

# DEREGULATION ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 6: Insolvency and company law*

#### **Part 2: Administration of companies**

#### **Appointment of administrators**

560. Administration is an insolvency proceeding where the affairs, business and property of the company are managed by an administrator. The primary aim of an administration is to ensure the company's survival as a going concern, and failing that to achieve a better result for the company's creditors than would be likely if the company was wound up. An administrator may be appointed, in an out-of-court procedure, by the company, directors or a qualifying floating charge holder by giving notice and filing prescribed documents at court. Alternatively, an administrator may be appointed by the court on application by the company, directors or creditors.
561. *Paragraph 5* inserts a new paragraph 25A into Schedule B1 to the Insolvency Act 1986 to enable a company or the directors of a company to appoint an administrator despite the presentation of a winding-up petition, if the petition was presented during an interim moratorium. Like that Schedule to that Act, paragraph 5 forms part of the law of England and Wales and Scotland. The act of filing with the court notice of intent to appoint an administrator under paragraph 27 of Schedule B1 to the Insolvency Act 1986 commences an interim moratorium in respect of the company (paragraph 44(4) of that Schedule). The interim moratorium prevents other insolvency proceedings or legal processes against the company being instituted or continued. The new paragraph 25A clarifies that the prohibition (under paragraph 25(a) of Schedule B1) on appointing an administrator when a winding-up petition has been presented and not yet disposed of applies only to a petition presented before an interim moratorium comes into effect.
562. *Paragraph 6* removes a requirement in paragraph 26(2) of Schedule B1 to the 1986 Act to give notice of intention to appoint an administrator to persons who are not themselves entitled to appoint an administrative receiver or administrator in certain circumstances. Paragraph 6 forms part of the law of England and Wales and Scotland.
563. At present a company or its directors intending to appoint an administrator must give notice of the intention to appoint to anyone entitled to appoint an administrative receiver of the company, to any holder of a qualifying floating charge entitled to appoint an administrator, and to other prescribed persons. The prescribed persons are set out in rule 2.20 of the Insolvency Rules 1986, and include the company (if the company is not intending to make the appointment) and a supervisor of a company voluntary arrangement under Part 1 of the Insolvency Act 1986. Unlike those entitled to appoint a receiver or administrator, the prescribed persons cannot block the appointment of an administrator.
564. The requirement to give notice to these prescribed persons can lead to unnecessary delays in the administrator's appointment where there is no one else to whom notice

*These notes refer to the Deregulation Act 2015 (c.20)  
which received Royal Assent on 26 March 2015*

of intention to appoint must be given and so the requirement is being removed by paragraph 6. The prescribed persons will in any event receive notice of the appointment when it is made.

565. [Paragraph 5](#) comes into force at the end of the period of 2 months beginning with the day on which the Act is passed and paragraph 6 comes into force on a day to be appointed by the Secretary of State in a commencement order.