

## SCHEDULES

### SCHEDULE 6

Section 109.

#### AMENDMENTS OF 1985 ACT

##### *Disqualification etc.*

- 1 (1) Section 295 (disqualification orders: introductory) shall be amended as follows.
- (2) In subsection (1), after the word " liquidator " there shall be inserted the words " or administrator " and in that subsection and subsection (3) for the words " sections 296 to 300 " there shall be substituted the words " sections 296 to 299 ".
- (3) In subsection (2), at the end there shall be inserted the words—

“and where a disqualification order is made against a person who is already subject to such an order the periods specified in those orders shall run concurrently.”
- (4) In subsection (6), for the words " Parts I and II of Schedule 12 have" there shall be substituted the words " Part I of Schedule 12 has ".
- 2 In section 301(1) (register of disqualification orders), for the words " sections 296 to 300" there shall be substituted the words " sections 296 to 299 ".
- 3 In section 441(1) (inspector's report to be evidence of opinion of inspectors), at the end there shall be inserted the words " and, in proceedings on an application under section 13 of the Insolvency Act 1985, as evidence of any fact stated therein ".
- 4 In section 449(1) (non-disclosure, except for certain purposes, of information obtained by Secretary of State), after paragraph (b) there shall be inserted the following paragraph—

“(ba) with a view to the institution of, or otherwise for the purposes of, any proceedings on an application under section 12 or 13 of the Insolvency Act 1985.”.
- 5 In section 507(1) (meaning of " contributory "), after the words " wound up " there shall be inserted the words " (other than a person so liable by virtue of a declaration under section 630 below or section 15 of the Insolvency Act 1985) ".
- 6 (1) For subsection (2) of section 630 (responsibility for company's fraudulent trading) there shall be substituted the following subsection—

“(2) The court, on the application of the liquidator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner above mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.”
- (2) In subsection (3) of that section for the words "the official receiver or the liquidator (as the case may be)" there shall be substituted the words " the liquidator ".

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- (3) After subsection (5) of that section there shall be inserted the following subsection—
- “(5A) Where the court makes a declaration under subsection (2) above in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.”
- 7 (1) Section 733 (liability of directors for offences by company under certain provisions) shall be amended as follows.
- (2) In subsection (1), after " 216(3)" there shall be inserted " 295(7) ".
- (3) In subsection (3), for the words "210 or 216(3)" there shall be substituted the words " 210, 216(3) or 295(7) ".

*Voluntary arrangements*

- 8 In section 153(3) (financial assistance allowed), for the words " section 601 (winding up imminent or in progress) " there shall be substituted the words " Chapter II of Part II of the Insolvency Act 1985 ".

*Administration orders*

- 9 At any time when an administration order is in force, section 225 (alteration of accounting reference period) shall have effect as if subsections (3) and (5) to (7) were omitted.
- 10 In sections 395(1) and 410(2) (certain charges void if not registered), after the word " liquidator " there shall be inserted the words " or administrator ".
- 11 In section 425(1) (power of company to compromise with creditors and members), for the words " , of the liquidator " there shall be substituted the words " or an administration order being in force in relation to a company, of the liquidator or administrator ".
- 12 In section 426(6) (liability of officer or liquidator of company for default in connection with the circulation of information as to a compromise), after the word " liquidator" there shall be inserted the words " or administrator ".
- 13 In section 478(6) (receiver to be appointed within one month of cessation of appointment of earlier receiver), at the end there shall be inserted the words—
- “and for the purposes of calculating the period of one month under this subsection no account shall be taken of any period during which an administration order under Part II of the Insolvency Act 1985 is in force”.
- 14 In paragraph 4(3) of Part I of Schedule 12 (orders under sections 296 to 299), for the words " liquidator or director " there shall be substituted the words " liquidator, administrator or director ".

*Receivers and managers (England and Wales)*

- 15 (1) Section 196 (payment of debts out of assets subject to a floating charge) shall be amended as follows.

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- (2) In subsection (1), after the words " secured by " there shall be inserted the words " a charge which, as created, was ".
- (3) In subsection (2), for the words from " the relevant" to " payments " there shall be substituted the words " section 89 of the Insolvency Act 1985 and Schedule 4 to that Act (read with Schedule 3 to the Social Security Pensions Act 1975) ".
- (4) For subsections (3) and (4) there shall be substituted the following subsection—
- “(3) For the purposes of this section Schedule 4 to the said Act of 1985 and Schedule 3 to the said Act of 1975 shall each have effect as if—
- (a) references to the relevant date were references to the date of the appointment of the receiver or the taking of possession as mentioned in subsection (1) above ; and
- (b) references to the company going into liquidation were references to the appointment of the receiver or the taking of possession as so mentioned.”
- 16 (1) Section 492 (receivers and managers appointed out of court) shall be amended as follows.
- (2) For subsection (1) there shall be substituted the following subsection—
- “(1) A receiver or manager of the property of a company appointed under powers contained in an instrument, or the persons by whom or on whose behalf a receiver or manager has been so appointed, may apply to the court for directions in relation to any particular matter arising in connection with the performance of the functions of the receiver or manager.”
- (3) In subsection (3), after the word "provides)" there shall be inserted the words " and on any contract of employment adopted by him in the performance of those functions ".
- (4) After that subsection there shall be inserted the following subsections—
- “(4) For the purposes of subsection (3)(a) the receiver or manager is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within fourteen days after his appointment.
- (5) Where at any time a receiver or manager so appointed vacates office—
- (a) his remuneration and any expenses properly incurred by him; and
- (b) any indemnity to which he is entitled out of the assets of the company,
- shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any charge or other security held by the person by or on whose behalf he was appointed.”
- 17 (1) Section 498 (receivership accounts to be delivered to the registrar) shall be amended as follows.
- (2) In subsection (1), for the words "Except where section 497 applies " there shall be substituted the words " Except in the case of an administrative receiver ".
- (3) In subsection (2), for the words " 6 months ", in the first place where they occur, there shall be substituted the words " 12 months ".

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- (4) In subsection (3), for the words " 6 months", in both places where they occur, there shall be substituted the words " 12 or 6 months ".

*Receivers (Scotland)*

18 In subsection (3) of section 463 (effect of floating charge on winding up), for the words " section 614(2)" there shall be substituted the words " section 89 of the Insolvency Act 1985 ".

19 In subsection (6) of section 464 (ranking of floating charges), for the words " section 614(2) (preferential debts in winding up) " there shall be substituted the words " section 89 of the Insolvency Act 1985 ".

20 (1) Section 475 (priority of debts) shall be amended as follows.

- (2) In subsection (2), for the words " the provisions of Part XX relating to preferential payments" there shall be substituted the words " section 89 of the Insolvency Act 1985 and Schedule 4 to that Act (read with Schedule 3 to the Social Security Pensions Act 1975) ".

(3) For subsections (3) and (4) there shall be substituted the following subsection—

“(3) For the purposes of this section Schedule 4 to the said Act of 1985 and Schedule 3 to the said Act of 1975 shall each have effect as if—

- (a) references to the relevant date were references to the date of the appointment of the receiver under section 469(6) or 470(5); and  
 (b) references to the company going into liquidation were references to that appointment.”.

21 (1) Section 476(1) (distribution of monies) shall be amended as follows.

(2) After the words " categories of persons " there shall be inserted the words " (which rights shall, except to the extent other-Wise provided in any instrument, have the following order of priority) ".

(3) In paragraph (d), after the word "remuneration" there shall be inserted the words " and any indemnity to which the receiver is entitled out of the property of the company. "

22 (1) Schedule 24 (punishment of offences) shall be amended as follows.

(2) After the entry relating to section 470(3) there shall be inserted the following entry—

“477(2e)	Failing to send to registrar of companies a certified copy of authorisation to dispose of certain property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.”.
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(3) In the entry relating to section 481(7), for " 481(7)" there shall be substituted " 481(4) ".

(4) For the entry relating to section 482(5) there shall be substituted the following entry—

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“482(6)	Failure to comply with obligation to submit statement of affairs to receiver.	1. On indictment. 2. Summary.	A fine.  The statutory maximum.	One-tenth of the statutory maximum.”.
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*Winding up*

- 23 In section 222(4) (obligation to preserve accounting records), for the words from " direction " onwards there shall be substituted the words " provision contained in rules made under section 106 of the Insolvency Act 1985 ".
- 24 For subsection (6) of section 461 (application of winding-up rules to petition under Part XVII) there shall be substituted the following subsection—
- “(6) The power under section 106 of the Insolvency Act 1985 to make rules shall, so far as it relates to a winding-up petition, apply for the purposes of a petition under this Part”
- 25 In sections 512(3), 515(5), 518(2), 622(7) and 624(7) (being provisions which refer to regulations under section 664), for the word " regulations " there shall be substituted the word "order ".
- 26 In section 512(4) (jurisdiction in relation to winding up), for the words " in bankruptcy" there shall be substituted the words " for the purposes of Part III of the Insolvency Act 1985 ".
- 27 (1) Section 518 (definition of inability to pay debts) shall be amended as follows.
- (2) In subsection (1)(a) after the word " demand " there shall be inserted the words " in the prescribed form ".
- (3) In subsection (1)(e), for the words from "(and. in determining " onwards there shall be substituted the words " as they fall due ".
- (4) After subsection (1) there shall be inserted the following subsection—
- “(1A) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.”
- 28 In section 519(1) (presentation of application for winding up), after the words " by the company " there shall be inserted the words " or the directors ".
- 29 In section 525(2) and (3) (restriction on proceedings against a company where winding-up order made or provisional liquidator appointed), after the words " against the company", in each place where they occur, there shall be inserted the words " or its property ".
- 30 For section 535 (liquidators in Scotland) there shall be substituted the following section—

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**“535 Liquidator in Scotland.**

Where a winding-up order is made by the court in Scotland, a liquidator shall be appointed by the court at the time when the order is made.”

- 31 (1) Section 539 (powers of liquidator) shall be amended as follows.
- (2) In subsection (1), for the words " committee of inspection ", there shall be substituted the words " committee established under section 74 or 75 of the Insolvency Act 1985 ".
- (3) Paragraph (c) of subsection (1) (power to appoint solicitor) shall be omitted and after subsection (2) there shall be inserted the following subsection—
- “(2A) Where the liquidator (not being the official receiver), in exercise of the powers conferred on him by this Act-
- (a) disposes of any property of the company to a person who is connected with the company (within the meaning of Part II of the Insolvency Act 1985); or
- (b) employs a solicitor to assist him in the carrying out of his functions, he shall, if there is for the time being a committee established under section 74 or 75 of that Act, give notice to the committee of that exercise of his powers.”
- (4) In subsection (4), for the words "committee of inspection" there shall be substituted the words " committee established under section 74 or 75 of the Insolvency Act 1985 ".
- 32 In section 552(3) (debts due from contributory), after the words " in full" there shall be inserted the words " (together with interest at the rate applicable under section 93 of the Insolvency Act 1985) ".
- 33 In section 562 (attendance at company meetings (Scotland)), for the words " committee of inspection " there shall be substituted the words " committee established under section 75 of the Insolvency Act 1985
- 34 In section 567(2) (delegation of powers to liquidator (England and Wales)), for the words " committee of inspection " there shall be substituted the words " committee established under section 74 of the Insolvency Act 1985 ".
- 35 In section 577 (statutory declaration that the company is able to pay its debts in full), in subsections (1) and (4) after the words " in full", and in subsection (5) after the word " debts ", there shall be inserted the words " (together with interest at the rate applicable under section 93 of the Insolvency Act 1985) ".
- 36 In section 584(1) (general company meeting at each year's end), for the words " section 586 " there shall be substituted the words " section 83(7) of the Insolvency Act 1985 ".
- 37 (1) In subsection (1) of section 589 (appointment of liquidator), for the words " section 588 " there shall be substituted the words " section 85 of the Insolvency Act 1985 ".
- (2) For subsection (2) of that section there shall be substituted the following subsection—

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- “(2) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the company.”
- 38 (1) Section 590 (appointment of committee of inspection) shall be amended as follows.
- (2) For subsection (1) there shall be substituted the following subsection—
- “(1) The creditors at the meeting to be held under section 85 of the Insolvency Act 1985 or at any subsequent meeting may, if they think fit, appoint a committee of not more than 5 persons to exercise the functions conferred on it by or under this Act or Part U of that Act.”
- (3) In subsection (3), for the words " committee of inspection " there shall be substituted the words " committee established under this section ".
- (4) In subsection (5), for the words " committees of inspection " there shall be substituted the words " such committees ".
- 39 In section 591(2) (remuneration of liquidator: cesser of director's powers), for the words " committee of inspection " there shall be substituted the words " committee established under section 590 ".
- 40 In section 593 (application of section 582 to creditors' voluntary winding up), for the words " committee of inspection " there shall be substituted the words " committee established under section 590 ".
- 41 (1) In subsection (1) of section 598 (powers and duties of liquidator in voluntary winding up), for the words " committee of inspection " there shall be substituted the words " committee established under section 590 ".
- (2) After subsection (4) of that section there shall be inserted the following subsection—
- “(4A) Where the liquidator in exercise of the powers conferred on him by this Act disposes of any property of the company to a person who is connected with the company (within the meaning of Part IT of the Insolvency Act 1985), he shall, if there is for the time being a committee established under section 590 above, give notice to the committee of that exercise of his powers.”
- 42 After subsection (1) of section 625 (transactions in fraud of creditors) there shall be inserted the following subsection—
- “(1A) A person shall not be guilty of an offence under this section—
- (a) by reason of conduct constituting an offence under subsection (1) (a) above which occurred more than five years before the commencement of the winding up ; or
- (b) if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the creditors of the company.”
- 43 In section 626(1)(d) (failure to inform liquidator that false debt has been proved), for the words " for the period of a month to inform the liquidator of it " there shall be substituted the words " to inform the liquidator as soon as practicable ".
- 44 In section 632 (prosecution of delinquent officers and members of company), after subsection (2) there shall be inserted the following subsection—
- “(2A) If in the case of a winding up by the court in England and Wales it appears to the liquidator, not being the official receiver, that any past or present officer

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- of the company, or any member of it, has been guilty of an offence in relation to the company for which he is criminally liable, the liquidator shall report the matter to the official receiver.”
- 45 In section 651(1) (power of court, within two years of dissolution of company, to declare dissolution void), for the words " 2 years " there shall be substituted the words " 12 years ".
- 46 For subsection (2) of section 657 (effect of Crown disclaimer) there shall be substituted the following subsection—
- “(2) As regards property in England and Wales, subsections (3) and (5) to (7) of section 91 of the Insolvency Act 1985 and section 92 of that Act shall apply as if the property had been disclaimed by the liquidator under the said section 91 immediately before the dissolution of the company.”
- 47 For subsection (1) of section 658 (application of section 620) there shall be substituted the following subsection—
- “(1) Subsection (7) of section 91 of the Insolvency Act 1985 shall apply to land in England and Wales which by operation of law vests subject to a rentcharge in the Crown or any other person on the dissolution of a company as it applies to land so vesting on a disclaimer under that section.”
- 48 In section 659(2) (which refers to the costs of a winding up), for the word " costs " there shall be substituted the word " expenses ".
- 49 (1) In subsection (1) of section 664 (power to alter monetary limits), for the words " regulations in a " there shall be substituted the words " order made by ".
- (2) For subsection (2) of that section there shall be substituted the following subsections—
- “(2) An order under this section may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.
- (3) No order under this section increasing or reducing any of the money sums for the time specified in section 512(2), 515(3) or 518(1)(a) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (4) A statutory instrument containing an order under this section, other than an order to which subsection (3) above applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- 50 In section 667((1)(a)) (inability of unregistered company to pay debts), after the word " demand " there shall be inserted the words " in the prescribed form ".
- 51 In section 668(6) (inability of unregistered company to pay its debts assumed if demand not complied with within 10 days), for the words "10 days" there shall be substituted the words " 3 weeks ".
- 52 (1) In section 669 (inability of unregistered company to pay debts), at the end of paragraph (d) there shall be inserted the words " as they fall due ".
- (2) That section, as amended by sub-paragraph (1) above, shall be re-numbered as subsection (1) of that section and after that provision as so renumbered there shall be inserted the following subsection—



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“(2) An unregistered company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.”