

# SCHEDULES

## SCHEDULE 1

Article 3(2).

### SCHEDULE B1 TO THE 1989 ORDER

#### Commencement Information

- II** Sch. 1 wholly in operation at 27.3.2006, see [art. 1\(3\)](#) and [S.R. 2006/21](#), **art. 2** (subject to [S.R. 2006/22](#), [arts. 2-7](#))

#### “SCHEDULE B1

#### ADMINISTRATION

### ARRANGEMENT OF SCHEDULE

Interpretation	Paragraph 1
Nature of administration	Paragraphs 2 to 10
Appointment of administrator by High Court	Paragraphs 11 to 14
Appointment of administrator by holder of floating charge	Paragraphs 15 to 22
Appointment of administrator by company or directors	Paragraphs 23 to 35
Administration application: special cases	Paragraphs 36 to 40
Effect of administration	Paragraphs 41 to 46
Process of administration	Paragraphs 47 to 59
Functions of administrator	Paragraphs 60 to 76
Ending administration	Paragraphs 77 to 87
Replacing administrator	Paragraphs 88 to 100
General	Paragraphs 101 to 111

## INTRODUCTORY

### *Interpretation*

**1.—(1)** In this Schedule—

- “administrative receiver” has the meaning given by Article 5(1),
- “administrator” has the meaning given by paragraph 2 and, where the context requires, includes a reference to a former administrator,
- “company” includes a company which may enter administration by virtue of Article 3 of the EC Regulation,
- “correspondence” includes correspondence by telephonic or other electronic means,
- “creditors' meeting” has the meaning given by paragraph 51,
- “enters administration” has the meaning given by paragraph 2,
- “floating charge” means a charge which is a floating charge on its creation,
- “in administration” has the meaning given by paragraph 2,
- “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,
- “holder of a qualifying floating charge” in respect of a company's property has the meaning given by paragraph 15,
- “market value” means the amount which would be realised on a sale of property in the open market by a willing vendor,
- “the purpose of administration” means an objective specified in paragraph 4, and
- “unable to pay its debts” has the meaning given by Article 103.

(2) A reference in this Schedule to a thing in writing includes a reference to a thing in electronic form.

(3) In this Schedule a reference to action includes a reference to inaction.

## NATURE OF ADMINISTRATION

### *Administration*

**2.—(1)** For the purposes of this Order “administrator” of a company means a person appointed under this Schedule to manage the company's affairs, business and property.

(2) For the purposes of this Order—

- (a) a company is “in administration” while the appointment of an administrator of the company has effect,
- (b) a company “enters administration” when the appointment of an administrator takes effect,
- (c) a company ceases to be in administration when the appointment of an administrator of the company ceases to have effect in accordance with this Schedule, and
- (d) a company does not cease to be in administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office.

**3.** A person may be appointed as administrator of a company—

- (a) by administration order of the High Court under paragraph 11,
- (b) by the holder of a floating charge under paragraph 15, or
- (c) by the company or its directors under paragraph 23.

#### *Purpose of administration*

- 4.—(1) The administrator of a company must perform his functions with the objective of—
- (a) rescuing the company as a going concern, or
  - (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
  - (c) realising property in order to make a distribution to one or more secured or preferential creditors.
- (2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole.
- (3) The administrator must perform his functions with the objective specified in sub-paragraph (1)(a) unless he thinks either—
- (a) that it is not reasonably practicable to achieve that objective, or
  - (b) that the objective specified in sub-paragraph (1)(b) would achieve a better result for the company's creditors as a whole.
- (4) The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if—
- (a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and
  - (b) he does not unnecessarily harm the interests of the creditors of the company as a whole.
5. The administrator of a company must perform his functions as quickly and efficiently as is reasonably practicable.

#### *Status of administrator*

6. An administrator is an officer of the High Court (whether or not he is appointed by the Court).

#### *General restrictions*

7. A person may be appointed as administrator of a company only if he is qualified to act as an insolvency practitioner in relation to the company.
8. A person may not be appointed as administrator of a company which is in administration (subject to the provisions of paragraphs 91 to 98 and 101 to 104 about replacement and additional administrators).
- 9.—(1) A person may not be appointed as administrator of a company which is in liquidation by virtue of—
- (a) a resolution for voluntary winding up, or
  - (b) a winding-up order.
- (2) Sub-paragraph (1)(a) is subject to paragraph 39.

**Changes to legislation:** There are currently no known outstanding effects for the The Insolvency (Northern Ireland) Order 2005, SCHEDULE 1. (See end of Document for details)

(3) Sub-paragraph (1)(b) is subject to paragraphs 38 and 39.

**10.**—(1) A person may not be appointed as administrator of a company which—

- (a) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22), but
- (b) is not an authorised deposit taker.

(2) A person may not be appointed as administrator of a company which effects or carries out contracts of insurance.

(3) But sub-paragraph (2) does not apply to a company which—

- (a) is exempt from the general prohibition in relation to effecting or carrying out contracts of insurance, or
- (b) is an authorised deposit taker effecting or carrying out contracts of insurance in the course of a banking business.

(4) In this paragraph—

“authorised deposit taker” means a person with permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, and  
“the general prohibition” has the meaning given by section 19 of that Act.

(5) This paragraph shall be construed in accordance with—

- (a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),
- (b) any relevant order under that section, and
- (c) Schedule 2 to that Act (regulated activities).

## APPOINTMENT OF ADMINISTRATOR BY HIGH COURT

### *Administration order*

**11.** An administration order is an order appointing a person as the administrator of a company.

### *Conditions for making order*

**12.** The High Court may make an administration order in relation to a company only if satisfied—

- (a) that the company is or is likely to become unable to pay its debts, and
- (b) that the administration order is reasonably likely to achieve the purpose of administration.

### *Administration application*

**13.**—(1) An application to the High Court for an administration order in respect of a company (an “administration application”) may be made only by—

- (a) the company,
- (b) the directors of the company,
- (c) one or more creditors of the company,

- (d) the chief clerk in the exercise of the power conferred by section 35(4A) of the Criminal Justice Act (Northern Ireland) 1945 (c. 15) (fine imposed on company),
  - (e) a clerk of petty sessions in exercise of the power conferred by Article 92A of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26), (fines imposed on company), or
  - (f) a combination of persons listed in paragraphs (a) to (e).
- (2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify—
- (a) any person who has appointed an administrative receiver of the company,
  - (b) any person who is or may be entitled to appoint an administrative receiver of the company,
  - (c) any person who is or may be entitled to appoint an administrator of the company under paragraph 15, and
  - (d) such other persons as may be prescribed.
- (3) An administration application may not be withdrawn without the permission of the Court.
- (4) In sub-paragraph (1) “creditor” includes a contingent creditor and a prospective creditor.
- (5) Sub-paragraph (1) is without prejudice to Article 20(4)(b).

#### *Powers of High Court*

- 14.**—(1) On hearing an administration application the High Court may—
- (a) make the administration order sought;
  - (b) dismiss the application;
  - (c) adjourn the hearing conditionally or unconditionally;
  - (d) make an interim order;
  - (e) treat the application as a winding-up petition and make any order which the Court could make under Article 105;
  - (f) make any other order which the Court thinks appropriate.
- (2) An appointment of an administrator by administration order takes effect—
- (a) at a time appointed by the order, or
  - (b) where no time is appointed by the order, when the order is made.
- (3) An interim order under sub-paragraph (1)(d) may, in particular—
- (a) restrict the exercise of a power of the directors or the company;
  - (b) make provision conferring a discretion on the Court or on a person qualified to act as an insolvency practitioner in relation to the company.
- (4) This paragraph is subject to paragraph 40.

#### **APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE**

##### *Power to appoint*

- 15.**—(1) The holder of a qualifying floating charge in respect of a company's property may appoint an administrator of the company.

**Changes to legislation:** There are currently no known outstanding effects for the The Insolvency (Northern Ireland) Order 2005, SCHEDULE 1. (See end of Document for details)

(2) For the purposes of sub-paragraph (1) a floating charge qualifies if created by an instrument which—

- (a) states that this paragraph applies to the floating charge,
- (b) purports to empower the holder of the floating charge to appoint an administrator of the company, or
- (c) purports to empower the holder of the floating charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by Article 5(1).

(3) For the purposes of sub-paragraph (1) a person is the holder of a qualifying floating charge in respect of a company's property if he holds one or more debentures of the company secured—

- (a) by a qualifying floating charge which relates to the whole or substantially the whole of the company's property,
- (b) by a number of qualifying floating charges which together relate to the whole or substantially the whole of the company's property, or
- (c) by charges and other forms of security which together relate to the whole or substantially the whole of the company's property and at least one of which is a qualifying floating charge.

#### *Restrictions on power to appoint*

**16.—**(1) A person may not appoint an administrator under paragraph 15 unless—

- (a) he has given at least 2 business days' written notice to the holder of any prior floating charge which satisfies paragraph 15(2), or
- (b) the holder of any prior floating charge which satisfies paragraph 15(2) has consented in writing to the making of the appointment.

(2) One floating charge is prior to another for the purposes of this paragraph if—

- (a) it was created first, or
- (b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

**17.** An administrator may not be appointed under paragraph 15 while a floating charge on which the appointment relies is not enforceable.

**18.** An administrator of a company may not be appointed under paragraph 15 if—

- (a) a provisional liquidator of the company has been appointed under Article 115, or
- (b) an administrative receiver of the company is in office.

#### *Notice of appointment*

**19.—**(1) A person who appoints an administrator of a company under paragraph 15 shall file with the High Court—

- (a) a notice of appointment, and
- (b) such other documents as may be prescribed.

(2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—

- (a) that the person is the holder of a qualifying floating charge in respect of the company's property,
  - (b) that each floating charge relied on in making the appointment is (or was) enforceable on the date of the appointment, and
  - (c) that the appointment is in accordance with this Schedule.
- (3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—
- (a) that he consents to the appointment,
  - (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
  - (c) giving such other information and opinions as may be prescribed.
- (4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).
- (5) The notice of appointment and any document accompanying it must be in the prescribed form.
- (6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.
- (7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
- (a) which is false, and
  - (b) which he does not reasonably believe to be true.

#### *Commencement of appointment*

- 20.** The appointment of an administrator under paragraph 15 takes effect when the requirements of paragraph 19 are satisfied.
- 21.** A person who appoints an administrator under paragraph 15—
- (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 19 are satisfied, and
  - (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

#### *Invalid appointment: indemnity*

- 22.—**(1) This paragraph applies where—
- (a) a person purports to appoint an administrator under paragraph 15, and
  - (b) the appointment is discovered to be invalid.
- (2) The High Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

### **APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS**

#### *Power to appoint*

- 23.—**(1) A company may appoint an administrator.

- (2) The directors of a company may appoint an administrator.

*Restrictions on power to appoint*

**24.**—(1) This paragraph applies where an administrator of a company is appointed—

- (a) under paragraph 23, or
- (b) on an administration application made by the company or its directors.

(2) An administrator of the company may not be appointed under paragraph 23 during the period of 12 months beginning with the date on which the appointment referred to in subparagraph (1) ceases to have effect.

**25.**—(1) If a moratorium for a company under Schedule A1 ends on a date when no voluntary arrangement is in force in respect of the company, this paragraph applies for the period of 12 months beginning with that date.

(2) This paragraph also applies for the period of 12 months beginning with the date on which a voluntary arrangement in respect of a company ends if—

- (a) the arrangement was made during a moratorium for the company under Schedule A1, and
- (b) the arrangement ends prematurely (within the meaning of Article 20B).

(3) While this paragraph applies, an administrator of the company may not be appointed under paragraph 23.

**26.** An administrator of a company may not be appointed under paragraph 23 if—

- (a) a petition for the winding up of the company has been presented and is not yet disposed of,
- (b) an administration application has been made and is not yet disposed of, or
- (c) an administrative receiver of the company is in office.

*Notice of intention to appoint*

**27.**—(1) A person who proposes to make an appointment under paragraph 23 shall give at least 5 business days' written notice to—

- (a) any person who is or may be entitled to appoint an administrative receiver of the company, and
- (b) any person who is or may be entitled to appoint an administrator of the company under paragraph 15.

(2) A person who proposes to make an appointment under paragraph 23 shall also give such notice as may be prescribed to such other persons as may be prescribed.

(3) A notice under this paragraph must—

- (a) identify the proposed administrator, and
- (b) be in the prescribed form.

**28.**—(1) A person who gives notice of intention to appoint under paragraph 27 shall file with the High Court as soon as is reasonably practicable a copy of—

- (a) the notice, and
- (b) any document accompanying it.



(2) The copy filed under sub-paragraph (1) must be accompanied by a statutory declaration made by or on behalf of the person who proposes to make the appointment—

- (a) that the company is or is likely to become unable to pay its debts,
- (b) that the company is not in liquidation, and
- (c) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by paragraphs 24 to 26, and
- (d) to such additional effect, and giving such information, as may be prescribed.

(3) A statutory declaration under sub-paragraph (2) must—

- (a) be in the prescribed form, and
- (b) be made during the prescribed period.

(4) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

- (a) which is false, and
- (b) which he does not reasonably believe to be true.

**29.—**(1) An appointment may not be made under paragraph 23 unless the person who makes the appointment has complied with any requirement of paragraphs 27 and 28 and—

- (a) the period of notice specified in paragraph 27(1) has expired, or
- (b) each person to whom notice has been given under paragraph 27(1) has consented in writing to the making of the appointment.

(2) An appointment may not be made under paragraph 23 after the period of 10 business days beginning with the date on which the notice of intention to appoint is filed under paragraph 28(1).

#### *Notice of appointment*

**30.—**(1) A person who appoints an administrator of a company under paragraph 23 shall file with the High Court—

- (a) a notice of appointment, and
- (b) such other documents as may be prescribed.

(2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—

- (a) that the person is entitled to make an appointment under paragraph 23,
- (b) that the appointment is in accordance with this Schedule, and
- (c) that, so far as the person making the statement is able to ascertain, the statements made and information given in the statutory declaration filed with the notice of intention to appoint remain accurate.

(3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—

- (a) that he consents to the appointment,
- (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
- (c) giving such other information and opinions as may be prescribed.

**Changes to legislation:** There are currently no known outstanding effects for the The Insolvency (Northern Ireland) Order 2005, SCHEDULE 1. (See end of Document for details)

(4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).

(5) The notice of appointment and any document accompanying it must be in the prescribed form.

(6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.

(7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—

- (a) which is false, and
- (b) which he does not reasonably believe to be true.

**31.** In a case in which no person is entitled to notice of intention to appoint under paragraph 27(1) (and paragraph 29 therefore does not apply)—

- (a) the statutory declaration accompanying the notice of appointment must include the statements and information required under paragraph 28(2), and
- (b) paragraph 30(2)(c) shall not apply.

#### *Commencement of appointment*

**32.** The appointment of an administrator under paragraph 23 takes effect when the requirements of paragraph 30 are satisfied.

**33.** A person who appoints an administrator under paragraph 23—

- (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 30 are satisfied, and
- (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

**34.** If before the requirements of paragraph 30 are satisfied the company enters administration by virtue of an administration order or an appointment under paragraph 15—

- (a) the appointment under paragraph 23 shall not take effect, and
- (b) paragraph 33 shall not apply.

#### *Invalid appointment: indemnity*

**35.—(1)** This paragraph applies where—

- (a) a person purports to appoint an administrator under paragraph 23, and
- (b) the appointment is discovered to be invalid.

(2) The High Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

### ADMINISTRATION APPLICATION — SPECIAL CASES

#### *Application by holder of floating charge*

**36.—(1)** This paragraph applies where an administration application in respect of a company—

- (a) is made by the holder of a qualifying floating charge in respect of the company's property, and
  - (b) includes a statement that the application is made in reliance on this paragraph.
- (2) The High Court may make an administration order—
- (a) whether or not satisfied that the company is or is likely to become unable to pay its debts, but
  - (b) only if satisfied that the applicant could appoint an administrator under paragraph 15.

*Intervention by holder of floating charge*

- 37.**—(1) This paragraph applies where—
- (a) an administration application in respect of a company is made by a person who is not the holder of a qualifying floating charge in respect of the company's property, and
  - (b) the holder of a qualifying floating charge in respect of the company's property applies to the High Court to have a specified person appointed as administrator (and not the person specified by the administration applicant).
- (2) The Court shall grant an application under sub-paragraph (1)(b) unless the Court thinks it right to refuse the application because of the particular circumstances of the case.

*Application where company in liquidation*

- 38.**—(1) This paragraph applies where the holder of a qualifying floating charge in respect of a company's property could appoint an administrator under paragraph 15 but for paragraph 9(1)(b).
- (2) The holder of the qualifying floating charge may make an administration application.
- (3) If the High Court makes an administration order on hearing an application made by virtue of sub-paragraph (2)—
- (a) the Court shall discharge the winding-up order,
  - (b) the Court shall make provision for such matters as may be prescribed,
  - (c) the Court may make other consequential provision,
  - (d) the Court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and
  - (e) this Schedule shall have effect with such modifications as the Court may specify.

- 39.**—(1) The liquidator of a company may make an administration application.
- (2) If the High Court makes an administration order on hearing an application made by virtue of sub-paragraph (1)—
- (a) the Court shall discharge any winding-up order in respect of the company,
  - (b) the Court shall make provision for such matters as may be prescribed,
  - (c) the Court may make other consequential provision,
  - (d) the Court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and
  - (e) this Schedule shall have effect with such modifications as the Court may specify.

**Changes to legislation:** There are currently no known outstanding effects for the The Insolvency (Northern Ireland) Order 2005, SCHEDULE 1. (See end of Document for details)

*Effect of administrative receivership*

**40.**—(1) Where there is an administrative receiver of a company the High Court must dismiss an administration application in respect of the company unless—

- (a) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order,
- (b) the Court thinks that the security by virtue of which the receiver was appointed would be liable to be released or discharged under Articles 202 to 204 (transaction at undervalue and preference) if an administration order were made, or
- (c) the Court thinks that the security by virtue of which the receiver was appointed would be avoided under Article 207 (avoidance of floating charge) if an administration order were made.

(2) Sub-paragraph (1) applies whether the administrative receiver is appointed before or after the making of the administration application.

**EFFECT OF ADMINISTRATION**

*Dismissal of pending winding-up petition*

**41.**—(1) A petition for the winding up of a company—

- (a) shall be dismissed on the making of an administration order in respect of the company, and
- (b) shall be suspended while the company is in administration following an appointment under paragraph 15.

(2) Sub-paragraph (1)(b) does not apply to a petition presented under—

- (a) Article 104A (public interest),
- (b) Article 104B (SEs), or
- (c) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).

(3) Where an administrator becomes aware that a petition was presented under a provision referred to in sub-paragraph (2) before his appointment, he shall apply to the High Court for directions under paragraph 64.

*Dismissal of administrative or other receiver*

**42.**—(1) When an administration order takes effect in respect of a company any administrative receiver of the company shall vacate office.

(2) Where a company is in administration, any receiver of part of the company's property shall vacate office if the administrator requires him to.

(3) Where an administrative receiver or receiver vacates office under sub-paragraph (1) or (2)—

- (a) his remuneration shall be charged on and paid out of any property of the company which was in his custody or under his control immediately before he vacated office, and
- (b) he need not take any further steps under Article 50.

(4) In the application of sub-paragraph (3)(a)—

- (a) “remuneration” includes expenses properly incurred and any indemnity to which the administrative receiver or receiver is entitled out of the assets of the company,
- (b) the charge imposed takes priority over security held by the person by whom or on whose behalf the administrative receiver or receiver was appointed, and
- (c) the provision for payment is subject to paragraph 44.

*Moratorium on insolvency proceedings*

- 43.**—(1) This paragraph applies to a company in administration.
- (2) No resolution may be passed for the winding up of the company.
  - (3) No order may be made for the winding up of the company.
  - (4) Sub-paragraph (3) does not apply to an order made on a petition presented under—
    - (a) Article 104A (public interest),
    - (b) Article 104B (SEs), or
    - (c) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).
  - (5) If a petition presented under a provision referred to in sub-paragraph (4) comes to the attention of the administrator, he shall apply to the High Court for directions under paragraph 64.

*Moratorium on other legal process*

- 44.**—(1) This paragraph applies to a company in administration.
- (2) No step may be taken to enforce security over the company's property except—
    - (a) with the consent of the administrator, or
    - (b) with the permission of the High Court.
  - (3) No step may be taken to repossess goods in the company's possession under a hire-purchase agreement except—
    - (a) with the consent of the administrator, or
    - (b) with the permission of the Court.
  - (4) A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company except—
    - (a) with the consent of the administrator, or
    - (b) with the permission of the Court.
  - (5) No legal process (including legal proceedings, execution and distress) may be instituted or continued against the company or property of the company except—
    - (a) with the consent of the administrator, or
    - (b) with the permission of the Court.
  - (6) An administrative receiver of the company may not be appointed.
  - (7) Where the Court gives permission for a transaction under this paragraph it may impose a condition on or a requirement in connection with the transaction.
  - (8) In this paragraph “landlord” includes a person to whom rent is payable.

### *Interim moratorium*

**45.—**(1) This paragraph applies where an administration application in respect of a company has been made and—

- (a) the application has not yet been granted or dismissed, or
- (b) the application has been granted but the administration order has not yet taken effect.

(2) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator under paragraph 15 is filed with the High Court until—

- (a) the appointment of the administrator takes effect, or
- (b) the period of 5 business days beginning with the date of filing expires without an administrator having been appointed.

(3) Sub-paragraph (2) has effect in relation to a notice of intention to appoint only if it is in the prescribed form.

(4) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator is filed with the Court under paragraph 28(1) until—

- (a) the appointment of the administrator takes effect, or
- (b) the period specified in paragraph 29(2) expires without an administrator having been appointed.

(5) The provisions of paragraphs 43 and 44 shall apply (ignoring any reference to the consent of the administrator).

(6) If there is an administrative receiver of the company when the administration application is made, the provisions of paragraphs 43 and 44 shall not begin to apply by virtue of this paragraph until the person by or on behalf of whom the receiver was appointed consents to the making of the administration order.

(7) This paragraph does not prevent or require the permission of the High Court for—

- (a) the presentation of a petition for the winding up of the company under a provision mentioned in paragraph 43(4),
- (b) the appointment of an administrator under paragraph 15,
- (c) the appointment of an administrative receiver of the company, or
- (d) the carrying out by an administrative receiver (whenever appointed) of his functions.

### *Publicity*

**46.—**(1) While a company is in administration every business document issued by or on behalf of the company or the administrator must state—

- (a) the name of the administrator, and
- (b) that the affairs, business and property of the company are being managed by him.

(2) Any of the following commits an offence if without reasonable excuse he authorises or permits a contravention of sub-paragraph (1)—

- (a) the administrator,
- (b) an officer of the company, and
- (c) the company.

(3) In sub-paragraph (1) “business document” means—

- (a) an invoice,

- (b) an order for goods or services, and
- (c) a business letter.

## PROCESS OF ADMINISTRATION

### *Announcement of administrator's appointment*

- 47.**—(1) This paragraph applies where a person becomes the administrator of a company.
- (2) As soon as is reasonably practicable the administrator shall—
    - (a) send a notice of his appointment to the company, and
    - (b) publish a notice of his appointment in the prescribed manner.
  - (3) As soon as is reasonably practicable the administrator shall—
    - (a) obtain a list of the company's creditors, and
    - (b) send a notice of his appointment to each creditor of whose claim and address he is aware.
  - (4) The administrator shall send a notice of his appointment to the registrar before the end of the period of 7 days beginning with the date specified in sub-paragraph (6).
  - (5) The administrator shall send a notice of his appointment to such persons as may be prescribed before the end of the prescribed period beginning with the date specified in sub-paragraph (6).
  - (6) The date for the purpose of sub-paragraphs (4) and (5) is—
    - (a) in the case of an administrator appointed by administration order, the date of the order,
    - (b) in the case of an administrator appointed under paragraph 15, the date on which he receives notice under paragraph 21, and
    - (c) in the case of an administrator appointed under paragraph 23, the date on which he receives notice under paragraph 33.
  - (7) The High Court may direct that sub-paragraph (3)(b) or (5)—
    - (a) shall not apply, or
    - (b) shall apply with the substitution of a different period.
  - (8) A notice under this paragraph must—
    - (a) contain the prescribed information, and
    - (b) be in the prescribed form.
  - (9) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

### *Statement of company's affairs*

- 48.**—(1) As soon as is reasonably practicable after appointment the administrator of a company shall by notice in the prescribed form require one or more relevant persons to provide the administrator with a statement of the affairs of the company.
- (2) The statement must—
    - (a) be verified by affidavit,
    - (b) be in the prescribed form,

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- (c) give particulars of the company's property, debts and liabilities,
  - (d) give the names and addresses of the company's creditors,
  - (e) specify the security held by each creditor,
  - (f) give the date on which each security was granted, and
  - (g) contain such other information as may be prescribed.
- (3) In sub-paragraph (1) “relevant person” means—
- (a) a person who is or has been an officer of the company,
  - (b) a person who took part in the formation of the company during the period of one year ending with the date on which the company enters administration,
  - (c) a person employed by the company during that period, and
  - (d) a person who is or has been during that period an officer or employee of a company which is or has been during that year an officer of the company.
- (4) For the purpose of sub-paragraph (3) a reference to employment is a reference to employment through a contract of employment or a contract for services.
- 49.**—(1) A person required to submit a statement of affairs must do so before the end of the period of 11 days beginning with the day on which he receives notice of the requirement.
- (2) The administrator may—
- (a) revoke a requirement under paragraph 48(1), or
  - (b) extend the period specified in sub-paragraph (1) (whether before or after expiry).
- (3) If the administrator refuses a request to act under sub-paragraph (2)—
- (a) the person whose request is refused may apply to the High Court, and
  - (b) the Court may take action of a kind specified in sub-paragraph (2).
- (4) A person commits an offence if he fails without reasonable excuse to comply with a requirement under paragraph 48(1).

#### *Administrator's proposals*

- 50.**—(1) The administrator of a company shall make a statement setting out proposals for achieving the purpose of administration.
- (2) A statement under sub-paragraph (1) must, in particular—
- (a) deal with such matters as may be prescribed, and
  - (b) where applicable, explain why the administrator thinks that the objective mentioned in paragraph 4(1)(a) or (b) cannot be achieved.
- (3) Proposals under this paragraph may include—
- (a) a proposal for a voluntary arrangement under Part II of this Order (although this paragraph is without prejudice to Article 17(3));
  - (b) a proposal for a compromise or arrangement to be sanctioned under Article 418 of the Companies Order (compromise with creditors or members).
- (4) The administrator shall send a copy of the statement of his proposals—
- (a) to the registrar,
  - (b) to every creditor of the company of whose claim and address he is aware, and
  - (c) to every member of the company of whose address he is aware.



- (5) The administrator shall comply with sub-paragraph (4)—
  - (a) as soon as is reasonably practicable after the company enters administration, and
  - (b) in any event, before the end of the period of 8 weeks beginning with the day on which the company enters administration.
- (6) The administrator shall be taken to comply with sub-paragraph (4)(c) if he publishes in the prescribed manner a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.
- (7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).
- (8) A period specified in this paragraph may be varied in accordance with paragraph 108.

#### *Creditors' meeting*

- 51.**—(1) In this Schedule “creditors' meeting” means a meeting of creditors of a company summoned by the administrator—
- (a) in the prescribed manner, and
  - (b) giving the prescribed period of notice to every creditor of the company of whose claim and address he is aware.
- (2) A period prescribed under sub-paragraph (1)(b) may be varied in accordance with paragraph 108.
- (3) A creditors' meeting shall be conducted in accordance with the rules.

#### *Requirement for initial creditors' meeting*

- 52.**—(1) Each copy of an administrator's statement of proposals sent to a creditor under paragraph 50(4)(b) must be accompanied by an invitation to a creditors' meeting (an “initial creditors' meeting”).
- (2) The date set for an initial creditors' meeting must be—
- (a) as soon as is reasonably practicable after the company enters administration, and
  - (b) in any event, within the period of 10 weeks beginning with the date on which the company enters administration.
- (3) An administrator shall present a copy of his statement of proposals to an initial creditors' meeting.
- (4) A period specified in this paragraph may be varied in accordance with paragraph 108.
- (5) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

- 53.**—(1) Paragraph 52(1) shall not apply where the statement of proposals states that the administrator thinks—
- (a) that the company has sufficient property to enable each creditor of the company to be paid in full,
  - (b) that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of Article 150A(2)(a), or
  - (c) that neither of the objectives specified in paragraph 4(1)(a) and (b) can be achieved.
- (2) But the administrator shall summon an initial creditors' meeting if it is requested—

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- (a) by creditors of the company whose debts amount to at least 10 per cent. of the total debts of the company,
  - (b) in the prescribed manner, and
  - (c) in the prescribed period.
- (3) A meeting requested under sub-paragraph (2) must be summoned for a date in the prescribed period.
- (4) The period prescribed under sub-paragraph (3) may be varied in accordance with paragraph 108.

#### *Business and result of initial creditors' meeting*

- 54.**—(1) An initial creditors' meeting to which an administrator's proposals are presented shall consider them and may—
- (a) approve them without modification, or
  - (b) approve them with modification to which the administrator consents.
- (2) After the conclusion of an initial creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—
- (a) the High Court,
  - (b) the registrar, and
  - (c) such other persons as may be prescribed.
- (3) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (2).

#### *Revision of administrator's proposals*

- 55.**—(1) This paragraph applies where—
- (a) an administrator's proposals have been approved (with or without modification) at an initial creditors' meeting,
  - (b) the administrator proposes a revision to the proposals, and
  - (c) the administrator thinks that the proposed revision is substantial.
- (2) The administrator shall—
- (a) summon a creditors' meeting,
  - (b) send a statement in the prescribed form of the proposed revision with the notice of the meeting sent to each creditor,
  - (c) send a copy of the statement, within the prescribed period, to each member of the company of whose address he is aware, and
  - (d) present a copy of the statement to the meeting.
- (3) The administrator shall be taken to have complied with sub-paragraph (2)(c) if he publishes a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to a specified address.
- (4) A notice under sub-paragraph (3) must be published—
- (a) in the prescribed manner, and
  - (b) within the prescribed period.

(5) A creditors' meeting to which a proposed revision is presented shall consider it and may—

- (a) approve it without modification, or
- (b) approve it with modification to which the administrator consents.

(6) After the conclusion of a creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—

- (a) the High Court,
- (b) the registrar, and
- (c) such other persons as may be prescribed.

(7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (6).

#### *Failure to obtain approval of administrator's proposals*

**56.**—(1) This paragraph applies where an administrator reports to the High Court that—

- (a) an initial creditors' meeting has failed to approve the administrator's proposals presented to it, or
- (b) a creditors' meeting has failed to approve a revision of the administrator's proposals presented to it.

(2) The Court may—

- (a) provide that the appointment of an administrator shall cease to have effect from a specified time;
- (b) adjourn the hearing conditionally or unconditionally;
- (c) make an interim order;
- (d) make an order on a petition for winding up suspended by virtue of paragraph 41(1)(b);
- (e) make any other order (including an order making consequential provision) that the Court thinks appropriate.

#### *Further creditors' meetings*

**57.**—(1) The administrator of a company shall summon a creditors' meeting if—

- (a) it is requested in the prescribed manner by creditors of the company whose debts amount to at least 10 per cent. of the total debts of the company, or
- (b) he is directed by the High Court to summon a creditors' meeting.

(2) An administrator commits an offence if he fails without reasonable excuse to summon a creditors' meeting as required by this paragraph.

#### *Creditors' committee*

**58.**—(1) A creditors' meeting may establish a creditors' committee.

- (2) A creditors' committee shall carry out functions conferred on it by or under this Order.
- (3) A creditors' committee may require the administrator—

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- (a) to attend on the committee at any reasonable time of which he is given at least 7 days' notice, and
- (b) to provide the committee with information about the exercise of his functions.

#### *Correspondence instead of creditors' meeting*

**59.**—(1) Anything which is required or permitted by or under this Schedule to be done at a creditors' meeting may be done by correspondence between the administrator and creditors—

- (a) in accordance with the rules, and
- (b) subject to any prescribed condition.

(2) A reference in this Schedule to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in reliance on sub-paragraph (1).

(3) A requirement to hold a creditors' meeting is satisfied by conducting correspondence in accordance with this paragraph.

### FUNCTIONS OF ADMINISTRATOR

#### *General powers*

**60.**—(1) The administrator of a company may do anything necessary or expedient for the management of the affairs, business and property of the company.

(2) A provision of this Schedule which expressly permits the administrator to do a specified thing is without prejudice to the generality of sub-paragraph (1).

(3) A person who deals with the administrator of a company in good faith and for value need not inquire whether the administrator is acting within his powers.

**61.** The administrator of a company has the powers specified in Schedule 1.

**62.** The administrator of a company—

- (a) may remove a director of the company, and
- (b) may appoint a director of the company (whether or not to fill a vacancy).

**63.** The administrator of a company may call a meeting of members or creditors of the company.

**64.** The administrator of a company may apply to the High Court for directions in connection with his functions.

**65.**—(1) A company in administration or an officer of a company in administration may not exercise a management power without the consent of the administrator.

(2) For the purpose of sub-paragraph (1)—

- (a) “management power” means a power which could be exercised so as to interfere with the exercise of the administrator's powers,
- (b) it is immaterial whether the power is conferred by an enactment or an instrument, and
- (c) consent may be general or specific.

### *Distribution*

**66.**—(1) The administrator of a company may make a distribution to a creditor of the company.

(2) Article 149 shall apply in relation to a distribution under this paragraph as it applies in relation to a winding up.

(3) A payment may not be made by way of distribution under this paragraph to a creditor of the company who is neither secured nor preferential unless the High Court gives permission.

**67.** The administrator of a company may make a payment otherwise than in accordance with paragraph 66 or paragraph 14 of Schedule 1 if he thinks it likely to assist achievement of the purpose of administration.

### *General duties*

**68.** The administrator of a company shall on his appointment take custody or control of all the property to which he thinks the company is entitled.

**69.**—(1) Subject to sub-paragraph (2), the administrator of a company shall manage its affairs, business and property in accordance with—

- (a) any proposals approved under paragraph 54,
- (b) any revision of those proposals which is made by him and which he does not consider substantial, and
- (c) any revision of those proposals approved under paragraph 55.

(2) If the High Court gives directions to the administrator of a company in connection with any aspect of his management of the company's affairs, business or property, the administrator shall comply with the directions.

(3) The Court may give directions under sub-paragraph (2) only if—

- (a) no proposals have been approved under paragraph 54,
- (b) the directions are consistent with any proposals or revision approved under paragraph 54 or 55,
- (c) the Court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under paragraph 54 or 55, or
- (d) the Court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under paragraph 54 or 55.

### *Administrator as agent of company*

**70.** In exercising his functions under this Schedule the administrator of a company acts as its agent.

### *Charged property: floating charge*

**71.**—(1) The administrator of a company may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge.

(2) Where property is disposed of in reliance on sub-paragraph (1) the holder of the floating charge shall have the same priority in respect of acquired property as he had in respect of the property disposed of.

(3) In sub-paragraph (2) “acquired property” means property of the company which directly or indirectly represents the property disposed of.

*Charged property: non-floating charge*

**72.—**(1) The High Court may by order enable the administrator of a company to dispose of property which is subject to a security (other than a floating charge) as if it were not subject to the security.

(2) An order under sub-paragraph (1) may be made only—

- (a) on the application of the administrator, and
- (b) where the Court thinks that disposal of the property would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums secured by the security—

- (a) the net proceeds of disposal of the property, and
- (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the property at market value.

(4) If an order under this paragraph relates to more than one security, application of money under sub-paragraph (3) shall be in the order of the priorities of the securities.

(5) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar before the end of the period of 14 days starting with the date of the order.

(6) An administrator commits an offence if he fails to comply with sub-paragraph (5) without reasonable excuse.

*Hire-purchase property*

**73.—**(1) The High Court may by order enable the administrator of a company to dispose of goods which are in the possession of the company under a hire-purchase agreement as if all the rights of the owner under the agreement were vested in the company.

(2) An order under sub-paragraph (1) may be made only—

- (a) on the application of the administrator, and
- (b) where the Court thinks that disposal of the goods would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums payable under the hire-purchase agreement—

- (a) the net proceeds of disposal of the goods, and
- (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the goods at market value.

(4) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar before the end of the period of 14 days starting with the date of the order.

(5) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (4).

*Protection for secured or preferential creditor*

**74.**—(1) An administrator's statement of proposals under paragraph 50 may not include any action which—

- (a) affects the right of a secured creditor of the company to enforce his security,
- (b) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts, or
- (c) would result in one preferential creditor of the company being paid a smaller proportion of his debt than another.

(2) Sub-paragraph (1) does not apply to—

- (a) action to which the relevant creditor consents,
- (b) a proposal for a voluntary arrangement under Part II of this Order (although this sub-paragraph is without prejudice to Article 17(3)), or
- (c) a proposal for a compromise or arrangement to be sanctioned under Article 418 of the Companies Order (compromise with creditors or members).

(3) The reference to a statement of proposals in sub-paragraph (1) includes a reference to a statement as revised or modified.

*Challenge to administrator's conduct of company*

**75.**—(1) A creditor or member of a company in administration may apply to the High Court claiming that—

- (a) the administrator is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors), or
- (b) the administrator proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors).

(2) A creditor or member of a company in administration may apply to the Court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.

(3) The Court may—

- (a) grant relief;
- (b) dismiss the application;
- (c) adjourn the hearing conditionally or unconditionally;
- (d) make an interim order;
- (e) make any other order it thinks appropriate.

(4) In particular, an order under this paragraph may—

- (a) regulate the administrator's exercise of his functions;
- (b) require the administrator to do or not do a specified thing;
- (c) require a creditors' meeting to be held for a specified purpose;
- (d) provide for the appointment of an administrator to cease to have effect;
- (e) make consequential provision.

- (5) An order may be made on a claim under sub-paragraph (1) whether or not the action complained of—
- (a) is within the administrator's powers under this Schedule;
  - (b) was taken in reliance on an order under paragraph 72 or 73.
- (6) An order may not be made under this paragraph if it would impede or prevent the implementation of—
- (a) a voluntary arrangement approved under Part II,
  - (b) a compromise or arrangement sanctioned under Article 418 of the Companies Order (compromise with creditors and members), or
  - (c) proposals or a revision approved under paragraph 54 or 55 more than 28 days before the day on which the application for the order under this paragraph is made.

#### *Misfeasance*

- 76.**—(1) The High Court may examine the conduct of a person who—
- (a) is or purports to be the administrator of a company, or
  - (b) has been or has purported to be the administrator of a company.
- (2) An examination under this paragraph may be held only on the application of—
- (a) the official receiver,
  - (b) the administrator of the company,
  - (c) the liquidator of the company,
  - (d) a creditor of the company, or
  - (e) a contributory of the company.
- (3) An application under sub-paragraph (2) must allege that the administrator—
- (a) has misapplied or retained money or other property of the company,
  - (b) has become accountable for money or other property of the company,
  - (c) has breached a fiduciary or other duty in relation to the company, or
  - (d) has been guilty of misfeasance.
- (4) On an examination under this paragraph into a person's conduct the Court may order him—
- (a) to repay, restore or account for money or property;
  - (b) to pay interest;
  - (c) to contribute a sum to the company's property by way of compensation for breach of duty or misfeasance.
- (5) In sub-paragraph (3) “administrator” includes a person who purports or has purported to be a company's administrator.
- (6) An application under sub-paragraph (2) may be made in respect of an administrator who has been discharged under paragraph 99 only with the permission of the Court.



## ENDING ADMINISTRATION

### *Automatic end of administration*

**77.**—(1) The appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.

(2) But—

- (a) on the application of an administrator the High Court may by order extend his term of office for a specified period, and
- (b) an administrator's term of office may be extended for a specified period not exceeding 6 months by consent.

**78.**—(1) An order of the High Court under paragraph 77—

- (a) may be made in respect of an administrator whose term of office has already been extended by order or by consent, but
- (b) may not be made after the expiry of the administrator's term of office.

(2) Where an order is made under paragraph 77 the administrator shall as soon as is reasonably practicable notify the registrar.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

**79.**—(1) In paragraph 77(2)(b) “consent” means consent of—

- (a) each secured creditor of the company, and
- (b) if the company has unsecured debts, creditors whose debts amount to more than 50 per cent. of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(2) But where the administrator has made a statement under paragraph 53(1)(b) “consent” means—

- (a) consent of each secured creditor of the company, or
- (b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—
  - (i) each secured creditor of the company, and
  - (ii) preferential creditors whose debts amount to more than 50 per cent. of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(3) Consent for the purposes of paragraph 77(2)(b) may be—

- (a) written, or
- (b) signified at a creditors' meeting.

(4) An administrator's term of office—

- (a) may be extended by consent only once,
- (b) may not be extended by consent after extension by order of the High Court, and
- (c) may not be extended by consent after expiry.

(5) Where an administrator's term of office is extended by consent he shall as soon as is reasonably practicable—

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- (a) file notice of the extension with the Court, and
  - (b) notify the registrar.
- (6) An administrator who fails without reasonable excuse to comply with sub-paragraph (5) commits an offence.

*Court ending administration on application of administrator*

**80.**—(1) On the application of the administrator of a company the High Court may provide for the appointment of an administrator of the company to cease to have effect from a specified time.

- (2) The administrator of a company shall make an application under this paragraph if—
  - (a) he thinks the purpose of administration cannot be achieved in relation to the company,
  - (b) he thinks the company should not have entered administration, or
  - (c) a creditors' meeting requires him to make an application under this paragraph.
- (3) The administrator of a company shall make an application under this paragraph if—
  - (a) the administration is pursuant to an administration order, and
  - (b) the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company.
- (4) On an application under this paragraph the Court may—
  - (a) adjourn the hearing conditionally or unconditionally;
  - (b) dismiss the application;
  - (c) make an interim order;
  - (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

*Termination of administration where objective achieved*

**81.**—(1) This paragraph applies where an administrator of a company is appointed under paragraph 15 or 23.

- (2) If the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company he may file a notice in the prescribed form—
  - (a) with the High Court, and
  - (b) with the registrar.
- (3) The administrator's appointment shall cease to have effect when the requirements of sub-paragraph (2) are satisfied.
- (4) Where the administrator files a notice he shall within the prescribed period send a copy to every creditor of the company of whose claim and address he is aware.
- (5) The rules may provide that the administrator is taken to have complied with sub-paragraph (4) if before the end of the prescribed period he publishes in the prescribed manner a notice undertaking to provide a copy of the notice under sub-paragraph (2) to any creditor of the company who applies in writing to a specified address.
- (6) An administrator who fails without reasonable excuse to comply with sub-paragraph (4) commits an offence.

*Court ending administration on application of creditor*

- 82.**—(1) On the application of a creditor of a company the High Court may provide for the appointment of an administrator of the company to cease to have effect at a specified time.
- (2) An application under this paragraph must allege an improper motive—
- (a) in the case of an administrator appointed by administration order, on the part of the applicant for the order, or
  - (b) in any other case, on the part of the person who appointed the administrator.
- (3) On an application under this paragraph the Court may—
- (a) adjourn the hearing conditionally or unconditionally;
  - (b) dismiss the application;
  - (c) make an interim order;
  - (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

*Public interest winding-up*

- 83.**—(1) This paragraph applies where a winding-up order is made for the winding up of a company in administration on a petition presented under—
- (a) Article 104A (public interest),
  - (b) Article 104B (SEs), or
  - (c) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).
- (2) This paragraph also applies where a provisional liquidator of a company in administration is appointed following the presentation of a petition under any of the provisions listed in sub-paragraph (1).
- (3) The High Court shall order—
- (a) that the appointment of the administrator shall cease to have effect, or
  - (b) that the appointment of the administrator shall continue to have effect.
- (4) If the Court makes an order under sub-paragraph (3)(b) it may also—
- (a) specify which of the powers under this Schedule are to be exercisable by the administrator, and
  - (b) order that this Schedule shall have effect in relation to the administrator with specified modifications.

*Moving from administration to creditors' voluntary liquidation*

- 84.**—(1) This paragraph applies where the administrator of a company thinks—
- (a) that the total amount which each secured creditor of the company is likely to receive has been paid to him or set aside for him, and
  - (b) that a distribution will be made to unsecured creditors of the company (if there are any).
- (2) The administrator may send to the registrar a notice that this paragraph applies.
- (3) On receipt of a notice under sub-paragraph (2) the registrar shall register it.

- (4) If an administrator sends a notice under sub-paragraph (2) he shall as soon as is reasonably practicable—
- (a) file a copy of the notice with the High Court, and
  - (b) send a copy of the notice to each creditor of whose claim and address he is aware.
- (5) On the registration of a notice under sub-paragraph (2)—
- (a) the appointment of an administrator in respect of the company shall cease to have effect, and
  - (b) the company shall be wound up as if a resolution for voluntary winding up under Article 70 were passed on the day on which the notice is registered.
- (6) The liquidator for the purposes of the winding up shall be—
- (a) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period, or
  - (b) if no person is nominated under paragraph (a), the administrator.
- (7) In the application of Part V to a winding up by virtue of this paragraph—
- (a) Article 71 shall not apply,
  - (b) Article 72 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (2),
  - (c) Article 75 does not apply,
  - (d) Articles 84, 85 and 86 shall not apply,
  - (e) Article 109 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (2), and
  - (f) any creditors' committee which is in existence immediately before the company ceases to be in administration shall continue in existence after that time as if appointed as a liquidation committee under Article 87.

*Moving from administration to dissolution*

- 85.**—(1) If the administrator of a company thinks that the company has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the registrar.
- (2) The High Court may on the application of the administrator of a company disapply sub-paragraph (1) in respect of the company.
- (3) On receipt of a notice under sub-paragraph (1) the registrar shall register it.
- (4) On the registration of a notice in respect of a company under sub-paragraph (1) the appointment of an administrator of the company shall cease to have effect.
- (5) If an administrator sends a notice under sub-paragraph (1) he shall as soon as is reasonably practicable—
- (a) file a copy of the notice with the Court, and
  - (b) send a copy of the notice to each creditor of whose claim and address he is aware.
- (6) At the end of the period of 3 months beginning with the date of registration of a notice in respect of a company under sub-paragraph (1) the company is deemed to be dissolved.
- (7) On an application in respect of a company by the administrator or another interested person the Court may—

- (a) extend the period specified in sub-paragraph (6),
- (b) suspend that period, or
- (c) disapply sub-paragraph (6).

(8) Where an order is made under sub-paragraph (7) in respect of a company the administrator shall as soon as is reasonably practicable notify the registrar.

(9) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

#### *Discharge of administration order where administration ends*

**86.**—(1) This paragraph applies where—

- (a) the High Court makes an order under this Schedule providing for the appointment of an administrator of a company to cease to have effect, and
  - (b) the administrator was appointed by administration order.
- (2) The Court shall discharge the administration order.

#### *Notice to registrar where administration ends*

**87.**—(1) This paragraph applies where the High Court makes an order under this Schedule providing for the appointment of an administrator to cease to have effect.

(2) The administrator shall send a copy of the order to the registrar within the period of 14 days beginning with the date of the order.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

### REPLACING ADMINISTRATOR

#### *Resignation of administrator*

**88.**—(1) An administrator may resign only in prescribed circumstances.

(2) Where an administrator may resign he may do so only—

- (a) in the case of an administrator appointed by administration order, by notice in writing to the High Court,
- (b) in the case of an administrator appointed under paragraph 15, by notice in writing to the holder of the floating charge by virtue of which the appointment was made,
- (c) in the case of an administrator appointed under paragraph 23(1), by notice in writing to the company, or
- (d) in the case of an administrator appointed under paragraph 23(2), by notice in writing to the directors of the company.

#### *Removal of administrator from office*

**89.** The High Court may by order remove an administrator from office.

**Changes to legislation:** There are currently no known outstanding effects for the The Insolvency (Northern Ireland) Order 2005, SCHEDULE 1. (See end of Document for details)

*Administrator ceasing to be qualified*

**90.**—(1) The administrator of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(2) Where an administrator vacates office by virtue of sub-paragraph (1) he shall give notice in writing—

- (a) in the case of an administrator appointed by administration order, to the High Court,
- (b) in the case of an administrator appointed under paragraph 15, to the holder of the floating charge by virtue of which the appointment was made,
- (c) in the case of an administrator appointed under paragraph 23(1), to the company, or
- (d) in the case of an administrator appointed under paragraph 23(2), to the directors of the company.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

*Supplying vacancy in office of administrator*

**91.** Paragraphs 92 to 96 apply where an administrator—

- (a) dies,
- (b) resigns,
- (c) is removed from office under paragraph 89, or
- (d) vacates office under paragraph 90.

**92.**—(1) Where the administrator was appointed by administration order, the High Court may replace the administrator on an application under this sub-paragraph made by—

- (a) a creditors' committee of the company,
- (b) the company,
- (c) the directors of the company,
- (d) one or more creditors of the company, or
- (e) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remains in office.

(2) But an application may be made in reliance on sub-paragraph (1)(b) to (d) only where—

- (a) there is no creditors' committee of the company,
- (b) the Court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement, or
- (c) the Court is satisfied that for another reason it is right for the application to be made.

**93.** Where the administrator was appointed under paragraph 15 the holder of the floating charge by virtue of which the appointment was made may replace the administrator.

**94.**—(1) Where the administrator was appointed under paragraph 23(1) by the company it may replace the administrator.

(2) A replacement under this paragraph may be made only—

- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
- (b) where consent is withheld, with the permission of the High Court.

**95.**—(1) Where the administrator was appointed under paragraph 23(2) the directors of the company may replace the administrator.

(2) A replacement under this paragraph may be made only—

- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
- (b) where consent is withheld, with the permission of the High Court.

**96.** The High Court may replace an administrator on the application of a person listed in paragraph 92(1) if the Court—

- (a) is satisfied that a person who is entitled to replace the administrator under any of paragraphs 93 to 95 is not taking reasonable steps to make a replacement, or
- (b) that for another reason it is right for the Court to make the replacement.

*Substitution of administrator: competing floating charge-holder*

**97.**—(1) This paragraph applies where an administrator of a company is appointed under paragraph 15 by the holder of a qualifying floating charge in respect of the company's property.

(2) The holder of a prior qualifying floating charge in respect of the company's property may apply to the High Court for the administrator to be replaced by an administrator nominated by the holder of the prior floating charge.

(3) One floating charge is prior to another for the purposes of this paragraph if—

- (a) it was created first, or
- (b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

*Substitution of administrator appointed by company or directors: creditors' meeting*

**98.**—(1) This paragraph applies where—

- (a) an administrator of a company is appointed by a company or directors under paragraph 23, and
- (b) there is no holder of a qualifying floating charge in respect of the company's property.

(2) A creditors' meeting may replace the administrator.

(3) A creditor's meeting may act under sub-paragraph (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.

*Vacation of office: discharge from liability*

**99.**—(1) Where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.

(2) The discharge provided by sub-paragraph (1) takes effect—

- (a) in the case of an administrator who dies, on the filing with the High Court of notice of his death,

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- (b) in the case of an administrator appointed under paragraph 15 or 23, at a time appointed by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors, or
- (c) in any case, at a time specified by the Court.

(3) For the purpose of the application of sub-paragraph (2)(b) in a case where the administrator has made a statement under paragraph 53(1)(b), a resolution shall be taken as passed if (and only if) passed with the approval of—

- (a) each secured creditor of the company, or
- (b) if the administrator has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors—
  - (i) each secured creditor of the company, and
  - (ii) preferential creditors whose debts amount to more than 50 per cent. of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(4) Discharge—

- (a) applies to liability accrued before the discharge takes effect, and
- (b) does not prevent the exercise of the High Court's powers under paragraph 76.

*Vacation of office: charges and liabilities*

**100.**—(1) This paragraph applies where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect).

(2) In this paragraph—

- “the former administrator” means the person referred to in sub-paragraph (1), and
- “cessation” means the time when he ceases to be the company's administrator.

(3) The former administrator's remuneration and expenses shall be—

- (a) charged on and payable out of property of which he had custody or control immediately before cessation, and
- (b) payable in priority to any security to which paragraph 71 applies.

(4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—

- (a) charged on and payable out of property of which the former administrator had custody or control immediately before cessation, and
- (b) payable in priority to any charge arising under sub-paragraph (3).

(5) Sub-paragraph (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—

- (a) action taken within the period of 14 days after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract,
- (b) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment, and
- (c) no account shall be taken of a liability to make a payment other than wages or salary.

(6) In sub-paragraph (5)(c) “wages or salary” includes—



- (a) a sum payable in respect of a period of holiday (for which purpose the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued),
- (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,
- (d) in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security, and
- (e) a contribution to an occupational pension scheme.

## GENERAL

### *Joint and concurrent administrators*

#### **101.**—(1) In this Schedule—

- (a) a reference to the appointment of an administrator of a company includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator of a company, and
- (b) a reference to the appointment of a person as administrator of a company includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator of a company.

(2) The appointment of a number of persons to act as administrator of a company must specify—

- (a) which functions (if any) are to be exercised by the persons appointed acting jointly, and
- (b) which functions (if any) are to be exercised by any or all of the persons appointed.

**102.**—(1) This paragraph applies where two or more persons are appointed to act jointly as the administrator of a company.

(2) A reference to the administrator of the company is a reference to those persons acting jointly.

(3) But a reference to the administrator of a company in paragraphs 88 to 100 of this Schedule is a reference to any or all of the persons appointed to act jointly.

(4) Where an offence of omission is committed by the administrator, each of the persons appointed to act jointly—

- (a) commits the offence, and
- (b) may be proceeded against and punished individually.

(5) The reference in paragraph 46(1)(a) to the name of the administrator is a reference to the name of each of the persons appointed to act jointly.

(6) Where persons are appointed to act jointly in respect of only some of the functions of the administrator of a company, this paragraph applies only in relation to those functions.

**103.**—(1) This paragraph applies where two or more persons are appointed to act concurrently as the administrator of a company.

(2) A reference to the administrator of a company in this Schedule is a reference to any of the persons appointed (or any combination of them).

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**104.**—(1) Where a company is in administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the company.

(2) Where a company entered administration by administration order, an appointment under sub-paragraph (1) must be made by the High Court on the application of—

- (a) a person or group listed in paragraph 13(1)(a) to (f), or
- (b) the person or persons acting as the administrator of the company.

(3) Where a company entered administration by virtue of an appointment under paragraph 15, an appointment under sub-paragraph (1) must be made by—

- (a) the holder of the floating charge by virtue of which the appointment was made, or
- (b) the High Court on the application of the person or persons acting as the administrator of the company.

(4) Where a company entered administration by virtue of an appointment under paragraph 23(1), an appointment under sub-paragraph (1) must be made either by the High Court on the application of the person or persons acting as the administrator of the company or—

- (a) by the company, and
- (b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the Court.

(5) Where a company entered administration by virtue of an appointment under paragraph 23(2), an appointment under sub-paragraph (1) must be made either by the Court on the application of the person or persons acting as the administrator of the company or—

- (a) by the directors of the company, and
- (b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the Court.

(6) An appointment under sub-paragraph (1) may be made only with the consent of the person or persons acting as the administrator of the company.

#### *Presumption of validity*

**105.** An act of the administrator of a company is valid in spite of a defect in his appointment or qualification.

#### *Majority decision of directors*

**106.** A reference in this Schedule to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company.

#### *Penalties*

**107.**—(1) A person who is guilty of an offence under this Schedule is liable to a fine (in accordance with Article 373 and Schedule 7).

(2) A person who is guilty of an offence under any of the following paragraphs of this Schedule is liable to a daily default fine (in accordance with Article 373 and Schedule 7)—

- (a) paragraph 21,
- (b) paragraph 33,

- (c) paragraph 47,
- (d) paragraph 49,
- (e) paragraph 50,
- (f) paragraph 52,
- (g) paragraph 54,
- (h) paragraph 55,
- (i) paragraph 57,
- (j) paragraph 72,
- (k) paragraph 73,
- (l) paragraph 78,
- (m) paragraph 79,
- (n) paragraph 81,
- (o) paragraph 85,
- (p) paragraph 87, and
- (q) paragraph 90.

*Extension of time limit*

**108.**—(1) Where a provision of this Schedule provides that a period may be varied in accordance with this paragraph, the period may be varied in respect of a company—

- (a) by the High Court, and
- (b) on the application of the administrator.

(2) A time period may be extended in respect of a company under this paragraph—

- (a) more than once, and
- (b) after expiry.

**109.**—(1) A period specified in paragraph 50(5), 51(1)(b) or 52(2) may be varied in respect of a company by the administrator with consent.

(2) In sub-paragraph (1) “consent” means consent of—

- (a) each secured creditor of the company, and
- (b) if the company has unsecured debts, creditors whose debts amount to more than 50 per cent. of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(3) But where the administrator has made a statement under paragraph 53(1)(b) “consent” means—

- (a) consent of each secured creditor of the company, or
- (b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—
  - (i) each secured creditor of the company, and
  - (ii) preferential creditors whose debts amount to more than 50 per cent. of the total preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(4) Consent for the purposes of sub-paragraph (1) may be—

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- (a) written, or
  - (b) signified at a creditors' meeting.
- (5) The power to extend under sub-paragraph (1)—
- (a) may be exercised in respect of a period only once,
  - (b) may not be used to extend a period by more than 28 days,
  - (c) may not be used to extend a period which has been extended by the High Court, and
  - (d) may not be used to extend a period after expiry.

**110.** Where a period is extended under paragraph 108 or 109, a reference to the period shall be taken as a reference to the period as extended.

*Amendment of provision about time*

- 111.**—(1) The Department may by order amend a provision of this Schedule which—
- (a) requires anything to be done within a specified period of time,
  - (b) prevents anything from being done after a specified time, or
  - (c) requires a specified minimum period of notice to be given.
- (2) An order under this paragraph shall be subject to negative resolution.”

**Changes to legislation:**

There are currently no known outstanding effects for the The Insolvency (Northern Ireland) Order 2005, SCHEDULE 1.