

Status: Point in time view as at 01/07/1995.

Changes to legislation: Deregulation and Contracting Out Act 1994, SCHEDULE 5 is up to date with all changes known to be in force on or before 11 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 5

Section 13(1).

STRIKING OFF OF NON-TRADING PRIVATE COMPANIES: GREAT BRITAIN

1 The ^{M1}Companies Act 1985 shall be amended as follows.

Marginal Citations

M1 1985 c. 6.

2 After section 652 there shall be inserted—

“652A Registrar may strike private company off register on application.

- (1) On application by a private company, the registrar of companies may strike the company’s name off the register.
- (2) An application by a company under this section shall—
 - (a) be made on its behalf by its directors or by a majority of them,
 - (b) be in the prescribed form, and
 - (c) contain the prescribed information.
- (3) The registrar shall not strike a company off under this section until after the expiration of 3 months from the publication by him in the Gazette of a notice—
 - (a) stating that he may exercise his power under this section in relation to the company, and
 - (b) inviting any person to show cause why he should not do so.
- (4) Where the registrar strikes a company off under this section, he shall publish notice of that fact in the Gazette.
- (5) On the publication in the Gazette of a notice under subsection (4), the company to which the notice relates is dissolved.
- (6) However, the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved.
- (7) Nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.

652B Duties in connection with making application under section 652A.

- (1) A person shall not make an application under section 652A on behalf of a company if, at any time in the previous 3 months, the company has—
 - (a) changed its name,

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- (b) traded or otherwise carried on business,
 - (c) made a disposal for value of property or rights which, immediately before ceasing to trade or otherwise carry on business, it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business, or
 - (d) engaged in any other activity, except one which is—
 - (i) necessary or expedient for the purpose of making an application under section 652A, or deciding whether to do so,
 - (ii) necessary or expedient for the purpose of concluding the affairs of the company,
 - (iii) necessary or expedient for the purpose of complying with any statutory requirement, or
 - (iv) specified by the Secretary of State by order for the purposes of this sub-paragraph.
- (2) For the purposes of subsection (1), a company shall not be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.
- (3) A person shall not make an application under section 652A on behalf of a company at a time when any of the following is the case—
- (a) an application has been made to the court under section 425 on behalf of the company for the sanctioning of a compromise or arrangement and the matter has not been finally concluded;
 - (b) a voluntary arrangement in relation to the company has been proposed under Part I of ^{M2} the Insolvency Act 1986 and the matter has not been finally concluded;
 - (c) an administration order in relation to the company is in force under Part II of that Act or a petition for such an order has been presented and not finally dealt with or withdrawn;
 - (d) the company is being wound up under Part IV of that Act, whether voluntarily or by the court, or a petition under that Part for the winding up of the company by the court has been presented and not finally dealt with or withdrawn;
 - (e) there is a receiver or manager of the company's property;
 - (f) the company's estate is being administered by a judicial factor.
- (4) For the purposes of subsection (3)(a), the matter is finally concluded if—
- (a) the application has been withdrawn,
 - (b) the application has been finally dealt with without a compromise or arrangement being sanctioned by the court, or
 - (c) a compromise or arrangement has been sanctioned by the court and has, together with anything required to be done under any provision made in relation to the matter by order of the court, been fully carried out.
- (5) For the purposes of subsection (3)(b), the matter is finally concluded if—
- (a) no meetings are to be summoned under section 3 of the Insolvency ^{M3}Act 1986,

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- (b) meetings summoned under that section fail to approve the arrangement with no, or the same, modifications,
 - (c) an arrangement approved by meetings summoned under that section, or in consequence of a direction under section 6(4)(b) of that Act, has been fully implemented, or
 - (d) the court makes an order under subsection (5) of section 6 of that Act revoking approval given at previous meetings and, if the court gives any directions under subsection (6) of that section, the company has done whatever it is required to do under those directions.
- (6) A person who makes an application under section 652A on behalf of a company shall secure that a copy of the application is given, within 7 days from the day on which the application is made, to every person who, at any time on that day, is—
- (a) a member of the company,
 - (b) an employee of the company,
 - (c) a creditor of the company,
 - (d) a director of the company,
 - (e) a manager or trustee of any pension fund established for the benefit of employees of the company, or
 - (f) a person of a description specified for the purposes of this paragraph by regulations made by the Secretary of State.
- (7) Subsection (6) shall not require a copy of the application to be given to a director who is a party to the application.
- (8) The duty imposed by subsection (6) shall cease to apply if the application is withdrawn before the end of the period for giving the copy application.
- (9) The Secretary of State may by order amend subsection (1) for the purpose of altering the period in relation to which the doing of the things mentioned in paragraphs (a) to (d) of that subsection is relevant.

652C Directors' duties following application under section 652A.

- (1) Subsection (2) applies in relation to any time after the day on which a company makes an application under section 652A and before the day on which the application is finally dealt with or withdrawn.
- (2) A person who is a director of the company at the end of a day on which a person other than himself becomes—
- (a) a member of the company,
 - (b) an employee of the company,
 - (c) a creditor of the company,
 - (d) a director of the company,
 - (e) a manager or trustee of any pension fund established for the benefit of employees of the company, or
 - (f) a person of a description specified for the purposes of this paragraph by regulations made by the Secretary of State,
- shall secure that a copy of the application is given to that person within 7 days from that day.

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- (3) The duty imposed by subsection (2) shall cease to apply if the application is finally dealt with or withdrawn before the end of the period for giving the copy application.
- (4) Subsection (5) applies where, at any time on or after the day on which a company makes an application under section 652A and before the day on which the application is finally dealt with or withdrawn—
- (a) the company—
 - (i) changes its name,
 - (ii) trades or otherwise carries on business,
 - (iii) makes a disposal for value of any property or rights other than those which it was necessary or expedient for it to hold for the purpose of making, or proceeding with, an application under section 652A, or
 - (iv) engages in any other activity, except one to which subsection (6) applies;
 - (b) an application is made to the court under section 425 on behalf of the company for the sanctioning of a compromise or arrangement;
 - (c) a voluntary arrangement in relation to the company is proposed under Part I of the ^{M4} Insolvency Act 1986;
 - (d) a petition is presented for the making of an administration order under Part II of that Act in relation to the company;
 - (e) there arise any of the circumstances in which, under section 84(1) of that Act, the company may be voluntarily wound up;
 - (f) a petition is presented for the winding up of the company by the court under Part IV of that Act;
 - (g) a receiver or manager of the company's property is appointed; or
 - (h) a judicial factor is appointed to administer the company's estate.
- (5) A person who, at the end of a day on which an event mentioned in any of paragraphs (a) to (h) of subsection (4) occurs, is a director of the company shall secure that the company's application is withdrawn forthwith.
- (6) This subsection applies to any activity which is—
- (a) necessary or expedient for the purpose of making, or proceeding with, an application under section 652A,
 - (b) necessary or expedient for the purpose of concluding affairs of the company which are outstanding because of what has been necessary or expedient for the purpose of making, or proceeding with, such an application,
 - (c) necessary or expedient for the purpose of complying with any statutory requirement, or
 - (d) specified by the Secretary of State by order for the purposes of this subsection.
- (7) For the purposes of subsection (4)(a), a company shall not be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.

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652D Sections 652B and 652C: supplementary provisions.

- (1) For the purposes of sections 652B(6) and 652C(2), a document shall be treated as given to a person if it is delivered to him or left at his proper address or sent by post to him at that address.
- (2) For the purposes of subsection (1) and section 7 of the Interpretation ^{M5}Act 1978 (which relates to the service of documents by post) in its application to that subsection, the proper address of any person shall be his last known address, except that—
 - (a) in the case of a body corporate, other than one to which subsection (3) applies, it shall be the address of its registered or principal office,
 - (b) in the case of a partnership, other than one to which subsection (3) applies, it shall be the address of its principal office, and
 - (c) in the case of a body corporate or partnership to which subsection (3) applies, it shall be the address of its principal office in the United Kingdom.
- (3) This subsection applies to a body corporate or partnership which—
 - (a) is incorporated or formed under the law of a country or territory outside the United Kingdom, and
 - (b) has a place of business in the United Kingdom.
- (4) Where a creditor of the company has more than one place of business, subsection (1) shall have effect, so far as concerns the giving of a document to him, as if for the words from “delivered” to the end there were substituted “left, or sent by post to him, at each place of business of his with which the company has had dealings in relation to a matter by virtue of which he is a creditor of the company.”
- (5) Any power to make an order or regulations under section 652B or 652C shall—
 - (a) include power to make different provision for different cases or classes of case,
 - (b) include power to make such transitional provisions as the Secretary of State considers appropriate, and
 - (c) be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) For the purposes of sections 652B and 652C, an application under section 652A is withdrawn if notice of withdrawal in the prescribed form is given to the registrar of companies.
- (7) In sections 652B and 652C, “disposal” includes part disposal.
- (8) In sections 652B and 652C and this section, “creditor” includes a contingent or prospective creditor.

652E Sections 652B and 652C: enforcement.

- (1) A person who breaches or fails to perform a duty imposed on him by section 652B or 652C is guilty of an offence and liable to a fine.

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- (2) A person who fails to perform a duty imposed on him by section 652B(6) or 652C(2) with the intention of concealing the making of the application in question from the person concerned is guilty of an offence and liable to imprisonment or a fine, or both.
- (3) In any proceedings for an offence under subsection (1) consisting of breach of a duty imposed by section 652B(1) or (3), it shall be a defence for the accused to prove that he did not know, and could not reasonably have known, of the existence of the facts which led to the breach.
- (4) In any proceedings for an offence under subsection (1) consisting of failure to perform the duty imposed by section 652B(6), it shall be a defence for the accused to prove that he took all reasonable steps to perform the duty.
- (5) In any proceedings for an offence under subsection (1) consisting of failure to perform a duty imposed by section 652C(2) or (5), it shall be a defence for the accused to prove—
 - (a) that at the time of the failure he was not aware of the fact that the company had made an application under section 652A, or
 - (b) that he took all reasonable steps to perform the duty.

652F Other offences connected with section 652A.

- (1) Where a company makes an application under section 652A, any person who, in connection with the application, knowingly or recklessly furnishes any information to the registrar of companies which is false or misleading in a material particular is guilty of an offence and liable to a fine.
- (2) Any person who knowingly or recklessly makes an application to the registrar of companies which purports to be an application under section 652A, but which is not, is guilty of an offence and liable to a fine.”

Marginal Citations

M2 1986 c. 45.
M3 1986 c. 45.
M4 1986 c. 45.
M5 1978 c. 30.

- 3 (1) Section 653 (objection to striking off by persons aggrieved) shall be amended as follows.
 - (2) In subsection (1)—
 - (a) for “The following” there shall be substituted “ Subsection (2) ”, and
 - (b) at the end there shall be inserted “ under section 652. ”
 - (3) After subsection (2) there shall be inserted—
 - “(2A) Subsections (2B) and (2D) apply if a company has been struck off the register under section 652A.
 - (2B) The court, on an application by a notifiable person made before the expiration of 20 years from publication in the Gazette of notice under section 652A(4), may, if satisfied—

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- (a) that any duty under section 652B or 652C with respect to the giving to that person of a copy of the company’s application under section 652A was not performed,
 - (b) that the making of the company’s application under section 652A involved a breach of duty under section 652B(1) or (3), or
 - (c) that it is for some other reason just to do so,
- order the company’s name to be restored to the register.
- (2C) In subsection (2B), “notifiable person” means a person to whom a copy of the company’s application under section 652A was required to be given under section 652B or 652C.
- (2D) The court, on an application by the Secretary of State made before the expiration of 20 years from publication in the Gazette of notice under section 652A(4), may, if satisfied that it is in the public interest to do so, order the company’s name to be restored.”
- (4) In subsection (3)—
- (a) for “the order” there shall be substituted “ an order under subsection (2), (2B) or (2D) ”, and
 - (b) after “company”, in the first place where it occurs, there shall be inserted “ to which the order relates ”.
- 4 In Schedule 24 (punishment of offences), there shall be inserted at the appropriate places—

“652E(1)	Person breaching or failing to perform duty imposed by section 652B or 652C.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
652E(2)	Person failing to perform duty imposed by section 652B(6) or 652C(2) with intent to conceal the making of application under section 652A.	1. On indictment. 2. Summary.	7 years or a fine; or both. 6 months or the statutory maximum; or both.
652F(1)	Person furnishing false or misleading information in connection with application under section 652A.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
652F(2)	Person making false application under section 652A.	1. On indictment. 2. Summary.	A fine. The statutory maximum.”

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