



Insolvency Act 1986

1986 CHAPTER 45

PART III

RECEIVERSHIP

CHAPTER I

RECEIVERS AND MANAGERS (ENGLAND AND WALES)

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
 - (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

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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) [^{F1}A 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.

Textual Amendments

- F1** Words in s. 43(5) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 74(4)} (with art. 10, Sch. 1 para. 84)

Modifications etc. (not altering text)

- C1** S. 43 excluded (6.3.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), reg. 46, [Sch. para. 2\(1\)](#)
- C2** S. 43 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), ss. 154, 155, 175(3)(a); S.I. 1991/878, art. 2, [Sch.](#) .
- S. 43 excluded (15.8.1995) by S.I. 1995/2049, [reg. 21\(4\)\(a\)](#)

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 [^{F2}, to

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- the extent of any qualifying liability,]on any contract of employment adopted by him in the carrying out of those functions; and
- (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.
- [^{F3}(2A) For the purposes of subsection (1)(b), a liability under a contract of employment is a qualifying liability if—
- (a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme,
- (b) it is incurred while the administrative receiver is in office, and
- (c) it is in respect of services rendered wholly or partly after the adoption of the contract.
- (2B) Where a sum payable in respect of a liability which is a qualifying liability for the purposes of subsection (1)(b) is payable in respect of services rendered partly before and partly after the adoption of the contract, liability under subsection (1)(b) shall only extend to so much of the sum as is payable in respect of services rendered after the adoption of the contract.
- (2C) For the purposes of subsections (2A) and (2B)—
- (a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and
- (b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.
- (2D) In subsection (2C)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.]
- (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.

Textual Amendments

- F2** Words in s. 44(1)(b) inserted (24.3.1994 with effect in relation to contracts of employment adopted on or after 15.3.1994) by 1994 c. 7, s. 2(2)(4)
- F3** S. 44(2A)-(2D) inserted (24.3.1994 with effect in relation to contracts of employment adopted on or after 15.3.1994) by 1994 c. 7, s. 2(3)(4)

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.

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- (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 [^{F4}and, for continued contravention, to a daily default fine].

Textual Amendments

- F4** Words repealed (*prosp.*) by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 107, 212, 213(2), 215(2), Sch. 16 para. 3(3), [Sch. 24](#)

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