

**Status:** Point in time view as at 12/05/2011.

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, REPLACING ADMINISTRATOR is up to date with all changes known to be in force on or before 15 July 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

### [<sup>F1</sup>SCHEDULE B1

#### ADMINISTRATION

**F1** Sch. B1 inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(2), Sch. 1 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2-7)

#### **Modifications etc. (not altering text)**

**C1** Sch. B1 applied (with modifications) (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 73, 87(1)(2), 93(3), Sch. 10 Pt. 1, Sch. 10 Pt. 2

#### REPLACING ADMINISTRATOR

##### *Resignation of administrator*

- 88.**—(1) An administrator may resign only in prescribed circumstances.
- (2) Where an administrator may resign he may do so only—
- in the case of an administrator appointed by administration order, by notice in writing to the High Court,
  - in the case of an administrator appointed under paragraph 15, by notice in writing to the holder of the floating charge by virtue of which the appointment was made,
  - in the case of an administrator appointed under paragraph 23(1), by notice in writing to the company, or
  - in the case of an administrator appointed under paragraph 23(2), by notice in writing to the directors of the company.

##### *Removal of administrator from office*

- 89.** The High Court may by order remove an administrator from office.

##### *Administrator ceasing to be qualified*

**90.**—(1) The administrator of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(2) Where an administrator vacates office by virtue of sub-paragraph (1) he shall give notice in writing—

- in the case of an administrator appointed by administration order, to the High Court,
- in the case of an administrator appointed under paragraph 15, to the holder of the floating charge by virtue of which the appointment was made,
- in the case of an administrator appointed under paragraph 23(1), to the company, or

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(d) in the case of an administrator appointed under paragraph 23(2), to the directors of the company.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

*Supplying vacancy in office of administrator*

**91.** Paragraphs 92 to 96 apply where an administrator—

- (a) dies,
- (b) resigns,
- (c) is removed from office under paragraph 89, or
- (d) vacates office under paragraph 90.

**92.—**(1) Where the administrator was appointed by administration order, the High Court may replace the administrator on an application under this sub-paragraph made by—

- (a) a creditors' committee of the company,
- (b) the company,
- (c) the directors of the company,
- (d) one or more creditors of the company, or
- (e) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remains in office.

(2) But an application may be made in reliance on sub-paragraph (1)(b) to (d) only where—

- (a) there is no creditors' committee of the company,
- (b) the Court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement, or
- (c) the Court is satisfied that for another reason it is right for the application to be made.

**93.** Where the administrator was appointed under paragraph 15 the holder of the floating charge by virtue of which the appointment was made may replace the administrator.

**94.—**(1) Where the administrator was appointed under paragraph 23(1) by the company it may replace the administrator.

(2) A replacement under this paragraph may be made only—

- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
- (b) where consent is withheld, with the permission of the High Court.

**95.—**(1) Where the administrator was appointed under paragraph 23(2) the directors of the company may replace the administrator.

(2) A replacement under this paragraph may be made only—

- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
- (b) where consent is withheld, with the permission of the High Court.

**96.** The High Court may replace an administrator on the application of a person listed in paragraph 92(1) if the Court—

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- (a) is satisfied that a person who is entitled to replace the administrator under any of paragraphs 93 to 95 is not taking reasonable steps to make a replacement, or
- (b) that for another reason it is right for the Court to make the replacement.

*Substitution of administrator: competing floating charge-holder*

**97.**—(1) This paragraph applies where an administrator of a company is appointed under paragraph 15 by the holder of a qualifying floating charge in respect of the company's property.

(2) The holder of a prior qualifying floating charge in respect of the company's property may apply to the High Court for the administrator to be replaced by an administrator nominated by the holder of the prior floating charge.

- (3) One floating charge is prior to another for the purposes of this paragraph if—
  - (a) it was created first, or
  - (b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

*Substitution of administrator appointed by company or directors: creditors' meeting*

**98.**—(1) This paragraph applies where—

- (a) an administrator of a company is appointed by a company or directors under paragraph 23, and
  - (b) there is no holder of a qualifying floating charge in respect of the company's property.
- (2) A creditors' meeting may replace the administrator.
- (3) A creditor's meeting may act under sub-paragraph (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.

*Vacation of office: discharge from liability*

**99.**—(1) Where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.

- (2) The discharge provided by sub-paragraph (1) takes effect—
  - (a) in the case of an administrator who dies, on the filing with the High Court of notice of his death,
  - (b) in the case of an administrator appointed under paragraph 15 or 23, at a time appointed by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors, or
  - (c) in any case, at a time specified by the Court.
- (3) For the purpose of the application of sub-paragraph (2)(b) in a case where the administrator has made a statement under paragraph 53(1)(b), a resolution shall be taken as passed if (and only if) passed with the approval of—
  - (a) each secured creditor of the company, or
  - (b) if the administrator has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors—
    - (i) each secured creditor of the company, and

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- (ii) preferential creditors whose debts amount to more than 50 per cent. of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.
- (4) Discharge—
- (a) applies to liability accrued before the discharge takes effect, and
  - (b) does not prevent the exercise of the High Court's powers under paragraph 76.

*Vacation of office: charges and liabilities*

**100.**—(1) This paragraph applies where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect).

(2) In this paragraph—

“the former administrator” means the person referred to in sub-paragraph (1), and

“cessation” means the time when he ceases to be the company's administrator.

(3) The former administrator's remuneration and expenses shall be—

(a) charged on and payable out of property of which he had custody or control immediately before cessation, and

(b) payable in priority to any security to which paragraph 71 applies.

(4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—

(a) charged on and payable out of property of which the former administrator had custody or control immediately before cessation, and

(b) payable in priority to any charge arising under sub-paragraph (3).

(5) Sub-paragraph (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—

(a) action taken within the period of 14 days after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract,

(b) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment, and

(c) no account shall be taken of a liability to make a payment other than wages or salary.

(6) In sub-paragraph (5)(c) “wages or salary” includes—

(a) a sum payable in respect of a period of holiday (for which purpose the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued),

(b) a sum payable in respect of a period of absence through illness or other good cause,

(c) a sum payable in lieu of holiday,

(d) in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security, and

(e) a contribution to an occupational pension scheme.]

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**Modifications etc. (not altering text)**

- C1** Sch. B1 para. 100(3) applied by Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), **reg. 14(5)(a)(iv)** (as substituted (1.10.2009) by Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 4(d)(iii)**)

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