

SCHEDULES

SCHEDULE 20

Section 159

CONDUCT OF ENERGY ADMINISTRATION

PART 1

APPLICATION OF SCHEDULE B1 TO THE 1986 ACT

Application of Schedule B1 provisions

- 1 (1) The provisions of Schedule B1 to the 1986 Act specified in paragraph 2 of this Schedule are to have effect in relation to energy administration orders—
 - (a) as they have effect in relation to administration orders under that Schedule; but
 - (b) with the modifications set out in Part 2 of this Schedule.
- (2) Those provisions as modified by Part 2 of this Schedule are to have effect in the case of an unregistered company with the further modifications for which provision is made by or under Part 3 of this Schedule.
- 2 Those provisions of Schedule B1 to the 1986 Act are paragraphs 1, 40 to 50, 54, 59 to 68, 70 to 75, 79, 83 to 91, 98 to 107 and 109 to 116.

PART 2

MODIFICATIONS OF SCHEDULE B1

Introductory

- 3 The modifications set out in this Part of this Schedule to the provisions of Schedule B1 to the 1986 Act specified in paragraph 2 apply where those provisions have effect by virtue of Part 1 of this Schedule.

General modifications of the applicable provisions

- 4 In those provisions—
 - (a) for “administration application” in each place where it occurs substitute “energy administration application”;
 - (b) for “administration order” in each place where it occurs substitute “energy administration order”;
 - (c) for “administrator” in each place where it occurs substitute “energy administrator”;
 - (d) for “enters administration” in each place where it occurs substitute “enters energy administration”;

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- (e) for “in administration” in each place where it occurs substitute “in energy administration”;
- (f) for “purpose of administration” in each place where it occurs (other than in paragraph 111(1)) substitute “objective of the energy administration”.

Specific modifications

- 5 (1) In paragraph 1, for sub-paragraph (1) (which defines “administrator”) substitute—
- “(1) In this Schedule “energy administrator”, in relation to a company, means a person appointed by the court for the purposes of an energy administration order to manage the company’s affairs, business and property.”
- (2) In sub-paragraph (2) of that paragraph, for “Act” substitute “Schedule”.
- 6 In paragraph 40 (dismissal of pending winding-up petition), omit sub-paragraphs (1) (b), (2) and (3).
- 7 In paragraph 42 (moratorium on insolvency proceedings), omit sub-paragraphs (4) and (5).
- 8 In paragraph 44 (interim moratorium), omit sub-paragraphs (2) to (4), (6) and (7) (a) to (c).
- 9 In paragraph 46(6) (date for notifying administrator’s appointment), for paragraphs (a) to (c) substitute “the date on which the energy administration order comes into force”.
- 10 (1) In sub-paragraph (2)(b) of paragraph 49 (administrator’s proposals) for “objective mentioned in paragraph 3(1)(a) or (b) cannot be achieved” substitute “objective of the energy administration should be achieved by means other than just a rescue of the company as a going concern”.
- (2) After sub-paragraph (4)(a) of that paragraph insert—
- “(aa) to the Secretary of State and to GEMA,”.
- 11 For paragraph 54 (revision of administrator’s proposals) substitute—
- “54 (1) The energy administrator of a company may on one or more occasions revise the proposals included in the statement made under paragraph 49 in relation to the company.
- (2) Where the energy administrator thinks that a revision by him is substantial, he must send a copy of the revised proposals—
- (a) to the registrar of companies,
 - (b) to the Secretary of State and to GEMA,
 - (c) to every creditor of the company of whose claim and address he is aware, and
 - (d) to every member of the company of whose address he is aware.
- (3) A copy sent in accordance with sub-paragraph (2) must be sent within the prescribed period.
- (4) The energy administrator is to be taken to have complied with sub-paragraph (2)(d) if he publishes, in the prescribed manner, a notice undertaking to provide a copy of the revised proposals free of charge

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to any member of the company who applies in writing to a specified address.

(5) The energy administrator commits an offence if he fails without reasonable excuse to comply with this paragraph.”

12 In paragraph 60 (powers of an administrator), the existing text is to be sub-paragraph (1) and after that sub-paragraph insert—

“(2) The energy administrator of a company has the power to act on behalf of the company for the purposes of any enactment or subordinate legislation which confers a power on the company, or imposes a duty on it.

(3) In sub-paragraph (2) “enactment” has the same meaning as in the Energy Act 2004.”

13 (1) In paragraph 68 (management duties of an administrator), for sub-paragraph (1)(a) to (c) substitute “the proposals as—

(a) set out in the statement made under paragraph 49 in relation to the company, and

(b) from time to time revised under paragraph 54,

for achieving the objective of the energy administration.”

(2) For sub-paragraph (3)(a) to (d) of that paragraph substitute “the directions are consistent with the achievement of the objective of the energy administration”.

14 In paragraphs 71(3)(b) and 72(3)(b) (handling of secured property), for “market” substitute “the appropriate”.

15 In paragraph 73(3) (which contains a reference to the administrator’s proposals), for “or modified” substitute “under paragraph 54”.

16 (1) In paragraph 74 (challenge to administrator’s conduct), for sub-paragraph (2) substitute—

“(2) Where a company is in energy administration, a person mentioned in sub-paragraph (2A) may apply to the court claiming that the energy administrator is conducting himself in a manner preventing the achievement of the objective of the energy administration as quickly and efficiently as is reasonably practicable.

(2A) The persons who may apply to the court under sub-paragraph (2) are—

(a) the Secretary of State;

(b) with the consent of the Secretary of State, GEMA;

(c) a creditor or member of the company.”

(2) In sub-paragraph (6) of that paragraph, for paragraphs (a) to (c) substitute—

“(a) a voluntary arrangement approved under Part 1, or

(b) a compromise or arrangement sanctioned under section 425 of the Companies Act (compromise with creditors and members).”

(3) After that sub-paragraph insert—

“(7) In the case of a claim made otherwise than by the Secretary of State or GEMA, the court may grant a remedy or relief or make an order under this paragraph only if it has given the Secretary of State or GEMA a reasonable

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opportunity of making representations about the claim and the proposed remedy, relief or order.

(8) The court may grant a remedy or relief or make an order on an application under this paragraph only if it is satisfied, in relation to the matters that are the subject of the application, that the energy administrator—

- (a) is acting,
- (b) has acted, or
- (c) is proposing to act,

in a way that is inconsistent with the achievement of the objective of the energy administration as quickly and as efficiently as is reasonably practicable.

(9) Before the making of an order of the kind mentioned in sub-paragraph (4) (d)—

- (a) the court must notify the energy administrator of the proposed order and of a period during which he is to have the opportunity of taking steps falling within sub-paragraphs (10) to (12); and
- (b) the period notified must have expired without the taking of such of those steps as the court thinks should have been taken;

and that period must be a reasonable period.

(10) In the case of a claim under sub-paragraph (1)(a), the steps referred to in sub-paragraph (9) are—

- (a) ceasing to act in a manner that unfairly harms the interests to which the claim relates;
- (b) remedying any harm unfairly caused to those interests; and
- (c) steps for ensuring that there is no repetition of conduct unfairly causing harm to those interests.

(11) In the case of a claim under sub-paragraph (1)(b), the steps referred to in sub-paragraph (9) are steps for ensuring that the interests to which the claim relates are not unfairly harmed.

(12) In the case of a claim under sub-paragraph (2), the steps referred to in sub-paragraph (9) are—

- (a) ceasing to act in a manner preventing the achievement of the objective of the energy administration as quickly and as efficiently as is reasonably practicable;
- (b) remedying the consequences of the energy administrator having acted in such a manner; and
- (c) steps for ensuring that there is no repetition of conduct preventing the achievement of the objective of the energy administration as quickly and as efficiently as is reasonably practicable.”

17 In paragraph 75(2) (misfeasance), after paragraph (b) insert—

“(ba) a person appointed as an administrator of the company under the provisions of this Act, as they have effect in relation to administrators other than energy administrators,”.

18 (1) In paragraph 79 (end of administration), for sub-paragraphs (1) and (2) substitute—

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- “(1) On an application made by a person mentioned in sub-paragraph (2), the court may provide for the appointment of an energy administrator of a company to cease to have effect from a specified time.
- (2) An application may be made to the court under this paragraph—
- (a) by the Secretary of State,
 - (b) with the consent of the Secretary of State, by GEMA, or
 - (c) with the consent of the Secretary of State, by the energy administrator.”
- (2) Omit sub-paragraph (3) of that paragraph.
- 19 In paragraph 83(3) (notice to registrar when moving to voluntary liquidation), after “may” insert “, with the consent of the Secretary of State or of GEMA,”.
- 20 (1) In paragraph 84 (notice to registrar when moving to dissolution), in sub-paragraph (1), for “to the registrar of companies” substitute—
- “(a) to the Secretary of State and to GEMA; and
 - (b) if directed to do so by either the Secretary of State or GEMA, to the registrar of companies.”
- (2) Omit sub-paragraph (2) of that paragraph.
- (3) In sub-paragraphs (3) to (6) of that paragraph, for “(1)”, wherever occurring, substitute “(1)(b)”.
- 21 In paragraph 87 (resignation of administrator), for sub-paragraph (2)(a) to (d) substitute “by notice in writing to the court”.
- 22 In paragraph 89 (administrator ceasing to be qualified), for sub-paragraph (2)(a) to (d) substitute “to the court”.
- 23 In paragraph 90 (filling vacancy in office of administrator), for “Paragraphs 91 to 95 apply” substitute “Paragraph 91 applies”.
- 24 (1) In paragraph 91 (vacancies in court appointments), for sub-paragraph (1) substitute—
- “(1) The court may replace the energy administrator on an application made—
 - (a) by the Secretary of State;
 - (b) with the consent of the Secretary of State, by GEMA; or
 - (c) where more than one person was appointed to act jointly as the energy administrator, by any of those persons who remains in office.”
- (2) Omit sub-paragraph (2) of that paragraph.
- 25 In paragraph 98 (discharge from liability on vacation of office), omit sub-paragraphs (2)(b) and (3).
- 26 (1) In paragraph 99 (charges and liabilities upon vacation of office by administrator), in sub-paragraph (4), for the words from the beginning to “cessation”, where first occurring, substitute “A sum falling within sub-paragraph (4A)”.
- (2) After that sub-paragraph insert—
- “(4A) A sum falls within this sub-paragraph if it is—

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- (a) a sum payable in respect of a debt or liability arising out of a contract that was entered into before cessation by the former energy administrator or a predecessor;
 - (b) a sum that must be repaid by the company in respect of a grant that was made before cessation under section 165 of the Energy Act 2004 as is mentioned in subsection (4) of that section;
 - (c) a sum that must be repaid by the company in respect of a loan made before cessation under that section or that must be paid by the company in respect of interest payable on such a loan;
 - (d) a sum payable by the company under subsection (4) of section 166 of that Act in respect of an agreement to indemnify made before cessation; or
 - (e) a sum payable by the company under subsection (5) of section 167 of that Act in respect of a guarantee given before cessation.”
- (3) In sub-paragraph (5) of that paragraph, for “(4)” substitute “(4A)(a)”.
- 27 In paragraph 100 (joint and concurrent administrators), omit sub-paragraph (2).
- 28 In paragraph 101(3) (joint administrators), after “87 to” insert “91, 98 and”.
- 29 (1) In paragraph 103 (appointment of additional administrators), in sub-paragraph (2)—
- (a) omit the words from the beginning to “order”;
 - (b) for paragraph (a) substitute—
 - “(a) the Secretary of State,
 - (aa) GEMA, or”.
- (2) After that sub-paragraph insert—
- “(2A) The consent of the Secretary of State is required for an application by GEMA for the purposes of sub-paragraph (2).”
- (3) Omit sub-paragraphs (3) to (5) of that paragraph.
- 30 In paragraph 106 (penalties), omit sub-paragraph (2)(a), (b), (f), (g), (i) and (l) to (n).
- 31 In paragraph 109 (references to extended periods), omit “or 108”.
- 32 (1) In sub-paragraph (1) of paragraph 111 (interpretation)—
- (a) omit the definitions of “correspondence”, “holder of a qualifying floating charge”, “market value”, “the purpose of administration” and “unable to pay its debts”;
 - (b) after the definition of “administrator” (as amended by virtue of paragraph 4 of this Schedule) insert—
 - ““appropriate value” means the best price which would be reasonably available on a sale which is consistent with the achievement of the objective of the energy administration;”
 - (c) for the definition of “company” substitute—
 - ““company”, “court” and “energy administration order” have the same meanings as in Chapter 3 of Part 3 of the Energy Act 2004;”
 - (d) after the definition of “creditors' meeting” insert—

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““energy administration application” means an application to the court for an energy administration order under Chapter 3 of Part 3 of the Energy Act 2004;

“GEMA” means the Gas and Electricity Markets Authority;”

(e) after the definition of “hire purchase agreement” insert—

““objective”, in relation to an energy administration, is to be construed in accordance with section 155 of the Energy Act 2004;

“prescribed” means prescribed by energy administration rules within the meaning of Chapter 3 of Part 3 of the Energy Act 2004;”.

(2) After sub-paragraph (3) of that paragraph insert—

“(4) For the purposes of this Schedule a reference to an energy administration order includes a reference to an appointment under paragraph 91 or 103.”

PART 3

FURTHER SCHEDULE B1 MODIFICATIONS FOR UNREGISTERED COMPANIES

Introductory

33 (1) Where the provisions of Schedule B1 to the 1986 Act specified in paragraph 2 of this Schedule (as modified by Part 2 of this Schedule) have effect in relation to an unregistered company, they shall do so subject to the further modifications that are set out—

- (a) in this Part of this Schedule; or
- (b) in an order made by the Secretary of State for the purposes of this paragraph.

(2) An order under this paragraph may include modifications of paragraphs 35 to 40.

(3) An order under this paragraph is subject to the negative resolution procedure.

34 In paragraphs 35 to 40—

- (a) the provisions of Schedule B1 to the 1986 Act that are specified in paragraph 2 are referred to as the applicable provisions; and
- (b) references to those provisions, or to provisions comprised in them, are references to those provisions as modified by Part 2 of this Schedule.

Modifications

35 In the case of an unregistered company—

- (a) paragraphs 42(2), 83 and 84 of Schedule B1 to the 1986 Act do not apply;
- (b) paragraphs 46(4), 49(4)(a), 54(2)(a), 71(5) and (6), 72(4) and (5) and 86 of that Schedule apply only if the company is subject to a requirement imposed by virtue of section 691(1) or 718 of the Companies Act 1985 (c. 6); and
- (c) paragraph 61 of that Schedule does not apply if the company is a non-GB company.

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- 36 (1) The applicable provisions and Schedule 1 to the 1986 Act (as applied by paragraph 60(1) of Schedule B1 to that Act) are to be construed in the case of a non-GB company by reference to the limitation imposed upon the scope of the energy administration order in question by virtue of section 154(4) of this Act.
- (2) Sub-paragraph (1) has effect, in particular, so that—
- (a) a power conferred, or duty imposed, upon the energy administrator by or under the applicable provisions or Schedule 1 to the 1986 Act is to be construed as being conferred or imposed only in relation to the affairs and business of the company so far as carried on in Great Britain and to its property in Great Britain;
 - (b) references to the affairs, business or property of the company are to be construed as references to its affairs or business so far as carried on in Great Britain or to its property in Great Britain;
 - (c) references to goods in the company’s possession are to be construed as references to goods in the possession of the company in Great Britain;
 - (d) references to premises let to the company are to be construed as references to premises let to the company in Great Britain;
 - (e) references to legal process instituted or continued against the company or property of the company are to be construed as references to such legal process relating to the affairs or business of the company so far as carried on in Great Britain or to its property in Great Britain.
- 37 (1) Paragraph 41 of Schedule B1 to the 1986 Act (dismissal of receivers) has effect in the case of a non-GB company as if—
- (a) for sub-paragraph (1) there were substituted the sub-paragraphs set out in sub-paragraph (2) of this paragraph; and
 - (b) sub-paragraphs (2) to (4) of that paragraph were omitted.
- (2) The sub-paragraphs treated as substituted for paragraph 41(1) are—
- “(1) Where an energy administration order takes effect in respect of a company—
- (a) a person appointed to perform functions equivalent to those of an administrative receiver, and
 - (b) if the energy administrator so requires, a person appointed to perform functions equivalent to those of a receiver,
- shall refrain, during the period specified in sub-paragraph (1A), from performing those functions in Great Britain or in relation to any of the company’s property in Great Britain.
- (1A) That period is—
- (a) in the case of a person mentioned in sub-paragraph (1)(a), the period while the company is in energy administration; and
 - (b) in the case of a person mentioned in sub-paragraph (1)(b), during so much of that period as is after the date on which he is required by the energy administrator to refrain from performing his functions.”
- 38 Paragraph 43(6A) of Schedule B1 to the 1986 Act (moratorium on appointment to receiverships) has effect in the case of a non-GB company as if for “An administrative receiver” there were substituted “A person with functions equivalent to those of an administrative receiver”.

- 39 Paragraph 44(7) of Schedule B1 to the 1986 Act (proceedings to which interim moratorium does not apply) has effect in the case of a non-GB company as if for paragraph (d) there were substituted—
- “(d) the carrying out of his functions by a person who (whenever his appointment) has functions equivalent to those of an administrative receiver of the company.”
- 40 Paragraph 64 of Schedule B1 to the 1986 Act (general powers of administrator) has effect in the case of a non-GB company as if—
- (a) in sub-paragraph (1), after “power” there were inserted “in relation to the affairs or business of the company so far as carried on in Great Britain or to its property in Great Britain”; and
- (b) in sub-paragraph (2)(b), after “instrument” there were inserted “or by the law of the place where the company is incorporated”.

PART 4

OTHER MODIFICATIONS

General modifications

- 41 (1) Subject to paragraph 42, every reference falling within sub-paragraph (2) which is contained—
- (a) in a provision of the 1986 Act (other than Schedule B1), or
- (b) in any other enactment passed before this Act,
- shall have effect as including a reference to whatever corresponds to it for the purposes of this paragraph.
- (2) Those references are those (however expressed) which are or include references to—
- (a) an administrator appointed by an administration order;
- (b) an administration order;
- (c) an application for an administration order;
- (d) a company in administration;
- (e) entering into administration;
- (f) Schedule B1 or a provision of that Schedule.
- (3) For the purposes of this paragraph—
- (a) an energy administrator corresponds to an administrator appointed by an administration order;
- (b) an energy administration order corresponds to an administration order;
- (c) an application for an energy administration order corresponds to an application for an administration order;
- (d) a company in energy administration corresponds to a company in administration;
- (e) entering into energy administration corresponds to entering into administration;
- (f) what corresponds to Schedule B1 or a provision of that Schedule is that Schedule or that provision as applied by Part 1 of this Schedule.

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- 42 (1) Paragraph 41, in its application to section 1(3) of the 1986 Act, does not entitle the energy administrator of an unregistered company to make a proposal under Part 1 of that Act (company voluntary arrangements).
- (2) Paragraph 41 does not confer any right under section 7(4) of the 1986 Act (implementation of voluntary arrangements) for a supervisor of voluntary arrangements to apply for an energy administration order in relation to a protected energy company.
- (3) Paragraph 41 does not apply to section 359 of the Financial Services and Markets Act 2000 (c. 8) (administration applications by Financial Services Authority).

Modifications of 1986 Act

- 43 In section 5 of the 1986 Act (effect of approval of voluntary arrangements) after subsection (4) insert—
- “(5) Where the company is in energy administration, the court shall not make an order or give a direction under subsection (3) unless—
- (a) the court has given the Secretary of State or the Gas and Electricity Markets Authority a reasonable opportunity of making representations to it about the proposed order or direction; and
- (b) the order or direction is consistent with the objective of the energy administration.
- (6) In subsection (5) “in energy administration” and “objective of the energy administration” are to be construed in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 20 to the Energy Act 2004.”
- 44 (1) Section 6 of that Act (challenge of decisions in relation to voluntary arrangements) is amended as follows.
- (2) In subsection (2) for “this section” substitute “subsection (1)”.
- (3) After that subsection insert—
- “(2A) Subject to this section, where a voluntary arrangement in relation to a company in energy administration is approved at the meetings summoned under section 3, an application to the court may be made—
- (a) by the Secretary of State, or
- (b) with the consent of the Secretary of State, by the Gas and Electricity Markets Authority,
- on the ground that the voluntary arrangement is not consistent with the achievement of the objective of the energy administration.”
- (4) In subsection (4) after “subsection (1)” insert “or, in the case of an application under subsection (2A), as to the ground mentioned in that subsection”.
- (5) After subsection (7) insert—
- “(8) In this section “in energy administration” and “objective of the energy administration” are to be construed in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 20 to the Energy Act 2004.”

- 45 In section 129(1A) of that Act (commencement of winding up), the reference to paragraph 13(1)(e) of Schedule B1 includes a reference to section 157(1)(e) of this Act.

Power to make further modifications

- 46 (1) The Secretary of State may by order make such modifications of—
- (a) the 1986 Act, or
 - (b) any other enactment passed before this Act that relates to insolvency or makes provision by reference to anything that is or may be done under the 1986 Act,
- as he considers appropriate in relation to any provision made by or under this Chapter.
- (2) An order under this paragraph may also make modifications of this Part of this Schedule.
- (3) The power to make an order containing provision authorised by this paragraph is subject to the affirmative resolution procedure.

Interpretation of Part 4 of Schedule

- 47 In this Part of this Schedule—
- “administration order”, “administrator”, “enters administration” and “in administration” are to be construed in accordance with Schedule B1 (disregarding Part 1 of this Schedule);
 - “enters energy administration” and “in energy administration” are to be construed in accordance with Schedule B1 (as applied by Part 1 of this Schedule);
 - “Schedule B1” means Schedule B1 to the 1986 Act.