

SCHEDULES

SCHEDULE 5

Section 102

CONDUCT OF HOUSING ADMINISTRATION: COMPANIES

PART 1

MODIFICATIONS OF SCHEDULE B1 TO THE INSOLVENCY ACT 1986

Introductory

- 1 (1) The applicable provisions of Schedule B1 to the Insolvency Act 1986 are to have effect in relation to a housing administration order that applies to a company as they have effect in relation to an administration order under that Schedule applies to a company, but with the modifications set out in this Part of this Schedule.
- (2) The applicable provisions of Schedule B1 to the Insolvency Act 1986 are—
 - (a) paragraphs 1, 40 to 49, 54, 59 to 68, 70 to 79, 83 to 91, 98 to 107, 109 to 111 and 112 to 116, and
 - (b) paragraph 50 (until the repeal of that paragraph by Schedule 10 to the Small Business, Enterprise and Employment Act 2015 comes into force).

General modifications of the applicable provisions

- 2 Those paragraphs are to have effect as if—
 - (a) for “administration application”, in each place, there were substituted “housing administration application”,
 - (b) for “administration order”, in each place, there were substituted “housing administration order”,
 - (c) for “administrator”, in each place, there were substituted “housing administrator”,
 - (d) for “enters administration”, in each place, there were substituted “enters housing administration”,
 - (e) for “in administration”, in each place, there were substituted “in housing administration”, and
 - (f) for “purpose of administration”, in each place (other than in paragraph 111(1)), there were substituted “objectives of the housing administration”.

Specific modifications

- 3 Paragraph 1 (administration) is to have effect as if—
 - (a) for sub-paragraph (1) there were substituted—
 - “(1) In this Schedule “housing administrator”, in relation to a company, means a person appointed by the court for the

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- purposes of a housing administration order to manage its affairs,
 business and property.”, and
- (b) in sub-paragraph (2), for “Act” there were substituted “Schedule”.
- 4 Paragraph 40 (dismissal of pending winding-up petition) is to have effect as if sub-paragraphs (1)(b), (2) and (3) were omitted.
- 5 Paragraph 42 (moratorium on insolvency proceedings) is to have effect as if sub-paragraphs (4) and (5) were omitted.
- 6 Paragraph 44 (interim moratorium) is to have effect as if sub-paragraphs (2) to (4), (6) and (7)(a) to (c) were omitted.
- 7 Paragraph 46(6) (date for notifying administrator’s appointment) is to have effect as if for paragraphs (a) to (c) there were substituted “the date on which the housing administration order comes into force”.
- 8 Paragraph 49 (administrator’s proposals) is to have effect as if—
- (a) in sub-paragraph (2)(b) for “objective mentioned in paragraph 3(1)(a) or (b) cannot be achieved” there were substituted “objectives of the housing administration should be achieved by means other than just a rescue of the company as a going concern”, and
- (b) in sub-paragraph (4), after paragraph (a) there were inserted—
- “(aa) to the Secretary of State and the Regulator of Social Housing.”.
- 9 Paragraph 54 is to have effect as if the following were substituted for it—
- “54 (1) The housing administrator of a company may on one or more occasions revise the proposals included in the statement made under paragraph 49 in relation to the company.
- (2) If the housing administrator thinks that a revision is substantial, the housing administrator must send a copy of the revised proposals—
- (a) to the registrar of companies,
- (b) to the Secretary of State and the Regulator of Social Housing,
- (c) to every creditor of the company, other than an opted-out creditor, of whose claim and address the housing administrator is aware, and
- (d) to every member of the company of whose address the housing administrator is aware.
- (3) A copy sent in accordance with sub-paragraph (2) must be sent within the prescribed period.
- (4) The housing administrator is to be taken to have complied with sub-paragraph (2)(d) if the housing administrator publishes, in the prescribed manner, a notice undertaking to provide a copy of the revised proposals free of charge to any member of the company who applies in writing to a specified address.
- (5) A housing administrator who fails without reasonable excuse to comply with this paragraph commits an offence.”
- 10 Paragraph 60 (powers of an administrator) has effect as if after that sub-paragraph (2) there were inserted—

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“(3) The housing administrator of a company has the power to act on behalf of the company for the purposes of provision contained in any legislation which confers a power on the company or imposes a duty on it.

(4) In sub-paragraph (2) “legislation” has the same meaning as in the Chapter 5 of Part 4 of the Housing and Planning Act 2016.”

- 11 Paragraph 68 (management duties of an administrator) is to have effect as if—
- (a) in sub-paragraph (1), for paragraphs (a) to (c) there were substituted “the proposals as—
 - (a) set out in the statement made under paragraph 49 in relation to the company, and
 - (b) from time to time revised under paragraph 54,for achieving the objectives of the housing administration.”, and
 - (b) in sub-paragraph (3), for paragraphs (a) to (d) there were substituted “the directions are consistent with the achievement of the objectives of the housing administration”.
- 12 Paragraph 73(3) (protection for secured or preferential creditor) is to have effect as if for “or modified” there were substituted “under paragraph 54”.
- 13 Paragraph 74 (challenge to administrator’s conduct) is to have effect as if—
- (a) for sub-paragraph (2) there were substituted—
 - “(2) If a company is in housing administration, a person mentioned in sub-paragraph (2A) may apply to the court claiming that the housing administrator is acting in a manner preventing the achievement of the objectives of the housing administration as quickly and efficiently as is reasonably practicable.
 - (2A) The persons who may apply to the court are—
 - (a) the Secretary of State;
 - (b) with the consent of the Secretary of State, the Regulator of Social Housing;
 - (c) a creditor or member of the company.”,
 - (b) in sub-paragraph (6)—
 - (i) at the end of paragraph (b) there were inserted “or”, and
 - (ii) paragraph (c) (and the “or” before it) were omitted, and
 - (c) after that sub-paragraph there were inserted—
 - “(7) In the case of a claim made otherwise than by the Secretary of State or the Regulator of Social Housing, the court may grant a remedy or relief or make an order under this paragraph only if it has given the Secretary of State or the Regulator a reasonable opportunity of making representations about the claim and the proposed remedy, relief or order.
 - (8) The court may grant a remedy or relief or make an order on an application under this paragraph only if it is satisfied, in relation to the matters that are the subject of the application, that the housing administrator—
 - (a) is acting,

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- (b) has acted, or
 - (c) is proposing to act,
- in a way that is inconsistent with the achievement of the objectives of the housing administration as quickly and as efficiently as is reasonably practicable.
- (9) Before the making of an order of the kind mentioned in sub-paragraph (4)(d)—
- (a) the court must notify the housing administrator of the proposed order and of a period during which the housing administrator is to have the opportunity of taking steps falling within sub-paragraphs (10) to (12), and
 - (b) the period notified must have expired without the taking of such of those steps as the court thinks should have been taken,
- and that period must be a reasonable period.
- (10) In the case of a claim under sub-paragraph (1)(a), the steps referred to in sub-paragraph (9) are—
- (a) ceasing to act in a manner that unfairly harms the interests to which the claim relates,
 - (b) remedying any harm unfairly caused to those interests, and
 - (c) steps for ensuring that there is no repetition of conduct unfairly causing harm to those interests.
- (11) In the case of a claim under sub-paragraph (1)(b), the steps referred to in sub-paragraph (9) are steps for ensuring that the interests to which the claim relates are not unfairly harmed.
- (12) In the case of a claim under sub-paragraph (2), the steps referred to in sub-paragraph (9) are—
- (a) ceasing to act in a manner preventing the achievement of the objectives of the housing administration as quickly and as efficiently as is reasonably practicable,
 - (b) remedying the consequences of the housing administrator having acted in such a manner, and
 - (c) steps for ensuring that there is no repetition of conduct preventing the achievement of the objectives of the housing administration as quickly and as efficiently as is reasonably practicable.”
- 14 Paragraph 75(2) (misfeasance) is to have effect as if after paragraph (b) there were inserted—
- “(ba) a person appointed as an administrator of the company under the provisions of this Act, as they have effect in relation to administrators other than housing administrators,”.
- 15 Paragraph 78 (consent to extension of administrator’s term of office) is to have effect as if sub-paragraph (2) were omitted.
- 16 Paragraph 79 (end of administration) is to have effect as if—

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- (a) for sub-paragraphs (1) and (2) there were substituted—
 - “(1) On an application made by a person mentioned in sub-paragraph (2), the court may provide for the appointment of a housing administrator of a company to cease to have effect from a specified time.
 - (2) An application may be made to the court under this paragraph—
 - (a) by the Secretary of State,
 - (b) with the consent of the Secretary of State, by the Regulator of Social Housing, or
 - (c) with the consent of the Secretary of State, by the housing administrator.”, and
 - (b) sub-paragraph (3) were omitted.
- 17 Paragraph 83(3) (notice to registrar when moving to voluntary liquidation) is to have effect as if after “may” there were inserted “, with the consent of the Secretary of State or of the Regulator of Social Housing.”.
- 18 Paragraph 84 (notice to registrar when moving to dissolution) is to have effect as if—
 - (a) in sub-paragraph (1), for “to the registrar of companies” there were substituted—
 - “(a) to the Secretary of State and the Regulator of Social Housing, and
 - (b) if directed to do so by either the Secretary of State or the Regulator of Social Housing, to the registrar of companies.”,
 - (b) sub-paragraph (2) were omitted, and
 - (c) in sub-paragraphs (3) to (6), for “(1)”, in each place, there were substituted “(1)(b)”.
- 19 Paragraph 87(2) (resignation of administrator) is to have effect as if for paragraphs (a) to (d) there were substituted “by notice in writing to the court”.
- 20 Paragraph 89(2) (administrator ceasing to be qualified) is to have effect as if for paragraphs (a) to (d) there were substituted “to the court”.
- 21 Paragraph 90 (filling vacancy in office of administrator) is to have effect as if for “Paragraphs 91 to 95 apply” there were substituted “Paragraph 91 applies”.
- 22 Paragraph 91 (vacancies in court appointments) is to have effect as if—
 - (a) for sub-paragraph (1) there were substituted—
 - “(1) The court may replace the housing administrator on an application made—
 - (a) by the Secretary of State,
 - (b) with the consent of the Secretary of State, by the Regulator of Social Housing, or
 - (c) where more than one person was appointed to act jointly as the housing administrator, by any of those persons who remains in office.”
 - (b) sub-paragraph (2) were omitted.
- 23 Paragraph 98 (discharge from liability on vacation of office) is to have effect as if sub-paragraphs (2)(b) and (ba), (3) and (3A) were omitted.

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- 24 Paragraph 99 (charges and liabilities upon vacation of office by administrator) is to have effect as if—
- (a) in sub-paragraph (4), for the words from the beginning to “cessation”, in the first place, there were substituted “A sum falling within sub-paragraph (4A)”,
 - (b) after that sub-paragraph there were inserted—
 - “(4A) A sum falls within this sub-paragraph if it is—
 - (a) a sum payable in respect of a debt or other liability arising out of a contract that was entered into before cessation by the former housing administrator or a predecessor,
 - (b) a sum that must be repaid by the company in respect of a grant that was made under section 109 of the Housing and Planning Act 2016 before cessation,
 - (c) a sum that must be repaid by the company in respect of a loan made under that section before cessation or that must be paid by the company in respect of interest payable on such a loan,
 - (d) a sum payable by the company under section 111 of that Act in respect of an agreement to indemnify made before cessation, or
 - (e) a sum payable by the company under section 113 of that Act in respect of a guarantee given before cessation.”,
 - and”
 - (c) in sub-paragraph (5), for “(4)” there were substituted “(4A)(a)”.
- 25 Paragraph 100 (joint and concurrent administrators) is to have effect as if sub-paragraph (2) were omitted.
- 26 Paragraph 101(3) (joint administrators) is to have effect as if after “87 to” there were inserted “91, 98 and”.
- 27 Paragraph 103 (appointment of additional administrators) is to have effect as if—
- (a) in sub-paragraph (2) the words from the beginning to “order” were omitted and for paragraph (a) there were substituted—
 - “(a) the Secretary of State,
 - (aa) the Regulator of Social Housing, or”,
 - (b) after that sub-paragraph there were inserted—
 - “(2A) The consent of the Secretary of State is required for an application by the Regulator of Social Housing for the purposes of sub-paragraph (2).”, and
 - (c) sub-paragraphs (3) to (5) were omitted.
- 28 Paragraph 106(2) (penalties) is to have effect as if paragraphs (a), (b), (f), (g), (i) and (l) to (n) were omitted.
- 29 Paragraph 109 (references to extended periods) is to have effect as if “or 108” were omitted.
- 30 Paragraph 111 (interpretation) is to have effect as if—

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- (a) in sub-paragraph (1), the definitions of “correspondence”, “holder of a qualifying floating charge”, “the purpose of administration” and “unable to pay its debts” were omitted,
- (b) in that sub-paragraph, at the appropriate places there were inserted—
 - ““company” and “court” have the same meaning as in Chapter 5 of Part 4 of the Housing and Planning Act 2016,”,
 - ““housing administration application” means an application to the court for a housing administration order under Chapter 5 of Part 4 of the Housing and Planning Act 2016;”,
 - ““housing administration order” has the same meaning as in Chapter 5 of Part 4 of the Housing and Planning Act 2016;”,
 - ““objectives”, in relation to a housing administration, is to be read in accordance with section 96(4) of the Housing and Planning Act 2016;” and
 - ““prescribed” means prescribed by housing administration rules within the meaning of Chapter 5 of Part 4 of the Housing and Planning Act 2016.”,
- (c) sub-paragraphs (1A) and (1B) were omitted, and
- (d) after sub-paragraph (3) there were inserted—
 - “(4) For the purposes of this Schedule a reference to a housing administration order includes a reference to an appointment under paragraph 91 or 103.”

PART 2

FURTHER MODIFICATIONS OF SCHEDULE B1 TO INSOLVENCY ACT 1986: FOREIGN COMPANIES

Introductory

- 31 (1) This Part of this Schedule applies in the case of a housing administration order applying to a foreign company.
- (2) The provisions of Schedule B1 to the Insolvency Act 1986 mentioned in paragraph 1 above (as modified by Part 1 of this Schedule) have effect in relation to the company with the further modifications set out in this Part of this Schedule.
- (3) The Secretary of State may by regulations amend this Part of this Schedule so as to add more modifications.
- 32 In paragraphs 33 to 38—
- (a) the provisions of Schedule B1 to the Insolvency Act 1986 that are mentioned in paragraph 1 above are referred to as the applicable provisions, and
 - (b) references to those provisions, or to provisions comprised in them, are references to those provisions as modified by Part 1 of this Schedule.

Modifications

- 33 In the case of a foreign company—

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- (a) paragraphs 42(2), 83 and 84 of Schedule B1 to the Insolvency Act 1986 do not apply,
 - (b) paragraphs 46(4), 49(4)(a), 54(2)(a), 71(5) and (6), 72(4) and (5) and 86 of that Schedule apply only if the company is subject to a requirement imposed by regulations under section 1043 or 1046 of the Companies Act 2006 (unregistered UK companies or overseas companies), and
 - (c) paragraph 61 of that Schedule does not apply.
- 34 (1) The applicable provisions and Schedule 1 to the Insolvency Act 1986 (as applied by paragraph 60(1) of Schedule B1 to that Act) are to be read by reference to the limitation imposed on the scope of the housing administration order in question as a result of section 95(4) above.
- (2) Sub-paragraph (1) has effect, in particular, so that—
- (a) a power conferred, or duty imposed, on the housing administrator by or under the applicable provisions or Schedule 1 to the Insolvency Act 1986 is to be read as being conferred or imposed in relation to the company’s UK affairs, business and property,
 - (b) references to the company’s affairs, business or property are to be read as references to its UK affairs, business and property,
 - (c) references to goods in the company’s possession are to be read as references to goods in its possession in the United Kingdom,
 - (d) references to premises let to the company are to be read as references to premises let to it in the United Kingdom, and
 - (e) references to legal process instituted or continued against the company or its property are to be read as references to such legal process relating to its UK affairs, business and property.
- 35 Paragraph 41 of Schedule B1 to the Insolvency Act 1986 (dismissal of receivers) is to have effect as if—
- (a) for sub-paragraph (1) there were substituted—
 - “(1) Where a housing administration order takes effect in respect of a company—
 - (a) a person appointed to perform functions equivalent to those of an administrative receiver, and
 - (b) if the housing administrator so requires, a person appointed to perform functions equivalent to those of a receiver,

must refrain, during the period specified in sub-paragraph (1A), from performing those functions in the United Kingdom or in relation to any of the company’s property in the United Kingdom.
 - (1A) That period is—
 - (a) in the case of a person mentioned in sub-paragraph (1) (a), the period while the company is in housing administration, and
 - (b) in the case of a person mentioned in sub-paragraph (1) (b), during so much of that period as is after the date on which the person is required by the housing

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administrator to refrain from performing functions.”,
and”

(b) sub-paragraphs (2) to (4) were omitted.

36 Paragraph 43(6A) of Schedule B1 to the Insolvency Act 1986 (moratorium on appointment to receiverships) is to have effect as if for “An administrative receiver” there were substituted “A person with functions equivalent to those of an administrative receiver”.

37 Paragraph 44(7) of Schedule B1 to the Insolvency Act 1986 (proceedings to which interim moratorium does not apply) is to have effect as if for paragraph (d) there were substituted—

“(d) the carrying out of functions by a person who (whenever appointed) has functions equivalent to those of an administrative receiver of the company.”

38 Paragraph 64 of Schedule B1 to the Insolvency Act 1986 (general powers of administrator) is to have effect as if—

(a) in sub-paragraph (1), after “power” there were inserted “in relation to the affairs or business of the company so far as carried on in the United Kingdom or to its property in the United Kingdom”, and

(b) in sub-paragraph (2)(b), after “instrument” there were inserted “or by the law of the place where the company is incorporated”.

PART 3

OTHER MODIFICATIONS

General modifications

39 (1) References within sub-paragraph (2) which are contained—
(a) in the Insolvency Act 1986 (other than Schedule B1 to that Act), or
(b) in other legislation passed or made before this Act,
include references to whatever corresponds to them for the purposes of this paragraph.

(2) The references are those (however expressed) which are or include references to—
(a) an administrator appointed by an administration order,
(b) an administration order,
(c) an application for an administration order,
(d) a company in administration,
(e) entering into administration, and
(f) Schedule B1 to the Insolvency Act 1986 or a provision of that Schedule.

(3) For the purposes of this paragraph—
(a) a housing administrator of a company corresponds to an administrator appointed by an administration order,
(b) a housing administration order in relation to a company corresponds to an administration order,
(c) an application for a housing administration order in relation to a company corresponds to an application for an administration order,

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- (d) a company in housing administration corresponds to a company in administration,
 - (e) entering into housing administration in relation to a company corresponds to entering into administration, and
 - (f) what corresponds to Schedule B1 to the Insolvency Act 1986 or a provision of that Schedule is that Schedule or that provision as applied by Part 1 of this Schedule.
- 40 (1) Paragraph 39, in its application to section 1(3) of the Insolvency Act 1986, does not entitle the housing administrator of an unregistered company to make a proposal under Part 1 of the Insolvency Act 1986 (company voluntary arrangements).
- (2) Paragraph 39 does not confer any right under section 7(4) of the Insolvency Act 1986 (implementation of voluntary arrangements) for a supervisor of voluntary arrangements to apply for a housing administration order in relation to a company that is a private registered provider.
- (3) Paragraph 39 does not apply to section 359 of the Financial Services and Markets Act 2000 (administration order).

Modifications of the Insolvency Act 1986

- 41 The following provisions of the Insolvency Act 1986 are to have effect in the case of any housing administration with the following modifications.
- 42 Section 5 (effect of approval of voluntary arrangements) is to have effect as if after subsection (4) there were inserted—
- “(4A) Where the company is in housing administration, the court must not make an order or give a direction under subsection (3) unless—
- (a) the court has given the Secretary of State or the Regulator of Social Housing a reasonable opportunity of making representations to it about the proposed order or direction, and
 - (b) the order or direction is consistent with the objectives of the housing administration.
- (4B) In subsection (4A) “in housing administration” and “objectives of the housing administration” are to be read in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 5 to the Housing and Planning Act 2016.”
- 43 Section 6 (challenge of decisions in relation to voluntary arrangements) is to have effect as if—
- (a) in subsection (2), for “this section” there were substituted “subsection (1)”,
 - (b) after that subsection there were inserted—
- “(2AA) Subject to this section, where a voluntary arrangement in relation to a company in housing administration is approved at the meetings summoned under section 3, an application to the court may be made—
- (a) by the Secretary of State, or
 - (b) with the consent of the Secretary of State, by the Regulator of Social Housing,

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- on the ground that the voluntary arrangement is not consistent with the achievement of the objectives of the housing administration.”,
- (c) in subsection (4), after “subsection (1)” there were inserted “or, in the case of an application under subsection (2AA), as to the ground mentioned in that subsection”, and
 - (d) after subsection (7) there were inserted—

“(7A) In this section “in housing administration” and “objectives of the housing administration” are to be read in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 5 to the Housing and Planning Act 2016.”

- 44 In section 129(1A) (commencement of winding up), the reference to paragraph 13(1)(e) of Schedule B1 is to include section 100(1)(e) of this Act.

Power to make further modifications

- 45 (1) The Secretary of State may by regulations amend this Part of this Schedule so as to add further modifications.
- (2) The further modifications that may be made are confined to such modifications of—
- (a) the Insolvency Act 1986, or
 - (b) other legislation passed or made before this Act that relate to insolvency or make provision by reference to anything that is or may be done under the Insolvency Act 1986,
- as the Secretary of State considers appropriate in relation to any provision made by or under this Chapter.

Interpretation of Part 3 of Schedule

- 46 In this Part of this Schedule—
- “administration order”, “administrator”, “enters administration” and “in administration” are to be read in accordance with Schedule B1 to the Insolvency Act 1986 (disregarding Part 1 of this Schedule), and
- “enters housing administration” and “in housing administration” are to be read in accordance with Schedule B1 to the Insolvency Act 1986 (as applied by Part 1 of this Schedule).