



Insolvency Act 1986

1986 CHAPTER 45

The First Group of Parts Company Insolvency ; Companies Winding Up

PART III

RECEIVERSHIP

CHAPTER I

RECEIVERS AND MANAGERS (ENGLAND AND WALES)

Preliminary and general provisions

28 Extent of this Chapter

This Chapter does not apply to receivers appointed under Chapter II of this Part (Scotland).

29 Definitions

- (1) It is hereby declared that, except where the context otherwise requires—
 - (a) any reference in the Companies Act or this Act to a receiver or manager of the property of a company, or to a receiver of it, includes a receiver or manager, or (as the case may be) a receiver of part only of that property and a receiver only of the income arising from the property or from part of it; and
 - (b) any reference in the Companies Act or this Act to the appointment of a receiver or manager under powers contained in an instrument includes an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.
- (2) In this Chapter " administrative receiver " means—
 - (a) a receiver or manager of the whole (or substantially the whole) of a company's property appointed by or on behalf of the holders of any debentures of the

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company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; or

- (b) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the company's property.

30 Disqualification of body corporate from acting as receiver

A body corporate is not qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver is liable to a fine.

31 Disqualification of undischarged bankrupt

If a person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he is liable to imprisonment or a fine, or both.

This does not apply to a receiver or a manager acting under an appointment made by the court.

32 Power for court to appoint official receiver

Where application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be appointed.

Receivers and managers appointed out of court

33 Time from which appointment is effective

- (1) The appointment of a person as a receiver or manager of a company's property under powers contained in an instrument—
- (a) is of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf, and
 - (b) subject to this, is deemed to be made at the time at which the instrument of appointment is so received.
- (2) This section applies to the appointment of two or more persons as joint receivers or managers of a company's property under powers contained in an instrument, subject to such modifications as may be prescribed by the rules.

34 Liability for invalid appointment

Where the appointment of a person as the receiver or manager of a company's property under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

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35 Application to court for directions

- (1) A receiver or manager of the property of a company appointed under powers contained in an instrument, or the persons by whom or on whose behalf a receiver or manager has been so appointed, may apply to the court for directions in relation to any particular matter arising in connection with the performance of the functions of the receiver or manager.
- (2) On such an application, the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as it thinks just.

36 Court's power to fix remuneration

- (1) The court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to a person who, under powers contained in an instrument, has been appointed receiver or manager of the company's property.
- (2) The court's power under subsection (1), where no previous order has been made with respect thereto under the subsection—
 - (a) extends to fixing the remuneration for any period before the making of the order or the application for it,
 - (b) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application, and
 - (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.

But the power conferred by paragraph (c) shall not be exercised as respects any period before the making of the application for the order under this section, unless in the court's opinion there are special circumstances making it proper for the power to be exercised.

- (3) The court may from time to time on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1).

37 Liability for contracts, etc.

- (1) A receiver or manager appointed under powers contained in an instrument (other than an administrative receiver) is, to the same extent as if he had been appointed by order of the court—
 - (a) personally liable on any contract entered into by him in the performance of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the performance of those functions, and
 - (b) entitled in respect of that liability to indemnity out of the assets.
- (2) For the purposes of subsection (1)(a), the receiver or manager is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment.

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- (3) Subsection (1) does not limit any right to indemnity which the receiver or manager would have apart from it, nor limit his liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.
- (4) Where at any time the receiver or manager so appointed vacates office—
 - (a) his remuneration and any expenses properly incurred by him, and
 - (b) any indemnity to which he is entitled out of the assets of the company,
 shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any charge or other security held by the person by or on whose behalf he was appointed.

38 Receivership accounts to be delivered to registrar

- (1) Except in the case of an administrative receiver, every receiver or manager of a company's property who has been appointed under powers contained in an instrument shall deliver to the registrar of companies for registration the requisite accounts of his receipts and payments.
- (2) The accounts shall be delivered within one month (or such longer period as the registrar may allow) after the expiration of 12 months from the date of his appointment and of every subsequent period of 6 months, and also within one month after he ceases to act as receiver or manager.
- (3) The requisite accounts shall be an abstract in the prescribed form showing—
 - (a) receipts and payments during the relevant period of 12 or 6 months, or
 - (b) where the receiver or manager ceases to act, receipts and payments during the period from the end of the period of 12 or 6 months to which the last preceding abstract related (or, if no preceding abstract has been delivered under this section, from the date of his appointment) up to the date of his so ceasing, and the aggregate amount of receipts and payments during all preceding periods since his appointment.
- (4) In this section "prescribed" means prescribed by regulations made by statutory instrument by the Secretary of State.
- (5) A receiver or manager who makes default in complying with this section is liable to a fine and, for continued contravention, to a daily default fine.

Provisions applicable to every receivership

39 Notification that receiver or manager appointed

- (1) When a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the company's name appears, shall contain a statement that a receiver or manager has been appointed.
- (2) If default is made in complying with this section, the company and any of the following persons, who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, is liable to a fine.

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40 Payment of debts out of assets subject to floating charge

- (1) The following applies, in the case of a company, where a receiver is appointed on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge.
- (2) If the company is not at the time in course of being wound up, its preferential debts (within the meaning given to that expression by section 386 in Part XII) shall be paid out of the assets coming to the hands of the receiver in priority to any claims for principal or interest in respect of the debentures.
- (3) Payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

41 Enforcement of duty to make returns

- (1) If a receiver or manager of a company's property—
 - (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, or
 - (b) having been appointed under powers contained in an instrument, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch them and pay over to the liquidator the amount properly payable to him,the court may, on an application made for the purpose, make an order directing the receiver or manager (as the case may be) to make good the default within such time as may be specified in the order.
- (2) In the case of the default mentioned in subsection (1)(a), application to the court may be made by any member or creditor of the company or by the registrar of companies; and in the case of the default mentioned in subsection (1)(b), the application shall be made by the liquidator.

In either case the court's order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.
- (3) Nothing in this section prejudices the operation of any enactment imposing penalties on receivers in respect of any such default as is mentioned in subsection (1).

Administrative receivers: general

42 General powers

- (1) The powers conferred on the administrative receiver of a company by the debentures by virtue of which he was appointed are deemed to include (except in so far as they are inconsistent with any of the provisions of those debentures) the powers specified in Schedule 1 to this Act.
- (2) In the application of Schedule 1 to the administrative receiver of a company—
 - (a) the words " he " and " him " refer to the administrative receiver, and

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- (b) references to the property of the company are to the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.
- (3) A person dealing with the administrative receiver in good faith and for value is not concerned to inquire whether the receiver is acting within his powers.

43 Power to dispose of charged property, etc.

- (1) Where, on an application by the administrative receiver, the court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security would be likely to promote a more advantageous realisation of the company's assets than would otherwise be effected, the court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.
- (2) Subsection (1) does not apply in the case of any security held by the person by or on whose behalf the administrative receiver was appointed, or of any security to which a security so held has priority.
- (3) It shall be a condition of an order under this section that—
 - (a) the net proceeds of the disposal, and
 - (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency,
 shall be applied towards discharging the sums secured by the security.
- (4) Where a condition imposed in pursuance of subsection (3) relates to two or more securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.
- (5) An office copy of an order under this section shall, within 14 days of the making of the order, be sent by the administrative receiver to the registrar of companies.
- (6) If the administrative receiver without reasonable excuse fails to comply with subsection (5), he is liable to a fine and, for continued contravention, to a daily default fine.
- (7) In this section "relevant property", in relation to the administrative receiver, means the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

44 Agency and liability for contracts

- (1) The administrative receiver of a company—
 - (a) is deemed to be the company's agent, unless and until the company goes into liquidation;
 - (b) is personally liable on any contract entered into by him in the carrying out of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the carrying out of those functions; and

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- (c) is entitled in respect of that liability to an indemnity out of the assets of the company.
- (2) For the purposes of subsection (1)(b) the administrative receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment.
- (3) This section does not limit any right to indemnity which the administrative receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

45 Vacation of office

- (1) An administrative receiver of a company may at any time be removed from office by order of the court (but not otherwise) and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.
- (2) An administrative receiver shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.
- (3) Where at any time an administrative receiver vacates office—
 - (a) his remuneration and any expenses properly incurred by him, and
 - (b) any indemnity to which he is entitled out of the assets of the company,shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.
- (4) Where an administrative receiver vacates office otherwise than by death, he shall, within 14 days after his vacation of office, send a notice to that effect to the registrar of companies.
- (5) If an administrative receiver without reasonable excuse fails to comply with subsection (4), he is liable to a fine and, for continued contravention, to a daily default fine.

Administrative receivers: ascertainment and investigation of company's affairs

46 Information to be given by administrative receiver

- (1) Where an administrative receiver is appointed, he shall—
 - (a) forthwith send to the company and publish in the prescribed manner a notice of his appointment, and
 - (b) within 28 days after his appointment, unless the court otherwise directs, send such a notice to all the creditors of the company (so far as he is aware of their addresses).
- (2) This section and the next do not apply in relation to the appointment of an administrative receiver to act—
 - (a) with an existing administrative receiver, or
 - (b) in place of an administrative receiver dying or ceasing to act,except that, where they apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in this section and the next

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to the administrative receiver include (subject to the next subsection) his successor and any continuing administrative receiver.

- (3) If the company is being wound up, this section and the next apply notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (4) If the administrative receiver without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

47 Statement of affairs to be submitted

- (1) Where an administrative receiver is appointed, he shall forthwith require some or all of the persons mentioned below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—
 - (a) particulars of the company's assets, debts and liabilities;
 - (b) the names and addresses of its creditors ;
 - (c) the securities held by them respectively;
 - (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed.
- (3) The persons referred to in subsection (1) are—
 - (a) those who are or have been officers of the company;
 - (b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver ;
 - (c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;
 - (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company.

In this subsection " employment" includes employment under a contract for services.

- (4) Where any persons are required under this section to submit a statement of affairs to the administrative receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrative receiver.
- (5) The administrative receiver, if he thinks fit, may—
 - (a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or
 - (b) either when giving notice under subsection (4) or subsequently, extend the period so mentioned;

and where the administrative receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

- (6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine.

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48 Report by administrative receiver

- (1) Where an administrative receiver is appointed, he shall, within 3 months (or such longer period as the court may allow) after his appointment, send to the registrar of companies, to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—
 - (a) the events leading up to his appointment, so far as he is aware of them;
 - (b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;
 - (c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors; and
 - (d) the amount (if any) likely to be available for the payment of other creditors.
- (2) The administrative receiver shall also, within 3 months (or such longer period as the court may allow) after his appointment, either—
 - (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company; or
 - (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,and (in either case), unless the court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than 14 days' notice.
- (3) The court shall not give a direction under subsection (2) unless—
 - (a) the report states the intention of the administrative receiver to apply for the direction, and
 - (b) a copy of the report is sent to the persons mentioned in paragraph (a) of that subsection, or a notice is published as mentioned in paragraph (b) of that subsection, not less than 14 days before the hearing of the application.
- (4) Where the company has gone or goes into liquidation, the administrative receiver—
 - (a) shall, within 7 days after his compliance with subsection (1) or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator, and
 - (b) where he does so within the time limited for compliance with subsection (2), is not required to comply with that subsection.
- (5) A report under this section shall include a summary of the statement of affairs made out and submitted to the administrative receiver under section 47 and of his comments (if any) upon it.
- (6) Nothing in this section is to be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his functions.
- (7) Section 46(2) applies for the purposes of this section also.
- (8) If the administrative receiver without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

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49 Committee of creditors

- (1) Where a meeting of creditors is summoned under section 48, the meeting may, if it thinks fit, establish a committee (" the creditors' committee ") to exercise the functions conferred on it by or under this Act.
- (2) If such a committee is established, the committee may, on giving not less than 7 days' notice, require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

CHAPTER II

RECEIVERS (SCOTLAND)

50 Extent of this Chapter

This Chapter extends to Scotland only.

51 Power to appoint receiver

- (1) It is competent under the law of Scotland for the holder of a floating charge over all or any part of the property (including uncalled capital), which may from time to time be comprised in the property and undertaking of an incorporated company (whether a company within the meaning of the Companies Act or not) which the Court of Session has jurisdiction to wind up, to appoint a receiver of such part of the property of the company as is subject to the charge.
- (2) It is competent under the law of Scotland for the court, on the application of the holder of such a floating charge, to appoint a receiver of such part of the property of the company as is subject to the charge.
- (3) The following are disqualified from being appointed as receiver—
 - (a) a body corporate ;
 - (b) an undischarged bankrupt; and
 - (c) a firm according to the law of Scotland.
- (4) A body corporate or a firm according to the law of Scotland which acts as a receiver is liable to a fine.
- (5) An undischarged bankrupt who so acts is liable to imprisonment or a fine, or both.
- (6) In this section, " receiver " includes joint receivers.

52 Circumstances justifying appointment

- (1) A receiver may be appointed under section 51(1) by the holder of the floating charge on the occurrence of any event which, by the provisions of the instrument creating the charge, entitles the holder of the charge to make that appointment and, in so far as not otherwise provided for by the instrument, on the occurrence of any of the following events, namely—

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- (a) the expiry of a period of 21 days after the making of a demand for payment of the whole or any part of the principal sum secured by the charge, without payment having been made;
 - (b) the expiry of a period of 2 months during the whole of which interest due and payable under the charge has been in arrears;
 - (c) the making of an order or the passing of a resolution to wind up the company;
 - (d) the appointment of a receiver by virtue of any other floating charge created by the company.
- (2) A receiver may be appointed by the court under section 51(2) on the occurrence of any event which, by the provisions of the instrument creating the floating charge, entitles the holder of the charge to make that appointment and, in so far as not otherwise provided for by the instrument, on the occurrence of any of the following events, namely—
- (a) where the court, on the application of the holder of the charge, pronounces itself satisfied that the position of the holder of the charge is likely to be prejudiced if no such appointment is made;
 - (b) any of the events referred to in paragraphs (a) to (c) of subsection (1).

53 Mode of appointment by holder of charge

- (1) The appointment of a receiver by the holder of the floating charge under section 51(1) shall be by means of a validly executed instrument in writing ("the instrument of appointment"), a copy (certified in the prescribed manner to be a correct copy) whereof shall be delivered by or on behalf of the person making the appointment to the registrar of companies for registration within 7 days of its execution and shall be accompanied by a notice in the prescribed form.
- (2) If any person without reasonable excuse makes default in complying with the requirements of subsection (1), he is liable to a fine and, for continued contravention, to a daily default fine.
- (3) The instrument of appointment is validly executed—
- (a) by a company, if it is executed in accordance with the provisions of section 36 of the Companies Act as if it were a contract, and
 - (b) by any other person, if it is executed in the manner required or permitted by the law of Scotland in the case of an attested deed.
- (4) The instrument may be executed on behalf of the holder of the floating charge by virtue of which the receiver is to be appointed—
- (a) by any person duly authorised in writing by the holder to execute the instrument, and
 - (b) in the case of an appointment of a receiver by the holders of a series of secured debentures, by any person authorised by resolution of the debenture-holders to execute the instrument.
- (5) On receipt of the certified copy of the instrument of appointment in accordance with subsection (1), the registrar shall, on payment of the prescribed fee, enter the particulars of the appointment in the register of charges.
- (6) The appointment of a person as a receiver by an instrument of appointment in accordance with subsection (1)—

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- (a) is of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf, and
- (b) subject to paragraph (a), is deemed to be made on the day on and at the time at which the instrument of appointment is so received, as evidenced by a written docquet by that person or on his behalf;

and this subsection applies to the appointment of joint receivers subject to such modifications as may be prescribed.

- (7) On the appointment of a receiver under this section, the floating charge by virtue of which he was appointed attaches to the property then subject to the charge; and such attachment has effect as if the charge was a fixed security over the property to which it has attached.

54 Appointment by court

- (1) Application for the appointment of a receiver by the court under section 51(2) shall be by petition to the court, which shall be served on the company.
- (2) On such an application, the court shall, if it thinks fit, issue an interlocutor making the appointment of the receiver.
- (3) A copy (certified by the clerk of the court to be a correct copy) of the court's interlocutor making the appointment shall be delivered by or on behalf of the petitioner to the registrar of companies for registration, accompanied by a notice in the prescribed form, within 7 days of the date of the interlocutor or such longer period as the court may allow.

If any person without reasonable excuse makes default in complying with the requirements of this subsection, he is liable to a fine and, for continued contravention, to a daily default fine.

- (4) On receipt of the certified copy interlocutor in accordance with subsection (3), the registrar shall, on payment of the prescribed fee, enter the particulars of the appointment in the register of charges.
- (5) The receiver is to be regarded as having been appointed on the date of his being appointed by the court.
- (6) On the appointment of a receiver under this section, the floating charge by virtue of which he was appointed attaches to the property then subject to the charge; and such attachment has effect as if the charge were a fixed security over the property to which it has attached.
- (7) In making rules of court for the purposes of this section, the Court of Session shall have regard to the need for special provision for cases which appear to the court to require to be dealt with as a matter of urgency.

55 Powers of receiver

- (1) Subject to the next subsection, a receiver has in relation to such part of the property of the company as is attached by the floating charge by virtue of which he was appointed, the powers, if any, given to him by the instrument creating that charge.

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- (2) In addition, the receiver has under this Chapter the powers as respects that property (in so far as these are not inconsistent with any provision contained in that instrument) which are specified in Schedule 2 to this Act.
- (3) Subsections (1) and (2) apply—
 - (a) subject to the rights of any person who has effectually executed diligence on all or any part of the property of the company prior to the appointment of the receiver, and
 - (b) subject to the rights of any person who holds over all or any part of the property of the company a fixed security or floating charge having priority over, or ranking *pari passu* with, the floating charge by virtue of which the receiver was appointed.
- (4) A person dealing with a receiver in good faith and for value is not concerned to enquire whether the receiver is acting within his powers.

56 Precedence among receivers

- (1) Where there are two or more floating charges subsisting over all or any part of the property of the company, a receiver may be appointed under this Chapter by virtue of each such charge; but a receiver appointed by, or on the application of, the holder of a floating charge having priority of ranking over any other floating charge by virtue of which a receiver has been appointed has the powers given to a receiver by section 55 and Schedule 2 to the exclusion of any other receiver.
- (2) Where two or more floating charges rank with one another equally, and two or more receivers have been appointed by virtue of such charges, the receivers so appointed are deemed to have been appointed as joint receivers.
- (3) Receivers appointed, or deemed to have been appointed, as joint receivers shall act jointly unless the instrument of appointment or respective instruments of appointment otherwise provide.
- (4) Subject to subsection (5) below, the powers of a receiver appointed by, or on the application of, the holder of a floating charge are suspended by, and as from the date of, the appointment of a receiver by, or on the application of, the holder of a floating charge having priority of ranking over that charge to such extent as may be necessary to enable the receiver second mentioned to exercise his powers under section 55 and Schedule 2 ; and any powers so suspended take effect again when the floating charge having priority of ranking ceases to attach to the property then subject to the charge, whether such cessation is by virtue of section 62(6) or otherwise.
- (5) The suspension of the powers of a receiver under subsection (4) does not have the effect of requiring him to release any part of the property (including any letters or documents) of the company from his control until he receives from the receiver superseding him a valid indemnity (subject to the limit of the value of such part of the property of the company as is subject to the charge by virtue of which he was appointed) in respect of any expenses, charges and liabilities he may have incurred in the performance of his functions as receiver.
- (6) The suspension of the powers of a receiver under subsection (4) does not cause the floating charge by virtue of which he was appointed to cease to attach to the property to which it attached by virtue of section 53(7) or 54(6).

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- (7) Nothing in this section prevents the same receiver being appointed by virtue of two or more floating charges.

57 Agency and liability of receiver for contracts

- (1) A receiver is deemed to be the agent of the company in relation to such property of the company as is attached by the floating charge by virtue of which he was appointed.
- (2) A receiver (including a receiver whose powers are subsequently suspended under section 56) is personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and on any contract of employment adopted by him in the carrying out of those functions.
- (3) A receiver who is personally liable by virtue of subsection (2) is entitled to be indemnified out of the property in respect of which he was appointed.
- (4) Any contract entered into by or on behalf of the company prior to the appointment of a receiver continues in force (subject to its terms) notwithstanding that appointment, but the receiver does not by virtue only of his appointment incur any personal liability on any such contract.
- (5) For the purposes of subsection (2), a receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment.
- (6) This section does not limit any right to indemnity which the receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.
- (7) Any contract entered into by a receiver in the performance of his functions continues in force (subject to its terms) although the powers of the receiver are subsequently suspended under section 56.

58 Remuneration of receiver

- (1) The remuneration to be paid to a receiver is to be determined by agreement between the receiver and the holder of the floating charge by virtue of which he was appointed.
- (2) Where the remuneration to be paid to the receiver has not been determined under subsection (1), or where it has been so determined but is disputed by any of the persons mentioned in paragraphs (a) to (d) below, it may be fixed instead by the Auditor of the Court of Session on application made to him by—
 - (a) the receiver;
 - (b) the holder of any floating charge or fixed security over all or any part of the property of the company;
 - (c) the company; or
 - (d) the liquidator of the company.
- (3) Where the receiver has been paid or has retained for his remuneration for any period before the remuneration has been fixed by the Auditor of the Court of Session under subsection (2) any amount in excess of the remuneration so fixed for that period, the receiver or his personal representatives shall account for the excess.

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59 Priority of debts

- (1) Where a receiver is appointed and the company is not at the time of the appointment in course of being wound up, the debts which fall under subsection (2) of this section shall be paid out of any assets coming to the hands of the receiver in priority to any claim for principal or interest by the holder of the floating charge by virtue of which the receiver was appointed.
- (2) Debts falling under this subsection are preferential debts (within the meaning given by section 386 in Part XII) which, by the end of a period of 6 months after advertisement by the receiver for claims in the Edinburgh Gazette and in a newspaper circulating in the district where the company carries on business either—
 - (i) have been intimated to him, or
 - (ii) have become known to him.
- (3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of ordinary creditors.

60 Distribution of moneys

- (1) Subject to the next section, and to the rights of any of the following categories of persons (which rights shall, except to the extent otherwise provided in any instrument, have the following order of priority), namely—
 - (a) the holder of any fixed security which is over property subject to the floating charge and which ranks prior to, or *pari passu* with, the floating charge;
 - (b) all persons who have effectually executed diligence on any part of the property of the company which is subject to the charge by virtue of which the receiver was appointed;
 - (c) creditors in respect of all liabilities, charges and expenses incurred by or on behalf of the receiver;
 - (d) the receiver in respect of his liabilities, expenses and remuneration, and any indemnity to which he is entitled out of the property of the company; and
 - (e) the preferential creditors entitled to payment under section 59,the receiver shall pay moneys received by him to the holder of the floating charge by virtue of which the receiver was appointed in or towards satisfaction of the debt secured by the floating charge.
- (2) Any balance of moneys remaining after the provisions of subsection (1) and section 61 below have been satisfied shall be paid in accordance with their respective rights and interests to the following persons, as the case may require—
 - (a) any other receiver ;
 - (b) the holder of a fixed security which is over property subject to the floating charge;
 - (c) the company or its liquidator, as the case may be.
- (3) Where any question arises as to the person entitled to a payment under this section, or where a receipt or a discharge of a security cannot be obtained in respect of any such payment, the receiver shall consign the amount of such payment in any joint stock bank of issue in Scotland in name of the Accountant of Court for behoof of the person or persons entitled thereto.

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61 Disposal of interest in property

- (1) Where the receiver sells or disposes, or is desirous of selling or disposing, of any property or interest in property of the company which is subject to the floating charge by virtue of which the receiver was appointed and which is—
 - (a) subject to any security or interest of, or burden or encumbrance in favour of, a creditor the ranking of which is prior to, or *pari passu* with, or postponed to the floating charge, or
 - (b) property or an interest in property affected or attached by effectual diligence executed by any person,and the receiver is unable to obtain the consent of such creditor or, as the case may be, such person to such a sale or disposal, the receiver may apply to the court for authority to sell or dispose of the property or interest in property free of such security, interest, burden, encumbrance or diligence.
- (2) Subject to the next subsection, on such an application the court may, if it thinks fit, authorise the sale or disposal of the property or interest in question free of such security, interest, burden, encumbrance or diligence, and such authorisation may be on such terms or conditions as the court thinks fit.
- (3) In the case of an application where a fixed security over the property or interest in question which ranks prior to the floating charge has not been met or provided for in full, the court shall not authorise the sale or disposal of the property or interest in question unless it is satisfied that the sale or disposal would be likely to provide a more advantageous realisation of the company's assets than would otherwise be effected.
- (4) It shall be a condition of an authorisation to which subsection (3) applies that—
 - (a) the net proceeds of the disposal, and
 - (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or interest in the open market by a willing seller, such sums as may be required to make good the deficiency,shall be applied towards discharging the sums secured by the fixed security.
- (5) Where a condition imposed in pursuance of subsection (4) relates to two or more such fixed securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those fixed securities in the order of their priorities.
- (6) A copy of an authorisation under subsection (2) certified by the clerk of court shall, within 14 days of the granting of the authorisation, be sent by the receiver to the registrar of companies.
- (7) If the receiver without reasonable excuse fails to comply with subsection (6), he is liable to a fine and, for continued contravention, to a daily default fine.
- (8) Where any sale or disposal is effected in accordance with the authorisation of the court under subsection (2), the receiver shall grant to the purchaser or donee an appropriate document of transfer or conveyance of the property or interest in question, and that document has the effect, or, where recording, intimation or registration of that document is a legal requirement for completion of title to the property or interest, then that recording, intimation or registration (as the case may be) has the effect, of—

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- (a) disencumbering the property or interest of the security, interest, burden or encumbrance affecting it, and
 - (b) freeing the property or interest from the diligence executed upon it.
- (9) Nothing in this section prejudices the right of any creditor of the company to rank for his debt in the winding up of the company.

62 Cessation of appointment of receiver

- (1) A receiver may be removed from office by the court under subsection (3) below and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.
- (2) A receiver shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.
- (3) Subject to the next subsection, a receiver may, on application to the court by the holder of the floating charge by virtue of which he was appointed, be removed by the court on cause shown.
- (4) Where at any time a receiver vacates office—
- (a) his remuneration and any expenses properly incurred by him, and
 - (b) any indemnity to which he is entitled out of the property of the company,
- shall be paid out of the property of the company which is subject to the floating charge and shall have priority as provided for in section 60(1).
- (5) When a receiver ceases to act as such otherwise than by death he shall, and, when a receiver is removed by the court, the holder of the floating charge by virtue of which he was appointed shall, within 14 days of the cessation or removal (as the case may be) give the registrar of companies notice to that effect, and the registrar shall enter the notice in the register of charges.

If the receiver or the holder of the floating charge (as the case may require) makes default in complying with the requirements of this subsection, he is liable to a fine and, for continued contravention, to a daily default fine.

- (6) If by the expiry of a period of one month following upon the removal of the receiver or his ceasing to act as such no other receiver has been appointed, the floating charge by virtue of which the receiver was appointed—
- (a) thereupon ceases to attach to the property then subject to the charge, and
 - (b) again subsists as a floating charge;
- and for the purposes of calculating the period of one month under this subsection no account shall be taken of any period during which an administration order under Part II of this Act is in force.

63 Powers of court

- (1) The court on the application of—
- (a) the holder of a floating charge by virtue of which a receiver was appointed, or
 - (b) a receiver appointed under section 51,
- may give directions to the receiver in respect of any matter arising in connection with the performance by him of his functions.

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- (2) Where the appointment of a person as a receiver by the holder of a floating charge is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the court may order the holder of the floating charge to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

64 Notification that receiver appointed

- (1) Where a receiver has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.
- (2) If default is made in complying with the requirements of this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely any officer of the company, any liquidator of the company and any receiver, is liable to a fine.

65 Information to be given by receiver

- (1) Where a receiver is appointed, he shall—
- (a) forthwith send to the company and publish notice of his appointment, and
 - (b) within 28 days after his appointment, unless the court otherwise directs, send such notice to all the creditors of the company (so far as he is aware of their addresses).
- (2) This section and the next do not apply in relation to the appointment of a receiver to act—
- (a) with an existing receiver, or
 - (b) in place of a receiver who has died or ceased to act,
- except that, where they apply to a receiver who dies or ceases to act before they have been fully complied with, the references in this section and the next to the receiver include (subject to subsection (3) of this section) his successor and any continuing receiver.
- (3) If the company is being wound up, this section and the next apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.
- (4) If a person without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

66 Company's statement of affairs

- (1) Where a receiver of a company is appointed, the receiver shall forthwith require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—
- (a) particulars of the company's assets, debts and liabilities ;
 - (b) the names and addresses of its creditors;

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- (c) the securities held by them respectively;
 - (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed.
- (3) The persons referred to in subsection (1) are—
- (a) those who are or have been officers of the company ;
 - (b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the receiver;
 - (c) those who are in the company's employment or have been in its employment within that year, and are in the receiver's opinion capable of giving the information required;
 - (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company.

In this subsection " employment " includes employment under a contract for services.

- (5) The receiver, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or
 - (b) either when giving the notice mentioned in subsection (4) or subsequently extend the period so mentioned,
- and where the receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.
- (6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention to a daily default fine.

67 Report by receiver

- (1) Where a receiver is appointed under section 51, he shall within 3 months (or such longer period as the court may allow) after his appointment, send to the registrar of companies, to the holder of the floating charge by virtue of which he was appointed and to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—
- (a) the events leading up to his appointment, so far as he is aware of them ;
 - (b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;
 - (c) the amounts of principal and interest payable to the holder of the floating charge by virtue of which he was appointed and the amounts payable to preferential creditors; and
 - (d) the amount (if any) likely to be available for the payment of other creditors.
- (2) The receiver shall also, within 3 months (or such longer period as the court may allow) after his appointment, either—
- (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company, or
 - (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,

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and (in either case), unless the court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than 14 days' notice.

- (3) The court shall not give a direction under subsection (2) unless—
 - (a) the report states the intention of the receiver to apply for the direction, and
 - (b) a copy of the report is sent to the persons mentioned in paragraph (a) of that subsection, or a notice is published as mentioned in paragraph (b) of that subsection, not less than 14 days before the hearing of the application.
- (4) Where the company has gone or goes into liquidation, the receiver—
 - (a) shall, within 7 days after his compliance with subsection (1) or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator, and
 - (b) where he does so within the time limited for compliance with subsection (2), is not required to comply with that subsection.
- (5) A report under this section shall include a summary of the statement of affairs made out and submitted under section 66 and of his comments (if any) on it.
- (6) Nothing in this section shall be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the receiver of his functions.
- (7) Section 65(2) applies for the purposes of this section also.
- (8) If a person without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.
- (9) In this section " secured creditor ", in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and " unsecured creditor " shall be construed accordingly.

68 Committee of creditors

- (1) Where a meeting of creditors is summoned under section 67, the meeting may, if it thinks fit, establish a committee (" the creditors' committee ") to exercise the functions conferred on it by or under this Act.
- (2) If such a committee is established, the committee may on giving not less than 7 days' notice require the receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

69 Enforcement of receiver's duty to make returns, etc.

- (1) If any receiver—
 - (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so ; or
 - (b) has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him,

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the court may, on an application made for the purpose, make an order directing the receiver to make good the default within such time as may be specified in the order.

- (2) In the case of any such default as is mentioned in subsection (1)(a), an application for the purposes of this section may be made by any member or creditor of the company or by the registrar of companies; and, in the case of any such default as is mentioned in subsection (1)(b), the application shall be made by the liquidator; and, in either case, the order may provide that all expenses of and incidental to the application shall be borne by the receiver.
- (3) Nothing in this section prejudices the operation of any enactments imposing penalties on receivers in respect of any such default as is mentioned in subsection (1).

70 Interpretation for Chapter II

- (1) In this Chapter, unless the contrary intention appears, the following expressions have the following meanings respectively assigned to them—

" company " means an incorporated company (whether or not a company within the meaning of the Companies Act) which the Court of Session has jurisdiction to wind up;

" fixed security ", in relation to any property of a company, means any security, other than a floating charge or a charge having the nature of a floating charge, which on the winding up of the company in Scotland would be treated as an effective security over that property, and (without prejudice to that generality) includes a security over that property, being a heritable security within the meaning of the Conveyancing and Feudal Reform (Scotland) Act 1970;

" instrument of appointment " has the meaning given by section 53(1);

" prescribed " means prescribed by regulations made under this Chapter by the Secretary of State ;

" receiver " means a receiver of such part of the property of the company as is subject to the floating charge by virtue of which he has been appointed under section 51 ;

" register of charges " means the register kept by the registrar of companies for the purposes of Chapter II of Part XII of the Companies Act;

" secured debenture " means a bond, debenture, debenture stock or other security which, either itself or by reference to any other instrument, creates a floating charge over all or any part of the property of the company, but does not include a security which creates no charge other than a fixed security; and

" series of secured debentures " means two or more secured debentures created as a series by the company in such a manner that the holders thereof are entitled *pari passu* to the benefit of the floating charge.

- (2) Where a floating charge, secured debenture or series of secured debentures has been created by the company, then, except where the context otherwise requires, any reference in this Chapter to the holder of the floating charge shall—
 - (a) where the floating charge, secured debenture or series of secured debentures provides for a receiver to be appointed by any person or body, be construed as a reference to that person or body;
 - (b) where, in the case of a series of secured debentures, no such provision has been made therein but—

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- (i) there are trustees acting for the debenture-holders under and in accordance with a trust deed, be construed as a reference to those trustees, and
- (i) where no such trustees are acting, be construed as a reference to—
 - (aa) a majority in nominal value of those present or represented by proxy and voting at a meeting of debenture-holders at which the holders of at least one-third in nominal value of the outstanding debentures of the series are present or so represented, or
 - (bb) where no such meeting is held, the holders of at least one-half in nominal value of the outstanding debentures of the series.
- (3) Any reference in this Chapter to a floating charge, secured debenture, series of secured debentures or instrument creating a charge includes, except where the context otherwise requires, a reference to that floating charge, debenture, series of debentures or instrument as varied by any instrument.
- (4) References in this Chapter to the instrument by which a floating charge was created are, in the case of a floating charge created by words in a bond or other written acknowledgement, references to the bond or, as the case may be, the other written acknowledgement.

71 Prescription of forms etc.; regulations

- (1) The notice referred to in section 62(5), and the notice referred to in section 65(1)(a) shall be in such form as may be prescribed.
- (2) Any power conferred by this Chapter on the Secretary of State to make regulations is exercisable by statutory instrument; and a statutory instrument made in the exercise of the power so conferred to prescribe a fee is subject to annulment in pursuance of a resolution of either House of Parliament.

CHAPTER III

RECEIVERS' POWERS IN GREAT BRITAIN AS A WHOLE

72 Cross-border operation of receivership provisions

- (1) A receiver appointed under the law of either part of Great Britain in respect of the whole or any part of any property or undertaking of a company and in consequence of the company having created a charge which, as created, was a floating charge may exercise his powers in the other part of Great Britain so far as their exercise is not inconsistent with the law applicable there.
- (2) In subsection (1) "receiver" includes a manager and a person who is appointed both receiver and manager.