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SCHEDULES

SCHEDULE 11

Section 437.

TRANSITIONAL PROVISIONS AND SAVINGS

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 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 ^{M1}Insolvency Act 1985, or the associated repeals 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 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.

Marginal Citations

M1 1985 c. 65.

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Receivers (Scotland)

- 3
- (1) In relation to any receiver appointed under section 467 of the Companies Act 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 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 the 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 ^{M2}Insolvency Act 1985; and “the former law” means Parts XX and XXI of the Companies Act (without the amendments in paragraphs 23 to 52 of Schedule 6 to the Insolvency Act 1985, or the associated repeals made by the Act).

Marginal Citations

M2 1985 c. 65.

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 (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.

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Provisions relating to liquidator

- 6
- (1) This paragraph applies as regards the liquidator in the case of 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 (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 subparagraph (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.
 - (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.

Winding up under supervision of the court

- 7
- The repeals in Part II of Schedule 10 the ^{M3}Insolvency Act 1985 of references (in the Companies Act 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 (power to order winding up under supervision) was made before the appointed day.

Marginal Citations

M3 1985 c. 65.

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.

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- (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 the 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 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 ^{M4}Insolvency Act 1985 does not apply in relation to any case in which a petition in 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).

Marginal Citations

M4 1985 c. 65.

- 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 ^{M5}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.

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- (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.

Marginal Citations

M5 1914 c. 59.

- 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 ^{M6}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.

Marginal Citations

M6 1914 c. 59.

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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 this section 299 has effect for the purposes of sub-paragraph (3)(c) as it has for the purposes of that section 8.
- (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 ^{M7}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.

Marginal Citations

M7 1914 c. 59.

Copyright

- 15 (1) 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.

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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 is an undischarged bankrupt under that Act is adjudged bankrupt under this Act.

Setting aside of preferences and other transactions

- 17 (1) A performance 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 ^{M8}Insolvency Act 1985 of the ^{M9}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.

Marginal Citations

M8 1985 c. 65.

M9 1914 c. 59.

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

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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 as is repealed and replaced by this Act, the ^{M10}Insolvency Act 1985 and the other enactments repealed by this Act.

Marginal Citations

M10 1985 c. 65.

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 by 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

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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 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, or events occurring or not occurring, in the past (including in particular past act 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.

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- (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 ^{M11}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 ^{M12}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 ^{M13}Company Directors Disqualification Act 1986.

Marginal Citations

M11 1978 c. 30.

M12 1985 c. 65.

M13 1986 c. 46.

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