These notes refer to the Deregulation Act 2015 (c.20)
which received Royal Assent on 26 March 2015

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 6: Insolvency and company law

Part 2: Administration of companies

Appointment of administrators

560. Administration is an insolvency proceeding where the affairs, business and property of the company are managed by an administrator. The primary aim of an administration is to ensure the company's survival as a going concern, and failing that to achieve a better result for the company's creditors than would be likely if the company was wound up. An administrator may be appointed, in an out-of-court procedure, by the company, directors or a qualifying floating charge holder by giving notice and filing prescribed documents at court. Alternatively, an administrator may be appointed by the court on application by the company, directors or creditors.

561. *Paragraph 5* inserts a new paragraph 25A into Schedule B1 to the Insolvency Act 1986 to enable a company or the directors of a company to appoint an administrator despite the presentation of a winding-up petition, if the petition was presented during an interim moratorium. Like that Schedule to that Act, paragraph 5 forms part of the law of England and Wales and Scotland. The act of filing with the court notice of intent to appoint an administrator under paragraph 27 of Schedule B1 to the Insolvency Act 1986 commences an interim moratorium in respect of the company (paragraph 44(4) of that Schedule). The interim moratorium prevents other insolvency proceedings or legal processes against the company being instituted or continued. The new paragraph 25A clarifies that the prohibition (under paragraph 25(a) of Schedule B1) on appointing an administrator when a winding-up petition has been presented and not yet disposed of applies only to a petition presented before an interim moratorium comes into effect.

562. *Paragraph 6* removes a requirement in paragraph 26(2) of Schedule B1 to the 1986 Act to give notice of intention to appoint an administrator to persons who are not themselves entitled to appoint an administrative receiver or administrator in certain circumstances. Paragraph 6 forms part of the law of England and Wales and Scotland.

563. At present a company or its directors intending to appoint an administrator must give notice of the intention to appoint to anyone entitled to appoint an administrative receiver of the company, to any holder of a qualifying floating charge entitled to appoint an administrator, and to other prescribed persons. The prescribed persons are set out in rule 2.20 of the Insolvency Rules 1986, and include the company (if the company is not intending to make the appointment) and a supervisor of a company voluntary arrangement under Part 1 of the Insolvency Act 1986. Unlike those entitled to appoint a receiver or administrator, the prescribed persons cannot block the appointment of an administrator.

564. The requirement to give notice to these prescribed persons can lead to unnecessary delays in the administrator's appointment where there is no one else to whom notice

of intention to appoint must be given and so the requirement is being removed by paragraph 6. The prescribed persons will in any event receive notice of the appointment when it is made.

565. Paragraph 5 comes into force at the end of the period of 2 months beginning with the day on which the Act is passed and paragraph 6 comes into force on a day to be appointed by the Secretary of State in a commencement order.

Release of administrator where no distribution to unsecured creditors other than by virtue of section 176A(2)(a)

566. *Paragraph 7* amends paragraph 98 of Schedule B1 to the Insolvency Act 1986 and like that Schedule forms part of the law of England and Wales and Scotland. The amendment makes it clear that where an administrator of a company has been appointed by a floating charge holder or by the company or its directors and there are insufficient assets to enable a distribution to be made to the unsecured creditors (other than under section 176A(2)(a) of the Insolvency Act 1986 - the “prescribed part”), there is no requirement for all of the creditors to resolve to give the administrator his/her release. Release is the release of an office-holder from liability in respect of his or her acts and omissions as an office-holder. (The “prescribed part” is a proportion of a company’s assets over which a floating charge holder has security which can nonetheless be applied in certain circumstances to unsecured creditors.)

567. Currently paragraph 98(2)(b) of Schedule B1 to the Insolvency Act 1986 provides that such an administrator obtains his release by a resolution of a creditors’ committee or by a resolution of the creditors. Paragraph 98(3) of Schedule B1 to that Act goes on to provide that where such an administrator makes a statement under paragraph 52(1)(b) of Schedule B1 (company has insufficient property to make a distribution to unsecured creditors), a resolution requires the approval of every secured creditor and (where distributions to preferential creditors have been or may be made) the approval of at least 50% of the preferential creditors by value. This implies that a normal resolution of all the creditors is required plus a resolution of all of the secured creditors.

568. The amendments made by paragraph 7 distinguish paragraph 52(1)(b) cases from non-paragraph 52(1)(b) cases. Thus, where the unsecured creditors have no interest in the administration (other than by virtue of the “prescribed part”), it will be clear that the unsecured creditors are not involved in the administrator’s release - the release only needs to be given by (all of) the secured creditors (together with at least 50% of the preferential creditors where relevant) and is effective from the time they decide. It will not be necessary for the secured creditors to hold a meeting.

569. Paragraph 7 will come into force on a day to be appointed by the Secretary of State in a commencement order. Paragraph 7 is deregulatory because it will avoid the calling of unnecessary creditors’ meetings at which the creditors formally resolve to give administrators their release.