



Enterprise Act 2002

2002 CHAPTER 40

PART 10

INSOLVENCY

Companies etc.

248 Replacement of Part II of Insolvency Act 1986

- (1) The following shall be substituted for Part II of the Insolvency Act 1986 (c. 45) (administration orders)—

“PART II

ADMINISTRATION

8 Administration

Schedule B1 to this Act (which makes provision about the administration of companies) shall have effect.”

- (2) The Schedule B1 set out in Schedule 16 to this Act shall be inserted after Schedule A1 to the Insolvency Act 1986.
- (3) Schedule 17 (minor and consequential amendments relating to administration) shall have effect.
- (4) The Secretary of State may by order amend an enactment in consequence of this section.
- (5) An order under subsection (4)—
- (a) must be made by statutory instrument, and

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- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

249 Special administration regimes

- (1) Section 248 shall have no effect in relation to—
 - (a) a company holding an appointment under Chapter I of Part II of the Water Industry Act 1991 (c. 56) (water and sewerage undertakers),
 - (b) a protected railway company within the meaning of section 59 of the Railways Act 1993 (c. 43) (railway administration order) (including that section as it has effect by virtue of section 19 of the Channel Tunnel Rail Link Act 1996 (c. 61) (administration)),
 - (c) a licence company within the meaning of section 26 of the Transport Act 2000 (c. 38) (air traffic services),
 - (d) a public-private partnership company within the meaning of section 210 of the Greater London Authority Act 1999 (c. 29) (public-private partnership agreement), or
 - (e) a building society within the meaning of section 119 of the Building Societies Act 1986 (c. 53) (interpretation).
- (2) A reference in an Act listed in subsection (1) to a provision of Part II of the Insolvency Act 1986 (or to a provision which has effect in relation to a provision of that Part of that Act) shall, in so far as it relates to a company or society listed in subsection (1), continue to have effect as if it referred to Part II as it had effect immediately before the coming into force of section 248.
- (3) But the effect of subsection (2) in respect of a particular class of company or society may be modified by order of—
 - (a) the Treasury, in the case of building societies, or
 - (b) the Secretary of State, in any other case.
- (4) An order under subsection (3) may make consequential amendment of an enactment.
- (5) An order under subsection (3)—
 - (a) must be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (6) An amendment of the Insolvency Act 1986 (c. 45) made by this Act is without prejudice to any power conferred by Part VII of the Companies Act 1989 (c. 40) (financial markets) to modify the law of insolvency.

250 Prohibition of appointment of administrative receiver

- (1) The following shall be inserted after Chapter III of Part III of the Insolvency Act 1986 (receivership: receivers' powers)—

“CHAPTER IV

PROHIBITION OF APPOINTMENT OF ADMINISTRATIVE RECEIVER

72A Floating charge holder not to appoint administrative receiver

- (1) The holder of a qualifying floating charge in respect of a company’s property may not appoint an administrative receiver of the company.
- (2) In Scotland, the holder of a qualifying floating charge in respect of a company’s property may not appoint or apply to the court for the appointment of a receiver who on appointment would be an administrative receiver of property of the company.
- (3) In subsections (1) and (2)—
 - “holder of a qualifying floating charge in respect of a company’s property” has the same meaning as in paragraph 14 of Schedule B1 to this Act, and
 - “administrative receiver” has the meaning given by section 251.
- (4) This section applies—
 - (a) to a floating charge created on or after a date appointed by the Secretary of State by order made by statutory instrument, and
 - (b) in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name).
- (5) An order under subsection (4)(a) may—
 - (a) make provision which applies generally or only for a specified purpose;
 - (b) make different provision for different purposes;
 - (c) make transitional provision.
- (6) This section is subject to the exceptions specified in sections 72B to 72G.

72B First exception: capital market

- (1) Section 72A does not prevent the appointment of an administrative receiver in pursuance of an agreement which is or forms part of a capital market arrangement if—
 - (a) a party incurs or, when the agreement was entered into was expected to incur, a debt of at least £50 million under the arrangement, and
 - (b) the arrangement involves the issue of a capital market investment.
- (2) In subsection (1)—
 - “capital market arrangement” means an arrangement of a kind described in paragraph 1 of Schedule 2A, and
 - “capital market investment” means an investment of a kind described in paragraph 2 or 3 of that Schedule.

72C Second exception: public-private partnership

- (1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—
 - (a) is a public-private partnership project, and
 - (b) includes step-in rights.
- (2) In this section “public-private partnership project” means a project—
 - (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
 - (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.
- (3) In this section—
 - “step-in rights” has the meaning given by paragraph 6 of Schedule 2A, and
 - “project company” has the meaning given by paragraph 7 of that Schedule.

72D Third exception: utilities

- (1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—
 - (a) is a utility project, and
 - (b) includes step-in rights.
- (2) In this section—
 - (a) “utility project” means a project designed wholly or mainly for the purpose of a regulated business,
 - (b) “regulated business” means a business of a kind listed in paragraph 10 of Schedule 2A,
 - (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule, and
 - (d) “project company” has the meaning given by paragraph 7 of that Schedule.

72E Fourth exception: project finance

- (1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—
 - (a) is a financed project, and
 - (b) includes step-in rights.
- (2) In this section—
 - (a) a project is “financed” if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least £50 million for the purposes of carrying out the project,
 - (b) “project company” has the meaning given by paragraph 7 of Schedule 2A, and

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- (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule.

72F Fifth exception: financial market

Section 72A does not prevent the appointment of an administrative receiver of a company by virtue of—

- (a) a market charge within the meaning of section 173 of the Companies Act 1989 (c. 40),
- (b) a system-charge within the meaning of the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469),
- (c) a collateral security charge within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979).

72G Sixth exception: registered social landlord

Section 72A does not prevent the appointment of an administrative receiver of a company which is registered as a social landlord under Part I of the Housing Act 1996 (c. 52) or under Part 3 of the Housing (Scotland) Act 2001 (asp 10).

72H Sections 72A to 72G: supplementary

- (1) Schedule 2A (which supplements sections 72B to 72G) shall have effect.
- (2) The Secretary of State may by order—
 - (a) insert into this Act provision creating an additional exception to section 72A(1) or (2);
 - (b) provide for a provision of this Act which creates an exception to section 72A(1) or (2) to cease to have effect;
 - (c) amend section 72A in consequence of provision made under paragraph (a) or (b);
 - (d) amend any of sections 72B to 72G;
 - (e) amend Schedule 2A.
- (3) An order under subsection (2) must be made by statutory instrument.
- (4) An order under subsection (2) may make—
 - (a) provision which applies generally or only for a specified purpose;
 - (b) different provision for different purposes;
 - (c) consequential or supplementary provision;
 - (d) transitional provision.
- (5) An order under subsection (2)—
 - (a) in the case of an order under subsection (2)(e), shall be subject to annulment in pursuance of a resolution of either House of Parliament,
 - (b) in the case of an order under subsection (2)(d) varying the sum specified in section 72B(1)(a) or 72E(2)(a) (whether or not the order also makes consequential or transitional provision), shall be subject to annulment in pursuance of a resolution of either House of Parliament, and

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- (c) in the case of any other order under subsection (2)(a) to (d), may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.”
- (2) The Schedule 2A set out in Schedule 18 to this Act shall be inserted after Schedule 2 to the Insolvency Act 1986 (c. 45).

251 Abolition of Crown preference

- (1) The following paragraphs of Schedule 6 to the Insolvency Act 1986 (categories of preferential debts) shall cease to have effect—
 - (a) paragraphs 1 and 2 (debts due to Inland Revenue),
 - (b) paragraphs 3 to 5C (debts due to Customs and Excise), and
 - (c) paragraphs 6 and 7 (social security contributions).
- (2) The following paragraphs of Schedule 3 to the Bankruptcy (Scotland) Act 1985 (c. 66) (list of preferred debts) shall cease to have effect—
 - (a) paragraph 1 (debts due to Inland Revenue),
 - (b) paragraph 2 (debts due to Customs and Excise), and
 - (c) paragraph 3 (social security contributions).
- (3) In section 386 of the Insolvency Act 1986 (categories of preferential debts) for the parenthetical words after “Schedule 6 to this Act” there shall be substituted “(contributions to occupational pension schemes; remuneration, &c. of employees; levies on coal and steel production)”.

252 Unsecured creditors

The following shall be inserted after section 176 of the Insolvency Act 1986 (winding up: preferential debt)—

“Property subject to floating charge

176A Share of assets for unsecured creditors

- (1) This section applies where a floating charge relates to property of a company—
 - (a) which has gone into liquidation,
 - (b) which is in administration,
 - (c) of which there is a provisional liquidator, or
 - (d) of which there is a receiver.
- (2) The liquidator, administrator or receiver—
 - (a) shall make a prescribed part of the company’s net property available for the satisfaction of unsecured debts, and
 - (b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.
- (3) Subsection (2) shall not apply to a company if—
 - (a) the company’s net property is less than the prescribed minimum, and

- (b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.
- (4) Subsection (2) shall also not apply to a company if or in so far as it is disapplied by—
- (a) a voluntary arrangement in respect of the company, or
 - (b) a compromise or arrangement agreed under section 425 of the Companies Act (compromise with creditors and members).
- (5) Subsection (2) shall also not apply to a company if—
- (a) the liquidator, administrator or receiver applies to the court for an order under this subsection on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and
 - (b) the court orders that subsection (2) shall not apply.
- (6) In subsections (2) and (3) a company’s net property is the amount of its property which would, but for this section, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.
- (7) An order under subsection (2) prescribing part of a company’s net property may, in particular, provide for its calculation—
- (a) as a percentage of the company’s net property, or
 - (b) as an aggregate of different percentages of different parts of the company’s net property.
- (8) An order under this section—
- (a) must be made by statutory instrument, and
 - (b) shall be subject to annulment pursuant to a resolution of either House of Parliament.
- (9) In this section—
- “floating charge” means a charge which is a floating charge on its creation and which is created after the first order under subsection (2) comes into force, and
 - “prescribed” means prescribed by order by the Secretary of State.
- (10) An order under this section may include transitional or incidental provision.”

253 Liquidator’s powers

The following shall be inserted in Part I of Schedule 4 to the Insolvency Act 1986 (c. 45) (liquidator’s powers in winding up: powers exercisable only with sanction) after paragraph 3—

- “3A Power to bring legal proceedings under section 213, 214, 238, 239, 242, 243 or 423.”

254 Application of insolvency law to foreign company

- (1) The Secretary of State may by order provide for a provision of the Insolvency Act 1986 to apply (with or without modification) in relation to a company incorporated outside Great Britain.
- (2) An order under this section—
 - (a) may make provision generally or for a specified purpose only,
 - (b) may make different provision for different purposes, and
 - (c) may make transitional, consequential or incidental provision.
- (3) An order under this section—
 - (a) must be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

255 Application of law about company arrangement or administration to non-company

- (1) The Treasury may with the concurrence of the Secretary of State by order provide for a company arrangement or administration provision to apply (with or without modification) in relation to—
 - (a) a society registered under the Industrial and Provident Societies Act 1965 (c. 12),
 - (b) a society registered under section 7(1)(b), (c), (d), (e) or (f) of the Friendly Societies Act 1974 (c. 46),
 - (c) a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40), or
 - (d) an unregistered friendly society.
- (2) In subsection (1) “company arrangement or administration provision” means—
 - (a) a provision of Part I of the Insolvency Act 1986 (company voluntary arrangements),
 - (b) a provision of Part II of that Act (administration), and
 - (c) section 425 of the Companies Act 1985 (c. 6) (compromise or arrangement with creditors).
- (3) An order under this section may not provide for a company arrangement or administration provision to apply in relation to a society which is registered as a social landlord under Part I of the Housing Act 1996 (c. 52) or under Part 3 of the Housing (Scotland) Act 2001 (asp 10).
- (4) An order under this section—
 - (a) may make provision generally or for a specified purpose only,
 - (b) may make different provision for different purposes, and
 - (c) may make transitional, consequential or incidental provision.
- (5) Provision by virtue of subsection (4)(c) may, in particular—
 - (a) apply an enactment (with or without modification);
 - (b) amend an enactment.
- (6) An order under this section—

- (a) must be made by statutory instrument, and
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.