

Status: Point in time view as at 15/09/2003. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), SCHEDULE 17. (See end of Document for details)

SCHEDULES

SCHEDULE 17

Section 248

ADMINISTRATION: MINOR AND CONSEQUENTIAL AMENDMENTS

Textual Amendments applied to the whole legislation

- F1** Act: for the words "solicitor of the Supreme Court of Northern Ireland" wherever they occur there is substituted (prosp.) the words "solicitor of the Court of Judicature of Northern Ireland" by virtue of [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59, 148(1), [Sch. 11 para. 5](#) [Editorial Note: this amendment will be carried through into the text of the Act at the same time as any other effects on the Act for the year in which the relevant commencement order (or first such order) is made]

General

- 1 In any instrument made before section 248(1) to (3) of this Act comes into force—
- (a) a reference to the making of an administration order shall be treated as including a reference to the appointment of an administrator under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (c. 45) (inserted by section 248(2) of this Act), and
 - (b) a reference to making an application for an administration order by petition shall be treated as including a reference to making an administration application under that Schedule, appointing an administrator under paragraph 14 or 22 of that Schedule or giving notice under paragraph 15 or 26 of that Schedule.

Magistrates' Courts Act 1980 (c. 43)

- 2 In section 87A(1) of the Magistrates' Court Act 1980 (fine imposed on company) for "section 9 or 124 of the Insolvency Act 1986" substitute " section 124 of, or paragraph 12 of Schedule B1 to, the Insolvency Act 1986 ".

Companies Act 1985 (c. 6)

- 3 The Companies Act 1985 shall be amended as follows.
- 4 In section 225 (alteration of accounting reference date)—
- (a) in subsection (4) for "an administration order is in force" substitute " the company is in administration ", and
 - (b) in subsection (6) for "An accounting reference period may not in any case, unless an administration order is in force" substitute " A company's accounting reference period may not in any case, unless the company is in administration ".

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- 5 In section 425(1) (power of company to compromise) for “an administration order being in force in relation to a company” substitute “ in administration ”.
- 6 In section 427A(3) (mergers and divisions of public companies) for “an administration order being in force in relation to the company” substitute “ where the company is in administration ”.
- 7 In section 652B(3) (duty when applying to strike off defunct company) for paragraph (c) substitute—
- “(c) the company is in administration under Part II of that Act;
 - (ca) an application to the court for an administration order in respect of the company has been made and not finally dealt with or withdrawn;
 - (cb) a copy of notice of intention to appoint an administrator of the company under paragraph 14 of Schedule B1 to that Act has been filed with the court and neither of the events mentioned in paragraph 44(2)(a) and (b) of that Schedule has occurred;
 - (cc) a copy of notice of intention to appoint an administrator of the company under paragraph 22 of that Schedule has been filed with the court and neither of the events mentioned in paragraph 44(4)(a) and (b) of that Schedule has occurred;”.
- 8 In section 652C(4) (director’s duty following application to strike off defunct company) for paragraph (d) substitute—
- “(d) an application to the court for an administration order in respect of the company is made under paragraph 12 of Schedule B1 to that Act;
 - (da) an administrator is appointed in respect of the company under paragraph 14 or 22 of that Schedule;
 - (db) a copy of notice of intention to appoint an administrator of the company under paragraph 14 or 22 of that Schedule is filed with the court;”.

Insolvency Act 1986 (c. 45)

- 9 The Insolvency Act 1986 shall be amended as follows.
- 10 In section 1 (proposal for company voluntary arrangement)—
- (a) in subsection (1) for “(other than one for which an administration order is in force, or which is being wound up)” substitute “ (other than one which is in administration or being wound up) ”, and
 - (b) in subsection (3) for paragraph (a) substitute—
 - “(a) where the company is in administration, by the administrator;”.
- 11 In section 5(3) (approval of company voluntary arrangement)—
- (a) for “an administration order is in force” substitute “ is in administration ”, and
 - (b) for “discharge the administration order” substitute “ provide for the appointment of the administrator to cease to have effect ”.
- 12 In section 6(2)(c) (challenge of decision in relation to company voluntary arrangement) for “an administration order is in force” substitute “ is in administration ”.

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- 13 In section 51 (power to appoint receiver: Scotland) after subsection (2) insert—
“(2A) Subsections (1) and (2) are subject to section 72A.”

PROSPECTIVE

- 14 At the end of section 100 (creditors’ voluntary winding up of company: appointment of liquidator) add—
“(4) The court shall grant an application under subsection (3) made by the holder of a qualifying floating charge in respect of the company’s property (within the meaning of paragraph 14 of Schedule B1) unless the court thinks it right to refuse the application because of the particular circumstances of the case.”
- 15 At the end of section 127 (winding-up: avoidance of property disposition) (which becomes subsection (1)) add—
“(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.”
- 16 After section 129(1) (commencement of winding up) insert—
“(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.”
- 17 In section 140 (appointment by court of liquidator following administration or voluntary arrangement) for subsection (1) substitute—
“(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.”
- 18 In section 212 (misfeasance of officers)—
(a) in subsection (1)(b) omit “, administrator”,
(b) in subsection (2) omit (in each place) “or administrator”, and
(c) in subsection (4)—
(i) omit “or administrator”, and
(ii) for “that person” substitute “ he ”.
- 19 Section 230(1) (administrator to be qualified insolvency practitioner) shall cease to have effect.
- 20 In section 231(1) and (2) (appointment to office of two or more persons) omit the word “administrator”.
- 21 In section 232 (validity of office-holder’s act) omit the word “administrator”.
- 22 In section 233 (utility supplies)—
(a) for subsection (1)(a) substitute—
“(a) the company enters administration”,
and

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- (b) for subsection (4)(a) substitute—
 “(a) the date on which the company entered administration”.
- 23 For section 234(1)(a) (getting in the company’s property) substitute—
 “(a) the company enters administration,”.
- 24 For section 235(4)(a) (co-operation with office-holder) substitute—
 “(a) the date on which the company entered administration,”.
- 25 For section 238(1)(a) (transactions at an undervalue: England and Wales) substitute—
 “(a) the company enters administration,”.
- 26 (1) Section 240 (relevant time for sections 238 and 239) shall be amended as follows.
- (2) For subsection (1)(c) substitute—
 “(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.”
- (3) The word “and” after subsection (1)(b) shall cease to have effect.
- (4) For subsection (3)(a), (aa) and (b) substitute—
 “(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 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.”
- 27 (1) Section 241 (order under section 238 or 239) shall be amended as follows.
- (2) For subsection (3A) substitute—

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“(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.”

(3) For subsection (3B) substitute—

“(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.”

- 28 (1) Section 242 (gratuitous alienations: Scotland) shall be amended as follows.
- (2) In subsection (1)(b) for “an administration order is in force in relation to a company” substitute “ a company enters administration ”.
- (3) In subsection (3)(a)(ii) for “the administration order is made” substitute “ the company enters administration ”.
- 29 (1) Section 243 (unfair preferences: Scotland) shall be amended as follows.
- (2) In subsection (1) for “the making of an administration order in relation to the company” substitute “ the company enters administration ”.
- (3) In subsection (4)(b) for “in the case of an administration order” substitute “ where the company has entered administration ”.
- 30 In section 244(2) (extortionate credit transaction) for “the day on which the administration order was made or (as the case may be) the company went into liquidation” substitute “ the day on which the company entered administration or went into liquidation ”.
- 31 (1) Section 245 (avoidance of floating charge) shall be amended as follows.
- (2) The word “or” after subsection (3)(b) shall cease to have effect.
- (3) For subsection (3)(c) substitute—
- “(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

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14 or 22 of Schedule B1 and the making of an appointment under that paragraph.”

- (4) For subsection (5)(a) and (b) substitute—
- “(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.”
- 32 For section 246(1)(a) (unenforceability of lien on records) substitute—
- “(a) the company enters administration.”
- 33 (1) Section 247 (meaning of “insolvency” and “go into liquidation”) shall be amended as follows.
- (2) In subsection (1) for “the making of an administration order or the appointment of an administrative receiver” substitute “ or the appointment of an administrator or administrative receiver ”.
- (3) For subsection (3) substitute—
- “(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.”
- 34 (1) Section 387 (preferential debts: “the relevant date”) shall be amended as follows.
- (2) In subsection (2) for paragraphs (a) and (b) substitute—
- “(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.”
- (3) In subsection (3)—
- (a) in paragraphs (a), (aa) and (ab) for “the date of the making of the administration order” substitute “ the date on which the company entered administration ”,
 - (b) after paragraph (b) insert—
 - “(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,

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the relevant date is the date on which the company entered administration.”,

and

(c) in paragraph (c) for “paragraph (a), (aa), (ab) or (b)” substitute “paragraph (a), (aa), (ab), (b) or (ba)”.

(4) After subsection (3) insert—

“(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.”

35 In section 422 (power to apply first Group of Parts to banks, &c.) for subsection (1) substitute—

“(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
- (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).”

36 In section 424(1)(a) (application for order in relation to transaction defrauding creditor) for “in relation to which an administration order is in force” substitute “is in administration”.

37 (1) Schedule A1 (moratorium where directors propose voluntary arrangement) shall be amended as follows.

(2) In paragraph 4(1) (exclusion from eligibility for moratorium)—

(a) for paragraph (a) substitute—

“(a) the company is in administration,”,

and

(b) after paragraph (f) (and before the word “or”) insert—

“(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.”.

(3) In paragraph 12(1) (effect of moratorium on creditor) for paragraph (d) substitute—

“(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.”.

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- (4) In paragraph 40 (challenge of directors' actions during moratorium) for sub-paragraph (7) substitute—
- “(7) Sub-paragraph (8) applies where—
- (a) the appointment of an administrator has effect in relation to the company and the appointment took effect before the moratorium came into force, or
 - (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.”
- 38 (1) Schedule 8 (scope of insolvency rules) shall be amended as follows.
- (2) At the end of paragraph 2 (which becomes sub-paragraph (1)) add—
- “(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.”
- (3) In paragraph 10 (provision as to committees) for “section 26, 49, 68, 101, 141 or 142 of this Act” substitute “section 49, 68, 101, 141 or 142 of, or paragraph 57 of Schedule B1 to, this Act”.
- (4) After paragraph 14 insert—
- “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.”
- (5) After paragraph 14A (inserted by sub-paragraph (4) above) insert—
- “Administration**
- 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.”
- (6) In paragraph 29 (general provision) for “section 22, 47, 66, 131, 143(2) or 235 of this Act” substitute “section 47, 66, 131, 143(2) or 235 of, or paragraph 47 of Schedule B1 to, this Act”.
- 39 (1) Schedule 10 (punishment of offences) shall be amended as follows.
- (2) After the entries for Schedule A1 insert—
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- | | | | |
|------------------------|-------------------------------------|----------------------------------|-----------------------------|
| “Sch. B1, para. 18(7). | Making false statement in statutory | 1. On indictment.
2. Summary. | 2 years, or a fine or both. |
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	declaration where administrator appointed by holder of floating charge.		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.	One-tenth of the statutory maximum.
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.	
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	Summary.	One-fifth of the statutory maximum.	

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	administrator appointed.			
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	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

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	disposal of charged property.			
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.

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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.”
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(3) Omit the entries for the following provisions—

- (a) section 12(2),
- (b) section 15(8),
- (c) section 18(5),
- (d) section 21(3),
- (e) section 22(6),
- (f) section 23(3),
- (g) section 24(7), and
- (h) section 27(6).

Company Directors Disqualification Act 1986 (c. 46)

40 The Company Directors Disqualification Act 1986 shall be amended as follows.

41 In section 6 (duty of court to disqualify unfit director of insolvent company)—

(a) for subsection (2)(b) substitute—

“(b) the company enters administration,”,

(b) for subsection (3)(c) substitute—

“(c) where neither paragraph (a) nor (b) applies but an administrator or administrative receiver has at any time been appointed in respect of the company in question, any court which has jurisdiction to wind it up.”,

and

(c) for subsection (3A)(b) substitute—

“(b) in a case within paragraph (c) of that subsection, to the appointment of the administrator or (as the case may be) administrative receiver.”

42 In section 7(3) (duty of office-holder to report to Secretary of State) for paragraph (c) substitute—

“(c) in the case of a company which is in administration, the administrator.”.

Companies Act 1989 (c. 40)

43 The Companies Act 1989 shall be amended as follows.

44 In section 158 (modification of insolvency law)—

(a) in subsection (3) for paragraph (b) substitute—

“(b) the application for an administration order or the presentation of a winding-up petition or the passing of a resolution for voluntary winding up.”,

and

(b) after subsection (3) insert—

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- “(3A) In subsection (3)(b) the reference to an application for an administration order shall be taken to include a reference to—
- (a) in a case where an administrator is appointed under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (appointment by floating charge holder, company or directors) following filing with the court of a copy of a notice of intention to appoint under that paragraph, the filing of the copy of the notice, and
 - (b) in a case where an administrator is appointed under either of those paragraphs without a copy of a notice of intention to appoint having been filed with the court, the appointment of the administrator.”
- 45 In section 161(4) (disapplication of enactments to default proceedings) for “sections 10(1)(c), 11(3), 126, 128, 130, 185 or 285 of the Insolvency Act 1986” substitute “ section 126, 128, 130, 185 or 285 of, or paragraph 42 or 43 (including paragraph 43(6) as applied by paragraph 44) of Schedule B1 to, the Insolvency Act 1986 ”.
- 46 After section 167(1) (application by exchange or clearing house about taking default proceedings) insert—
- “(1A) In subsection (1) a reference to an administration order shall be taken to include a reference to the appointment of an administrator under—
- (a) paragraph 14 of Schedule B1 to the Insolvency Act 1986 (c.45) (appointment by holder of qualifying floating charge), or
 - (b) paragraph 22 of that Schedule (appointment by company or directors).”
- 47 (1) Section 175 (financial markets: administration) shall be amended as follows.
- (2) For subsection (1) substitute—
- “(1) The following provisions of Schedule B1 to the Insolvency Act 1986 (administration) do not apply in relation to a market charge—
- (a) paragraph 43(2) and (3) (restriction on enforcement of security or repossession of goods) (including that provision as applied by paragraph 44 (interim moratorium)), and
 - (b) paragraphs 70, 71 and 72 (power of administrator to deal with charged or hire-purchase property).
- (1A) Paragraph 41(2) of that Schedule (receiver to vacate office at request of administrator) does not apply to a receiver appointed under a market charge.”
- (3) In subsection (2) for “an administration order has been made or a petition for an administration order has been presented” substitute “ the occurrence of an event to which subsection (2A) applies ”.
- (4) After subsection (2) insert—
- “(2A) This subsection applies to—
- (a) making an administration application under paragraph 12 of Schedule B1 to the Insolvency Act 1986,
 - (b) appointing an administrator under paragraph 14 or 22 of that Schedule (appointment by floating charge holder, company or directors),

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- (c) filing with the court a copy of notice of intention to appoint an administrator under either of those paragraphs.”

Coal Industry Act 1994 (c. 21)

48 (1) Section 36 of the Coal Industry Act 1994 (insolvency of licensed operator) shall be amended as follows.

(2) After subsection (2) insert—

“(2A) Where the administrator of a company which is or has been a licensed operator files a notice with the registrar of companies under paragraph 84(1) of Schedule B1 to the Insolvency Act 1986 (c. 45) (administration: moving to dissolution), he shall at the same time send a copy to the Authority.”

(3) In subsection (3)—

- (a) after “liquidator” insert “ or administrator ”, and
(b) after “subsection (2)” insert “ or (2A) ”.

Employment Rights Act 1996 (c. 18)

49 (1) The Employment Rights Act 1996 shall be amended as follows.

(2) In section 166(7) (application by employee for payment by Secretary of State)—

- (a) in paragraph (a) omit “or an administration order”, and
(b) after paragraph (a) insert—
 “(aa) if the company is in administration for the purposes of the Insolvency Act 1986.”.

(3) In section 183(3)(a) (insolvency of employer)—

- (a) in paragraph (a) omit “or an administration order”, and
(b) after paragraph (a) insert—
 “(aa) if the company is in administration for the purposes of the Insolvency Act 1986.”.

(4) Omit section 189(4) (transfer to Secretary of State of rights and remedies: priority of preferential debts).

Housing Act 1996 (c. 52)

50 The Housing Act 1996 shall be amended as follows.

51 At the end of section 40 (initial notice to be given to Housing Corporation or Housing for Wales) add—

“(7) Subsections (8) and (9) apply in relation to the reference in subsection (3) to applying for an administration order.

(8) In a case where an administrator is appointed under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (appointment by floating charge holder, company or directors)—

- (a) the reference includes a reference to appointing an administrator under that paragraph, and

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Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), SCHEDULE 17. (See end of Document for details)

- (b) in respect of an appointment under either of those paragraphs the reference to the applicant shall be taken as a reference to the person making the appointment.
 - (9) In a case where a copy of a notice of intention to appoint an administrator under either of those paragraphs is filed with the court—
 - (a) the reference shall be taken to include a reference to the filing of the copy of the notice, and
 - (b) in respect of the filing of a copy of a notice of intention to appoint under either of those paragraphs the reference to the applicant shall be taken as a reference to the person giving the notice.”
- 52 At the end of section 41 (further notice to be given to Housing Corporation or Housing for Wales) add—
- “(6) In subsection (3)—
- (a) the reference to the making of an administration order includes a reference to appointing an administrator under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (administration), and
 - (b) in respect of an appointment under either of those paragraphs the reference to the applicant shall be taken as a reference to the person making the appointment.”

Financial Services and Markets Act 2000 (c. 8)

- 53 The Financial Services and Markets Act 2000 shall be amended as follows.
- 54 (1) Section 215 (provision of Financial Services Compensation Scheme in relation to insolvency) shall be amended as follows.
- (2) In subsection (3) for “presents a petition under section 9 of the 1986 Act or Article 22 of the 1989 Order” substitute “ makes an administration application under Schedule B1 to the 1986 Act or presents a petition under Article 22 of the 1989 Order ”.
 - (3) After subsection (3) insert—
 - “(3A) In subsection (3) the reference to making an administration application includes a reference to—
 - (a) appointing an administrator under paragraph 14 or 22 of Schedule B1 to the 1986 Act, or
 - (b) filing with the court a copy of notice of intention to appoint an administrator under either of those paragraphs.”
- 55 For section 359 (administration order) substitute—

“359 Administration order

- (1) The Authority may make an administration application under Schedule B1 to the 1986 Act (or present a petition under Article 22 of the 1989 Order) in relation to a company or insolvent partnership which—
 - (a) is or has been an authorised person,
 - (b) is or has been an appointed representative, or
 - (c) is carrying on or has carried on a regulated activity in contravention of the general prohibition.

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- (2) Subsection (3) applies in relation to an administration application made (or a petition presented) by the Authority by virtue of this section.
- (3) Any of the following shall be treated for the purpose of paragraph 11(a) of Schedule B1 to the 1986 Act (or Article 21(1)(a) of the 1989 Order) as unable to pay its debts—
- (a) a company or partnership in default on an obligation to pay a sum due and payable under an agreement, and
 - (b) an authorised deposit taker in default on an obligation to pay a sum due and payable in respect of a relevant deposit.
- (4) In this section—
- “agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the company or partnership,
- “authorised deposit taker” means a person with a Part IV permission to accept deposits (but not a person who has a Part IV permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission),
- “company” means a company—
- (a) in respect of which an administrator may be appointed under Schedule B1 to the 1986 Act, or
 - (b) to which Article 21 of the 1989 Order applies, and
- “relevant deposit” shall, ignoring any restriction on the meaning of deposit arising from the identity of the person making the deposit, be construed in accordance with—
- (a) section 22,
 - (b) any relevant order under that section, and
 - (c) Schedule 2.
- (5) The definition of “authorised deposit taker” in subsection (4) shall be construed in accordance with—
- (a) section 22,
 - (b) any relevant order under that section, and
 - (c) Schedule 2.”

56 For section 361 (administrator to report to Authority) substitute—

“361 Administrator’s duty to report to Authority

- (1) This section applies where a company or partnership is—
- (a) in administration within the meaning of Schedule B1 to the 1986 Act, or
 - (b) the subject of an administration order under Part III of the 1989 Order.
- (2) If the administrator thinks that the company or partnership is carrying on or has carried on a regulated activity in contravention of the general prohibition, he must report to the Authority without delay.

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- (3) Subsection (2) does not apply where the administration arises out of an administration order made on an application made or petition presented by the Authority.”

57 In section 362 (Financial Services Authority’s right to participate in proceedings)—

- (a) in subsection (1) for “presents a petition to the court under section 9 of the 1986 Act (or Article 22 of the 1989 Order)” substitute “ makes an administration application under Schedule B1 to the 1986 Act (or presents a petition under Article 22 of the 1989 Order) ”,

- (b) after subsection (1) insert—

“(1A) This section also applies in relation to—

- (a) the appointment under paragraph 14 or 22 of Schedule B1 to the 1986 Act of an administrator of a company of a kind described in subsection (1)(a) to (c), or
- (b) the filing with the court of a copy of notice of intention to appoint an administrator under either of those paragraphs.”,
- (c) in subsection (2)(a) for “petition” substitute “ administration application or the petition ”,
- (d) for subsection (4) substitute—

“(4) The Authority may apply to the court under paragraph 74 of Schedule B1 to the 1986 Act (or Article 39 of the 1989 Order).

(4A) In respect of an application under subsection (4)—

- (a) paragraph 74(1)(a) and (b) shall have effect as if for the words “harm the interests of the applicant (whether alone or in common with some or all other members or creditors)” there were substituted the words “harm the interests of some or all members or creditors”, and
- (b) Article 39 of the 1989 Order shall have effect with the omission of the words “(including at least himself)”.

and

- (e) in subsection (5)(b) for “section 26 of the 1986 Act” substitute “ paragraph 57 of Schedule B1 to the 1986 Act ”.

58 After section 362 insert—

“362A Administrator appointed by company or directors

- (1) This section applies in relation to a company of a kind described in section 362(1)(a) to (c).
- (2) An administrator of the company may not be appointed under paragraph 22 of Schedule B1 to the 1986 Act without the consent of the Authority.
- (3) Consent under subsection (2)—
- (a) must be in writing, and
- (b) must be filed with the court along with the notice of intention to appoint under paragraph 27 of that Schedule.
- (4) In a case where no notice of intention to appoint is required—

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- (a) subsection (3)(b) shall not apply, but
- (b) consent under subsection (2) must accompany the notice of appointment filed under paragraph 29 of that Schedule.”

PROSPECTIVE

59 In section 427A(3) (mergers and divisions of public companies) for “an administration order being in force in relation to the company” substitute “ where the company is in administration ”.

Status:

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Changes to legislation:

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