

## SCHEDULES

### SCHEDULE 12

#### WRITE-DOWN ORDERS

##### PART 1

###### WRITE-DOWN ORDERS: MAIN PROVISIONS

- 1 (1) Part 24 of FSMA 2000 (insolvency) is amended as follows.
- (2) In section 360 (application of Part 2 of 1986 Act or Part 3 of 1989 Order (administration) to insurers), at the end insert—
  - “(4) Subsection (5) applies where, by virtue of an order under this section, a person may be appointed as administrator of an insurer.
  - (5) While a write-down order under section 377A has effect in relation to an insurer, a person may not be appointed as administrator of the insurer without the consent of the PRA.”
- (3) Omit section 377 (reducing the value of contracts instead of winding up).
- (4) Before section 378 (treatment of assets on winding up) insert—

###### “377A Write-down orders

- (1) A “write-down order” is an order of the court directing that the value of one or more of an insurer’s liabilities is reduced on such terms as may be specified in the order.
- (2) The court may make a write-down order in relation to an insurer if it is satisfied that—
  - (a) the insurer is, or is likely to become, unable to pay its debts (within the meaning given to that expression by section 123 of the 1986 Act or Article 103 of the 1989 Order), and
  - (b) making the order is reasonably likely to lead to a better outcome for the insurer’s policyholders and other creditors (taken as a whole) than not making the order.
- (3) A write-down order—
  - (a) takes effect on the later of—
    - (i) the date specified in the order, and
    - (ii) the date on which the appointment of a person to act as the manager of the order first takes effect (see section 377G(7));
  - (b) ceases to have effect in accordance with section 377H;
  - (c) may be revoked or varied in accordance with section 377I.

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- (4) A write-down order may not be made in relation to an insurer—
- (a) which is in administration (within the meaning of Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order), or
  - (b) which is in liquidation by virtue of—
    - (i) a resolution for voluntary winding up, or
    - (ii) a winding-up order under section 125 of the 1986 Act or Article 105 of the 1989 Order.
- (5) A write-down order may not reduce the value of an excluded liability (within the meaning given by section 377B).
- (6) A liability, to the extent of its reduction by a write-down order under this section, is to be treated as extinguished unless and until revived by section 377H or 377I.
- (7) In this section, “creditor” includes a contingent or prospective creditor.

### **377B Excluded liabilities**

- (1) Each of the following is an “excluded liability”—
- (a) a liability with an original maturity of less than 7 days;
  - (b) an amount payable in respect of goods delivered, or a service provided, on or after the date on which the write-down order is made;
  - (c) an amount in respect of remuneration or expenses of a person appointed under section 377G to act as the manager of the write-down order (including amounts incurred before, as well as after, the person’s appointment in connection with the order or the application for the order);
  - (d) an amount secured on property of any kind, other than an amount secured by a charge which, as created, was a floating charge;
  - (e) an amount payable in respect of wages or salary arising under a contract of employment;
  - (f) a contribution or other sum payable in respect of an occupational pension scheme;
  - (g) an amount payable in respect of redundancy payments;
  - (h) an amount payable under a contract or other instrument involving financial services.
- (2) In this section—
- “contract or other instrument involving financial services” has the meaning given by Schedule ZA2 to the 1986 Act, but does not include an agreement which is, or forms part of, an arrangement involving the issue of a capital market investment (see paragraph 6 of that Schedule);
- “floating charge” has the meaning given by section 251 of the 1986 Act or paragraph (1) of Article 5 of the 1989 Order;
- “redundancy payment” means—
- (a) a redundancy payment under Part 11 of the Employment Rights Act 1996 or Part 12 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)), or

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(b) a payment made to a person who agrees to the termination of their employment in circumstances where they would have been entitled to a redundancy payment under that Part if dismissed;

“wages or salary” includes—

- (a) a sum payable in respect of a period of holiday;
- (b) a sum payable in respect of a period of absence through illness or other good cause;
- (c) a sum payable in lieu of holiday.

### **377C Application for a write-down order**

- (1) An application to the court for a write-down order in relation to an insurer may be made only by—
  - (a) the Treasury;
  - (b) the PRA;
  - (c) the insurer;
  - (d) a shareholder of the insurer;
  - (e) a policyholder or other creditor (including a contingent or prospective creditor) of the insurer.
- (2) An application for a write-down order may not be withdrawn without the permission of the court.
- (3) A person other than the PRA or the Treasury—
  - (a) must obtain the consent of the PRA before making an application for a write-down order;
  - (b) must notify the PRA before seeking the court’s permission to withdraw an application for a write-down order.
- (4) Consent under subsection (3)—
  - (a) must be in writing, and
  - (b) must be filed with the court with the relevant application.
- (5) The PRA must consult the FCA before—
  - (a) making an application for a write-down order, or
  - (b) giving or refusing consent for a person to make an application for a write-down order.

### **377D Powers of the FCA and PRA to participate in proceedings**

- (1) This section applies if an application is made to the court for a write-down order.
- (2) The FCA and the PRA are entitled to be heard—
  - (a) at any hearing relating to the application, and
  - (b) if an order is made, at any hearing relating to the order.
- (3) Any notice or other document required to be sent to a creditor of the insurer—
  - (a) in relation to the application, or

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- (b) if an order is made, in relation to the order, must also be sent to the FCA and the PRA.

### **377E Powers of the court**

On an application for a write-down order, the court may—

- (a) if, on hearing the application, it is satisfied of the matters in section 377A(2), make a write-down order in the terms sought, or in such other terms as the court thinks appropriate;
- (b) dismiss the application;
- (c) adjourn the hearing conditionally or unconditionally;
- (d) make any other order which the court thinks appropriate.

### **377F Duty to notify creditors**

- (1) This section applies where a write-down order is made in relation to an insurer.
- (2) As soon as reasonably practicable after the order is made, the insurer must notify the FCA, the PRA and each affected person that the order has been made.
- (3) An “affected person” is a person of a description specified in rules made by the PRA for the purposes of this section.
- (4) Notification under this section—
  - (a) must include such other information as may be specified in rules made by the PRA for the purposes of this section, and
  - (b) must be given in such form and manner as may be specified in rules made by the PRA for the purposes of this section.
- (5) Failure to notify an affected person in accordance with this section, or rules made by the PRA for the purposes of this section, does not affect the validity of the write-down order in relation to that person or any other person.

### **377G The manager**

- (1) The court may by order appoint one or more eligible persons to act as the manager of a write-down order (“the manager”).
- (2) An order under subsection (1) may—
  - (a) be made at the same time as the write-down order or at a later date (but see section 377A(3)(a));
  - (b) appoint a person in addition to or instead of a person who is for the time being appointed;
  - (c) give such directions about the carrying out of the person’s functions as the manager as the court thinks appropriate.
- (3) The court may by order terminate the appointment of a person who is for the time being appointed to act as the manager of a write-down order.

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- (4) Sections 377C and 377D apply to an application to the court for an order under subsection (1) or (3) as they apply to an application for a write-down order but—
- (a) if the application is for the appointment of a person in addition to, or instead of, a person for the time being appointed, section 377C(1) applies as if the persons mentioned included a person for the time being appointed;
  - (b) section 377C(2) does not apply.
- (5) The court may appoint a person to act as the manager of a write-down order only if—
- (a) the PRA has provided the court with a statement that the person is suitably qualified, and
  - (b) the person has provided the court with a statement that the person consents so to act.
- (6) Where it is proposed that more than one person should act as the manager, the statement under subsection (5)(b) must specify—
- (a) which of the functions of the manager (if any) are to be exercised by the persons acting jointly, and
  - (b) which of the functions of the manager (if any) are to be exercised by any or all of the persons.
- (7) The appointment of a person to act as the manager—
- (a) takes effect at the time specified in the order by which the person is appointed, and
  - (b) ceases to have effect at the time specified in the order by which the person's appointment is terminated (whether by being replaced by another person or otherwise).
- (8) Schedule 19A makes further provision about the manager of a write-down order.

### **377H Write-down order ceasing to have effect**

- (1) A reduction in the value of a liability of an insurer under a write-down order ceases to have effect—
- (a) on such date as may be specified in the order (and different dates may be specified in relation to different liabilities or liabilities of different types), or
  - (b) if earlier, or if no such date is specified, the date on which a termination event happens (or, if more than one termination event happens, the earliest of those dates).
- (2) In the following table—
- (a) the first column specifies each event which is a termination event for the purposes of this section, and
  - (b) the second column specifies, in relation to each termination event, the date on which the event happens for the purposes of this section.

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<i>Event</i>	<i>Date event happens</i>
The write-down order being— (a) revoked, or (b) varied so as to remove the liability in question from its scope, by an order under section 377I	(a) The date specified in the order under section 377I as the date on which the revocation or variation is to take effect, or (b) if no date is specified, the date on which the order under section 377I is made
The insurer ceasing to have permission under Part 4A to carry out contracts of insurance	The date on which the withdrawal of permission takes effect
The transfer of the liability in question pursuant to an insurance business transfer scheme which has effect in accordance with an order under section 111(1)	The date on which the transfer takes effect
The making of a winding-up order against the insurer	The date on which the order is made
The voluntary winding up of the insurer	The date on which the liquidator is appointed
The coming into force of a voluntary arrangement (under Part 1 of the 1986 Act or Part 2 of the 1989 Order) in relation to the insurer	The date on which the voluntary arrangement comes into force
The insurer entering administration	The date on which the appointment of an administrator takes effect.

- (3) Where a write-down order is varied, this section applies as if references to the write-down order were to the order as varied.

### **377I Variation or revocation of a write-down order**

- (1) The court may, by order—
- (a) revoke a write-down order, or
  - (b) vary (or further vary) a write-down order.
- (2) Section 377A(2)(b) applies to the making of an order under this section as it applies to the making of the write-down order.
- (3) In varying (or further varying) a write-down order the court may, in particular—
- (a) remove one or more of the insurer’s liabilities from the scope of the order (but removing all such liabilities from the scope of the order takes effect as a termination of the order);
  - (b) bring one or more of the insurer’s liabilities within the scope of the order (on such terms as the court may specify);
  - (c) further reduce the value of one or more of the insurer’s liabilities;

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- (d) increase the value of one or more of the insurer’s liabilities to any amount less than the value the liability had before the write-down order took effect;
  - (e) vary any term specified in the order, including the period for which a reduction in the value of a liability has effect;
  - (f) make any other order that the court thinks appropriate.
- (4) Sections 377C to 377F apply to an application for an order under this section as they apply to an application for a write-down order but with the following modifications—
- (a) section 377C(1) applies as if the list of persons entitled to make an application included—
    - (i) the FCA;
    - (ii) the scheme manager of the Financial Services Compensation Scheme (see section 212(1));
    - (iii) a person appointed under section 377G to act as the manager of the write-down order;
  - (b) if the person making the application is the scheme manager of the Financial Services Compensation Scheme, section 377C(3) does not apply.
- (5) The scheme manager of the Financial Services Compensation Scheme must consult the FCA and the PRA before making an application to vary or revoke a write-down order.
- (6) Where a provisional liquidator of the insurer has been appointed under section 135 of the 1986 Act or Article 115 of the 1989 Order, a person appointed to act as the manager of a write-down order must obtain the consent of the provisional liquidator before making an application for an order under this section.

### **377J Further provision about write-down orders**

In Schedule 19B—

- (a) Part 1 makes provision about the enforcement of a liability of an insurer while a write-down order has effect;
- (b) Part 2 makes provision about the disposal of an insurer’s assets and the making of certain payments by an insurer while a write-down order has effect;
- (c) Part 3 makes provision about the treatment of an insurer’s liabilities for the purposes of certain provisions relating to insolvency while a write-down order has effect;
- (d) Part 4 makes provision about interest payable in respect of liabilities reduced under a write-down order or prevented from being enforced while a write-down order has effect.”

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#### **Commencement Information**

**II** Sch. 12 para. 1 in force at 29.8.2023, see s. 86(2)(e)

**Changes to legislation:**

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