

Status: Point in time view as at 01/02/1991.

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SCHEDULES

SCHEDULE 11

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.

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