, freeing the property from, the security.

]¹⁰¹²

[114

In Scotland, where goods in the possession of a company under a hire-purchase agreement are disposed of under paragraph 72, the disposal has the effect of extinguishing as against the donee all rights of the owner of the goods under the agreement.

]¹⁰¹³

[115

(1) In Scotland, the administrator of a company may make, in or towards the satisfaction of the debt secured by the floating charge, a payment to the holder of a floating charge which has attached to the property subject to the charge.

(2) In Scotland, where the administrator thinks that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a), he may file a notice to that effect with the registrar of companies.

(3) On delivery of the notice to the registrar of companies, any floating charge granted by the company shall, unless it has already so attached, attach to the property which is subject to the charge and that attachment shall have effect as if each floating charge is a fixed security over the property to which it has attached.

]¹⁰¹⁴

[116

In Scotland, the administrator in making any payment in accordance with paragraph 115 shall make such payment subject to the rights of any of the following categories of persons (which rights shall, except to the extent provided in any instrument, have the following order of priority)—

¹⁰¹¹ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

¹⁰¹² Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

¹⁰¹³ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

¹⁰¹⁴ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

- (a) the holder of any fixed security which is over property subject to the floating charge and which ranks prior to, or *pari passu* with, the floating charge,
- (b) creditors in respect of all liabilities and expenses incurred by or on behalf of the administrator,
- (c) the administrator in respect of his liabilities, expenses and remuneration and any indemnity to which he is entitled out of the property of the company,
- (d) the preferential creditors entitled to payment in accordance with paragraph 65,
- (e) the holder of the floating charge in accordance with the priority of that charge in relation to any other floating charge which has attached, and
- (f) the holder of a fixed security, other than one referred to in paragraph (a), which is over property subject to the floating charge.

]¹⁰¹⁵

SCHEDULE 1

POWERS OF ADMINISTRATOR OR ADMINISTRATIVE RECEIVER

Sections 14,42

1.

Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.

2.

Power to sell or otherwise dispose of the property of the company by public auction or private contract or, in Scotland, to sell, [...] ¹⁰¹⁶ hire out or otherwise dispose of the property of the company by public roup or private bargain.

3.

Power to raise or borrow money and grant security therefor over the property of the company.

4.

Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.

5.

Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.

6.

Power to refer to arbitration any question affecting the company.

¹⁰¹⁵ Inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.16 para.1 (September 15, 2003: insertion comes into force on September 15, 2003 subject to transitional provisions specified in SI 2003/2093 art.3)

¹⁰¹⁶ Word repealed by Abolition of Feudal Tenure etc. (Scotland) Act 2000 asp 5 (Scottish Act) Sch.13(1) para.1 (November 28, 2004: as SSI 2003/456)

7.

Power to effect and maintain insurances in respect of the business and property of the company.

8.

Power to use the company's seal.

9.

Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.

10.

Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.

11.

Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.

12.

Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.

13.

Power to make any payment which is necessary or incidental to the performance of his functions.

14.

Power to carry on the business of the company.

15.

Power to establish subsidiaries of the company.

16.

Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.

17.

Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.

18.

Power to make any arrangement or compromise on behalf of the company.

19.

Power to call up any uncalled capital of the company.

20.

Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.

21.

Power to present or defend a petition for the winding up of the company.

22.

Power to change the situation of the company's registered office.

23.

Power to do all other things incidental to the exercise of the foregoing powers.

SCHEDULE 2

POWERS OF A SCOTTISH RECEIVER (ADDITIONAL TO THOSE CONFERRED ON HIM BY THE INSTRUMENT OF CHARGE)

Section 55

1.

Power to take possession of, collect and get in the property from the company or a liquidator thereof or any other person, and for that purpose, to take such proceedings as may seem to him expedient.

2.

Power to sell, [...] ¹⁰¹⁷ hire out or otherwise dispose of the property by public roup or private bargain and with or without advertisement.

3.

Power to raise or borrow money and grant security therefor over the property.

4.

Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.

5.

Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.

6.

Power to refer to arbitration all questions affecting the company.

7.

Power to effect and maintain insurances in respect of the business and property of the company.

8.

Power to use the company's seal.

¹⁰¹⁷ Word repealed by Abolition of Feudal Tenure etc. (Scotland) Act 2000 asp 5 (Scottish Act) Sch.13(1) para.1 (November 28, 2004: as SSI 2003/456)

9.

Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.

10.

Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.

11.

Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent, and power to employ and dismiss employees.

12.

Power to do all such things (including the carrying out of works), as may be necessary for the realisation of the property.

13.

Power to make any payment which is necessary or incidental to the performance of his functions.

14.

Power to carry on the business of the company or any part of it.

15.

Power to grant or accept a surrender of a lease or tenancy of any of the property, and to take a lease or tenancy of any property required or convenient for the business of the company.

16.

Power to make any arrangement or compromise on behalf of the company.

17.

Power to call up any uncalled capital of the company.

18.

Power to establish subsidiaries of the company.

19.

Power to transfer to subsidiaries of the company the business of the company or any part of it and any of the property.

20.

Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person or company indebted to the company and to receive dividends, and to accede to trust deeds for creditors of any such person.

21.

Power to present or defend a petition for the winding up of the company.

22.

Power to change the situation of the company's registered office.

23.

Power to do all other things incidental to the exercise of the powers mentioned in section 55(1) of this Act or above in this Schedule.

[SCHEDULE 2A

**EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE
RECEIVER: SUPPLEMENTARY PROVISIONS**

] ¹⁰¹⁸

[Capital market arrangement] ¹⁰¹⁹

[1

- (1) For the purposes of section 72B an arrangement is a capital market arrangement if—
 - (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or
 - [(aa) it involves a grant of security to—
 - (i) a party to the arrangement who issues a capital market investment, or
 - (ii) a person who holds the security as trustee for a party to the arrangement in connection with the issue of a capital market investment, or
 - (ab) it involves a grant of security to a person who holds the security as trustee for a party to the arrangement who agrees to provide finance to another party, or] ¹⁰²⁰
 - (b) at least one party guarantees the performance of obligations of another party, or
 - (c) at least one party provides security in respect of the performance of obligations of another party, or
 - (d) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (options, futures and contracts for differences).
- (2) For the purposes of sub-paragraph (1)—
 - (a) a reference to holding as trustee includes a reference to holding as nominee or agent,
 - (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
 - (c) a person holds a capital market investment if he has a legal or beneficial interest in it [, and] ¹⁰²¹
 - [(d) the reference to the provision of finance includes the provision of an indemnity.] ¹⁰²¹

¹⁰¹⁸ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰¹⁹ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰²⁰ Added by Insolvency Act 1986 (Amendment) (Administrative Receivership and Capital Market Arrangements) Order 2003/1468 art.2 (September 15, 2003: as 1986 c.45 ss.72A-72G and Sch.2A)

¹⁰²¹ Added by Insolvency Act 1986 (Amendment) (Administrative Receivership and Capital Market Arrangements) Order 2003/1468 art.3 (September 15, 2003: as 1986 c.45 ss.72A-72G and Sch.2A)

(3) In section 72B(1) and this paragraph “party” to an arrangement includes a party to an agreement which—

- (a) forms part of the arrangement,
- (b) provides for the raising of finance as part of the arrangement, or
- (c) is necessary for the purposes of implementing the arrangement.

]¹⁰²²

*[Capital market investment]*¹⁰²³

[2

- (1) For the purposes of section 72B an investment is a capital market investment if it—
- (a) is within [article 77 or 77A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001]¹⁰²⁴ (S.I. 2001/544) (debt instruments), and
 - (b) is rated, listed or traded or designed to be rated, listed or traded.

(2) In sub-paragraph (1)—

“rated” means rated for the purposes of investment by an internationally recognised rating agency,

“listed” means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation), and

“traded” means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

(3) In sub-paragraph (2)—

“recognised investment exchange” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange), and

“foreign market” has the same meaning as “relevant market” in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335) (foreign markets).

]¹⁰²⁵

[3

(1) An investment is also a capital market investment for the purposes of section 72B if it consists of a bond or commercial paper issued to one or more of the following—

- (a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,
- (b) a person who is, when the agreement mentioned in section 72B(1) is entered into, a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that order,
- (c) a person to whom article 49(2) of that order applies (high net worth company, &c.),

¹⁰²² Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰²³ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰²⁴ Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010/86 Sch.1 para.2(a) (February 24, 2010)

¹⁰²⁵ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

(d) a person who is, when the agreement mentioned in section 72B(1) is entered into, a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that order, and

(e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(2) In sub-paragraph (1)—

“bond” shall be construed in accordance with article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 [, and includes any instrument falling within article 77A of that Order]¹⁰²⁶ (S.I. 2001/544), and

“commercial paper” has the meaning given by article 9(3) of that order.

(3) For the purposes of sub-paragraph (1)—

(a) in applying article 19(5) of the Financial Promotion Order for the purposes of sub-paragraph (1)(a)—

(i) in article 19(5)(b), ignore the words after “exempt person”,

(ii) in article 19(5)(c)(i), for the words from “the controlled activity” to the end substitute “a controlled activity”, and

(iii) in article 19(5)(e) ignore the words from “where the communication” to the end, and

(b) in applying article 49(2) of that order for the purposes of sub-paragraph (1)(c), ignore article 49(2)(e).

]¹⁰²⁷

[“Agreement”]¹⁰²⁸

[4

For the purposes of sections 72B and 72E and this Schedule “agreement” includes an agreement or undertaking effected by—

(a) contract,

(b) deed, or

(c) any other instrument intended to have effect in accordance with the law of England and Wales, Scotland or another jurisdiction.

]¹⁰²⁹

[Debt]¹⁰³⁰

[5

The debt of at least £50 million referred to in section 72B(1)(a) or 72E(2)(a)—

¹⁰²⁶ Words inserted by Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010/86 Sch.1 para.2(b) (February 24, 2010)

¹⁰²⁷ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰²⁸ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰²⁹ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰³⁰ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

- (a) may be incurred at any time during the life of the capital market arrangement or financed project, and
- (b) may be expressed wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into or the project begins).

]¹⁰³¹

*[Step-in rights]*¹⁰³²

[6

(1) For the purposes of sections 72C to 72E a project has “step-in rights” if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—

- (a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or
- (b) make arrangements for carrying out all or part of the project.

(2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

]¹⁰³³

*[Project company]*¹⁰³⁴

[7

(1) For the purposes of sections 72C to 72E a company is a “project company” of a project if—

- (a) it holds property for the purpose of the project,
- (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,
- (c) it is one of a number of companies which together carry out the project,
- (d) it has the purpose of supplying finance to enable the project to be carried out, or
- (e) it is the holding company of a company within any of paragraphs (a) to (d).

(2) But a company is not a “project company” of a project if—

- (a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but
- (b) it also performs a function which is not—
 - (i) within sub-paragraph (1)(a) to (d),
 - (ii) related to a function within sub-paragraph (1)(a) to (d), or
 - (iii) related to the project.

(3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

¹⁰³¹ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰³² Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰³³ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰³⁴ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

]¹⁰³⁵

[*“Resources”*]¹⁰³⁶

[8

In section 72C “resources” includes—

- (a) funds (including payment for the provision of services or facilities),
- (b) assets,
- (c) professional skill,
- (d) the grant of a concession or franchise, and
- (e) any other commercial resource.

]¹⁰³⁷

[*“Public body”*]¹⁰³⁸

[9

(1) In section 72C “public body” means—

- (a) a body which exercises public functions,
- (b) a body specified for the purposes of this paragraph by the Secretary of State, and
- (c) a body within a class specified for the purposes of this paragraph by the Secretary of State.

(2) A specification under sub-paragraph (1) may be—

- (a) general, or
- (b) for the purpose of the application of section 72C to a specified case.

]¹⁰³⁹

[*Regulated business*]¹⁰⁴⁰

[10

(1) For the purposes of section 72D a business is regulated if it is carried on—

- (a) [...]¹⁰⁴¹
- (b) in reliance on a licence under section 7 or 7A of the Gas Act 1986 (c. 44) (transport and supply of gas),

¹⁰³⁵ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰³⁶ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰³⁷ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰³⁸ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰³⁹ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰⁴⁰ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰⁴¹ Repealed subject to the transitional provisions specified in 2003 c.21 Sch.18 para.13 by Communications Act 2003 c. 21 Sch.19 para.1 (September 15, 2003: repeal has effect as specified in SI 2003/1900, subject to the transitional provisions specified in 2003 c.21 Sch.18 para.13, but cannot take effect until the insertion of Sch.2A on September 15, 2003)

- (c) in reliance on a licence granted by virtue of section 41C of that Act (power to prescribe additional licensable activity),
- (d) in reliance on a licence under section 6 of the Electricity Act 1989 (c. 29) (supply of electricity),
- (e) by a water undertaker,
- (f) by a sewerage undertaker,
- (g) by a universal service provider within the meaning given by section 4(3) and (4) of the Postal Services Act 2000 (c. 26),
- (h) by the Post Office company within the meaning given by section 62 of that Act (transfer of property),
- (i) by a relevant subsidiary of the Post Office Company within the meaning given by section 63 of that Act (government holding),
- (j) in reliance on a licence under section 8 of the Railways Act 1993 (c. 43) (railway services),
- (k) in reliance on a licence exemption under section 7 of that Act (subject to sub-paragraph (2) below),
- (l) by the operator of a system of transport which is deemed to be a railway for a purpose of Part I of that Act by virtue of section 81(2) of that Act (tramways, &c.), [...] ¹⁰⁴²
- (m) by the operator of a vehicle carried on flanged wheels along a system within paragraph (l) [, or] ¹⁰⁴³
- [(n) in reliance on a European licence granted pursuant to a provision contained in any instrument made for the purpose of implementing Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council, or pursuant to any action taken by an EEA State for that purpose.] ¹⁰⁴³

(2) Sub-paragraph (1)(k) does not apply to the operator of a railway asset on a railway unless on some part of the railway there is a permitted line speed exceeding 40 kilometres per hour.

[(2A) For the purposes of section 72D a business is also regulated to the extent that it consists in the provision of a public electronic communications network or a public electronic communications service.] ¹⁰⁴⁴

[(2B) In sub-paragraph (1)(n), an “EEA State” means a member State, Norway, Iceland or Liechtenstein.] ¹⁰⁴⁵
¹⁰⁴⁶

¹⁰⁴² Word repealed by Railway (Licensing of Railway Undertakings) Regulations 2005/3050 Sch.1(1) para.2(a) (November 28, 2005)

¹⁰⁴³ Added by Railway (Licensing of Railway Undertakings) Regulations 2005/3050 Sch.1(1) para.2(b) (November 28, 2005)

¹⁰⁴⁴ Added by Communications Act 2003 c. 21 Sch.17 para.82(4) (September 15, 2003: insertion comes into force on July 25, 2003 but cannot take effect until the insertion of Sch.2A on September 15, 2003)

¹⁰⁴⁵ Added by Railway (Licensing of Railway Undertakings) Regulations 2005/3050 Sch.1(1) para.2(c) (November 28, 2005)

¹⁰⁴⁶ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

[“Person”]¹⁰⁴⁷

[11

A reference to a person in this Schedule includes a reference to a partnership or another unincorporated group of persons.

]¹⁰⁴⁸

SCHEDULE 3

ORDERS IN COURSE OF WINDING UP PRONOUNCED IN VACATION (SCOTLAND)

Section 162

PART I

ORDERS WHICH ARE TO BE FINAL

Orders under section 153, as to the time for proving debts and claims.

Orders under section 195 as to meetings for ascertaining wishes of creditors or contributories.

Orders under section 198, as to the examination of witnesses in regard to the property or affairs of a company.

PART II

ORDERS WHICH ARE TO TAKE EFFECT UNTIL MATTER DISPOSED OF BY INNER HOUSE

Orders under section 126(1), 130(2) or (3), 147, 227 or 228, restraining or permitting the commencement or the continuance of legal proceedings.

Orders under section 135(5), limiting the powers of provisional liquidators.

Orders under section 108, appointing a liquidator to fill a vacancy.

Orders under section 167 or 169, sanctioning the exercise of any powers by a liquidator, other than the powers specified in paragraphs 1, 2 and 3 of Schedule 4 to this Act.

Orders under section 158, as to the arrest and detention of an absconding contributory and his property.

¹⁰⁴⁷ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

¹⁰⁴⁸ Added by Enterprise Act 2002 c. 40 Sch.18 para.1 (September 15, 2003 as SI 2003/2093)

SCHEDULE 4**POWERS OF LIQUIDATOR IN A WINDING UP****Sections 165, 167****PART I****POWERS EXERCISABLE WITH SANCTION****1.**

Power to pay any class of creditors in full.

2.

Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.

3.

Power to compromise, on such terms as may be agreed—

- (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and
- (b) all questions in any way relating to or affecting the assets or the winding up of the company,

and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

Amendments Pending

Sch. 4(I) para. 3: words inserted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 10(1) (April 6, 2010: insertion has effect subject to transitional provisions specified in SI 2010/18 art.12(5))

[3A.

Power to bring legal proceedings under section 213, 214, 238, 239, 242, 243 or 423.

¹⁰⁴⁹

¹⁰⁴⁹ Added subject to transitional provisions specified in SI 2003/2093 art.5 by Enterprise Act 2002 c. 40 Pt 10 s.253 (September 15, 2003: addition has effect subject to transitional provisions specified in SI 2003/2093 art.5)

PART II

POWERS EXERCISABLE WITHOUT SANCTION IN VOLUNTARY WINDING UP, WITH SANCTION IN WINDING UP BY THE COURT

4.

Power to bring or defend any action or other legal proceeding in the name and on behalf of the company.

5.

Power to carry on the business of the company so far as may be necessary for its beneficial winding up.

PART III

POWERS EXERCISABLE WITHOUT SANCTION IN ANY WINDING UP

6.

Power to sell any of the company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.

7.

Power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company's seal.

8.

Power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

9.

Power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.

10.

Power to raise on the security of the assets of the company any money requisite.

11.

Power to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the company.

In all such cases the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.

12.

Power to appoint an agent to do any business which the liquidator is unable to do himself.

13.

Power to do all such other things as may be necessary for winding up the company's affairs and distributing its assets.

[SCHEDULE 4ZA

CONDITIONS FOR MAKING A DEBT RELIEF ORDER

¹⁰⁵⁰

[PART 1

CONDITIONS WHICH MUST BE MET

¹⁰⁵¹

[Connection with England and Wales]¹⁰⁵²

[1

(1) The debtor—

- (a) is domiciled in England and Wales on the application date; or
- (b) at any time during the period of three years ending with that date—
 - (i) was ordinarily resident, or had a place of residence, in England and Wales; or
 - (ii) carried on business in England and Wales.

(2) The reference in sub-paragraph (1)(b)(ii) to the debtor carrying on business includes—

- (a) the carrying on of business by a firm or partnership of which he is a member;
- (b) the carrying on of business by an agent or manager for him or for such a firm or partnership.

¹⁰⁵³

¹⁰⁵⁰ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁵¹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁵² Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁵³ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

*[Debtor's previous insolvency history]*¹⁰⁵⁴

[2]

The debtor is not, on the determination date—

- (a) an undischarged bankrupt;
- (b) subject to an interim order or voluntary arrangement under Part 8; or
- (c) subject to a bankruptcy restrictions order or a debt relief restrictions order.

]¹⁰⁵⁵

[3]

A debtor's petition for the debtor's bankruptcy under Part 9—

- (a) has not been presented by the debtor before the determination date;
- (b) has been so presented, but proceedings on the petition have been finally disposed of before that date; or
- (c) has been so presented and proceedings in relation to the petition remain before the court at that date, but the court has referred the debtor under section 274A(2) for the purposes of making an application for a debt relief order.

]¹⁰⁵⁶

[4]

A creditor's petition for the debtor's bankruptcy under Part 9—

- (a) has not been presented against the debtor at any time before the determination date;
- (b) has been so presented, but proceedings on the petition have been finally disposed of before that date; or
- (c) has been so presented and proceedings in relation to the petition remain before the court at that date, but the person who presented the petition has consented to the making of an application for a debt relief order.

]¹⁰⁵⁷

[5]

A debt relief order has not been made in relation to the debtor in the period of six years ending with the determination date.

]¹⁰⁵⁸

¹⁰⁵⁴ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁵⁵ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁵⁶ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁵⁷ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁵⁸ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

[Limit on debtor's overall indebtedness]¹⁰⁵⁹

[6]

- (1) The total amount of the debtor's debts on the determination date, other than unliquidated debts and excluded debts, does not exceed the prescribed amount.
- (2) For this purpose an unliquidated debt is a debt that is not for a liquidated sum payable to a creditor either immediately or at some future certain time.

]¹⁰⁶⁰

[Limit on debtor's monthly surplus income]¹⁰⁶¹

[7]

- (1) The debtor's monthly surplus income (if any) on the determination date does not exceed the prescribed amount.
- (2) For this purpose "monthly surplus income" is the amount by which a person's monthly income exceeds the amount necessary for the reasonable domestic needs of himself and his family.
- (3) The rules may—
 - (a) make provision as to how the debtor's monthly surplus income is to be determined;
 - (b) provide that particular descriptions of income are to be excluded for the purposes of this paragraph.

]¹⁰⁶²

[Limit on value of debtor's property]¹⁰⁶³

[8]

- (1) The total value of the debtor's property on the determination date does not exceed the prescribed amount.
- (2) The rules may—
 - (a) make provision as to how the value of a person's property is to be determined;
 - (b) provide that particular descriptions of property are to be excluded for the purposes of this paragraph.

¹⁰⁵⁹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁶⁰ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁶¹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁶² Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁶³ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

] ¹⁰⁶⁴**[PART 2****OTHER CONDITIONS**] ¹⁰⁶⁵**[9**

(1) The debtor has not entered into a transaction with any person at an undervalue during the period between—

- (a) the start of the period of two years ending with the application date; and
- (b) the determination date.

(2) For this purpose a debtor enters into a transaction with a person at an undervalue if—

- (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration;
- (b) he enters into a transaction with that person in consideration of marriage or the formation of a civil partnership; or
- (c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

] ¹⁰⁶⁶**[10**

(1) The debtor has not given a preference to any person during the period between—

- (a) the start of the period of two years ending with the application date; and
- (b) the determination date.

(2) For this purpose a debtor gives a preference to a person if—

- (a) that person is one of the debtor's creditors to whom a qualifying debt is owed or is a surety or guarantor for any such debt, and
- (b) the debtor does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event that a debt relief order is made in relation to the debtor, will be better than the position he would have been in if that thing had not been done.

] ¹⁰⁶⁷

¹⁰⁶⁴ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁶⁵ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁶⁶ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁶⁷ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.18 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

[SCHEDULE 4ZB**DEBT RELIEF RESTRICTIONS ORDERS AND UNDERTAKINGS**] ¹⁰⁶⁸*[Debt relief restrictions order]*¹⁰⁶⁹**[1**

- (1) A debt relief restrictions order may be made by the court in relation to a person in respect of whom a debt relief order has been made.
- (2) An order may be made only on the application of—
 - (a) the Secretary of State, or
 - (b) the official receiver acting on a direction of the Secretary of State.

] ¹⁰⁷⁰*[Grounds for making order]*¹⁰⁷¹**[2**

- (1) The court shall grant an application for a debt relief restrictions order if it thinks it appropriate to do so having regard to the conduct of the debtor (whether before or after the making of the debt relief order).
- (2) The court shall, in particular, take into account any of the following kinds of behaviour on the part of the debtor—
 - (a) failing to keep records which account for a loss of property by the debtor, or by a business carried on by him, where the loss occurred in the period beginning two years before the application date for the debt relief order and ending with the date of the application for the debt relief restrictions order;
 - (b) failing to produce records of that kind on demand by the official receiver;
 - (c) entering into a transaction at an undervalue in the period beginning two years before the application date for the debt relief order and ending with the date of the determination of that application;
 - (d) giving a preference in the period beginning two years before the application date for the debt relief order and ending with the date of the determination of that application;
 - (e) making an excessive pension contribution;
 - (f) a failure to supply goods or services that were wholly or partly paid for;

¹⁰⁶⁸ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁶⁹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁷⁰ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁷¹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

- (g) trading at a time, before the date of the determination of the application for the debt relief order, when the debtor knew or ought to have known that he was himself to be unable to pay his debts;
 - (h) incurring, before the date of the determination of the application for the debt relief order, a debt which the debtor had no reasonable expectation of being able to pay;
 - (i) failing to account satisfactorily to the court or the official receiver for a loss of property or for an insufficiency of property to meet his debts;
 - (j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of his inability to pay his debts before the application date for the debt relief order or which took place between that date and the date of the determination of the application for the debt relief order;
 - (k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of his inability to pay his debts;
 - (l) fraud or fraudulent breach of trust;
 - (m) failing to co-operate with the official receiver.
- (3) The court shall also, in particular, consider whether the debtor was an undischarged bankrupt at some time during the period of six years ending with the date of the application for the debt relief order.
- (4) For the purposes of sub-paragraph (2)–
- “excessive pension contribution” shall be construed in accordance with section 342A;
 - “preference” shall be construed in accordance with paragraph 10(2) of Schedule 4ZA;
 - “undervalue” shall be construed in accordance with paragraph 9(2) of that Schedule.

]¹⁰⁷²

[Timing of application for order]¹⁰⁷³

[3

An application for a debt relief restrictions order in respect of a debtor may be made–

- (a) at any time during the moratorium period relating to the debt relief order in question, or
- (b) after the end of that period, but only with the permission of the court.

]¹⁰⁷⁴

¹⁰⁷² Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁷³ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁷⁴ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

*[Duration of order]¹⁰⁷⁵***[4**

- (1) A debt relief restrictions order—
 - (a) comes into force when it is made, and
 - (b) ceases to have effect at the end of a date specified in the order.
- (2) The date specified in a debt relief restrictions order under sub-paragraph (1)(b) must not be—
 - (a) before the end of the period of two years beginning with the date on which the order is made, or
 - (b) after the end of the period of 15 years beginning with that date.

] ¹⁰⁷⁶*[Interim debt relief restrictions order]¹⁰⁷⁷***[5**

- (1) This paragraph applies at any time between—
 - (a) the institution of an application for a debt relief restrictions order, and
 - (b) the determination of the application.
- (2) The court may make an interim debt relief restrictions order if the court thinks that—
 - (a) there are prima facie grounds to suggest that the application for the debt relief restrictions order will be successful, and
 - (b) it is in the public interest to make an interim debt relief restrictions order.
- (3) An interim debt relief restrictions order may only be made on the application of—
 - (a) the Secretary of State, or
 - (b) the official receiver acting on a direction of the Secretary of State.
- (4) An interim debt relief restrictions order—
 - (a) has the same effect as a debt relief restrictions order, and
 - (b) comes into force when it is made.
- (5) An interim debt relief restrictions order ceases to have effect—
 - (a) on the determination of the application for the debt relief restrictions order,
 - (b) on the acceptance of a debt relief restrictions undertaking made by the debtor, or
 - (c) if the court discharges the interim debt relief restrictions order on the application of the person who applied for it or of the debtor.

] ¹⁰⁷⁸

¹⁰⁷⁵ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁷⁶ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁷⁷ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁷⁸ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

[6

(1) This paragraph applies to a case in which both an interim debt relief restrictions order and a debt relief restrictions order are made.

(2) Paragraph 4(2) has effect in relation to the debt relief restrictions order as if a reference to the date of that order were a reference to the date of the interim debt relief restrictions order.

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¹⁰⁷⁹

*[Debt relief restrictions undertaking]*¹⁰⁸⁰

[7

(1) A debtor may offer a debt relief restrictions undertaking to the Secretary of State.

(2) In determining whether to accept a debt relief restrictions undertaking the Secretary of State shall have regard to the matters specified in paragraph 2(2) and (3).

]

¹⁰⁸¹
[8

A reference in an enactment to a person in respect of whom a debt relief restrictions order has effect (or who is “the subject of” a debt relief restrictions order) includes a reference to a person in respect of whom a debt relief restrictions undertaking has effect.

]

¹⁰⁸²
[9

(1) A debt relief restrictions undertaking—

- (a) comes into force on being accepted by the Secretary of State, and
- (b) ceases to have effect at the end of a date specified in the undertaking.

(2) The date specified under sub-paragraph (1)(b) must not be—

- (a) before the end of the period of two years beginning with the date on which the undertaking is accepted, or
- (b) after the end of the period of 15 years beginning with that date.

(3) On an application by the debtor the court may—

- (a) annul a debt relief restrictions undertaking;
- (b) provide for a debt relief restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

]

¹⁰⁸³

¹⁰⁷⁹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁸⁰ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁸¹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁸² Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁸³ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

*[Effect of revocation of debt relief order]*¹⁰⁸⁴**[10]**

Unless the court directs otherwise, the revocation at any time of a debt relief order does not—

- (a) affect the validity of any debt relief restrictions order, interim debt relief restrictions order or debt relief restrictions undertaking which is in force in respect of the debtor;
- (b) prevent the determination of any application for a debt relief restrictions order, or an interim debt relief restrictions order, in relation to the debtor that was instituted before that time;
- (c) prevent the acceptance of a debt relief restrictions undertaking that was offered before that time; or
- (d) prevent the institution of an application for a debt relief restrictions order or interim debt relief restrictions order in respect of the debtor, or the offer or acceptance of a debt relief restrictions undertaking by the debtor, after that time.

]

¹⁰⁸⁵
[SCHEDULE 4A**BANKRUPTCY RESTRICTIONS ORDER AND UNDERTAKING**

]

¹⁰⁸⁶
*[Bankruptcy restrictions order]*¹⁰⁸⁷**[1**

- (1) A bankruptcy restrictions order may be made by the court.
- (2) An order may be made only on the application of—
 - (a) the Secretary of State, or
 - (b) the official receiver acting on a direction of the Secretary of State.

]

¹⁰⁸⁸

¹⁰⁸⁴ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁸⁵ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.19 para.1 (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹⁰⁸⁶ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹⁰⁸⁷ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹⁰⁸⁸ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

[Grounds for making order]¹⁰⁸⁹

[2

(1) The court shall grant an application for a bankruptcy restrictions order if it thinks it appropriate having regard to the conduct of the bankrupt (whether before or after the making of the bankruptcy order).

(2) The court shall, in particular, take into account any of the following kinds of behaviour on the part of the bankrupt—

- (a) failing to keep records which account for a loss of property by the bankrupt, or by a business carried on by him, where the loss occurred in the period beginning 2 years before petition and ending with the date of the application;
- (b) failing to produce records of that kind on demand by the official receiver or the trustee;
- (c) entering into a transaction at an undervalue;
- (d) giving a preference;
- (e) making an excessive pension contribution;
- (f) a failure to supply goods or services which were wholly or partly paid for which gave rise to a claim provable in the bankruptcy;
- (g) trading at a time before commencement of the bankruptcy when the bankrupt knew or ought to have known that he was himself to be unable to pay his debts;
- (h) incurring, before commencement of the bankruptcy, a debt which the bankrupt had no reasonable expectation of being able to pay;
- (i) failing to account satisfactorily to the court, the official receiver or the trustee for a loss of property or for an insufficiency of property to meet bankruptcy debts;
- (j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of the bankruptcy or which took place between presentation of the petition and commencement of the bankruptcy;
- (k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of the bankruptcy;
- (l) fraud or fraudulent breach of trust;
- (m) failing to cooperate with the official receiver or the trustee.

(3) The court shall also, in particular, consider whether the bankrupt was an undischarged bankrupt at some time during the period of six years ending with the date of the bankruptcy to which the application relates.

(4) For the purpose of sub-paragraph (2)—

- “before petition” shall be construed in accordance with section 351(c),
- “excessive pension contribution” shall be construed in accordance with section 342A,
- “preference” shall be construed in accordance with section 340, and
- “undervalue” shall be construed in accordance with section 339.

¹⁰⁹⁰

¹⁰⁸⁹ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹⁰⁹⁰ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

*[Timing of application for order]¹⁰⁹¹***[3]**

- (1) An application for a bankruptcy restrictions order in respect of a bankrupt must be made—
 - (a) before the end of the period of one year beginning with the date on which the bankruptcy commences, or
 - (b) with the permission of the court.
- (2) The period specified in sub-paragraph (1)(a) shall cease to run in respect of a bankrupt while the period set for his discharge is suspended under section 279(3).

] ¹⁰⁹²*[Duration of order]¹⁰⁹³***[4]**

- (1) A bankruptcy restrictions order—
 - (a) shall come into force when it is made, and
 - (b) shall cease to have effect at the end of a date specified in the order.
- (2) The date specified in a bankruptcy restrictions order under sub-paragraph (1)(b) must not be—
 - (a) before the end of the period of two years beginning with the date on which the order is made, or
 - (b) after the end of the period of 15 years beginning with that date.

] ¹⁰⁹⁴*[Interim bankruptcy restrictions order]¹⁰⁹⁵***[5]**

- (1) This paragraph applies at any time between—
 - (a) the institution of an application for a bankruptcy restrictions order, and
 - (b) the determination of the application.
- (2) The court may make an interim bankruptcy restrictions order if the court thinks that—
 - (a) there are prima facie grounds to suggest that the application for the bankruptcy restrictions order will be successful, and
 - (b) it is in the public interest to make an interim order.

¹⁰⁹¹ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹⁰⁹² Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹⁰⁹³ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹⁰⁹⁴ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹⁰⁹⁵ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

- (3) An interim order may be made only on the application of—
 - (a) the Secretary of State, or
 - (b) the official receiver acting on a direction of the Secretary of State.
- (4) An interim order—
 - (a) shall have the same effect as a bankruptcy restrictions order, and
 - (b) shall come into force when it is made.
- (5) An interim order shall cease to have effect—
 - (a) on the determination of the application for the bankruptcy restrictions order,
 - (b) on the acceptance of a bankruptcy restrictions undertaking made by the bankrupt, or
 - (c) if the court discharges the interim order on the application of the person who applied for it or of the bankrupt.

]¹⁰⁹⁶

[6

- (1) This paragraph applies to a case in which both an interim bankruptcy restrictions order and a bankruptcy restrictions order are made.
- (2) Paragraph 4(2) shall have effect in relation to the bankruptcy restrictions order as if a reference to the date of that order were a reference to the date of the interim order.

]¹⁰⁹⁷

*[Bankruptcy restrictions undertaking]*¹⁰⁹⁸

[7

- (1) A bankrupt may offer a bankruptcy restrictions undertaking to the Secretary of State.
- (2) In determining whether to accept a bankruptcy restrictions undertaking the Secretary of State shall have regard to the matters specified in paragraph 2(2) and (3).

]¹⁰⁹⁹

[8

A reference in an enactment to a person in respect of whom a bankruptcy restrictions order has effect (or who is “the subject of” a bankruptcy restrictions order) includes a reference to a person in respect of whom a bankruptcy restrictions undertaking has effect.

]¹¹⁰⁰

¹⁰⁹⁶ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹⁰⁹⁷ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹⁰⁹⁸ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹⁰⁹⁹ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹¹⁰⁰ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

[9]

- (1) A bankruptcy restrictions undertaking—
 - (a) shall come into force on being accepted by the Secretary of State, and
 - (b) shall cease to have effect at the end of a date specified in the undertaking.
- (2) The date specified under sub-paragraph (1)(b) must not be—
 - (a) before the end of the period of two years beginning with the date on which the undertaking is accepted, or
 - (b) after the end of the period of 15 years beginning with that date.
- (3) On an application by the bankrupt the court may—
 - (a) annul a bankruptcy restrictions undertaking;
 - (b) provide for a bankruptcy restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

J¹¹⁰¹*[Effect of annulment of bankruptcy order]¹¹⁰²***[10]**

Where a bankruptcy order is annulled under section 282(1)(a) or (2)—

- (a) any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt shall be annulled,
- (b) no new bankruptcy restrictions order or interim order may be made in respect of the bankrupt, and
- (c) no new bankruptcy restrictions undertaking by the bankrupt may be accepted.

J¹¹⁰³**[11]**

Where a bankruptcy order is annulled under section 261, 263D or 282(1)(b)—

- (a) the annulment shall not affect any bankruptcy restrictions order, interim order or undertaking in respect of the bankrupt,
- (b) the court may make a bankruptcy restrictions order in relation to the bankrupt on an application instituted before the annulment,
- (c) the Secretary of State may accept a bankruptcy restrictions undertaking offered before the annulment, and
- (d) an application for a bankruptcy restrictions order or interim order in respect of the bankrupt may not be instituted after the annulment.

J¹¹⁰⁴

¹¹⁰¹ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹¹⁰² Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹¹⁰³ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹¹⁰⁴ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

[Registration]¹¹⁰⁵

[12

The Secretary of State shall maintain a register of—

- (a) bankruptcy restrictions orders,
- (b) interim bankruptcy restrictions orders, and
- (c) bankruptcy restrictions undertakings.

] ¹¹⁰⁶

SCHEDULE 5

POWERS OF TRUSTEE IN BANKRUPTCY

Section 314

PART I

POWERS EXERCISABLE WITH SANCTION

1.

Power to carry on any business of the bankrupt so far as may be necessary for winding it up beneficially and so far as the trustee is able to do so without contravening any requirement imposed by or under any enactment.

2.

Power to bring, institute or defend any action or legal proceedings relating to the property comprised in the bankrupt's estate.

[2A.

Power to bring legal proceedings under section 339, 340 or 423.

] ¹¹⁰⁷

3.

Power to accept as the consideration for the sale of any property comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditors' committee or the court thinks fit.

4.

Power to mortgage or pledge any part of the property comprised in the bankrupt's estate for the purpose of raising money for the payment of his debts.

¹¹⁰⁵ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹¹⁰⁶ Added subject to transitional provisions specified in SI 2003/2093 art.7 by Enterprise Act 2002 c. 40 Sch.20 para.1 (April 1, 2004: addition has effect subject to transitional provisions specified in SI 2003/2093 art.7)

¹¹⁰⁷ Added subject to transitional provisions specified in SI 2003/2093 art.6 by Enterprise Act 2002 c. 40 Pt 10 s.262 (September 15, 2003: addition has effect subject to transitional provisions specified in SI 2003/2093 art.6)

5.

Power, where any right, option or other power forms part of the bankrupt's estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power.

6.

Power to refer to arbitration, or compromise on such terms as may be agreed on, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

Amendments Pending

Sch. 5(I) para. 6: repealed by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 11(1)(a) (April 6, 2010: repeal has effect subject to transitional provisions specified in SI 2010/18 art.12(5))

7.

Power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of bankruptcy debts.

8.

Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the trustee by any person or by the trustee on any person.

Amendments Pending

Sch. 5(I) para. 8: words repealed by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 11(1)(b) (April 6, 2010: repeal subject to transitional provisions specified in SI 2010/18 art.12(5))

PART II

GENERAL POWERS

9.

Power to sell any part of the property for the time being comprised in the bankrupt's estate, including the goodwill and book debts of any business.

10.

Power to give receipts for any money received by him, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application.

11.

Power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate.

12.

Power to exercise in relation to any property comprised in the bankrupt's estate any powers the capacity to exercise which is vested in him under Parts VIII to XI of this Act.

13.

Power to deal with any property comprised in the estate to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

PART III**ANCILLARY POWERS****14.**

For the purposes of, or in connection with, the exercise of any of his powers under Parts VIII to XI of this Act, the trustee may, by his official name—

- (a) hold property of every description,
- (b) make contracts,
- (c) sue and be sued,
- (d) enter into engagements binding on himself and, in respect of the bankrupt's estate, on his successors in office,
- (e) employ an agent,
- (f) execute any power of attorney, deed or other instrument;

and he may do any other act which is necessary or expedient for the purposes of or in connection with the exercise of those powers.

SCHEDULE 6**THE CATEGORIES OF PREFERENTIAL DEBTS****Section 386***Category 1: Debts due to Inland Revenue*

1. [...] ¹¹⁰⁸

2. [...] ¹¹⁰⁹

Category 2: Debts due to Customs and Excise

3. [...] ¹¹¹⁰

¹¹⁰⁸ Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

¹¹⁰⁹ Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

3A. [...] ¹¹¹¹

3B. [...] ¹¹¹²

3C. [...] ¹¹¹³

3D [...] ¹¹¹⁴

4. [...] ¹¹¹⁵

5. [...] ¹¹¹⁶

5A. [...] ¹¹¹⁷

5B. [...] ¹¹¹⁸

5C. [...] ¹¹¹⁹

Category 3: Social security contributions

6. [...] ¹¹²⁰

7. [...] ¹¹²¹

¹¹¹⁰ Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

¹¹¹¹ Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

¹¹¹² Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

¹¹¹³ Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

¹¹¹⁴ Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

¹¹¹⁵ Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

¹¹¹⁶ Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

¹¹¹⁷ Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

¹¹¹⁸ Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

¹¹¹⁹ Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

¹¹²⁰ Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

¹¹²¹ Repealed subject to transitional provisions specified in SI 2003/2093 art.4 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect subject to transitional provisions specified in SI 2003/2093 art.4)

Category 4: Contributions to occupational pension schemes, etc.

8.

Any sum which is owed by the debtor and is a sum to which [Schedule 4 to the Pension Schemes Act 1993]¹¹²² applies (contributions to occupational pension schemes and state scheme premiums).

Category 5: Remuneration, etc., of employees

9.

So much of any amount which—

- (a) is owed by the debtor to a person who is or has been an employee of the debtor, and
- (b) is payable by way of remuneration in respect of the whole or any part of the period of 4 months next before the relevant date,

as does not exceed so much as may be prescribed by order made by the Secretary of State.

10.

An amount owed by way of accrued holiday remuneration, in respect of any period of employment before the relevant date, to a person whose employment by the debtor has been terminated, whether before, on or after that date.

11.

So much of any sum owed in respect of money advanced for the purpose as has been applied for the payment of a debt which, if it had not been paid, would have been a debt falling within paragraph 9 or 10.

12.

So much of any amount which—

- (a) is ordered (whether before or after the relevant date) to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985, and
- (b) is so ordered in respect of a default made by the debtor before that date in the discharge of his obligations under that Act,

as does not exceed such amount as may be prescribed by order made by the Secretary of State.

Interpretation for Category 5

13.—

(1) For the purposes of paragraphs 9 to 12, a sum is payable by the debtor to a person by way of remuneration in respect of any period if—

- (a) it is paid as wages or salary (whether payable for time or for piece work or earned wholly or partly by way of commission) in respect of services rendered to the debtor in that period, or
- (b) it is an amount falling within the following sub-paragraph and is payable by the debtor in respect of that period.

[(2) An amount falls within this sub-paragraph if it is—

¹¹²² Words substituted by Pension Schemes Act 1993 c. 48 Sch.8 para.18 (February 7, 1994)

- (a) a guarantee payment under Part III of the Employment Rights Act 1996 (employee without work to do);
- (b) any payment for time off under section 53 (time off to look for work or arrange training) or section 56 (time off for ante-natal care) of that Act or under section 169 of the Trade Union and Labour Relations (Consolidation) Act 1992 (time off for carrying out trade union duties etc.);
- (c) remuneration on suspension on medical grounds, or on maternity grounds, under Part VII of the Employment Rights Act 1996; or
- (d) remuneration under a protective award under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancy dismissal with compensation).

]¹¹²³

14.—

(1) This paragraph relates to a case in which a person's employment has been terminated by or in consequence of his employer going into liquidation or being adjudged bankrupt or (his employer being a company not in liquidation) by or in consequence of—

- (a) a receiver being appointed as mentioned in section 40 of this Act (debenture-holders secured by floating charge), or
- (b) the appointment of a receiver under section 53(6) or 54(5) of this Act (Scottish company with property subject to floating charge), or
- (c) the taking of possession by debenture-holders (so secured), as mentioned in [section 754 of the Companies Act 2006]¹¹²⁴ .

(2) For the purposes of paragraphs 9 to 12, holiday remuneration is deemed to have accrued to that person in respect of any period of employment if, by virtue of his contract of employment or of any enactment that remuneration would have accrued in respect of that period if his employment had continued until he became entitled to be allowed the holiday.

(3) The reference in sub-paragraph (2) to any enactment includes an order or direction made under an enactment.

15.

Without prejudice to paragraphs 13 and 14—

- (a) any remuneration payable by the debtor to a person in respect of a period of holiday or of absence from work through sickness or other good cause is deemed to be wages or (as the case may be) salary in respect of services rendered to the debtor in that period, and
- (b) references here and in those paragraphs to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.

[15A. Category 6: Levies on coal and steel production

Any sums due at the relevant date from the debtor in respect of—

- (a) the levies on the production of coal and steel referred to in Articles 49 and 50 of the E.C.S.C. Treaty, or

¹¹²³ Substituted by Employment Rights Act 1996 c. 18 Sch.1 para.29 (August 22, 1996)

¹¹²⁴ Words substituted subject to savings specified in SI 2008/948 arts 11 and 12 by Companies Act 2006 (Consequential Amendments etc) Order 2008/948 Sch.1(2) para.104 (April 6, 2008)

(b) any surcharge for delay provided for in Article 50(3) of that Treaty and Article 6 of Decision 3/52 of the High Authority of the Coal and Steel Community.

]¹¹²⁵

Orders

16.

An order under paragraph 9 or 12—

- (a) may contain such transitional provisions as may appear to the Secretary of State necessary or expedient;
- (b) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

SCHEDULE 7

INSOLVENCY PRACTITIONERS TRIBUNAL

Section 396

Panels of members

1.—

(1) The Secretary of State shall draw up and from time to time revise—

- (a) a panel of persons who [
 - [(i) satisfy the judicial-appointment eligibility condition on a 5-year basis;]¹¹²⁶
 - (ii) are advocates or solicitors in Scotland of at least [5]¹¹²⁷ years' standing,]¹¹²⁸
 and are nominated for the purpose by the Lord Chancellor or the Lord President of the Court of Session, and
- (b) a panel of persons who are experienced in insolvency matters;

and the members of the Tribunal shall be selected from those panels in accordance with this Schedule.

(2) The power to revise the panels includes power to terminate a person's membership of either of them, and is accordingly to that extent subject to [section 7 of the Tribunals and Inquiries Act 1992]¹¹²⁹ (which makes it necessary to obtain the concurrence of the Lord Chancellor and the Lord President of the Court of Session to dismissals in certain cases).

¹¹²⁵ Sch. 6 Para. 15A inserted by S.I. 1987/2093, reg. 2(1)(3)

¹¹²⁶ Substituted subject to transitional provisions specified in SI 2008/1653 art.3 by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.10(1) para.19(2) (July 21, 2008: substitution has effect subject to transitional provisions specified in SI 2008/1653 art.3)

¹¹²⁷ Word substituted subject to transitional provisions specified in SI 2008/1653 art.3 by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.10(1) para.19(3) (July 21, 2008: substitution has effect subject to transitional provisions specified in SI 2008/1653 art.3)

¹¹²⁸ Words substituted by Courts and Legal Services Act 1990 (c.41), s. 71(2), Sch. 10 para. 67

¹¹²⁹ Words substituted by Tribunals and Inquiries Act 1992 c. 53 Sch.3 para.19 (October 1, 1992)

*Remuneration of members***2.**

The Secretary of State may out of money provided by Parliament pay to members of the Tribunal such remuneration as he may with the approval of the Treasury determine; and such expenses of the Tribunal as the Secretary of State and the Treasury may approve shall be defrayed by the Secretary of State out of money so provided.

*Sittings of Tribunal***3.—**

(1) For the purposes of carrying out their functions in relation to any cases referred to them, the Tribunal may sit either as a single tribunal or in two or more divisions.

(2) The functions of the Tribunal in relation to any case referred to them shall be exercised by three members consisting of—

- (a) a chairman selected by the Secretary of State from the panel drawn up under paragraph 1(1)(a) above, and
- (b) two other members selected by the Secretary of State from the panel drawn up under paragraph 1(1)(b).

*Procedure of Tribunal***4.—**

(1) Any investigation by the Tribunal shall be so conducted as to afford a reasonable opportunity for representations to be made to the Tribunal by or on behalf of the person whose case is the subject of the investigation.

(2) For the purposes of any such investigation, the Tribunal—

- (a) may by summons require any person to attend, at such time and place as is specified in the summons, to give evidence or to produce any books, papers and other records in his possession or under his control which the Tribunal consider it necessary for the purposes of the investigation to examine, and
- (b) may take evidence on oath, and for the purpose administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined;

but no person shall be required, in obedience to such a summons, to go more than ten miles from his place of residence, unless the necessary expenses of his attendance are paid or tendered to him.

(3) Every person who—

- (a) without reasonable excuse fails to attend in obedience to a summons issued under this paragraph, or refuses to give evidence, or
- (b) intentionally alters, suppresses, conceals or destroys or refuses to produce any document which he may be required to produce for the purpose of an investigation by the Tribunal,

is liable to a fine.

(4) Subject to the provisions of this paragraph, the Secretary of State may make rules for regulating the procedure on any investigation by the Tribunal.

(5) In their application to Scotland, sub-paragraph (2) and (3) above have effect as if for any reference to a summons there were substituted a reference to a notice in writing.

SCHEDULE 8

PROVISIONS CAPABLE OF INCLUSION IN COMPANY INSOLVENCY RULES

Section 411

Courts

1.

Provision for supplementing, in relation to the insolvency or winding up of companies, any provision made by or under section 117 of this Act (jurisdiction in relation to winding up).

[2.

(1) Provision for regulating the practice and procedure of any court exercising jurisdiction for the purposes of Parts I to VII of this Act or [the Companies Acts]¹¹³⁰ so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies, being any provision that could be made by rules of court.

(2) Rules made by virtue of this paragraph about the consequence of failure to comply with practice or procedure may, in particular, include provision about the termination of administration.

]¹¹³¹

Notices, etc.

3.

Provision requiring notice of any proceedings in connection with or arising out of the insolvency or winding up of a company to be given or published in the manner prescribed by the rules.

4.

Provision with respect to the form, manner of serving, contents and proof of any petition, application, order, notice, statement or other document required to be presented, made, given, published or prepared under any enactment or subordinate legislation relating to, or to matters connected with or arising out of, the insolvency or winding up of companies.

5.

Provision specifying the persons to whom any notice is to be given.

¹¹³⁰ Words substituted by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007/2194 Sch.4(3) para.44 (October 1, 2007)

¹¹³¹ Existing Sch.8 para.2 renumbered as Sch.8 para.2(1) and Sch.8 para.2(2) is added subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.38(2) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

*Registration of voluntary arrangements***6.**

Provision for the registration of voluntary arrangements approved under Part I of this Act, including provision for the keeping and inspection of a register.

*Provisional liquidator***7.**

Provision as to the manner in which a provisional liquidator appointed under section 135 is to carry out his functions.

*Conduct of insolvency***8.**

Provision with respect to the certification of any person as, and as to the proof that a person is, the liquidator, administrator or administrative receiver of a company.

9.

The following provision with respect to meetings of a company's creditors, contributories or members—

- (a) provision as to the manner of summoning a meeting (including provision as to how any power to require a meeting is to be exercised, provision as to the manner of determining the value of any debt or contribution for the purposes of any such power and provision making the exercise of any such power subject to the deposit of a sum sufficient to cover the expenses likely to be incurred in summoning and holding a meeting);
- (b) provision specifying the time and place at which a meeting may be held and the period of notice required for a meeting;
- (c) provision as to the procedure to be followed at a meeting (including the manner in which decisions may be reached by a meeting and the manner in which the value of any vote at a meeting is to be determined);
- (d) provision for requiring a person who is or has been an officer of the company to attend a meeting;
- (e) provision creating, in the prescribed circumstances, a presumption that a meeting has been duly summoned and held;
- (f) provision as to the manner of proving the decisions of a meeting.

10.—

- (1) Provision as to the functions, membership and proceedings of a committee established under [section 49, 68, 101, 141 or 142 of, or paragraph 57 of Schedule B1 to, this Act]¹¹³² .
- (2) The following provision with respect to the establishment of a committee under section 101, 141 or 142 of this Act, that is to say—

¹¹³² Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.38(3) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

- (a) provision for resolving differences between a meeting of the company's creditors and a meeting of its contributories or members;
- (b) provision authorising the establishment of the committee without a meeting of contributories in a case where a company is being wound up on grounds including its inability to pay its debts; and
- (c) provision modifying the requirements of this Act with respect to the establishment of the committee in a case where a winding-up order has been made immediately upon the discharge of an administration order.

11.

Provision as to the manner in which any requirement that may be imposed on a person under any of Parts I to VII of this Act by the official receiver, the liquidator, administrator or administrative receiver of a company or a special manager appointed under section 177 is to be so imposed.

12.

Provision as to the debts that may be proved in a winding up, as to the manner and conditions of proving a debt and as to the manner and expenses of establishing the value of any debt or security.

13.

Provision with respect to the manner of the distribution of the property of a company that is being wound up, including provision with respect to unclaimed funds and dividends.

14.

Provision which, with or without modifications, applies in relation to the winding up of companies any enactment contained in Parts VIII to XI of this Act or in the Bankruptcy (Scotland) Act 1985.

[14A.

Provision about the application of section 176A of this Act which may include, in particular—

- (a) provision enabling a receiver to institute winding up proceedings;
- (b) provision requiring a receiver to institute winding up proceedings.

¹¹³³

*[Administration]*¹¹³⁴

[14B.

Provision which—

- (a) applies in relation to administration, with or without modifications, a provision of Parts IV to VII of this Act, or
- (b) serves a purpose in relation to administration similar to a purpose that may be served by the rules in relation to winding up by virtue of a provision of this Schedule.

¹¹³³ Added subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.38(4) (September 15, 2003: addition has effect subject to transitional provisions specified in SI 2003/2093 art.3)

¹¹³⁴ Added subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.38(5) (September 15, 2003: addition has effect subject to transitional provisions specified in SI 2003/2093 art.3)

]¹¹³⁵

Financial provisions

15.

Provision as to the amount, or manner of determining the amount, payable to the liquidator, administrator or administrative receiver of a company or a special manager appointed under section 177, by way of remuneration for the carrying out of functions in connection with or arising out of the insolvency or winding up of a company.

16.

Provision with respect to the manner in which moneys received by the liquidator of a company in the course of carrying out his functions as such are to be invested or otherwise handled and with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Services Account.

[16A.

Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.

]¹¹³⁶

17.

Provision as to the fees, costs, charges and other expenses that may be treated as the expenses of a winding up.

18.

Provision as to the fees, costs, charges and other expenses that may be treated as properly incurred by the administrator or administrative receiver of a company.

19.

Provision as to the fees, costs, charges and other expenses that may be incurred for any of the purposes of Part I of this Act or in the administration of any voluntary arrangement approved under that Part.

Information and records

20.

Provision requiring registrars and other officers of courts having jurisdiction in England and Wales in relation to, or to matters connected with or arising out of, the insolvency or winding up of companies—

- (a) to keep books and other records with respect to the exercise of that jurisdiction, and

¹¹³⁵ Added subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.38(5) (September 15, 2003: addition has effect subject to transitional provisions specified in SI 2003/2093 art.3)

¹¹³⁶ Added by Enterprise Act 2002 c. 40 Pt 10 s.271(1) (December 18, 2003 as amended by SI 2003/3340; April 1, 2004 was the date originally appointed by SI 2003/2093)

- (b) to make returns to the Secretary of State of the business of those courts.

21.

Provision requiring a creditor, member or contributory, or such a committee as is mentioned in paragraph 10 above, to be supplied (on payment in prescribed cases of the prescribed fee) with such information and with copies of such documents as may be prescribed.

22.

Provision as to the manner in which public examinations under sections 133 and 134 of this Act and proceedings under sections 236 and 237 are to be conducted, as to the circumstances in which records of such examinations or proceedings are to be made available to prescribed persons and as to the costs of such examinations and proceedings.

23.

Provision imposing requirements with respect to—

- (a) the preparation and keeping by the liquidator, administrator or administrative receiver of a company, or by the supervisor of a voluntary arrangement approved under Part I of this Act, of prescribed books, accounts and other records;
- (b) the production of those books, accounts and records for inspection by prescribed persons;
- (c) the auditing of accounts kept by the liquidator, administrator or administrative receiver of a company, or the supervisor of such a voluntary arrangement; and
- (d) the issue by the administrator or administrative receiver of a company of such a certificate as is mentioned in section 22(3)(b) of the Value Added Tax Act 1983 (refund of tax in cases of bad debts) and the supply of copies of the certificate to creditors of the company.

24.

Provision requiring the person who is the supervisor of a voluntary arrangement approved under Part I, when it appears to him that the voluntary arrangement has been fully implemented and that nothing remains to be done by him under the arrangement—

- (a) to give notice of that fact to persons bound by the voluntary arrangement, and
- (b) to report to those persons on the carrying out of the functions conferred on the supervisor of the arrangement.

25.

Provision as to the manner in which the liquidator of a company is to act in relation to the books, papers and other records of the company, including provision authorising their disposal.

26.

Provision imposing requirements in connection with the carrying out of functions under section 7(3) of the Company Directors Disqualification Act 1986 (including, in particular, requirements with respect to the making of periodic returns).

*General***27.**

Provision conferring power on the Secretary of State [or the Treasury]¹¹³⁷ to make regulations with respect to so much of any matter that may be provided for in the rules as relates to the carrying out of the functions of the liquidator, administrator or administrative receiver of a company.

28.

Provision conferring a discretion on the court.

29.

Provision conferring power on the court to make orders for the purpose of securing compliance with obligations imposed by or under [section 47, 66, 131, 143(2) or 235 of, or paragraph 47 of Schedule B1 to, this Act]¹¹³⁸ or section 7(4) of the Company Directors Disqualification Act 1986.

30.

Provision making non-compliance with any of the rules a criminal offence.

31.

Provision making different provision for different cases or descriptions of cases, including different provisions for different areas.

SCHEDULE 9**PROVISIONS CAPABLE OF INCLUSION IN INDIVIDUAL INSOLVENCY RULES****Section 412***Courts***1.**

Provision with respect to the arrangement and disposition of the business under [Parts 7A to 11]¹¹³⁹ of this Act of courts having jurisdiction for the purpose of those Parts, including provision for the allocation of proceedings under those Parts to particular courts and for the transfer of such proceedings from one court to another.

2.

Provision for enabling a registrar in bankruptcy of the High Court or a registrar of a county court having jurisdiction for the purposes of those Parts to exercise such of the jurisdiction conferred for those purposes on the High Court or, as the case may be, that county court as may be prescribed.

¹¹³⁷ Words inserted by Banking Act 2009 c. 1 Pt 2 s.125(7) (February 17, 2009 for the purpose of enabling subordinate legislation or codes of practice to be made; February 21, 2009 otherwise)

¹¹³⁸ Words substituted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.38(6) (September 15, 2003: substitution has effect subject to transitional provisions specified in SI 2003/2093 art.3)

¹¹³⁹ Words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.14(2) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

3.

Provision for regulating the practice and procedure of any court exercising jurisdiction for the purposes of those Parts, being any provision that could be made by rules of court.

4.

Provision conferring rights of audience, in courts exercising jurisdiction for the purposes of those Parts, on the official receiver and on solicitors.

Notices, etc.

5.

Provision requiring notice of any proceedings under [Parts 7A to 11]¹¹⁴⁰ of this Act or of any matter relating to or arising out of a proposal under Part VIII or a bankruptcy to be given or published in the prescribed manner.

6.

Provision with respect to the form, manner of serving, contents and proof of any petition, application, order, notice, statement or other document required to be presented, made, given, published or prepared under any enactment contained in [Parts 7A to 11]¹¹⁴¹ or subordinate legislation under those Parts or Part XV (including provision requiring prescribed matters to be verified by affidavit).

7.

Provision specifying the persons to whom any notice under Parts VIII to XI is to be given.

[Debt relief orders]¹¹⁴²

[7A

Provision as to the manner in which the official receiver is to carry out his functions under Part 7A.

]¹¹⁴³

[7B

Provision as to the manner in which any requirement that may be imposed by the official receiver on a person under Part 7A is to take effect.

]¹¹⁴⁴

¹¹⁴⁰ Words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.14(3) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹¹⁴¹ Words substituted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.14(4) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹¹⁴² Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.14(5) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹¹⁴³ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.14(5) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹¹⁴⁴ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.14(5) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

[7C

Provision modifying the application of Part 7A in relation to an individual who has died at a time when a moratorium period under a debt relief order applies in relation to him.

]¹¹⁴⁵

*[Debt relief restrictions orders and undertakings]*¹¹⁴⁶

[7D

Provision about debt relief restrictions orders, interim orders and undertakings, including provision about evidence.

]¹¹⁴⁷

*[Register of debt relief orders and debt relief restrictions orders etc]*¹¹⁴⁸

[7E

Provision about the register required to be maintained by section 251W and the information to be contained in it, including provision—

- (a) enabling the amalgamation of the register with another register;
- (b) enabling inspection of the register by the public.

]¹¹⁴⁹

Registration of voluntary arrangements

8.

Provision for the registration of voluntary arrangements approved under Part VIII of this Act, including provision for the keeping and inspection of a register.

*[Official receiver acting on voluntary arrangement]*¹¹⁵⁰

[8A.

Provision about the official receiver acting as nominee or supervisor in relation to a voluntary arrangement under Part VIII of this Act, including—

- (a) provision requiring the official receiver to act in specified circumstances;
- (b) provision about remuneration;

¹¹⁴⁵ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.14(5) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹¹⁴⁶ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.14(5) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹¹⁴⁷ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.14(5) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹¹⁴⁸ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.14(5) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹¹⁴⁹ Added by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.14(5) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹¹⁵⁰ Added by Enterprise Act 2002 c. 40 Sch.23 para.16(2) (April 1, 2004)

- (c) provision prescribing terms or conditions to be treated as forming part of a voluntary arrangement in relation to which the official receiver acts as nominee or supervisor;
- (d) provision enabling those terms or conditions to be varied or excluded, in specified circumstances or subject to specified conditions, by express provision in an arrangement.

]¹¹⁵¹

Interim receiver

9.

Provision as to the manner in which an interim receiver appointed under section 286 is to carry out his functions, including any such provision as is specified in relation to the trustee of a bankrupt's estate in paragraph 21 or 27 below.

Receiver or manager

10.

Provision as to the manner in which the official receiver is to carry out his functions as receiver or manager of a bankrupt's estate under section 287, including any such provision as is specified in relation to the trustee of a bankrupt's estate in paragraph 21 or 27 below.

Administration of individual insolvency

11.

Provision with respect to the certification of the appointment of any person as trustee of a bankrupt's estate and as to the proof of that appointment.

12.

The following provision with respect to meetings of creditors—

- (a) provision as to the manner of summoning a meeting (including provision as to how any power to require a meeting is to be exercised, provision as to the manner of determining the value of any debt for the purposes of any such power and provision making the exercise of any such power subject to the deposit of a sum sufficient to cover the expenses likely to be incurred in summoning and holding a meeting);
- (b) provision specifying the time and place at which a meeting may be held and the period of notice required for a meeting;
- (c) provision as to the procedure to be followed at such a meeting (including the manner in which decisions may be reached by a meeting and the manner in which the value of any vote at a meeting is to be determined);
- (d) provision for requiring a bankrupt or debtor to attend a meeting;
- (e) provision creating, in the prescribed circumstances, a presumption that a meeting has been duly summoned and held; and
- (f) provision as to the manner of proving the decisions of a meeting.

¹¹⁵¹ Added by Enterprise Act 2002 c. 40 Sch.23 para.16(2) (April 1, 2004)

13.

Provision as to the functions, membership and proceedings of a creditors' committee established under section 301.

14.

Provision as to the manner in which any requirement that may be imposed on a person under Parts VIII to XI of this Act by the official receiver, the trustee of a bankrupt's estate or a special manager appointed under section 370 is to be so imposed and, in the case of any requirement imposed under section 305(3) (information etc. to be given by the trustee to the official receiver), provision conferring power on the court to make orders for the purpose of securing compliance with that requirement.

15.

Provision as to the manner in which any requirement imposed by virtue of section 310(3) (compliance with income payments order) is to take effect.

16.

Provision as to the terms and conditions that may be included in a charge under section 313 (dwelling house forming part of bankrupt's estate).

17.

Provision as to the debts that may be proved in any bankruptcy, as to the manner and conditions of proving a debt and as to the manner and expenses of establishing the value of any debt or security.

18.

Provision with respect to the manner of the distribution of a bankrupt's estate, including provision with respect to unclaimed funds and dividends.

19.

Provision modifying the application of Parts VIII to XI of this Act in relation to a debtor or bankrupt who has died.

Financial provisions

20.

Provision as to the amount, or manner of determining the amount, payable to an interim receiver, the trustee of a bankrupt's estate or a special manager appointed under section 370 by way of remuneration for the performance of functions in connection with or arising out of the bankruptcy of any person.

21.

Provision with respect to the manner in which moneys received by the trustee of a bankrupt's estate in the course of carrying out his functions as such are to be [invested or otherwise handled and with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Services Account]¹¹⁵² .

¹¹⁵² Words substituted by Insolvency Act 2000 c. 39 s.13(1) (April 2, 2001)

[21A.

Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.

] ¹¹⁵³

22.

Provision as to the fees, costs, charges and other expenses that may be treated as the expenses of a bankruptcy.

23.

Provision as to the fees, costs, charges and other expenses that may be incurred for any of the purposes of Part VIII of this Act or in the administration of any voluntary arrangement approved under that Part.

Information and records

24.

Provision requiring registrars and other officers of courts having jurisdiction for the purposes of Parts VIII to XI—

- (a) to keep books and other records with respect to the exercise of that jurisdiction and of jurisdiction under the Deeds of Arrangement Act 1914, and
- (b) to make returns to the Secretary of State of the business of those courts.

25.

Provision requiring a creditor or a committee established under section 301 to be supplied (on payment in prescribed cases of the prescribed fee) with such information and with copies of such documents as may be prescribed.

26.

Provision as to the manner in which public examinations under section 290 and proceedings under sections 366 to 368 are to be conducted, as to the circumstances in which records of such examinations and proceedings are to be made available to prescribed persons and as to the costs of such examinations and proceedings.

27.

Provision imposing requirements with respect to—

- (a) the preparation and keeping by the trustee of a bankrupt's estate, or the supervisor of a voluntary arrangement approved under Part VIII, of prescribed books, accounts and other records;
- (b) the production of those books, accounts and records for inspection by prescribed persons; and
- (c) the auditing of accounts kept by the trustee of a bankrupt's estate or the supervisor of such a voluntary arrangement.

¹¹⁵³ Added by Enterprise Act 2002 c. 40 Pt 10 s.271(2) (December 18, 2003 as amended by SI 2003/3340; April 1, 2004 was the date originally appointed by SI 2003/2093)

28.

Provision requiring the person who is the supervisor of a voluntary arrangement approved under Part VIII, when it appears to him that the voluntary arrangement has been fully implemented and that nothing remains to be done by him under it—

- (a) to give notice of that fact to persons bound by the voluntary arrangement, and
- (b) to report to those persons on the carrying out of the functions conferred on the supervisor of it.

29.

Provision as to the manner in which the trustee of a bankrupt's estate is to act in relation to the books, papers and other records of the bankrupt, including provision authorising their disposal.

*[Bankruptcy restrictions orders and undertakings]*¹¹⁵⁴

[29A.

Provision about bankruptcy restrictions orders, interim orders and undertakings, including—

- (a) provision about evidence;
- (b) provision enabling the amalgamation of the register mentioned in paragraph 12 of Schedule 4A with another register;
- (c) provision enabling inspection of that register by the public.

¹¹⁵⁵

General

30.

Provision conferring power on the Secretary of State to make regulations with respect to so much of any matter that may be provided for in the rules as relates to the carrying out of the functions of an interim receiver appointed under section 286, of the official receiver while acting as a receiver or manager under section 287 or of a trustee of a bankrupt's estate.

31.

Provision conferring a discretion on the court.

32.

Provision making non-compliance with any of the rules a criminal offence.

33.

Provision making different provision for different cases, including different provision for different areas.

¹¹⁵⁴ Added by Enterprise Act 2002 c. 40 Sch.23 para.16(3) (April 1, 2004)

¹¹⁵⁵ Added by Enterprise Act 2002 c. 40 Sch.23 para.16(3) (April 1, 2004)

SCHEDULE 10

PUNISHMENT OF OFFENCES UNDER THIS ACT

Section 430

(a)-(b) [...] ¹¹⁵⁶

Section of Act creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
[6A(1). [... 30 31 38(5) 39(2) 43(6) 45(5)	False representation or fraud for purpose of obtaining members' or creditors' approval of proposed voluntary arrangement. Body corporate acting as receiver. [Bankrupt] ¹¹⁵⁹ [or person in respect of whom a debt relief order is made] ¹¹⁶⁰ acting as receiver or manager. Receiver failing to deliver accounts to registrar. Company and others failing to state in correspondence that receiver appointed. Administrative receiver failing to file [copy] ¹¹⁶¹ of order permitting disposal of charged property. Administrative receiver failing to file notice of vacation of office.	1. On indictment. 2. Summary. 1. On indictment. 2. Summary. Summary. Summary. Summary. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both. A fine. The statutory maximum. 2 years or a fine, or both. 6 months or the statutory maximum, or both. One-fifth of the statutory maximum. One-fifth of the statutory maximum. One-fifth of the statutory maximum. One-fifth of the statutory maximum. One-fifth of the statutory maximum.] ¹¹⁵⁷] ...] One-fifth of the statutory maximum. One-fifth of the statutory maximum. One-fiftieth of the statutory maximum. One-fiftieth of the statutory maximum.

¹¹⁵⁶ In Sch.10, the Note by Statute Law (Repeals) Act 1993 c. 50 Sch.1(XIV) para.1 (November 5, 1993)

¹¹⁵⁷ Entry inserted by Insolvency Act 2000 c. 39 Sch.2(I) para.12 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

¹¹⁵⁸ Entries repealed subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.26 para.1 (September 15, 2003: repeal has effect as SI 2003/2093 subject to transitional provisions specified in SI 2003/2093 art.3)

¹¹⁵⁹ Entries repealed by Enterprise Act 2002 c. 40 Sch.26 para.1 (April 1, 2004 as SI 2003/2093)

¹¹⁶⁰ Words inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.15(2) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

¹¹⁶¹ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.80 (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

Section of Act creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
46(4)	Administrative receiver failing to give notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
47(6)	Failure to comply with provisions relating to statement of affairs, where administrative receiver appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
48(8)	Administrative receiver failing to comply with requirements as to his report.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
51(4)	Body corporate or Scottish firm acting as receiver.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
51(5)	Undischarged bankrupt acting as receiver (Scotland).	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
53(2)	Failing to deliver to registrar copy of instrument of appointment of receiver.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
54(3)	Failing to deliver to registrar the court's interlocutor appointing receiver.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
61(7)	Receiver failing to send to registrar certified copy of court order authorising disposal of charged property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
62(5)	Failing to give notice to registrar of cessation or removal of receiver.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
64(2)	Company and others failing to state on correspondence etc. that receiver appointed.	Summary.	One-fifth of the statutory maximum.	
65(4)	Receiver failing to send or publish notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
66(6)	Failing to comply with provisions concerning statement of affairs, where receiver appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
67(8)	Receiver failing to comply with requirements as to his report.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
85(2)	Company failing to give notice in Gazette of resolution for voluntary winding up.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
89(4)	Director making statutory declaration of company's solvency without reasonable grounds for his opinion.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
89(6)	Declaration under section 89 not delivered to registrar within prescribed time.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
93(3)	Liquidator failing to summon general meeting of company at each year's end.	Summary.	One-fifth of the statutory maximum.	
94(4)	Liquidator failing to send to registrar a copy of account of winding up and return of final meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
94(6)	Liquidator failing to call final meeting.	Summary.	One-fifth of the statutory maximum.	
95(8)	Liquidator failing to comply with s. 95, where company insolvent.	Summary.	The statutory maximum.	
98(6)	Company failing to comply with s. 98 in respect of summoning and giving notice of creditors' meeting.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	

Section of Act creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
99(3)	Directors failing to attend and lay statement in prescribed form before creditors' meeting.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
105(3)	Liquidator failing to summon company general meeting and creditors' meeting at each year's end.	Summary.	One-fifth of the statutory maximum.	
106(4)	Liquidator failing to send to registrar account of winding up and return of final meetings.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
106(6)	Liquidator failing to call final meeting of company or creditors.	Summary.	One-fifth of the statutory maximum.	
109(2)	Liquidator failing to publish notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
114(4)	Directors exercising powers in breach of s. 114, where no liquidator.	Summary.	The statutory maximum.	
131(7)	Failing to comply with requirements as to statement of affairs, where liquidator appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
164	Giving, offering etc. corrupt inducement affecting appointment of liquidator.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
166(7)	Liquidator failing to comply with requirements of s. 166 in creditors' voluntary winding up.	Summary.	The statutory maximum.	
188(2)	Default in compliance with s. 188 as to notification that company being wound up.	Summary.	One-fifth of the statutory maximum.	
192(2)	Liquidator failing to notify registrar as to progress of winding up.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
201(4)	Failing to deliver to registrar [copy] ¹¹⁶¹ of court order deferring dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
203(6)	Failing to deliver to registrar copy of directions or result of appeal under s. 203.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
204(7)	Liquidator failing to deliver to registrar copy of court order for early dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
204(8)	Failing to deliver to registrar copy of court order deferring early dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
205(7)	Failing to deliver to registrar copy of Secretary of State's directions or court order deferring dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
206(1)	Fraud etc. in anticipation of winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
206(2)	Privity to fraud in anticipation of winding up; fraud, or privity to fraud, after commencement of winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
206(5)	Knowingly taking in pawn or pledge, or otherwise receiving, company property.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
207	Officer of company entering into transaction in fraud of company's creditors.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	

Section of Act creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
208	Officer of company misconducting himself in course of winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	One-tenth of the statutory maximum.
209	Officer of contributory destroying, falsifying, etc. company's books.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
210	Officer of company making material omission from statement relating to company's affairs.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
211	False representation or fraud for purpose of obtaining creditors' consent to an agreement in connection with winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
216(4)	Contravening restrictions on re-use of name of company in insolvent liquidation.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
235(5)	Failing to co-operate with office-holder.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
[251O(1)]	False representations or omissions in making an application for a debt relief order.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.	
251O(2)(a)	Failing to comply with duty in connection with an application for a debt relief order.	1. On indictment 2. Summary	2 years or a fine, or both. 12 months or the statutory maximum, or both.	
251O(2)(b)	False representations or omissions in connection with duty in relation to an application for a debt relief order.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.	
251O(4)(a)	Failing to comply with duty in connection with a debt relief order.	1. On indictment 2. Summary	2 years or a fine, or both. 12 months or the statutory maximum, or both.	
251O(4)(b)	False representations or omissions in connection with a duty in relation to a debt relief order.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.	
251P(1)	Failing to deliver books, records and papers to official receiver, concealing or destroying them or making false entries in them by person in respect of whom a debt relief order is made.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.	
251P(2)	Person in respect of whom debt relief order is made doing anything falling within paragraphs (c) to (e) of section 251P(1) during the period of 12 months ending with the application date or doing anything falling within paragraphs (b) to (e) of section 251P(1) after that date but before the effective date.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.	
251Q(1)	Fraudulent disposal of property by person in respect of whom a debt relief order is made.	1. On indictment	2 years or a fine, or both.	

¹¹⁶² Entries inserted by Tribunals, Courts and Enforcement Act 2007 c. 15 Sch.20(1) para.15(3) (February 24, 2009: 24 February, 2009 for the purpose of making rules, regulations and orders; 6 April, 2009 otherwise)

Section of Act creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
		2. Summary	12 months or the statutory maximum, or both.	
251R(1)	Disposal of property that is not paid for by person in respect of whom a debt relief order is made.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.	
251R(2)	Obtaining property in respect of which money is owed by a person in respect of whom a debt relief order is made.	1. On indictment 2. Summary	7 years or a fine, or both. 12 months or the statutory maximum, or both.	
251S(1)	Person in respect of whom a debt relief order is made obtaining credit or engaging in business without disclosing his status or name.	1. On indictment 2. Summary	2 years or a fine, or both. 12 months or the statutory maximum, or both.] ¹¹⁶²
[262A(1)	False representation or fraud for purpose of obtaining creditors' approval of proposed voluntary arrangement.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.] ¹¹⁶³
353(1)	Bankrupt failing to disclose property or disposals to official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
354(1)	Bankrupt failing to deliver property to, or concealing property from, official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
354(2)	Bankrupt removing property which he is required to deliver to official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
354(3)	Bankrupt failing to account for loss of substantial part of property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
355(1)	Bankrupt failing to deliver books, papers and records to official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
355(2)	Bankrupt concealing, destroying etc. books, papers or records, or making false entries in them.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
355(3)	Bankrupt disposing of, or altering, books, papers or records relating to his estate or affairs.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
356(1)	Bankrupt making material omission in statement relating to his affairs.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
356(2)	Bankrupt making false statement, or failing to inform trustee, where false debt proved.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
357	Bankrupt fraudulently disposing of property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
358	Bankrupt absconding with property he is required to deliver to official receiver or trustee.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	

¹¹⁶² Entry inserted by Insolvency Act 2000 c. 39 Sch.3 para.16 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

Section of Act creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
359(1)	Bankrupt disposing of property obtained on credit and not paid for.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
359(2)	Obtaining property in respect of which money is owed by a bankrupt.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
360(1)	Bankrupt obtaining credit or engaging in business without disclosing his status or name in which he was made bankrupt.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
360(3)	Person made bankrupt in Scotland or Northern Ireland obtaining credit, etc. in England and Wales.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
[...
...]
389	Acting as insolvency practitioner when not qualified.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	¹¹⁵⁹
429(5)	Contravening s. 429 in respect of disabilities imposed by county court on revocation of administration order.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
[Sch. A1, para. 9(2).	Directors failing to notify nominee of beginning of moratorium.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
Sch. A1, para. 10(3).	Nominee failing to advertise or notify beginning of moratorium.	Summary.	One-fifth of the statutory maximum.	
Sch. A1, para. 11(2).	Nominee failing to advertise or notify end of moratorium.	Summary.	One-fifth of the statutory maximum.	
Sch. A1, para. 16(2).	Company and officers failing to state in correspondence etc. that moratorium in force.	Summary.	One-fifth of the statutory maximum.	
Sch. A1, para. 17(3)(a).	Company obtaining credit without disclosing existence of moratorium.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
Sch. A1, para. 17(3)(b).	Obtaining credit for company without disclosing existence of moratorium.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
Sch. A1, para. 18(3)(a).	Company disposing of property otherwise than in ordinary way of business.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
Sch. A1, para. 18(3)(b).	Authorising or permitting disposal of company property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
Sch. A1, para. 19(3)(a).	Company making payments in respect of liabilities existing before beginning of moratorium.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	

¹¹⁶⁴ Entries inserted by Insolvency Act 2000 c. 39 Sch.1 para.12 (January 1, 2003 subject to transitional provisions specified in SI 2002/2711 arts.3-5)

Section of Act creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
Sch. A1, para. 19(3)(b).	Authorising or permitting such a payment.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
Sch. A1, para. 20(9).	Directors failing to send to registrar [copy] ¹¹⁶¹ of court order permitting disposal of charged property.	Summary.	One-fifth of the statutory maximum.	
Sch. A1, para. 22(1).	Company disposing of charged property.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
Sch. A1, para. 22(2).	Authorising or permitting such a disposal.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
Sch. A1, para. 23(1)(a).	Company entering into market contract, etc.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
Sch. A1, para. 23(1)(b).	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
Sch. A1, para. 25(6).	Nominee failing to give notice of withdrawal of consent to act.	Summary.	One-fifth of the statutory maximum.	
Sch. A1, para. 34(3).	Nominee failing to give notice of extension of moratorium.	Summary.	One-fifth of the statutory maximum.	
Sch. A1, para. 41(2).	Fraud or privity to fraud in anticipation of moratorium.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
Sch. A1, para. 41(3).	Fraud or privity to fraud during moratorium.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
Sch. A1, para. 41(7).	Knowingly taking in pawn or pledge, or otherwise receiving, company property.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
Sch. A1, para. 42(1).	False representation or fraud for purpose of obtaining or extending moratorium.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.] ¹¹⁶⁴
[Sch. B1, para. 18(7).	Making false statement in statutory declaration where administrator appointed by holder of floating charge.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.	
Sch. B1, para. 20.	Holder of floating charge failing to notify administrator or others of commencement of appointment.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.	
Sch. B1, para. 27(4).	Making false statement in statutory declaration where appointment of administrator proposed by company or directors.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.	One-tenth of the statutory maximum.

¹¹⁶⁵ Entries inserted subject to transitional provisions specified in SI 2003/2093 art.3 by Enterprise Act 2002 c. 40 Sch.17 para.39(2) (September 15, 2003: insertion has effect subject to transitional provisions specified in SI 2003/2093 art.3)

Section of Act creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
Sch. B1, para. 29(7).	Making false statement in statutory declaration where administrator appointed by company or directors.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.	
Sch. B1, para. 32.	Company or directors failing to notify administrator or others of commencement of appointment.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.	One-tenth of the statutory maximum.
Sch. B1, para. 45(2).	Administrator, company or officer failing to state in business document that administrator appointed.	Summary.	One-fifth of the statutory maximum.	
Sch. B1, para. 46(9).	Administrator failing to give notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 48(4).	Failing to comply with provisions about statement of affairs where administrator appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
Sch. B1, para. 49(7).	Administrator failing to send out statement of his proposals.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 51(5).	Administrator failing to arrange initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 53(3).	Administrator failing to report decision taken at initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 54(7).	Administrator failing to report decision taken at creditors meeting summoned to consider revised proposal.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 56(2).	Administrator failing to summon creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 71(6).	Administrator failing to file court order enabling disposal of charged property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 72(5).	Administrator failing to file court order enabling disposal of hire-purchase property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 77(3).	Administrator failing to notify Registrar of Companies of automatic end of administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 78(6).	Administrator failing to give notice of extension by consent of term of office.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 80(6).	Administrator failing to give notice of termination of administration where objective achieved.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 84(9).	Administrator failing to comply with provisions where company moves to dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 86(3).	Administrator failing to notify Registrar of Companies where court terminates administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 89(3).	Administrator failing to give notice on ceasing to be qualified.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.] ¹¹⁶⁵
Sch. 7, para. 4(3).	Failure to attend and give evidence to Insolvency Practitioners Tribunal; suppressing, concealing, etc. relevant documents.	Summary.	Level 3 on the standard scale within the meaning given by section 75 of the Criminal Justice Act 1982.	

Amendments Pending

Sch. 10 para. 1: words repealed by Companies Act 1989 c. 40 Sch. 24 para. 1 (date to be appointed: commencement order)

Sch. 10 para. 1: entry inserted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 6(5)(a) (April 6, 2010: insertion has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

Sch. 10 para. 1: entry inserted by Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010/18 art. 6(5)(b) (April 6, 2010: insertion has effect subject to transitional provisions specified in SI 2010/18 art.12(4))

SCHEDULE 11**TRANSITIONAL PROVISIONS AND SAVINGS****Section 437.****PART I****COMPANY INSOLVENCY AND WINDING UP***Administration orders***1.—**

(1) Where any right to appoint an administrative receiver of a company is conferred by any debentures or floating charge created before the appointed day, the conditions precedent to the exercise of that right are deemed to include the presentation of a petition applying for an administration order to be made in relation to the company.

(2) “Administrative receiver” here has the meaning assigned by section 251.

*Receivers and managers (England and Wales)***2.—**

(1) In relation to any receiver or manager of a company's property who was appointed before the appointed day, the new law does not apply, and the relevant provisions of the former law continue to have effect.

(2) “The new law” here means Chapter I of Part III, and Part VI, of this Act; and “the former law” means [the Companies Act 1985]¹¹⁶⁶ and so much of this Act as replaces provisions of that Act (without the amendments in paragraphs 15 to 17 of Schedule 6 to the Insolvency Act 1985, or the associated repeals made by that Act), and any provision of the Insolvency Act 1985 which was in force before the appointed day.

¹¹⁶⁶ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.83 (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

(3) This paragraph is without prejudice to the power conferred by this Act under which rules under section 411 may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to the receiver or manager of a company's property notwithstanding that he was appointed before the coming into force of the rules or section 411.

Receivers (Scotland)

3.—

(1) In relation to any receiver appointed under section 467 of [the Companies Act 1985]¹¹⁶⁷ before the appointed day, the new law does not apply and the relevant provisions of the former law continue to have effect.

(2) “The new law” here means Chapter II of Part III, and Part VI, of this Act; and “the former law” means [the Companies Act 1985]¹¹⁶⁷ and so much of this Act as replaces provisions of that Act (without the amendments in paragraphs 18 to 22 of Schedule 6 to the Insolvency Act 1985 or the associated repeals made by that Act), and any provision of the Insolvency Act 1985 which was in force before the appointed day.

(3) This paragraph is without prejudice to the power conferred by this Act under which rules under section 411 may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to a receiver appointed under section 467 notwithstanding that he was appointed before the coming into force of the rules or section 411.

Winding up already in progress

4.—

(1) In relation to any winding up which has commenced, or is treated as having commenced, before the appointed day, the new law does not apply, and the former law continues to have effect, subject to the following paragraphs.

(2) “The new law” here means any provisions in the first Group of Parts of this Act which replace sections 66 to 87 and 89 to 105 of the Insolvency Act 1985; and “the former law” means Parts XX and XXI of [the Companies Act 1985]¹¹⁶⁸ (without the amendments in paragraphs 23 to 52 of Schedule 6 to the Insolvency Act 1985, or the associated repeals made by that Act).

¹¹⁶⁷ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.83 (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹¹⁶⁸ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.83 (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

*Statement of affairs***5.—**

(1) Where a winding up by the court in England and Wales has commenced, or is treated as having commenced, before the appointed day, the official receiver or (on appeal from a refusal by him) the court may, at any time on or after that day—

- (a) release a person from an obligation imposed on him by or under section 528 of [the Companies Act 1985]¹¹⁶⁹ (statement of affairs), or
- (b) extend the period specified in subsection (6) of that section.

(2) Accordingly, on and after the appointed day, section 528(6) has effect in relation to a winding up to which this paragraph applies with the omission of the words from “or within” onwards.

*Provisions relating to liquidator***6.—**

(1) This paragraph applies as regards the liquidator in the case of a winding up by the court in England and Wales commenced, or treated as having commenced, before the appointed day.

(2) The official receiver may, at any time when he is liquidator of the company, apply to the Secretary of State for the appointment of a liquidator in his (the official receiver's) place; and on any such application the Secretary of State shall either make an appointment or decline to make one.

(3) Where immediately before the appointed day the liquidator of the company has not made an application under section 545 of [the Companies Act 1985]¹¹⁷⁰ (release of liquidators), then—

- (a) except where the Secretary of State otherwise directs, sections 146(1) and (2) and 172(8) of this Act apply, and section 545 does not apply, in relation to any liquidator of that company who holds office on or at any time after the appointed day and is not the official receiver;
- (b) section 146(3) applies in relation to the carrying out at any time after that day by any liquidator of the company of any of his functions; and
- (c) a liquidator in relation to whom section 172(8) has effect by virtue of this paragraph has his release with effect from the time specified in section 174(4)(d) of this Act.

(4) Subsection (6) of section 174 of this Act has effect for the purposes of sub-paragraph (3)(c) above as it has for the purposes of that section, but as if the reference to section 212 were to section 631 of [the Companies Act 1985]¹¹⁷⁰.

(5) The liquidator may employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection; but if he does so employ a solicitor he shall inform the committee of inspection that he has done so.

¹¹⁶⁹ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.83 (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

¹¹⁷⁰ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.83 (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

*Winding up under supervision of the court***7.**

The repeals in Part II of Schedule 10 to the Insolvency Act 1985 of references (in [the Companies Act 1985]¹¹⁷¹ and elsewhere) to a winding up under the supervision of the court do not affect the operation of the enactments in which the references are contained in relation to any case in which an order under section 606 of [the Companies Act 1985]¹¹⁷¹ (power to order winding up under supervision) was made before the appointed day.

*Saving for power to make rules***8.—**

(1) Paragraphs 4 to 7 are without prejudice to the power conferred by this Act under which rules made under section 411 may make transitional provision in connection with the coming into force of those rules.

(2) Such provision may apply those rules in relation to a winding up notwithstanding that the winding up commenced, or is treated as having commenced, before the coming into force of the rules or section 411.

*Setting aside of preferences and other transactions***9.—**

(1) Where a provision in Part VI of this Act applies in relation to a winding up or in relation to a case in which an administration order has been made, a preference given, floating charge created or other transaction entered into before the appointed day shall not be set aside under that provision except to the extent that it could have been set aside under the law in force immediately before that day, assuming for this purpose that any relevant administration order had been a winding-up order.

(2) The references above to setting aside a preference, floating charge or other transaction include the making of an order which varies or reverses any effect of a preference, floating charge or other transaction.

PART II**INDIVIDUAL INSOLVENCY***Bankruptcy (general)***10.—**

(1) Subject to the following provisions of this Part of this Schedule, so much of this Act as replaces Part III of the Insolvency Act 1985 does not apply in relation to any case in which a petition in

¹¹⁷¹ Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.83 (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before the appointed day.

(2) In relation to any such case as is mentioned above, the enactments specified in Schedule 8 to that Act, so far as they relate to bankruptcy, and those specified in Parts III and IV of Schedule 10 to that Act, so far as they so relate, have effect without the amendments and repeals specified in those Schedules.

(3) Where any subordinate legislation made under an enactment referred to in sub-paragraph (2) is in force immediately before the appointed day, that subordinate legislation continues to have effect on and after that day in relation to any such case as is mentioned in sub-paragraph (1).

11.—

(1) In relation to any such case as is mentioned in paragraph 10(1) the references in any enactment or subordinate legislation to a petition, order or other matter which is provided for under the Bankruptcy Act 1914 and corresponds to a petition, order or other matter provided for under provisions of this Act replacing Part III of the Insolvency Act 1985 continue on and after the appointed day to have effect as references to the petition, order or matter provided for by the Act of 1914; but otherwise those references have effect on and after that day as references to the petition, order or matter provided for by those provisions of this Act.

(2) Without prejudice to sub-paragraph (1), in determining for the purposes of section 279 of this Act (period of bankruptcy) or paragraph 13 below whether any person was an undischarged bankrupt at a time before the appointed day, an adjudication in bankruptcy and an annulment of a bankruptcy under the Act of 1914 are to be taken into account in the same way, respectively, as a bankruptcy order under the provisions of this Act replacing Part III of the Insolvency Act 1985 and the annulment under section 282 of this Act of such an order.

12.

Transactions entered into before the appointed day have effect on and after that day as if references to acts of bankruptcy in the provisions for giving effect to those transactions continued to be references to acts of bankruptcy within the meaning of the Bankruptcy Act 1914 but as if such acts included failure to comply with a statutory demand served under section 268 of this Act.

Discharge from old bankruptcy

13.—

(1) Where a person—

(a) was adjudged bankrupt before the appointed day or is adjudged bankrupt on or after that day on a petition presented before that day, and

(b) that person was not an undischarged bankrupt at any time in the period of 15 years ending with the adjudication,

that person is deemed (if not previously discharged) to be discharged from his bankruptcy for the purposes of the Bankruptcy Act 1914 at the end of the discharge period.

(2) Subject to sub-paragraph (3) below, the discharge period for the purposes of this paragraph is—

- (a) in the case of a person adjudged bankrupt before the appointed day, the period of 3 years beginning with that day, and
 - (b) in the case of a person who is adjudged bankrupt on or after that day on a petition presented before that day, the period of 3 years beginning with the date of the adjudication.
- (3) Where the court exercising jurisdiction in relation to a bankruptcy to which this paragraph applies is satisfied, on the application of the official receiver, that the bankrupt has failed, or is failing, to comply with any of his obligations under the Bankruptcy Act 1914, any rules made under that Act or any such rules as are mentioned in paragraph 19(1) below, the court may order that the discharge period shall cease to run for such period, or until the fulfilment of such conditions (including a condition requiring the court to be satisfied as to any matter) as may be specified in the order.

Provisions relating to trustee

14.—

- (1) This paragraph applies as regards the trustee in the case of a person adjudged bankrupt before the appointed day, or adjudged bankrupt on or after that day on a petition presented before that day.
- (2) The official receiver may at any time when he is the trustee of the bankrupt's estate apply to the Secretary of State for the appointment of a person as trustee instead of the official receiver; and on any such application the Secretary of State shall either make an appointment or decline to make one.
- (3) Where on the appointed day the trustee of a bankrupt's estate has not made an application under section 93 of the Bankruptcy Act 1914 (release of trustee), then—
- (a) except where the Secretary of State otherwise directs, sections 298(8), 304 and 331(1) to (3) of this Act apply, and section 93 of the Act of 1914 does not apply, in relation to any trustee of the bankrupt's estate who holds office on or at any time after the appointed day and is not the official receiver;
 - (b) section 331(4) of this Act applies in relation to the carrying out at any time on or after the appointed day by the trustee of the bankrupt's estate of any of his functions; and
 - (c) a trustee in relation to whom section 298(8) of this Act has effect by virtue of this paragraph has his release with effect from the time specified in section 299(3)(d).
- (4) Subsection (5) of section 299 has effect for the purposes of sub-paragraph (3)(c) as it has for the purposes of that section.
- (5) In the application of subsection (3) of section 331 in relation to a case by virtue of this paragraph, the reference in that subsection to section 330(1) has effect as a reference to section 67 of the Bankruptcy Act 1914.
- (6) The trustee of the bankrupt's estate may employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection; but if he does so employ a solicitor, he shall inform the committee of inspection that he has done so.

*Copyright***15.**

Where a person who is adjudged bankrupt on a petition presented on or after the appointed day is liable, by virtue of a transaction entered into before that day, to pay royalties or a share of the profits to any person in respect of any copyright or interest in copyright comprised in the bankrupt's estate, section 60 of the Bankruptcy Act 1914 (limitation on trustee's powers in relation to copyright) applies in relation to the trustee of that estate as it applies in relation to a trustee in bankruptcy under the Act of 1914.

*Second bankruptcy***16.—**

(1) Sections 334 and 335 of this Act apply with the following modifications where the earlier bankruptcy (within the meaning of section 334) is a bankruptcy in relation to which the Act of 1914 applies instead of the second Group of Parts in this Act, that is to say—

(a) references to property vested in the existing trustee under section 307(3) of this Act have effect as references to such property vested in that trustee as was acquired by or devolved on the bankrupt after the commencement (within the meaning of the Act of 1914) of the earlier bankruptcy; and

(b) references to an order under section 310 of this Act have effect as references to an order under section 51 of the Act of 1914.

(2) Section 39 of the Act of 1914 (second bankruptcy) does not apply where a person who is an undischarged bankrupt under that Act is adjudged bankrupt under this Act.

*Setting aside of preferences and other transactions***17.—**

(1) A preference given, assignment made or other transaction entered into before the appointed day shall not be set aside under any of sections 339 to 344 of this Act except to the extent that it could have been set aside under the law in force immediately before that day.

(2) References in sub-paragraph (1) to setting aside a preference, assignment or other transaction include the making of any order which varies or reverses any effect of a preference, assignment or other transaction.

*Bankruptcy offences***18.—**

(1) Where a bankruptcy order is made under this Act on or after the appointed day, a person is not guilty of an offence under Chapter VI of Part IX in respect of anything done before that day; but, notwithstanding the repeal by the Insolvency Act 1985 of the Bankruptcy Act 1914, is guilty of an offence under the Act of 1914 in respect of anything done before the appointed day which would have been an offence under that Act if the making of the bankruptcy order had been the making of a receiving order under that Act.

(2) Subsection (5) of section 350 of this Act applies (instead of sections 157(2), 158(2), 161 and 165 of the Act of 1914) in relation to proceedings for an offence under that Act which are instituted (whether by virtue of sub-paragraph (1) or otherwise) after the appointed day.

Power to make rules

19.—

(1) The preceding provisions of this Part of this Schedule are without prejudice to the power conferred by this Act under which rules under section 412 may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to a bankruptcy notwithstanding that it arose from a petition presented before either the coming into force of the rules or the appointed day.

(2) Rules under section 412 may provide for such notices served before the appointed day as may be prescribed to be treated for the purposes of this Act as statutory demands served under section 268.

PART III

TRANSITIONAL EFFECT OF PART XVI

20.—

(1) A transaction entered into before the appointed day shall not be set aside under Part XVI of this Act except to the extent that it could have been set aside under the law in force immediately before that day.

(2) References above to setting aside a transaction include the making of any order which varies or reverses any effect of a transaction.

PART IV

INSOLVENCY PRACTITIONERS

21.

Where an individual began to act as an insolvency practitioner in relation to any person before the appointed day, nothing in section 390 (2) or (3) prevents that individual from being qualified to act as an insolvency practitioner in relation to that person.

PART V

GENERAL TRANSITIONAL PROVISIONS AND SAVINGS

Interpretation for this Part

22.

In this Part of this Schedule, “the former enactments” means so much of [the Companies Act 1985]¹¹⁷² as is repealed and replaced by this Act, the Insolvency Act 1985 and the other enactments repealed by this Act.

General saving for past acts and events

23.

So far as anything done or treated as done under or for the purposes of any provision of the former enactments could have been done under or for the purposes of the corresponding provision of this Act, it is not invalidated by the repeal of that provision but has effect as if done under or for the purposes of the corresponding provision; and any order, regulation, rule or other instrument made or having effect under any provision of the former enactments shall, insofar as its effect is preserved by this paragraph, be treated for all purposes as made and having effect under the corresponding provision.

Periods of time

24.

Where any period of time specified in a provision of the former enactments is current immediately before the appointed day, this Act has effect as if the corresponding provision had been in force when the period began to run; and (without prejudice to the foregoing) any period of time so specified and current is deemed for the purposes of this Act—

(a) to run from the date or event from which it was running immediately before the appointed day, and

(b) to expire (subject to any provision of this Act for its extension) whenever it would have expired if this Act had not been passed;

and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of such a period as above mentioned shall be under this Act as they were or would have been under the former enactments.

Internal cross-references in this Act

25.

Where in any provision of this Act there is a reference to another such provision, and the first-mentioned provision operates, or is capable of operating, in relation to things done or omitted,

¹¹⁷² Words substituted by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009/1941 Sch.1 para.83 (October 1, 2009: substitution has effect subject to transitional provisions specified in SI 2009/1941 art.8)

or events occurring or not occurring, in the past (including in particular past acts of compliance with any enactment, failures of compliance, contraventions, offences and convictions of offences), the reference to the other provision is to be read as including a reference to the corresponding provision of the former enactments.

Punishment of offences

26.—

(1) Offences committed before the appointed day under any provision of the former enactments may, notwithstanding any repeal by this Act, be prosecuted and punished after that day as if this Act had not passed.

(2) A contravention of any provision of the former enactments committed before the appointed day shall not be visited with any severer punishment under or by virtue of this Act than would have been applicable under that provision at the time of the contravention; but where an offence for the continuance of which a penalty was provided has been committed under any provision of the former enactments, proceedings may be taken under this Act in respect of the continuance of the offence on and after the appointed day in the like manner as if the offence had been committed under the corresponding provision of this Act.

References elsewhere to the former enactments

27.—

(1) A reference in any enactment, instrument or document (whether express or implied, and in whatever phraseology) to a provision of the former enactments (including the corresponding provision of any yet earlier enactment) is to be read, where necessary to retain for the enactment, instrument or document the same force and effect as it would have had but for the passing of this Act, as, or as including, a reference to the corresponding provision by which it is replaced in this Act.

(2) The generality of the preceding sub-paragraph is not affected by any specific conversion of references made by this Act, nor by the inclusion in any provision of this Act of a reference (whether express or implied, and in whatever phraseology) to the provision of the former enactments corresponding to that provision, or to a provision of the former enactments which is replaced by a corresponding provision of this Act.

Saving for power to repeal provisions in section 51

28.

The Secretary of State may by order in a statutory instrument repeal subsections (3) to (5) of section 51 of this Act and the entries in Schedule 10 relating to subsections (4) and (5) of that section.

*Saving for Interpretation Act 1978 ss. 16, 17***29.**

Nothing in this Schedule is to be taken as prejudicing sections 16 and 17 of the Interpretation Act 1978 (savings from, and effect of, repeals); and for the purposes of section 17(2) of that Act (construction of references to enactments repealed and replaced, etc.), so much of section 18 of the Insolvency Act 1985 as is replaced by a provision of this Act is deemed to have been repealed by this Act and not by the Company Directors Disqualification Act 1986.

SCHEDULE 12**ENACTMENTS REPEALED****Section 438**

Chapter	Short title	Extent of repeal
1970 c. 8.	The Insolvency Services (Accounting and Investment) Act 1970.	The whole Act.
1976 c. 60.	The Insolvency Act 1976.	Section 3.
1985 c. 6.	The Companies Act 1985.	In section 463(4), the words “Subject to section 617”. Sections 467 to 485. In section 486, in the definition of “company” the words “other than in Chapter II of this Part”; and the definitions of “instrument of appointment”, “prescribed”, “receiver” and “register of charges”. Sections 488 to 650. Sections 659 to 664. Sections 665 to 674. Section 709(4). Section 710(4). Section 724. Schedule 16. In Schedule 24, the entries relating to section 467; all entries thereafter up to and including section 641(2); and the entry relating to section 710(4).
1985 c. 65.	The Insolvency Act 1985.	Sections 1 to 11. Section 15. Section 17. Section 19. Sections 20 to 107. Section 108(1) and (3) to (7). Sections 109 to 211. Sections 212 to 214. Section 216. Section 217(1) to (3). Sections 221 to 234. In section 235, subsections (2) to (5). In section 236, subsections (3) to (5). In Schedule 1, paragraphs 1 to 4, and sub-paragraph (4) of paragraph 5. Schedules 3 to 5.

Chapter	Short title	Extent of repeal
		In Schedule 6, paragraphs 5, 6, 9, 15 to 17, 20 to 22, 25 to 44 and 48 to 52. Schedule 7. In Schedule 9, paragraphs 1 and 4 to 24. Schedule 10.
1985 c. 66.	The Bankruptcy (Scotland) Act 1985.	In Schedule 7, paragraphs 19 to 22
1986 c. 44.	The Gas Act 1986.	In Schedule 7, paragraph 31.

SCHEDULE 13

CONSEQUENTIAL AMENDMENTS OF COMPANIES ACT 1985

Section 439(1)

PART I

INTERNAL AND OTHER SECTION REFERENCES AMENDED OR RE-AMENDED

Section of Act	Consequential amendment or re-amendment
[...]	...
...	...
...	...
...	...
...	...] ¹¹⁷³
Section 153(3)	In paragraph (f), for “section 582” substitute “section 110 of the Insolvency Act”. In paragraph (g), for “Chapter II of Part II of the Insolvency Act 1985” substitute “Part I of the Insolvency Act”.
Section 156(3)	For “section 517” substitute “section 122 of the Insolvency Act”.
[...]	...] ¹¹⁷³
[...]	...
...	...
...	...] ¹¹⁷⁴
[...]	...] ¹¹⁷⁵
Section 441(1)	For “section 13 of the Insolvency Act 1985” substitute “section 8 of the Company Directors Disqualification Act 1986”.

¹¹⁷³ Repealed by Companies Act 2006 c. 46 Sch.16 para.1 (October 1, 2009 as SI 2008/2860)

¹¹⁷⁴ Repealed, subject to savings and transitional provisions specified in SI 2007/3495 arts 9, 12 and Sch.4, by Companies Act 2006 c. 46 Sch.16 para.1 (April 6, 2008: repeal has effect subject to savings and transitional provisions specified in SI 2007/3495 arts 9, 12 and Sch.4)

¹¹⁷⁵ Entries repealed subject to savings and transitional provisions specified in SI 2007/2194 art.9 and Sch.3 para.50 by Companies Act 2006 c. 46 Sch.16 para.1 (October 1, 2007: repealed subject to savings and transitional provisions specified in SI 2007/2194 art.9 and Sch.3 para.50)

Section of Act	Consequential amendment or re-amendment
[...]	...] ¹¹⁷⁶
[...]	...] ¹¹⁷⁵
Section 462(5)	After “this Part” insert “and Part III of the Insolvency Act 1986”.
Section 463(2)	For “Part XX (except section 623(4))” substitute “Part IV of the Insolvency Act (except section 185)”.
Section 463(3)	For this subsection substitute— “(3) Nothing in this section derogates from the provisions of sections 53(7) and 54(6) of the Insolvency Act (attachment of floating charge on appointment of receiver), or prejudices the operation of sections 175 and 176 of that Act (payment of preferential debts in winding up)”.
Section 464(6)	For “section 89 of the Insolvency Act 1985” substitute “sections 175 and 176 of the Insolvency Act”.
[...]	...
...	...] ¹¹⁷³
[...]	...] ¹¹⁷⁷
Section 733	In subsection (1), omit “295(7)”.
	[...] ¹¹⁷⁸

Amendments Pending

Sch. 13(I) para. 1: entries repealed by Companies Act 2006 c. 46 Sch. 16 para. 1 (date to be appointed)

PART II

AMENDMENT OF PART XXVI (INTERPRETATION)

In Part XXVI of the Companies Act, after section 735, insert the following section—

“735A.— Relationship of this Act to Insolvency Act.

(1) In this Act “the Insolvency Act” means the Insolvency Act 1986; and in the following provisions of this Act, namely, sections 375(1)(b), 425(6)(a), 440, 449(1)(a) and (d), 460(2), 675, 676, 677, 699(1), 728 and Schedule 21, paragraph 6(1), the words “this Act” are to be read as including Parts I to VII of that Act, sections 411, 413, 414, 416 and 417 in Part XV of that Act, and also the Company Directors Disqualification Act 1986.

(2) In sections 704(5), 706(1), 707(1), 708(1)(a) and (4), 710(5), 713(1), 729 and 732(3) references to the Companies Acts include Parts I to VII of the Insolvency Act, sections 411,

¹¹⁷⁶ Entry repealed by Companies (Audit, Investigations and Community Enterprise) Act 2004 c. 27 Sch.8 para.1 (April 6, 2005 as SI 2004/3322)

¹¹⁷⁷ Entry repealed by Companies Act 2006 c. 46 Sch.16 para.1 (January 1, 2007 as SI 2006/3428)

¹¹⁷⁸ Entry repealed by Companies Act 1989 (c.40), ss. 212, 213(2), Sch. 24

413, 414, 416 and 417 in Part XV of that Act, and also the Company Directors Disqualification Act 1986.

(3) Subsections (1) and (2) apply unless the contrary intention appears.”

SCHEDULE 14

CONSEQUENTIAL AMENDMENTS OF OTHER ENACTMENTS

Section 439(2)

Enactment	Amendment
Deeds of Arrangement Act 1914 c. 47:	
Section 3(1)	For “Part III of the Insolvency Act 1985” substitute “Parts VIII to XI of the Insolvency Act 1986”.
Section 3(4)	The same amendment.
Section 11(1) and (2)	In each subsection, the same amendment.
Section 15(1)	For “section 207 of the Insolvency Act 1985” substitute “section 412 of the Insolvency Act 1986”.
Section 16	The same amendment as of section 3(1).
Section 23	The same amendment.
Section 30(1)	For the definition of “property” substitute— “‘property’ has the meaning given by section 436 of the Insolvency Act 1986”.
Law of Property Act 1925 c. 20:	
Section 52(2)(b)	For “section 91 or 161 of the Insolvency Act 1985” substitute “sections 178 to 180 or sections 315 to 319 of the Insolvency Act 1986”.
[...]	...] ¹¹⁷⁹
Section 42(2)	For “section 161 of the Insolvency Act 1985” substitute “sections 315 to 319 of the Insolvency Act 1986”.
[...] ¹¹⁸⁰	[...] ¹¹⁸⁰
Third Parties (Rights against Insurers) Act 1930 c. 25:	
Section 1	In subsection (1)(b), for the words from “a composition” to “that Chapter” substitute “a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 being approved under that Part”. In subsection (2), for “228 of the Insolvency Act 1985” substitute “421 of the Insolvency Act 1986”. In subsection (3), the same amendment.
Section 2	In subsection (1), the same amendment as of section 1(2). In subsection (1A), for the words from “composition or scheme” to the end of the subsection substitute “voluntary arrangement proposed for the purposes of, and approved under, Part I or Part VIII of the Insolvency Act 1986”.
Section 4	In paragraph (b), the same amendment as of section 1(2).

¹¹⁷⁹ Entry repealed by Land Registration Act 2002 c. 9 Sch.13 para.1 (October 13, 2003)

Enactment	Amendment
[...] ¹¹⁸¹	[...] ¹¹⁸¹
[...]	...
...	...] ¹¹⁸²
Agricultural Marketing Act 1958 c. 47:	
Schedule 2	For paragraph 4 substitute—
	“4.—
	(1) A scheme shall provide for the winding up of the board, and for that purpose may apply Part V of the Insolvency Act 1986 (winding up of unregistered companies), subject to the following modifications.
	(2) For the purposes of sections 221, 222 and 224 of the Act of 1986, the principal place of business of the board is deemed to be the office of the board the address of which is registered by the Minister under paragraph 3 above.
	(3) Section 223 does not apply.
	(4) Section 224 applies as if the words “or any member of it as such” were omitted.
	(5) A petition for winding up the board may be presented by the Minister as well as by any person authorised under Part IV of the Insolvency Act 1986 to present a petition for winding up a company”.
Charities Act 1960 c. 58:	
Section 30(1)	For “Companies Act 1985” substitute “Insolvency Act 1986”.
[...]	...
...	...
...	...] ¹¹⁸³
Industrial and Provident Societies Act 1965 c.12:	
Section 55	For “Companies Act 1985” substitute “Insolvency Act 1986”.
Medicines Act 1968 (c. 67):	
Section 72(4)	For the words from “composition or scheme” to the end of the subsection substitute “voluntary arrangement proposed for the purposes of, and approved under, Part VIII of the Insolvency Act 1986”.
[...] ¹¹⁸⁴	[...] ¹¹⁸⁴
Conveyancing and Feudal Reform (Scotland) Act 1970 c. 35:	

¹¹⁸¹ Entry repealed by Finance Act 1987 (c.16), s. 72, Sch. 16 Pt. XI

¹¹⁸² Entry repealed by Arbitration Act 1996 c. 23 Sch.4 para.1 (January 31, 1997 as SI 1996/3146)

¹¹⁸³ Entries repealed by Licensing Act 2003 c. 17 Sch.7 para.1 (November 24, 2005 as SI 2005/3056)

¹¹⁸⁴ Entry repealed by Income and Corporation Taxes Act 1988 (c.1), s. 844, Sch. 31

Enactment	Amendment
Schedule 3	In Standard Condition 9(2)(b), for “228 of the Insolvency Act 1985” substitute “421 of the Insolvency Act 1986”.
[...]	...
...	...
...	...
Superannuation Act 1972 c. 11:	
Section 5(2)	For “156 of the Insolvency Act 1985” substitute “310 of the Insolvency Act 1986”; and for “the said section 156” substitute “the said section 310”.
[...] ¹¹⁸⁶	[...] ¹¹⁸⁶
[...] ¹¹⁸⁴	[...] ¹¹⁸⁴
Land Charges Act 1972 c. 61:	
Section 16(2)	For “207 of the Insolvency Act 1985” substitute “412 of the Insolvency Act 1986”; and for “Part III” substitute “Parts VIII to XI”.
Matrimonial Causes Act 1973 c. 18:	
Section 39	For “section 174 of the Insolvency Act 1985” substitute “section 339 or 340 of the Insolvency Act 1986”.
Powers of Criminal Courts Act 1973 c. 62:	
Section 39(3)	In paragraph (d), for “174(10) of the Insolvency Act 1985” substitute “341(4) of the Insolvency Act 1986”.
Friendly Societies Act 1974 c. 46:	
Section 87(2)	For “Companies Act 1985” substitute “Insolvency Act 1986”.
[...]	...
...	...
...	...
...	...
...	[...] ¹¹⁸⁷
Recess Elections Act 1975 c. 66:	
Section 1(2)	In the definition of “certificate of vacancy”, for “214(6)(a) of the Insolvency Act 1985” substitute “427(6)(a) of the Insolvency Act 1986”.
Policyholders Protection Act 1975 c. 75:	
Section 5(1)(a)	For “Companies Act 1985” substitute “Insolvency Act 1986”.
Section 15(1)	For “532 of the Companies Act 1985” substitute “135 of the Insolvency Act 1986”.

¹¹⁸⁵ Words repealed by Tribunals and Inquiries Act 1992 c. 53 Sch.4(I) para.1 (October 1, 1992)

¹¹⁸⁶ Entry repealed by Road Traffic (Consequential Provisions) Act 1988 (c.54), ss. 3, 5, Sch. 1 Pt. I, Sch. 4 paras. 1, 2

¹¹⁸⁷ The entries relating to the Social Security Pensions Act by Pension Schemes Act 1993 c. 48 Sch.5(I) para.1 (February 7, 1994)

Enactment	Amendment
Section 16(1)(b)	The same amendment as of section 5(1)(a).
Development Land Tax Act 1976 c. 24:	
Section 33(1)	For “538 of the Companies Act 1985” substitute “145 of the Insolvency Act 1986”.
Restrictive Trade Practices Act 1976 c. 34:	
Schedule 1	For paragraph 9A (inserted by Insolvency Act 1985, section 217(4)) substitute—
	“9A.
	Insolvency services within the meaning of section 428 of the Insolvency Act 1986”.
[...	...
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...	...] ¹¹⁸⁸
Credit Unions Act 1979 c. 34:	
Section 6(1)	For “517(1)(e) of the Companies Act 1985” substitute “122(1)(e) of the Insolvency Act 1986”; and for “517(1)(e) of the Act of 1985” substitute “122(1)(e) of the Act of 1986”.
Banking Act 1979 c. 37:	
Section 6(3)	In paragraph (b), for “Part XXI of the Companies Act 1985” substitute “Part V of the Insolvency Act 1986”.
Section 18	In subsection (1), for “Companies Act 1985” substitute “Insolvency Act 1986”; and in paragraph (a) of the subsection for “518” substitute “123”. In subsection (2), for “Companies Act 1985” substitute “Insolvency Act 1986”; and for “Part XXI” substitute “Part V”. In subsection (4)— in paragraph (a), for “Companies Act 1985” substitute “Insolvency Act 1986”; in paragraph (b), for “518 of the said Act of 1985” substitute “123 of the said Act of 1986” and in paragraph (c), for “Part XXI of the said Act of 1985” substitute “Part V of the said Act of 1986”.
Section 19	In subsection (2), for paragraph (ba) substitute— “(ba) in connection with any proceedings under any provision of— (i) Part XVIII or XX of the Companies Act 1985, or

¹¹⁸⁸ Entries relating to the Employment Protection (Consolidation) Act 1978 repealed by Employment Rights Act 1996 c. 18 Sch.3(I) para.1 (August 22, 1996)

Enactment	Amendment
Section 28	<p>(ii) Parts I to VII of the Insolvency Act 1986 (other than sections 236 and 237)</p> <p>In subsection (8), for paragraph (a) and (aa) substitute—</p> <p>“(a) for the references in subsection (2) to Part XVIII or XX of the Companies Act 1985 and Parts I to VII of the Insolvency Act 1986, there shall be substituted references to Parts V, VI and IX of the Companies Act (Northern Ireland) 1960 (the reference to sections 236 and 237 of the Act of 1986 being disregarded)”.</p> <p>In subsection (3), in paragraph (c), for “83 of the Insolvency Act 1985” substitute “95 of the Insolvency Act 1986”.</p> <p>In subsection (4), in paragraph (a), for “Part XXI of the Companies Act 1985” substitute “Part V of the Insolvency Act 1986”.</p> <p>In subsection (6)(b), for sub-paragraphs (ii) to (iv) substitute—</p> <p>“(ii) to be a member of a liquidation committee established under Part IV or V of the Insolvency Act 1986;</p> <p>(iii) to be a member of a creditors committee appointed under section 301 of that Act; and</p> <p>(iv) to be a commissioner under section 30 of the Bankruptcy (Scotland) Act 1985”;</p> <p>(v) to be a member of a committee of inspection appointed for the purposes of Part V or Part IX of the Companies Act (Northern Ireland) 1960;</p> <p>and (in the passage following sub-paragraph (iv)) for “such a committee as is mentioned in paragraph (b)(ii) or (iv) above” substitute “a liquidation committee, creditors’ committee or committee of inspection”.</p> <p>In subsection (7), in paragraph (b), for the words from “section 116(4)” to the end of the paragraph substitute “section 261(1) of the Insolvency Act 1986 to any person in whom the property of the firm is vested under section 282(4) of that Act”.</p>
Section 31(7)	<p>For paragraph (a) substitute—</p> <p>“(a) for England and Wales, under sections 411 and 412 of the Insolvency Act 1986”;</p> <p>and in paragraph (b) for “the said section 106” substitute “section 411 of that Act”.</p>
British Aerospace Act 1980 c. 26:	
Section 9(1)	In paragraph (a), for “Companies Act 1985” substitute “Insolvency Act 1986”.
Public Passenger Vehicles Act 1981 c. 14:	
Section 19(3)	In paragraph (a), for “Chapter III of Part II of the Insolvency Act 1985” substitute “Part II of the Insolvency Act 1986”.
[...] ¹¹⁸⁴	[...] ¹¹⁸⁴
[Senior Courts Act 1981 c.54] ¹¹⁸⁹ :	

¹¹⁸⁹ Words substituted by Constitutional Reform Act 2005 c. 4 Sch.11(1) para.1(2) (October 1, 2009)

Enactment	Amendment
Section 40A(2)	For “section 179 of the Insolvency Act 1985” substitute “section 346 of the Insolvency Act 1986”; and for “621 of the Companies Act 1985” substitute “183 of the Insolvency Act 1986”.
Trustee Savings Banks Act 1981 c.65:	
Section 31	In paragraph (b), for “666 to 669 of the Companies Act 1985” substitute “221 to 224 of the Insolvency Act 1986”.
Section 54(2)	For “666(6) of the Companies Act 1985” substitute “221(6) of the Insolvency Act 1986”.
Iron and Steel Act 1982 c. 25:	
Schedule 4	In paragraph 3(3) after “Companies Act 1985” insert “or the Insolvency Act 1986”.
Civil Jurisdiction and Judgments Act 1982 c.27:	
Section 18(3)	In paragraph (ba), for “213 of the Insolvency Act 1985” substitute “426 of the Insolvency Act 1986”.
Schedule 5	In paragraph (1), for “Companies Act 1985” substitute “Insolvency Act 1986”.
Insurance Companies Act 1982 c.50:	
Section 53	For “Companies Act” (the first time) substitute “Insolvency Act 1986”; and for “Companies Act” (the second time) substitute “that Act of 1986”.
Section 54	In subsection (1), for “the Companies Act” (the first time) substitute “Part IV or V of the Insolvency Act 1986”; and in paragraph (a), for “518 or sections 667 to 669” substitute “123 or section 222 to 224”. In subsection (4) for “Companies Act” (the first time) substitute “Insolvency Act 1986”.
Section 55	In subsection (5), for “subsection (3) of section 540 of the Companies Act” substitute “section 168(2) of the Insolvency Act 1986”. In subsection (6), for “631 of the Companies Act” substitute “212 of the Insolvency Act 1986”.
Section 56	In subsection (4), for “Section 90(5) of the Insolvency Act 1985” substitute “Section 177(5) of the Insolvency Act 1986”; and for “section 90 of the said Act of 1985” substitute “section 177 of the said Act of 1986”. In subsection (7), for “section 539(1) of the Companies Act” substitute “section 167 of, and Schedule 4 to, the Insolvency Act 1986”.
Section 59	In subsection (1), for “106 of the Insolvency Act 1985” substitute “411 of the Insolvency Act 1986”. In subsection (2), for “106 of the Insolvency Act 1985” substitute “411 of the Insolvency Act 1986”; and for “section 89 of, and Schedule 4 to, the Insolvency Act 1985” substitute “sections 175 and 176 of, and Schedule 6 to, the Insolvency Act 1986”.
Section 96(1)	In the definition of “insolvent”, for “517 and 518 or section 666 of the Companies Act” substitute “122 and 123 or section 221 of the Insolvency Act 1986”.
[...] ¹¹⁸⁴	[...] ¹¹⁸⁴
Telecommunications Act 1984 c.12:	
Section 68(1)	In paragraph (a), for “Companies Act 1985” substitute “Insolvency Act 1986”.
Country Courts Act 1984 c. 28:	
Section 98	For subsection (3) substitute— “(3)

Enactment	Amendment
Section 102	The provisions of this section have effect subject to those of sections 183, 184 and 346 of the Insolvency Act 1986". For subsection (8) substitute— “(8) Nothing in this section affects section 346 of the Insolvency Act 1986”.
Section 109(2)	For “179 of the Insolvency Act 1985” substitute “346 of the Insolvency Act 1986”.
Finance Act 1985 c. 54:	
Section 79	Omit the word “altogether”; and after “Companies Act 1985” insert “sections 110 and 111 of the Insolvency Act 1986”.
Housing Act 1985 c.68:	
Schedule 18	In paragraphs 3(4) and 5(3), for “228 of the Insolvency Act 1985” substitute “421 of the Insolvency Act 1986”.

Commencement

Sch. 14 para. 1: June 1, 1991 represents law in force excluding amendments between December 29, 1986 and June 1, 1991

Amendments Pending

Sch. 14 para. 1: entries repealed by Third Parties (Rights against Insurers) Act 2010 c. 10 Sch. 4 para. 1 (date to be appointed)

TABLE OF DERIVATIONS

Provision	Derivation
1	The Insolvency Act 1985 (c. 65)s. 20.
2	The Insolvency Act 1985 (c. 65)s. 21.
3	The Insolvency Act 1985 (c. 65)s. 22.
4	The Insolvency Act 1985 (c. 65) s. 23(1)-(6), (7) (part).
5	The Insolvency Act 1985 (c. 65)s. 24.
6	The Insolvency Act 1985 (c. 65)s. 26.
8	The Insolvency Act 1985 (c. 65)s. 27.
9	The Insolvency Act 1985 (c. 65)s. 28.
10	The Insolvency Act 1985 (c. 65)s. 29.
11	The Insolvency Act 1985 (c. 65)s. 30.
12	The Insolvency Act 1985 (c. 65)s. 31.
13	The Insolvency Act 1985 (c. 65) s. 32.
14	The Insolvency Act 1985 (c. 65)s. 33.
15	The Insolvency Act 1985 (c. 65) s. 34(1)-(8), (12).
16	The Insolvency Act 1985 (c. 65) s. 34(9), (10).
17	The Insolvency Act 1985 (c. 65) s. 35.
18	The Insolvency Act 1985 (c. 65)s. 36.
19	The Insolvency Act 1985 (c. 65) s. 37(1)-(3).

Provision	Derivation
20	The Insolvency Act 1985 (c. 65) s. 37(4), (5).
21	The Insolvency Act 1985 (c. 65)s. 38.
22	The Insolvency Act 1985 (c. 65)s. 39.
23	The Insolvency Act 1985 (c. 65)s. 40.
24	The Insolvency Act 1985 (c. 65)s. 41.
25	The Insolvency Act 1985 (c. 65)s. 42.
26	The Insolvency Act 1985 (c. 65)s. 43.
27	The Insolvency Act 1985 (c. 65) ss. 34(11), 44.
28	The Companies Act 1985 (c. 6)s. 488; The Insolvency Act 1985 (c. 65) s. 45(1).
29	The Companies Act 1985 (c. 6)s. 500; The Insolvency Act 1985 (c. 65)s. 45(2).
30	The Companies Act 1985 (c. 6)s. 489.
31	The Companies Act 1985 (c. 6)s. 490.
32	The Companies Act 1985 (c. 6)s. 491.
33	The Insolvency Act 1985 (c. 65)s. 46.
34	The Insolvency Act 1985 (c. 65)s. 47.
35	The Companies Act 1985 (c. 6), s. 492(1), (2); The Insolvency Act 1985 (c. 65) Sch. 6 para. 16(2).
36	The Companies Act 1985 (c. 6)s. 494.
37	The Companies Act 1985 (c. 6)s. 492(3); The Insolvency Act 1985 (c. 65)Sch. 6 para. 16(3), (4).
38	The Companies Act 1985 (c. 6)s. 498; The Insolvency Act 1985 (c. 65)Sch. 6 para. 17.
39	The Companies Act 1985 (c. 6)s. 493.
40	The Companies Act 1985 (c. 6)s. 196 ; The Insolvency Act 1985 (c. 65) Sch. 6 para. 15(2), (3).
41	The Companies Act 1985 (c. 6)s. 499.
42	The Insolvency Act 1985 (c. 65)s. 48.
43	The Insolvency Act 1985 (c. 65)s. 49.
44	The Insolvency Act 1985 (c. 65)s. 50.
45	The Insolvency Act 1985 (c. 65)s. 51.
46	The Insolvency Act 1985 (c. 65)s. 52.
47	The Insolvency Act 1985 (c. 65)s. 53.
48	The Insolvency Act 1985 (c. 65)s. 54.
49	The Insolvency Act 1985 (c. 65)s. 55.
50	The Companies Act 1985 (c. 6)s. 487.
51	The Companies Act 1985 (c. 6)s. 467.
52	The Companies Act 1985 (c. 6)s. 468.
53	The Companies Act 1985 (c. 6)s. 469; The Insolvency Act 1985 (c. 65)s. 56 (part).
54	The Companies Act 1985 (c. 6)s. 470.
55	The Companies Act 1985 (c. 6)s. 471; The Insolvency Act 1985 (c. 65)s. 57.
56	The Companies Act 1985 (c. 6)s. 472.
57	The Companies Act 1985 (c. 6)s. 473; The Insolvency Act 1985 (c. 65)s. 58.
58	The Companies Act 1985 (c. 6)s. 474.
59	The Companies Act 1985 (c. 6)s. 475; The Insolvency Act 1985 (c. 65) Sch. 6 para. 20(2).

Provision	Derivation
60	The Companies Act 1985 (c. 6)s. 476; The Insolvency Act 1985 (c. 65)Sch. 6 para. 21.
61	The Companies Act 1985 (c. 6)s. 477; The Insolvency Act 1985 (c. 65)s. 59.
62	The Companies Act 1985 (c. 6)s. 478; The Insolvency Act 1985 (c. 65)s. 60, Sch. 6 para. 13.
63	The Companies Act 1985 (c. 6)s. 479; The Insolvency Act 1985 (c. 65)s. 61.
64	The Companies Act 1985 (c. 6)s. 480.
65	The Companies Act 1985 (c. 6)s. 481; The Insolvency Act 1985 (c. 65)s. 62.
66	The Companies Act 1985 (c. 6)s. 482; The Insolvency Act 1985 (c. 65)s. 63.
67	The Companies Act 1985 (c. 6) s. 482A; The Insolvency Act 1985 (c. 65)s. 64.
68	The Companies Act 1985 (c. 6) s. 482B; The Insolvency Act 1985 (c. 65)s. 65.
69	The Companies Act 1985 (c. 6)s. 483.
70	The Companies Act 1985 (c. 6)ss. 462(4), 484, 486 (part).
71	The Companies Act 1985 (c. 6)s. 485.
72	The Companies Act 1985 (c. 6)s. 724.
73	The Companies Act 1985 (c. 6)s. 501.
74	The Companies Act 1985 (c. 6)s. 502.
75	The Companies Act 1985 (c. 6)s. 503.
76	The Companies Act 1985 (c. 6)s. 504.
77	The Companies Act 1985 (c. 6)s. 505.
78	The Companies Act 1985 (c. 6)s. 506.
79	The Companies Act 1985 (c. 6)s. 507; The Insolvency Act 1985 (c. 65)Sch. 6 para. 5.
80	The Companies Act 1985 (c. 6)s. 508.
81	The Companies Act 1985 (c. 6)s. 509.
82	The Companies Act 1985 (c. 6)s. 510.
83	The Companies Act 1985 (c. 6)s. 511.
84	The Companies Act 1985 (c. 6)s. 572.
85	The Companies Act 1985 (c. 6)s. 573.
86	The Companies Act 1985 (c. 6)s. 574.
87	The Companies Act 1985 (c. 6)s. 575.
88	The Companies Act 1985 (c. 6)s. 576.
89	The Companies Act 1985 (c. 6)s. 577; The Insolvency Act 1985 (c. 65)Sch. 6 para. 35.
90	The Companies Act 1985 (c. 6)s. 578.
91	The Companies Act 1985 (c. 6)s. 580.
92	The Companies Act 1985 (c. 6)s. 581.
93	The Companies Act 1985 (c. 6)s. 584; The Insolvency Act 1985 (c. 65)Sch. 6 para. 36.
94	The Companies Act 1985 (c. 6) s. 585(1)-(4), (7).
95	The Insolvency Act 1985 (c. 65) s. 83(1)-(6), (9), (10).
96	The Insolvency Act 1985 (c. 65) s. 83(7) (part).
97	The Companies Act 1985 (c. 6)s. 587; The Insolvency Act 1985 (c. 65) s. 85(1).
98	The Insolvency Act 1985 (c. 65) s. 85(2), (3), (6)-(8), (9)(a), (10).
99	The Insolvency Act 1985 (c. 65) s. 85(4), (5), (9)(b), (c), (10).

Provision	Derivation
100	The Companies Act 1985 (c. 6)s. 589; The Insolvency Act 1985 (c. 65) Sch. 6 para. 37(1), (2).
101	The Companies Act 1985 (c. 6)s. 590; The Insolvency Act 1985 (c. 65) Sch. 6 para. 38(2)-(4).
102	The Insolvency Act 1985 (c. 65) s. 83(7) (part).
103	The Companies Act 1985 (c. 6)s. 591; The Insolvency Act 1985 (c. 65)Sch. 6 para. 39.
104	The Companies Act 1985 (c. 6)s. 592.
105	The Companies Act 1985 (c. 6)s. 594; The Insolvency Act 1985 (c. 65) s. 83(8).
106	The Companies Act 1985 (c. 6) s. 595(1)-(5), (8).
107	The Companies Act 1985 (c. 6)s. 597.
108	The Companies Act 1985 (c. 6)s. 599.
109	The Companies Act 1985 (c. 6)s. 600.
110	The Companies Act 1985 (c. 6) ss. 582(1)-(4), (7), 593; The Insolvency Act 1985 (c. 65)Sch. 6 para. 40.
111	The Companies Act 1985 (c. 6) s. 582(5), (6), (8).
112	The Companies Act 1985 (c. 6)s. 602.
113	The Companies Act 1985 (c. 6)s. 603.
114	The Insolvency Act 1985 (c. 65)s. 82.
115	The Companies Act 1985 (c. 6)s. 604.
116	The Companies Act 1985 (c. 6)s. 605.
117	The Companies Act 1985 (c. 6)s. 512; The Insolvency Act 1985 (c. 65)Sch. 6 paras. 25, 26.
118	The Companies Act 1985 (c. 6)s. 513.
119	The Companies Act 1985 (c. 6)s. 514.
120	The Companies Act 1985 (c. 6)s. 515; The Insolvency Act 1985 (c. 65)Sch. 6 para. 25.
121	The Companies Act 1985 (c. 6)s. 516.
122	The Companies Act 1985 (c. 6)s. 517.
123	The Companies Act 1985 (c. 6)s. 518; The Insolvency Act 1985 (c. 65)Sch. 6 paras. 25, 27.
124	The Companies Act 1985 (c. 6)s. 519; The Insolvency Act 1985 (c. 65)Sch. 6 para. 28.
125	The Companies Act 1985 (c. 6)s. 520.
126	The Companies Act 1985 (c. 6)s. 521.
127	The Companies Act 1985 (c. 6)s. 522.
128	The Companies Act 1985 (c. 6)s. 523.
129	The Companies Act 1985 (c. 6)s. 524.
130	The Companies Act 1985 (c. 6)s. 525; The Insolvency Act 1985 (c. 65)Sch. 6 para. 29.
131	The Insolvency Act 1985 (c. 65)s. 66.
132	The Insolvency Act 1985 (c. 65)s. 67.
133	The Insolvency Act 1985 (c. 65) s. 68(1)-(4).
134	The Insolvency Act 1985 (c. 65) s. 68(5), (6).
135	The Companies Act 1985 (c. 6)s. 532; The Insolvency Act 1985 (c. 65) s. 69(3).
136	The Insolvency Act 1985 (c. 65) s. 70(1)-(3), (4)(a), (5), (6).
137	The Insolvency Act 1985 (c. 65) s. 70(4)(b), (7)-(9).
138	The Companies Act 1985 (c. 6)s. 535; The Insolvency Act 1985 (c. 65)s. 71, Sch. 6 para. 30.
139	The Insolvency Act 1985 (c. 65)s. 72.

Provision	Derivation
140	The Insolvency Act 1985 (c. 65)s. 73.
141	The Insolvency Act 1985 (c. 65)s. 74.
142	The Insolvency Act 1985 (c. 65)s. 75.
143	The Insolvency Act 1985 (c. 65) s. 69(1), (2).
144	The Companies Act 1985 (c. 6)s. 537.
145	The Companies Act 1985 (c. 6)s. 538.
146	The Insolvency Act 1985 (c. 65)s. 78.
147	The Companies Act 1985 (c. 6)s. 549.
148	The Companies Act 1985 (c. 6)s. 550.
149	The Companies Act 1985 (c. 6)s. 552; The Insolvency Act 1985 (c. 65)Sch. 6 para. 32.
150	The Companies Act 1985 (c. 6)s. 553.
151	The Companies Act 1985 (c. 6)s. 554.
152	The Companies Act 1985 (c. 6)s. 555.
153	The Companies Act 1985 (c. 6)s. 557.
154	The Companies Act 1985 (c. 6)s. 558.
155	The Companies Act 1985 (c. 6)s. 559.
156	The Companies Act 1985 (c. 6)s. 560.
157	The Companies Act 1985 (c. 6)s. 562; The Insolvency Act 1985 (c. 65)Sch. 6 para. 33.
158	The Companies Act 1985 (c. 6)s. 565.
159	The Companies Act 1985 (c. 6)s. 566.
160	The Companies Act 1985 (c. 6)s. 567; The Insolvency Act 1985 (c. 65)Sch. 6 para. 34.
161	The Companies Act 1985 (c. 6)s. 569.
162	The Companies Act 1985 (c. 6)s. 571.
163	The Insolvency Act 1985 (c. 65)s. 94.
164	The Companies Act 1985 (c. 6)s. 635.
165	The Companies Act 1985 (c. 6) ss. 539(1)(d), (e), (f), 598; The Insolvency Act 1985 (c. 65) s. 84(1), Sch. 6 para. 41.
166	The Insolvency Act 1985 (c. 65)s. 84.
167	The Companies Act 1985 (c. 6) s. 539(1), (2), (2A), (3); The Insolvency Act 1985 (c. 65) Sch. 6 para. 31(2), (3).
168	The Companies Act 1985 (c. 6) s. 540(3)-(6).
169	The Companies Act 1985 (c. 6) s. 539(4), (5); The Insolvency Act 1985 (c. 65) Sch. 6 para. 31(4).
170	The Companies Act 1985 (c. 6)s. 636.
171	The Insolvency Act 1985 (c. 65)s. 86.
172	The Insolvency Act 1985 (c. 65)s. 79.
173	The Insolvency Act 1985 (c. 65)s. 87.
174	The Insolvency Act 1985 (c. 65)s. 80.
175	The Insolvency Act 1985 (c. 65) s. 89(1), (2).
176	The Insolvency Act 1985 (c. 65) s. 89(3), (4).
177	The Insolvency Act 1985 (c. 65)s. 90.
178	The Insolvency Act 1985 (c. 65) s. 91(1)-(4), (8).
179	The Insolvency Act 1985 (c. 65) s. 91(5), (6).

Provision	Derivation
180	The Insolvency Act 1985 (c. 65) s. 91(7).
181	The Insolvency Act 1985 (c. 65) s. 92(1)-(4), (9), (10).
182	The Insolvency Act 1985 (c. 65) s. 92(5)-(8).
183	The Companies Act 1985 (c. 6)s. 622; The Insolvency Act 1985 (c. 65)Sch. 6 para 25.
185	The Companies Act 1985 (c. 6)s. 623; The Bankruptcy (Scotland) Act 1985 (c. 66)Sch. 7 para. 21.
186	The Companies Act 1985 (c. 6) s. 619(4).
187	The Companies Act 1985 (c. 6)s. 659; The Insolvency Act 1985 (c. 65)Sch. 6 para. 48.
188	The Companies Act 1985 (c. 6)s. 637.
189	The Insolvency Act 1985 (c. 65)s. 93.
190	The Companies Act 1985 (c. 6)s. 638.
191	The Companies Act 1985 (c. 6)s. 639.
192	The Companies Act 1985 (c. 6)s. 641.
193	The Companies Act 1985 (c. 6)s. 643; The Bankruptcy (Scotland) Act 1985 (c. 66)Sch. 7 para. 22.
194	The Companies Act 1985 (c. 6)s. 644.
195	The Companies Act 1985 (c. 6)s. 645.
196	The Companies Act 1985 (c. 6)s. 646.
197	The Companies Act 1985 (c. 6)s. 647.
198	The Companies Act 1985 (c. 6)s. 648.
199	The Companies Act 1985 (c. 6)s. 649.
200	The Companies Act 1985 (c. 6)s. 650.
201	The Companies Act 1985 (c. 6) ss. 585(5), (6), 595(6), (7).
202	The Insolvency Act 1985 (c. 65) s. 76(1)-(3), (6).
203	The Insolvency Act 1985 (c. 65) s. 76(4), (5), (7)-(10).
204	The Insolvency Act 1985 (c. 65)s. 77.
205	The Insolvency Act 1985 (c. 65)s. 81.
206	The Companies Act 1985 (c. 6)s. 624; The Insolvency Act 1985 (c. 65)Sch. 6 para. 25.
207	The Companies Act 1985 (c. 6)s. 625; The Insolvency Act 1985 (c. 65)Sch. 6 para. 42.
208	The Companies Act 1985 (c. 6)s. 626; The Insolvency Act 1985 (c. 65)Sch. 6 para. 43.
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215	The Companies Act 1985 (c. 6) s. 630(3)-(6); The Insolvency Act 1985 (c. 65) s. 15(6), Sch. 6 para. 6(2), (3).
216	The Insolvency Act 1985 (c. 65)s. 17, Sch. 9 para. 5.
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230	The Insolvency Act 1985 (c. 65) ss. 95(1), (2), 96(1).
231	The Insolvency Act 1985 (c. 65) ss. 95(1), (2), 96(2).
232	The Insolvency Act 1985 (c. 65) ss. 95(1), (2), 96(3).
233	The Insolvency Act 1985 (c. 65)ss. 95, 97.
234	The Insolvency Act 1985 (c. 65) ss. 95(1), (2), 98.
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237	The Insolvency Act 1985 (c. 65) s. 100(3)-(5), (7).
238	The Insolvency Act 1985 (c. 65) ss. 95(1)(a), (b), 101(1) (part)-(3).
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240	The Insolvency Act 1985 (c. 65) s. 101(8)-(11).
241	The Insolvency Act 1985 (c. 65) ss. 95(1), 102.
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244	The Insolvency Act 1985 (c. 65) ss. 95(1)(a), (b), 103.
245	The Insolvency Act 1985 (c. 65) ss. 95(1)(a), (b), 104.
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247	The Insolvency Act 1985 (c. 65)s. 108(3) (part),(4).
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253	The Insolvency Act 1985 (c. 65)ss. 110, 111(1), (2), (3)(part).
254	The Insolvency Act 1985 (c. 65) s. 111(4), (5).
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258	The Insolvency Act 1985 (c. 65) s. 115(1)-(6), (9), (10).
259	The Insolvency Act 1985 (c. 65) s. 115(7), (8).

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260	The Insolvency Act 1985 (c. 65) s. 116(1)-(3), (6), (7).
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265	The Insolvency Act 1985 (c. 65) s. 119(2), (3).
266	The Insolvency Act 1985 (c. 65) s. 119(4)-(7).
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268	The Insolvency Act 1985 (c. 65) s. 120(3), (4).
269	The Insolvency Act 1985 (c. 65) s. 120(5).
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281	The Insolvency Act 1985 (c. 65)s. 128.
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283	The Insolvency Act 1985 (c. 65)s. 130.
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308	The Insolvency Act 1985 (c. 65) s. 155(1), (2), (4), (5).
309	The Insolvency Act 1985 (c. 65) ss. 154(5), (6), 155(3).
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340	The Insolvency Act 1985 (c. 65) s. 174(1) (part), (3)-(6), (12) (part).
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383	The Insolvency Act 1985 (c. 65) s. 211(1) (part), (5)-(7).
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385	The Insolvency Act 1985 (c. 65) s. 211(1) (part), (4).
386	The Companies Act 1985 (c. 6)ss. 196(2), 475(1); The Insolvency Act 1985 (c. 65) ss. 23(7), 89(1), 108(3), 115(9), 166(1), Sch. 4 para. 1(1), Sch. 6 para. 15(3).
387	The Companies Act 1985 (c. 6)ss. 196(2)-(4), 475(3), (4); The Insolvency Act 1985 (c. 65) ss. 23(8), 115(10), Sch. 4, Pt. II para. 1(2), (3), Sch. 6 paras. 15(4), 20(3).
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414	The Insolvency Act 1985 (c. 65) ss. 106(5), 107.
415	The Insolvency Act 1985 (c. 65) ss. 207(5), 208(1)-(3), (5).
416	The Companies Act 1985 (c. 6)s. 664; The Insolvency Act 1985 (c. 65)Sch. 6 para. 49.

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418	The Insolvency Act 1985 (c. 65) s. 209(1) (part), (2), (3).
419	The Insolvency Act 1985 (c. 65) ss. 10, 11 (part).
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