

Status: Point in time view as at 01/01/1998.

Changes to legislation: There are currently no known outstanding effects for the Friendly Societies Act 1992, SCHEDULE 10. (See end of Document for details)

SCHEDULES

SCHEDULE 10

Section 23.

APPLICATION OF COMPANIES WINDING UP LEGISLATION TO INCORPORATED FRIENDLY SOCIETIES

PART I

GENERAL MODE OF APPLICATION

- 1 The enactments which comprise the companies winding up legislation (referred to in this Schedule as “the enactments”) are the provisions of—
- (a) Parts IV, VI, VII, XII and XIII of the ^{M1}Insolvency Act 1986, or
 - (b) Parts V, VI, XI and XII of the ^{M2}Insolvency (Northern Ireland) Order 1989, and, in so far as they relate to offences under any such enactment, sections 430 and 432 of, and Schedule 10 to, that Act or Article 373 of, and Schedule 7 to, that Order.

Marginal Citations

- M1** 1986 c. 45.
M2 S.I. 1989/2405 (N.I.19).

- 2 Subject to the following provisions of this Schedule, the enactments apply to the winding up of incorporated friendly societies as they apply to the winding up of companies registered under the ^{M3}Companies Act 1985 or (as the case may be) the ^{M4}Companies (Northern Ireland) Order 1986.

Marginal Citations

- M3** 1985 c. 6.
M4 S.I. 1986/1032 (N.I.6).

- 3 (1) Subject to the following provisions of this Schedule, the enactments shall, in their application to incorporated friendly societies, have effect with the substitution—
- (a) for “company” of “incorporated friendly society”;
 - (b) for “directors” of “committee of management”;
 - (c) for “the registrar of companies” or “the registrar” of “the central office”; and
 - (d) for “the articles” of “the rules”.
- (2) Subject to the following provisions of this Schedule in the application of the enactments to incorporated friendly societies—

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- (a) every reference to the officers, or to a particular officer, of a company shall have effect as a reference to the officers, or to the corresponding officer, of the incorporated friendly society and as including a person holding himself out as such an officer;
- (b) every reference to a director of a company shall be construed as a reference to a member of the committee of management; and
- (c) every reference to an administrator, an administration order, an administrative receiver, a shadow director or a voluntary arrangement shall be omitted.
- 4 (1) Where any of the enactments as applied to incorporated friendly societies requires a notice or other document to be sent to the central office, it shall have effect as if it required the central office to keep the notice or document in the public file of the society and to record in that file the date on which the notice or document is placed in it.
- (2) Where any of the enactments, as so applied, refers to the registration, or to the date of registration, of such a notice or document, that enactment shall have effect as if it referred to the placing of the notice or document in the public file or (as the case may be) to the date on which it was placed there.
- 5 Any enactment which specifies a sum altered by order under section 416 of the ^{M5}Insolvency Act 1986 or Article 362 of the ^{M6}Insolvency (Northern Ireland) Order 1989 (powers to alter monetary limits) applies with the effect of the alteration.

Marginal Citations

M5 1986 c. 45.

M6 S.I. 1989/2405 (N.I.19).

PART II

MODIFIED APPLICATION OF INSOLVENCY ACT 1986 PARTS IV AND XII

Preliminary

- 6 In this Part of this Schedule, Part IV of the Insolvency Act 1986 is referred to as “Part IV”; and that Act is referred to as “the Act”.

Members of a friendly society as contributories in winding up

- 7 (1) Section 74 (liability of members) of the Act is modified as follows.
- (2) In subsection (1), the reference to any past member shall be omitted.
- (3) Paragraphs (a) to (d) of subsection (2) shall be omitted; and so shall subsection (3).
- (4) The extent of the liability of a member of an incorporated friendly society in a winding up shall not exceed the extent of his liability under paragraph 8 of Schedule 3 to this Act.

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- 8 Sections 75 to 78 and 83 in Chapter I of Part IV (miscellaneous provisions not relevant to incorporated friendly societies) do not apply.
- 9 (1) Section 79 (meaning of “contributory”) of the Act does not apply.
- (2) In the enactments as applied to an incorporated friendly society, “contributory”—
- (a) means every person liable to contribute to the assets of the society in the event of its being wound up; and
 - (b) for the purposes of all proceedings for determining, and all proceedings prior to the determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory; and
 - (c) includes persons who are liable to pay or contribute to the payment of—
 - (i) any debt or liability of the incorporated friendly society being wound up; or
 - (ii) any sum for the adjustment of rights of members among themselves; or
 - (iii) the expenses of the winding up;
- but does not include persons liable to contribute by virtue of a declaration by the court under section 213 (imputed responsibility for fraudulent trading) or section 214 (wrongful trading) of the Act.

Voluntary winding up

- 10 (1) Section 84 of the Act does not apply.
- (2) In the enactments as applied to an incorporated friendly society, the expression “resolution for voluntary winding up” means a resolution passed under section 21(1) above.
- 11 Section 88 shall have effect with the omission of the words from the beginning to “and”.
- 12 (1) Subsection (1) of section 89 shall have effect as if for the words from the beginning to “meeting” there were substituted the words—
- “(1) Where it is proposed to wind up an incorporated friendly society voluntarily, the committee of management (or, in the case of an incorporated friendly society whose committee of management has more than two members, the majority of them) may at a meeting of the committee”.
- (2) The reference to the directors in subsection (2) shall be construed as a reference to members of the committee of management.
- 13 Section 90 shall have effect as if for the words “directors’ statutory declaration under section 89” there were substituted the words “statutory declaration made under section 89 by members of the committee of management”.
- 14 Sections 95(1) and 96 shall have effect as if the word “directors” were omitted from each of them.
- 15 In subsection (1) of section 101 (appointment of liquidation committee) of the Act, the reference to functions conferred on a liquidation committee by or under that Act shall have effect as a reference to its functions by or under that Act as applied to incorporated friendly societies.

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- 16 (1) Section 107 (distribution of property) of the Act does not apply; and the following applies in its place.
- (2) Subject to the provisions of Part IV relating to preferential payments, an incorporated friendly society’s property in a voluntary winding up shall be applied in satisfaction of the society’s liabilities to creditors *pari passu* and, subject to that application, in accordance with the rules of the society.
- 17 Sections 110 and 111 (liquidator accepting shares, etc. as consideration for sale of company property) of the Act do not apply.

Winding up by the court

- 18 In sections 117 (High Court and county court jurisdiction) and 120 (Court of Session and sheriff court jurisdiction) of the Act, each reference to a company’s share capital paid up or credited as paid up shall have effect as a reference to the amount of the contribution or subscription income of an incorporated friendly society as shown by the latest balance sheet.
- 19 Section 122 (circumstances in which company may be wound up by the court) of the Act does not apply.
- 20 Section 124 (application for winding up) of the Act does not apply.
- 21 (1) In section 125 (powers of court on hearing of petition) of the Act, subsection (1) applies with the omission of the words from “but the court” to the end of the subsection.
- (2) The conditions which the court may impose under section 125 of the Act include conditions for securing—
 - (a) that the incorporated friendly society be dissolved by consent of its members under section 20 above; or
 - (b) that the society amalgamates with, or transfers all or any of its engagements to, another friendly society under section 85 or 86 above, or
 - (c) that the society converts itself into a company under section 91 above,
 and may also include conditions for securing that any default which occasioned the petition be made good and that the costs, or in Scotland the expenses, of the proceedings on that petition be defrayed by the person or persons responsible for the default.

[^{F1}22]

Textual Amendments
F1 Sch. 2 para. 22 repealed (N.I.) (7.2.1994) by 1993 c. 49, s. 182(1), Sch. 4 Pt.I; S.R. 1994/17, art. 2

[^{F2}23 If, before the presentation of a petition for the winding up by the court of an incorporated friendly society, an instrument of dissolution under section 20 above is placed in the society’s public file, section 129(1) (commencement of winding up by the court) of the Act shall also apply in relation to the date on which the notice is so placed and to any proceedings in the course of the dissolution as it applies to the commencement date for, and proceedings in, a voluntary winding up.]

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Textual Amendments

F2 Sch. 2 para. 23 repealed (N.I.) (7.2.1994) by 1993 c. 49, s. 182(1), Sch. 4 Pt.I; S.R. 1994/17, art. 2

- 24 (1) Section 130 of the Act (consequences of winding-up order) shall have effect with the following modifications.
- (2) Subsections (1) and (3) shall be omitted.
- (3) An incorporated friendly society shall, within 15 days of a winding-up order being made in respect of it, give notice of the order to the central office; and the central office shall keep the notice in the public file of the society.
- (4) If an incorporated friendly society fails to comply with sub-paragraph (3) above, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 25 Section 140 (appointment of liquidator by court in certain circumstances) of the Act does not apply.
- 26 In the application of sections 141(1) and 142(1) (liquidation committees), of the Act to incorporated friendly societies, the references to functions conferred on a liquidation committee by or under that Act shall have effect as references to its functions by or under that Act as so applied.
- 27 The conditions which the court may impose under section 147 (power to stay or sist winding up) of the Act shall include those specified in paragraph 21(2) above.
- 28 Section 154 (adjustment of rights of contributories) of the Act shall have effect with the modification that any surplus is to be distributed in accordance with the rules of the society.
- 29 In section 165(2) (liquidator's powers) of the Act, the reference to an extraordinary resolution shall have effect as a reference to a special resolution.

Winding up: general

- 30 Section 187 (power to make over assets to employees) of the Act does not apply.
- 31 (1) In section 201 (dissolution: voluntary winding up) of the Act, subsection (2) applies without the words from "and on the expiration" to the end of the subsection and, in subsection (3), the word "However" shall be omitted.
- (2) Sections 202 to 204 (early dissolution) of the Act do not apply.
- 32 In section 205 (dissolution: winding up by the court) of the Act, subsection (2) applies with the omission of the words from "and, subject" to the end of the subsection; and in subsections (3) and (4) references to the Secretary of State shall have effect as references to the Commission.

Penal provisions

- 33 Sections 216 and 217 of the Act (restriction on re-use of name) do not apply.

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- 34 (1) Sections 218 and 219 (prosecution of delinquent officers) of the Act do not apply in relation to offences committed by members of an incorporated friendly society acting in that capacity.
- (2) Sections 218(5) of the Act and subsections (1) and (2) of section 219 of the Act do not apply.
- (3) The references in subsections (3) and (4) of section 219 of the Act to the Secretary of State shall have effect as references to the Commission; and the reference in subsection (3) to section 218 of the Act shall have effect as a reference to that section as supplemented by paragraph 35 below.
- 35 (1) Where a report is made to the prosecuting authority (within the meaning of section 218) under section 218(4) of the Act, in relation to an officer of an incorporated friendly society, he may, if he thinks fit, refer the matter to the Commission for further enquiry.
- (2) On such a reference to it the Commission shall exercise its power under section 65(1) above to appoint one or more investigators to investigate and report on the matter.
- (3) An answer given by a person to a question put to him, in exercise of the powers conferred by section 65 above on a person so appointed, may be used in evidence against the person giving it.

Preferential debts

- 36 Section 387 (meaning in Schedule 6 of “the relevant date”) of the Act applies with the omission of subsections (2) and (4) to (6).

PART III

MODIFIED APPLICATION OF INSOLVENCY (NORTHERN IRELAND) ORDER 1989

Preliminary

- 37 In this Part of this Schedule, Part V of the ^{M7}Insolvency (Northern Ireland) Order 1989 is referred to as “Part V”; and that Order is referred to as “the Order”.

Marginal Citations

M7 [S.I. 1989/2405 \(N.I.19\)](#)

Members of a friendly society as contributories in winding up

- 38 (1) Article 61 (liability of members) of the Order is modified as follows.
- (2) In paragraph (1), the reference to any past member shall be omitted.
- (3) Sub-paragraphs (a) to (d) of paragraph (2) shall be omitted; and so shall paragraph (3).

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- (4) The extent of the liability of a member of an incorporated friendly society in a winding up shall not exceed the extent of his liability under paragraph 8 of Schedule 3 to this Act.
- 39 Articles 62 to 65 and 69 of the Order (miscellaneous provisions not relevant to incorporated friendly societies) do not apply.
- 40 (1) Article 13 (meaning of “contributory”) of the Order does not apply.
- (2) In the enactments as applied to an incorporated friendly society “contributory”—
- (a) means every person liable to contribute to the assets of the society in the event of its being wound up; and
 - (b) for the purposes of all proceedings for determining, and all proceedings prior to the determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory; and
 - (c) includes persons who are liable to pay or contribute to the payment of—
 - (i) any debt or liability of the incorporated friendly society being wound up; or
 - (ii) any sum for the adjustment of rights of members among themselves; or
 - (iii) the expenses of the winding up;
- but does not include persons liable to contribute by virtue of a declaration by the court under Article 177 (imputed responsibility for fraudulent trading) or Article 178 (wrongful trading) of the Order.

Voluntary winding up

- 41 (1) Article 70 of the Order does not apply.
- (2) In the enactments as applied to an incorporated friendly society, the expression “resolution for voluntary winding up” means a resolution passed under section 21(1) above.
- 42 Article 74 shall have effect with the omission of the words from the beginning to “and”.
- 43 (1) Paragraph (1) of Article 75 shall have effect as if for the words from the beginning to “meeting” there were substituted the words—
- “(1) Where it is proposed to wind up an incorporated friendly society voluntarily, the committee of management (or, in the case of an incorporated friendly society whose committee of management has more than two members, the majority of them) may at a meeting of the committee”.
- (2) The reference to the directors in paragraph (2) shall be construed as a reference to members of the committee of management.
- 44 Article 76 shall have effect as if for the words “directors’ statutory declaration in accordance with Article 75” there were substituted the words “statutory declaration made in accordance with Article 75 by members of the committee of management”.
- 45 Article 81(1) and 82 shall have effect as if the word “directors” were omitted from each of them.
- 46 In paragraph (1) of Article 87 (appointment of liquidation committee) of the Order, the reference to functions conferred on a liquidation committee by or under that

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Order shall have effect as a reference to its functions by or under that Order as applied to incorporated friendly societies.

- 47 (1) Article 93 (distribution of property) of the Order does not apply; and the following applies in its place.
- (2) Subject to the provisions of Part V relating to preferential payments, an incorporated friendly society's property in a voluntary winding up shall be applied in satisfaction of the society's liabilities to creditors *pari passu* and, subject to that application, in accordance with the rules of the society.
- 48 Articles 96 and 97 (liquidator accepting shares, etc. as consideration for sale of company property) of the Order do not apply.

Winding up by the High Court

- 49 Article 102 (circumstances in which company may be wound up by the High Court) of the Order does not apply.
- 50 Article 104 (application for winding up) of the Order does not apply.
- 51 (1) In Article 105 (powers of High Court on hearing of petition) of the Order, paragraph (1) applies with the omission of the words from "but the Court" to the end of the paragraph.
- (2) The conditions which the Court may impose under Article 105 of the Order include conditions for securing—
- (a) that the incorporated friendly society be dissolved by consent of its members under section 20 above; or
 - (b) that the society amalgamates with, or transfers its engagements to, another friendly society under section 85 or 86 above; or
 - (c) that the society converts itself to a company under section 91 above,
- and may also include conditions for securing that any default which occasioned the petition be made good and that the costs of the proceedings on that petition be defrayed by the person or persons responsible for the default.
- 52 Article 106 (power of court, between petition and winding-up order, to stay or restrain proceedings against company) of the Order has effect with the omission of paragraph (2).
- 53 If, before the presentation of a petition for the winding up by the High Court of an incorporated friendly society, an instrument of dissolution under section 20 is placed in the society's public file, Article 109(1) (commencement of winding up by the High Court) of the Order shall also apply in relation to the date on which the notice is so placed and to any proceedings in the course of the dissolution as it applies to the commencement date for, and proceedings in, a voluntary winding up.
- 54 (1) Article 110 of the Order (consequences of winding-up order) shall have effect with the following modifications.
- (2) Paragraphs (1) and (3) shall be omitted.
- (3) An incorporated friendly society shall, within 15 days of a winding-up order being made in respect of it, give notice of the order to the central office; and the central office shall keep the notice in the public file of the society.

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- (4) If an incorporated friendly society fails to comply with sub-paragraph (3) above, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

55 Article 119 (appointment of liquidator by High Court in certain circumstances) of the Order does not apply.

56 In the application of Article 120(1) (liquidation committees), of the Order to incorporated friendly societies, the references to functions conferred on a liquidation committee by or under that Order shall have effect as references to its functions by or under that Order as so applied.

57 The conditions which the High Court may impose under Article 125 (power to stay winding up) of the Order shall include those specified in paragraph 51(2) above.

58 Article 132 (adjustment of rights of contributories) of the Order shall have effect with the modification that any surplus is to be distributed in accordance with the rules of the society.

59 Article 140(2) (liquidator's powers) of the Order, the reference to an extraordinary resolution shall have effect as a reference to a special resolution.

Winding up: general

60 Article 158 (power to make over assets to employees) of the Order does not apply.

61 (1) In Article 166 (dissolution: voluntary winding up) of the Order, paragraph (2) applies without the words from "and on the expiration" to the end of the paragraph and, in paragraph (3), the word "However" shall be omitted.

(2) Articles 167 and 168 (early dissolution) of the Order do not apply.

62 In Article 169 (dissolution: winding up by the High Court) of the Order, paragraph (1) applies with the omission of the words from "and, subject" to the end of the paragraph; and in paragraphs (2) and (3) references to the Department shall have effect as references to the Commission.

Penal provisions

63 Articles 180 and 181 of the Order (restriction on re-use of name) do not apply.

64 (1) Articles 182 and 183 (prosecution of delinquent officers) of the Order do not apply in relation to offences committed by members of an incorporated friendly society acting in that capacity.

(2) Articles 182(4) and 183(1) and (2) of the Order do not apply.

(3) The references in paragraph (3) and (5) of Article 183 of the Order to the Department shall have effect as references to the Commission; and the reference in paragraph (3) to Article 182 of the Order shall have effect as a reference to that Article as supplemented by paragraph 65 below.

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- 65 (1) Where a report is made to the prosecuting authority (within the meaning of Article 182) under Article 182(5) of the Order, in relation to an officer of an incorporated friendly society, he may, if he thinks fit, refer the matter to the Commission for further enquiry.
- (2) On such a reference to it the Commission shall exercise its power under section 65(1) above to appoint one or more investigators to investigate and report on the matter.
- (3) An answer given by a person to a question put to him in exercise of the powers conferred by section 65 above on a person so appointed may be used in evidence against the person giving it.

Preferential debts

- 66 Article 347 (meaning in Schedule 4 of “the relevant date”) of the Order applies with the omission of paragraphs (2) and (4) to (6).

PART IV

SUPPLEMENTARY

Dissolution of incorporated friendly society after winding up

- 67 (1) Where an incorporated friendly society has been wound up voluntarily, it is dissolved as from 3 months from the date of the placing in the public file of the society of the return of the final meetings of the society and its creditors made by the liquidator under—
- (a) section 94 or 106 of the ^{M8}Insolvency Act 1986 (as applied to incorporated friendly societies), or on such other date as is determined in accordance with section 201 of that Act; or
- (b) Article 80 or 92 of the ^{M9}Insolvency (Northern Ireland) Order 1989 (as so applied), or on such other date as is determined in accordance with Article 166 of that Order.
- (2) Where an incorporated friendly society has been wound up by the court, it is dissolved as from 3 months from the date of the placing in the public file of the society of the liquidator’s notice under—
- (a) section 172(8) of the ^{M10}Insolvency Act 1986 (as applied to incorporated friendly societies) or on such other date as is determined in accordance with section 205 of that Act; or
- (b) Article 146(7) of the Insolvency (Northern Ireland) Order 1989 (as so applied) or on such other date as is determined in accordance with Article 169 of that Order.

Marginal Citations

- M8** 1986 c. 45.
M9 S.I. 1989/2405 (N.I.19)
M10 1986 c. 45.

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- 68 (1) Sections 654 to 658 of the ^{M11}Companies Act 1985 or Articles 605 to 609 of the ^{M12}Companies (Northern Ireland) Order 1986 (provisions as to corporate property as bona vacantia), shall have the same effect in relation to the property of a dissolved incorporated friendly society (whether dissolved under section 20 above or following its winding up) as they have in relation to the property of a dissolved company, but with the following modifications.
- (2) Paragraph 3(1) above shall apply to those sections for the purpose of their application to incorporated friendly societies.
- (3) Subsection (2) of section 654 and subsections (1) and (3) of section 655 apply without the words “or 653”; and the references in those subsections to section 651 shall have effect as references to section 25 above.
- (4) Paragraph (2) of Article 605 and paragraph (1) of Article 606 apply without the words “or 604”; and the references in those paragraphs to Article 602 shall have effect as references to section 25 above.

Marginal Citations

M11 1985 c. 6.

M12 S.I. 1986/1032 (N.I.6)

Insolvency rules and fees

- 69 (1) Rules may be made under—
- (a) section 411 of the Insolvency Act 1986; or
- (b) Article 359 of the Insolvency (Northern Ireland) Order 1989,
- for the purpose of giving effect, in relation to incorporated friendly societies, to the provisions of the applicable winding up legislation.
- (2) An order made by the competent authority under section 414 of the Insolvency Act 1986 may make provision for fees to be payable under that section in respect of proceedings under the applicable winding-up legislation and the performance by the official receiver or the Secretary of State of functions under it.
- (3) An order made by the competent authority under Article 361 of the Insolvency (Northern Ireland) Order 1989 may make provisions for fees to be payable under that section in respect of proceedings under the applicable winding-up legislation and the performance by the official receiver in Northern Ireland or the Department of Economic Development in Northern Ireland of functions under it.

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