

*This document shows how the Insolvency Act 1986 will apply to CIOs. The document has no legal effect: the Act is applied, with modifications, by the Charitable Incorporated Organisations (Dissolution and Insolvency) Regulations 2012. In this document references to companies are replaced by references to CIOs etc, and other modifications (whether substituted or additional words, or words omitted) are indicated by the use of square brackets. Although every effort has been made to include amendments made by other legislation, and to reflect each modification, no guarantee is given as to its accuracy.*

*Office for Civil Society, November 2012.*

## THE INSOLVENCY ACT 1986

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**THE FIRST GROUP OF PARTS**  
**CIO INSOLVENCY; CIO WINDING UP**  
**PART 1**  
**CIO VOLUNTARY ARRANGEMENTS**

*The proposal*

**1. Those who may propose an arrangement**

(1) The charity trustees of a CIO (other than one which is in administration or being wound up) may make a proposal under this Part to the CIO and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs (from here on referred to, in either case, as a “voluntary arrangement”).

(2) A proposal under this Part is one which provides for some person (“the nominee”) to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation; and the nominee must be a person who is qualified to act as an insolvency practitioner or authorised to act as nominee, in relation to the voluntary arrangement.

(3) Such a proposal may also be made—

- (a) where the CIO is in administration, by the administrator, and
- (b) where the CIO is being wound up, by the liquidator.

(4) – (6) [omitted]

## **1A. Moratorium**

- (1) Where the charity trustees of an eligible CIO intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the CIO.
- (2) The provisions of Schedule A1 to this Act have effect with respect to—
  - (a) CIOs eligible for a moratorium under this section,
  - (b) the procedure for obtaining such a moratorium,
  - (c) the effects of such a moratorium, and
  - (d) the procedure applicable (in place of sections 2 to 6 and 7) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.

## **2. Procedure where nominee is not the liquidator or administrator**

- (1) This section applies where the nominee under section 1 is not the liquidator or administrator of the CIO and the charity trustees do not propose to take steps to obtain a moratorium under section 1A for the CIO.
- (2) The nominee shall, within 28 days (or such longer period as the court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the court stating—
  - (a) whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
  - (aa) whether, in his opinion, meetings of the CIO and of its creditors should be summoned to consider the proposal, and
  - (b) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.
- (3) For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee—
  - (a) a document setting out the terms of the proposed voluntary arrangement, and
  - (b) a statement of the CIO's affairs containing—
    - (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and
    - (ii) such other information as may be prescribed.

- (4) The court may—
  - (a) on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this section or has died, or
  - (b) on an application made by that person or the nominee, in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

## **3. Summoning of meetings**

- (1) Where the nominee under section 1 is not the liquidator or administrator, and it has been reported to the court that such meetings as are mentioned in section 2(2) should be summoned, the person making the report shall (unless the court otherwise directs) summon those meetings for the time, date and place proposed in the report.
- (2) Where the nominee is the liquidator or administrator, he shall summon meetings of the CIO and of its creditors to consider the proposal for such a time, date and place as he thinks fit.
- (3) The persons to be summoned to a creditors' meeting under this section are every creditor of the CIO of whose claim and address the person summoning the meeting is aware.

## *Consideration and implementation of proposal*

### **4. Decisions of meetings**

(1) The meetings summoned under section 3 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner or authorised to act as nominee, in relation to the voluntary arrangement.

But they shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 1.

(3) A meeting so summoned shall not approve any proposal or modification which affects the right of a secured creditor of the CIO to enforce his security, except with the concurrence of the creditor concerned.

(4) Subject as follows, a meeting so summoned shall not approve any proposal or modification under which—

(a) any preferential debt of the CIO is to be paid otherwise than in priority to such of its debts as are not preferential debts, or

(b) a preferential creditor of the CIO is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

However, the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(5) Subject as above, each of the meetings shall be conducted in accordance with the rules.

(6) After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.

(7) References in this section to preferential debts and preferential creditors are to be read in accordance with section 386 in Part 12 of this Act.

### **4A. Approval of arrangement**

(1) This section applies to a decision, under section 4, with respect to the approval of a proposed voluntary arrangement.

(2) The decision has effect if, in accordance with the rules—

(a) it has been taken by both meetings summoned under section 3, or

(b) (subject to any order made under subsection (4)) it has been taken by the creditors' meeting summoned under that section.

(3) If the decision taken by the creditors' meeting differs from that taken by the CIO meeting, a member of the CIO may apply to the court.

(4) An application under subsection (3) shall not be made after the end of the period of 28 days beginning with—

(a) the day on which the decision was taken by the creditors' meeting, or

(b) where the decision of the CIO meeting was taken on a later day, that day.

(5) [omitted]

(6) On an application under subsection (3), the court may—

(a) order the decision of the CIO meeting to have effect instead of the decision of the creditors' meeting, or

(b) make such other order as it thinks fit.

### **5. Effect of approval**

(1) This section applies where a decision approving a voluntary arrangement has effect under section 4A.

(2) The voluntary arrangement—

(a) takes effect as if made by the CIO at the creditors' meeting, and

(b) binds every person who in accordance with the rules—

(i) was entitled to vote at that meeting (whether or not he was present or represented at it), or

(ii) would have been so entitled if he had had notice of it,

as if he were a party to the voluntary arrangement.

(2A) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of subsection (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the CIO shall at that time become liable to pay to that person the amount payable under the arrangement.

(3) Subject as follows, if the CIO is being wound up or is in administration, the court may do one or both of the following, namely—

(a) by order stay [...] all proceedings in the winding up or provide for the appointment of the administrator to cease to have effect;

(b) give such directions with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the voluntary arrangement.

(4) The court shall not make an order under subsection (3)(a)—

(a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court, or

(b) at any time when an application under the next section or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

(5) – (6) [omitted]

## **6. Challenge of decisions**

(1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—

(a) that a voluntary arrangement which has effect under section 4A unfairly prejudices the interests of a creditor [...] or contributory of the CIO;

(b) that there has been some material irregularity at or in relation to either of the meetings.

(2) The persons who may apply under subsection (1) are—

(a) a person entitled, in accordance with the rules, to vote at either of the meetings;

(aa) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it;

(b) the nominee or any person who has replaced him under section 2(4) or 4(2); and

(c) if the CIO is being wound up or is in administration, the liquidator or administrator.

(2A) [omitted]

(3) An application under this section shall not be made—

(a) after the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court, or

(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within subsection (2)(aa) on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on such an application the court is satisfied as to either of the grounds mentioned in subsection (1) [...] it may do one or both of the following, namely—

(a) revoke or suspend any decision approving the voluntary arrangement which has effect under section 4A or, in a case falling within subsection (1)(b), any decision taken by the meeting in question which has effect under that section;

(b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in a case falling within subsection (1)(b), a further CIO or (as the case may be) creditors' meeting to reconsider the original proposal.

(5) Where at any time after giving a direction under subsection (4)(b) for the summoning of meetings to consider a revised proposal the court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect under section 4A.

(6) In a case where the court, on an application under this section with respect to any meeting—

(a) gives a direction under subsection (4)(b), or

(b) revokes or suspends an approval under subsection (4)(a) or (5),

the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done under the voluntary arrangement since it took effect.

(7) Except in pursuance of the preceding provisions of this section, a decision taken at a meeting summoned under section 3 is not invalidated by any irregularity at or in relation to the meeting.

(8) [omitted]

## **6A. False representations, etc**

(1) If, for the purpose of obtaining the approval of the members or creditors of a CIO to a proposal for a voluntary arrangement, a person who is a charity trustee of the CIO—

(a) makes any false representation, or

(b) fraudulently does, or omits to do, anything,

he commits an offence.

(2) Subsection (1) applies even if the proposal is not approved.

(3) [omitted]

(4) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

## **7. Implementation of proposal**

(1) This section applies where a voluntary arrangement has effect under section 4A.

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—

(a) on the nominee by virtue of the approval given at one or both of the meetings summoned under section 3,

(b) by virtue of section 2(4) or 4(2) on a person other than the nominee,

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the CIO's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on the application the court may—

- (a) confirm, reverse or modify any act or decision of the supervisor,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(4) The supervisor—

- (a) may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement, and
- (b) is included among the persons who may apply to the court for the winding up of the CIO or for an administration order to be made in relation to it.

(5) The court may, whenever—

- (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
- (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,

make an order appointing a person who is qualified to act as an insolvency practitioner or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

#### **7A. Prosecution of delinquent officers of CIO**

(1) This section applies where a moratorium under section 1A has been obtained for a CIO or the approval of a voluntary arrangement in relation to a CIO has taken effect under section 4A or paragraph 36 of Schedule A1.

(2) It appears to the nominee or supervisor that any past or present charity trustee of the CIO has been guilty of an offence in connection with the moratorium or, as the case may be, voluntary arrangement for which he is criminally liable, the nominee or supervisor shall forthwith—

- (a) report the matter to the appropriate authority, and
- (b) provide the appropriate authority with such information and give the authority such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the nominee or supervisor and relating to the matter in question) as the authority requires.

In this subsection, “the appropriate authority” means [in the case of a CIO, the Secretary of State][...].

(3) Where a report is made to the Secretary of State under subsection (2), he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the CIO as appear to him to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act 1985 [to investigate the CIO's affairs as if the CIO were a company].

(4) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Acts to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Secretary of State in his investigation.

(5) An answer given by a person to a question put to him in exercise of the powers conferred by subsection (3) may be used in evidence against him.

(6) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

- (a) no evidence relating to the answer may be adduced, and

(b) no question relating to it may be asked,  
by or on behalf of the prosecution, unless evidence relating to it is asked, in the proceedings by or on behalf of that person.

(7) Subsection (6) applies to an offence other than-

(a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or

(b) [...]

(8) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the nominee or supervisor, and every charity trustee and agent of the CIO past and present (other than the defender or defendant), shall give the authority all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose—

(a) “agent” includes any banker or solicitor of the CIO and any person employed by the CIO as auditor, whether that person is or is not an charity trustee of the CIO,

(b) “prosecuting authority” means the DPP [...] or Secretary of State.

(9) The court may, on the application of the prosecuting authority, direct any person referred to in subsection (8) to comply with that subsection if he has failed to do so.

## **7B. Arrangements coming to an end prematurely**

For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under section 4A or paragraph 36 of Schedule A1 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of section 5(2)(b)(i) or, as the case may be, paragraph 37(2)(b)(i) of Schedule A1.

## **PART 2 ADMINISTRATION**

### **8. Administration**

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

*9 to 27 repealed*

## **PART 3 RECEIVERSHIP**

### **CHAPTER 1**

#### **Receivers and Managers (England and Wales)**

##### *Preliminary and general provisions*

**28. Extent of this Chapter** *omitted*

### **29. Definitions**

(1) It is hereby declared that, except where the context otherwise requires—

(a) any reference in this Act to a receiver or manager of the property of a CIO, or to a receiver of it, includes a receiver or manager, or (as the case may be) a receiver of part only of that property and a receiver only of the income arising from the property or from part of it; and

(b) any reference in this Act to the appointment of a receiver or manager under powers contained in an instrument includes an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.

(2) In this Chapter “administrative receiver” means—

(a) a receiver or manager of the whole (or substantially the whole) of a CIO's property appointed by or on behalf of the holders of any debentures of the CIO secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; or

(b) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the CIO's property.

### **30. Disqualification of body corporate from acting as receiver**

A body corporate is not qualified for appointment as a receiver of the property of a CIO and any body corporate which acts as such a receiver is liable to a fine.

*The Regulations provide that any reference to a body corporate is to be treated as a reference to a body corporate other than a body corporate appointed as an interim manager under section 76(3)(g) of the Charities Act 2011.*

### **31. Disqualification of bankrupt or person in respect of whom a debt relief order is made**

(1) A person commits an offence if he acts as receiver or manager of the property of a CIO on behalf of debenture holders while—

(a) he is an undischarged bankrupt,

(aa) a moratorium period under a debt relief order applies in relation to him, or

(b) a bankruptcy restrictions order or a debt relief restrictions order is in force in respect of him.

(2) A person guilty of an offence under subsection (1) shall be liable to imprisonment, a fine or both.

(3) This section does not apply to a receiver or manager acting under an appointment made by the court.

### **32. Power for court to appoint official receiver**

Where application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a CIO which is being wound up by the court, the official receiver may be appointed.

*Receivers and managers appointed out of court*

### **33. Time for which appointment is effective**

(1) The appointment of a person as a receiver or manager of a CIO's property under powers contained in an instrument—

(a) is of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf, and

(b) subject to this, is deemed to be made at the time at which the instrument of appointment is so received.

(2) This section applies to the appointment of two or more persons as joint receivers or managers of a CIO's property under powers contained in an instrument, subject to such modifications as may be prescribed by the rules.

#### **34. Liability for invalid appointment**

Where the appointment of a person as the receiver or manager of a CIO's property under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

#### **35. Application to court for directions**

(1) A receiver or manager of the property of a CIO 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.

(2) On such an application, the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as it thinks just.

#### **36. Court's power to fix remuneration**

(1) The court may, on an application made by the liquidator of a CIO, by order fix the amount to be paid by way of remuneration to a person who, under powers contained in an instrument, has been appointed receiver or manager of the CIO's property.

(2) The court's power under subsection (1), where no previous order has been made with respect thereto under the subsection—

(a) extends to fixing the remuneration for any period before the making of the order or the application for it,

(b) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application, and

(c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.

But the power conferred by paragraph (c) shall not be exercised as respects any period before the making of the application for the order under this section, unless in the court's opinion there are special circumstances making it proper for the power to be exercised.

(3) The court may from time to time on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1).

#### **37. Liability for contracts, etc**

(1) A receiver or manager appointed under powers conferred in an instrument (other than an administrative receiver) is, to the same extent as if he had been appointed by order of the court—

(a) personally liable on any contract entered into by him in the performance of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the performance of those functions, and

(b) entitled in respect of that liability to indemnity out of the assets.

(2) For the purposes of subsection (1)(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 14 days after his appointment.

(3) Subsection (1) does not limit any right to indemnity which the receiver or manager would have apart from it, nor limit his liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.

(4) Where at any time the 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 CIO,

shall be charged on and paid out of any property of the CIO 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.

### **38. Receivership accounts to be delivered to Charity Commission**

(1) Except in the case of an administrative receiver, every receiver or manager of a CIO's property who has been appointed under powers contained in an instrument shall deliver to the Charity Commission [...] the requisite accounts of his receipts and payments.

(2) The accounts shall be delivered within one month (or such longer period as the Charity Commission may allow) after the expiration of 12 months from the date of his appointment and of every subsequent period of 6 months, and also within one month after he ceases to act as receiver or manager.

(3) The requisite accounts shall be an abstract in the prescribed form showing—

- (a) receipts and payments during the relevant period of 12 or 6 months, or
- (b) where the receiver or manager ceases to act, receipts and payments during the period from the end of the period of 12 or 6 months to which the last preceding abstract related (or, if no preceding abstract has been delivered under this section, from the date of his appointment) up to the date of his so ceasing, and the aggregate amount of receipts and payments during all preceding periods since his appointment.

(4) In this section “prescribed” means prescribed by regulations made by statutory instrument by the Secretary of State.

(5) A receiver or manager who makes default in complying with this section is liable to a fine and, for continued contravention, to a daily default fine.

#### *Provisions applicable to every receivership*

### **39. Notification that receiver or manager appointed**

(1) Where a receiver or manager of the property of a CIO has been appointed—

- (a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the CIO or the receiver or manager or the liquidator of the CIO; and
- (b) all the CIO's websites,

must contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with this section, the CIO and any of the following persons, who knowingly and wilfully authorises or permits the default, namely, any charity trustee of the CIO, any liquidator of the CIO and any receiver or manager, is liable to a fine.

### **40. Payment of debts out of assets subject to floating charge**

(1) The following applies, in the case of a CIO, where a receiver is appointed on behalf of the holders of any debentures of the CIO secured by a charge which, as created, was a floating charge.

(2) If the CIO is not at the time in course of being wound up, its preferential debts (within the meaning given to that expression by section 386 in Part 12) shall be paid out of the assets coming to the hands of the receiver in priority to any claims for principal or interest in respect of the debentures.

(3) Payments made under this section shall be recouped, as far as may be, out of the assets of the CIO available for payment of general creditors.

#### **41. Enforcement of duty to make returns**

(1) If a receiver or manager of a CIO's property—

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, or

(b) having been appointed under powers contained in an instrument, has, after being required at any time by the liquidator of the CIO to do so, failed to render proper accounts of his receipts and payments and to vouch them and pay over to the liquidator the amount properly payable to him,

the court may, on an application made for the purpose, make an order directing the receiver or manager (as the case may be) to make good the default within such time as may be specified in the order.

(2) In the case of the default mentioned in subsection (1)(a), application to the court may be made by any member or creditor of the CIO or by the Charity Commission; and in the case of the default mentioned in subsection (1)(b), the application shall be made by the liquidator.

In either case the court's order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section prejudices the operation of any enactment imposing penalties on receivers in respect of any such default as is mentioned in subsection (1).

#### *Administrative receivers: general*

#### **42. General powers**

(1) The powers conferred on the administrative receiver of a CIO by the debentures by virtue of which he was appointed are deemed to include (except in so far as they are inconsistent with any of the provisions of those debentures) the powers specified in Schedule 1 to this Act.

(2) In the application of Schedule 1 to the administrative receiver of a CIO—

(a) the words “he” and “him” refer to the administrative receiver, and

(b) references to the property of the CIO are to the property of which he is or, but for the appointment of some other person as the receiver of part of the CIO's property, would be the receiver or manager.

(3) A person dealing with the administrative receiver in good faith and for value is not concerned to inquire whether the receiver is acting within his powers.

#### **43. Power to dispose of charged property, etc**

(1) Where, on an application by the administrative receiver, the court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security would be likely to promote a more advantageous realisation of the CIO's assets than would otherwise be effected, the court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.

(2) Subsection (1) does not apply in the case of any security held by the person by or on whose behalf the administrative receiver was appointed, or of any security to which a security so held has priority.

(3) It shall be a condition of an order under this section that—

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security.

(4) Where a condition imposed in pursuance of subsection (3) relates to two or more securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(5) A copy of an order under this section shall, within 14 days of the making of the order, be sent by the administrative receiver to the Charity Commission.

(6) If the administrative receiver without reasonable excuse fails to comply with subsection (5), he is liable to a fine and, for continued contravention, to a daily default fine.

(7) In this section “relevant property”, in relation to the administrative receiver, means the property of which he is or, but for the appointment of some other person as the receiver of part of the CIO's property, would be the receiver or manager.

#### **44. Agency and liability for contracts**

(1) The administrative receiver of a CIO—

(a) is deemed to be the CIO's agent, unless and until the CIO goes into liquidation;

(b) is personally liable on any contract entered into by him in the carrying out of his functions (except in so far as the contract otherwise provides) and, to the extent of any qualifying liability, on any contract of employment adopted by him in the carrying out of those functions; and

(c) is entitled in respect of that liability to an indemnity out of the assets of the CIO.

(2) For the purposes of subsection (1)(b) the administrative receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment.

(2A) For the purposes of subsection (1)(b), a liability under a contract of employment is a qualifying liability if—

(a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme,

(b) it is incurred while the administrative receiver is in office, and

(c) it is in respect of services rendered wholly or partly after the adoption of the contract.

(2B) Where a sum payable in respect of a liability which is a qualifying liability for the purposes of subsection (1)(b) is payable in respect of services rendered partly before and partly after the adoption of the contract, liability under subsection (1)(b) shall only extend to so much of the sum as is payable in respect of services rendered after the adoption of the contract.

(2C) For the purposes of subsections (2A) and (2B)—

(a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and

(b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(2D) In subsection (2C)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.

(3) This section does not limit any right to indemnity which the administrative receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

#### **45. Vacation of office**

(1) An administrative receiver of a CIO may at any time be removed from office by order of the court (but not otherwise) and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.

(2) An administrative receiver shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the CIO.

(3) Where at any time an administrative receiver 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 CIO,

shall be charged on and paid out of any property of the CIO which is in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.

(4) Where an administrative receiver vacates office otherwise than by death, he shall, within 14 days after his vacation of office, send a notice to that effect to the Charity Commission.

(5) If an administrative receiver without reasonable excuse fails to comply with subsection (4), he is liable to a fine and, for continued contravention, to a daily default fine.

#### *Administrative receivers: ascertainment and investigation of CIO's affairs*

#### **46. Information to be given by administrative receiver**

(1) Where an administrative receiver is appointed, he shall—

(a) forthwith send to the CIO and publish in the prescribed manner a notice of his appointment, and

(b) within 28 days after his appointment, unless the court otherwise directs, send such a notice to all the creditors of the CIO (so far as he is aware of their addresses).

(2) This section and the next do not apply in relation to the appointment of an administrative receiver to act—

(a) with an existing administrative receiver, or

(b) in place of an administrative receiver dying or ceasing to act,

except that, where they apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in this section and the next to the administrative receiver include (subject to the next subsection) his successor and any continuing administrative receiver.

(3) If the CIO is being wound up, this section and the next apply notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If the administrative receiver without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

#### **47. Statement of affairs to be submitted**

(1) Where an administrative receiver is appointed, he shall forthwith require some or all of the persons mentioned below to make out and submit to him a statement in the prescribed form as to the affairs of the CIO.

(2) A statement submitted under this section shall be verified by a statement of truth by the persons required to submit it and shall show—

(a) particulars of the CIO's assets, debts and liabilities;

(b) the names and addresses of its creditors;

(c) the securities held by them respectively;

- (d) the dates when the securities were respectively given; and
  - (e) such further or other information as may be prescribed.
- (3) The persons referred to in subsection (1) are—
- (a) those who are or have been charity trustees of the CIO;
  - (b) those who have taken part in the CIO's formation at any time within one year before the date of the appointment of the administrative receiver;
  - (c) those who are in the CIO's employment, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;
  - (d) [those who are or have been within that year officers of, or in the employment of, a company or a CIO which is, or within that year was, a charity trustee of the CIO].

In this subsection “employment” includes employment under a contract for services.

(4) Where any persons are required under this section to submit a statement of affairs to the administrative receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrative receiver.

- (5) The administrative receiver, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or
  - (b) either when giving notice under subsection (4) or subsequently, extend the period so mentioned;

and where the administrative receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine.

#### **48. Report by administrative receiver**

(1) Where an administrative receiver is appointed, he shall, within 3 months (or such longer period as the court may allow) after his appointment, send to the Charity Commission, to any trustees for secured creditors of the CIO and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—

- (a) the events leading up to his appointment, so far as he is aware of them;
- (b) the disposal or proposed disposal by him of any property of the CIO and the carrying on or proposed carrying on by him of any business of the CIO;
- (c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors; and
- (d) the amount (if any) likely to be available for the payment of other creditors.

(2) The administrative receiver shall also, within 3 months (or such longer period as the court may allow) after his appointment, either—

- (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the CIO; or
- (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the CIO should write for copies of the report to be sent to them free of charge,

and (in either case), unless the court otherwise directs, lay a copy of the report before a meeting of the CIO's unsecured creditors summoned for the purpose on not less than 14 days' notice.

(3) The court shall not give a direction under subsection (2) unless—

- (a) the report states the intention of the administrative receiver to apply for the direction, and

(b) a copy of the report is sent to the persons mentioned in paragraph (a) of that subsection, or a notice is published as mentioned in paragraph (b) of that subsection, not less than 14 days before the hearing of the application.

(4) Where the CIO has gone or goes into liquidation, the administrative receiver—

(a) shall, within 7 days after his compliance with subsection (1) or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator, and

(b) where he does so within the time limited for compliance with subsection (2), is not required to comply with that subsection.

(5) A report under this section shall include a summary of the statement of affairs made out and submitted to the administrative receiver under section 47 and of his comments (if any) upon it.

(6) Nothing in this section is to be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his functions.

(7) Section 46(2) applies for the purposes of this section also.

(8) If the administrative receiver without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a default fine.

#### **49. Committee of creditors**

(1) Where a meeting of creditors is summoned under section 48, the meeting may, if it thinks fit, establish a committee (“the creditors' committee”) to exercise the functions conferred on it by or under this Act.

(2) If such a committee is established, the committee may, on giving not less than 7 days' notice, require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

## **CHAPTER 2**

### **RECEIVERS (SCOTLAND)**

*OMITTED*

## **CHAPTER 3**

### **RECEIVERS' POWERS IN GREAT BRITAIN AS A WHOLE**

*OMITTED*

## **CHAPTER 4**

### **PROHIBITION ON 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 CIO's property may not appoint an administrative receiver of the CIO.

(2) [omitted]

(3) In subsection (1) [...]—

“holder of a qualifying floating charge in respect of a CIO'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 [section 72G][...].

**72B to 72F omitted**

**72G. Sixth exception: social landlords**

Section 72A does not prevent the appointment of an administrative receiver of a CIO which is-

- (a) a private registered provider of social housing, or
- (b) registered as a social landlord under Part I of the Housing Act 1996 (c 52) [...].

**72GA omitted**

**72H. Sections 72A to 72G: supplementary**

- (1) Schedule 2A (which supplements section [...] 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 section [...] 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) [omitted];
  - (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.

**PART 4**  
**WINDING UP OF CIOs**  
**CHAPTER 1**  
**PRELIMINARY**

*Introductory*

**73. Scheme of this Part**

- (1) This Part applies to the winding up of a CIO [...].
- (2) The winding up may be either—
  - (a) voluntary (see Chapters 2 to 5); or
  - (b) by the court (see Chapter 6).
- (3) This Chapter and Chapters 7 to 10 relate to winding up generally, except where otherwise stated.

*Contributories*

**74. Liability as contributories of present and past members**

- (1) [When—
  - (a) a CIO is wound up; and
  - (b) its constitution states that its members are liable to contribute to its assets if it is wound up,

every present and past member of the CIO is liable to contribute to its assets to any amount sufficient for the payment of its debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories amongst themselves].

- (2) This is subject as follows—
  - (a) a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of winding up;
  - (b) a past member is not liable to contribute in respect of any debt or liability of the CIO contracted after he ceased to be a member;
  - (c) a past member is not liable to contribute, unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them;
  - (d) [omitted]
  - (e) nothing in the [Charities Act 2011] or this Act invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the CIO are alone made liable in respect of the policy or contract;
  - (f) [omitted]

- (3) [No contribution is required from any member of a CIO exceeding the amount specified in the CIO's constitution under section 206(1)(d) of the Charities Act 2011 as the amount to be contributed by that member in the event of the CIO being wound up].

**75 repealed**

**76 to 78 omitted**

**79. Meaning of “contributory”**

- (1) In this Act the expression “contributory” means every person liable to contribute to the assets of a CIO in the event of its being wound up, and for the purposes of all proceedings for

determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

(2) The reference in subsection (1) to persons liable to contribute to the assets does not include a person so liable by virtue of a declaration under section 213 (imputed responsibility for CIO's fraudulent trading) or 214 (wrongful trading) in Chapter 10 of this Part.

(3) [omitted]

### **80. Nature of contributory's liability**

The liability of a contributory creates a debt (in England and Wales in the nature of an ordinary contract debt) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

### **81. Contributories in case of death of a member**

(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives [...] are liable in a due course of administration to contribute to the assets of the CIO in discharge of his liability and are contributories accordingly.

(2) [omitted]

(3) If [...] the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment out of it of the money due.

### **82. Effect of contributory's bankruptcy**

(1) The following applies if a contributory becomes bankrupt, either before or after he has been placed on the list of contributories.

(2) His trustee in bankruptcy represents him for all purposes of the winding up, and is a contributory accordingly.

(3) The trustee may be called on to admit to proof against the bankrupt's estate, or otherwise allow to be paid out of the bankrupt's assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the CIO's assets.

(4) There may be proved against the bankrupt's estate the estimated value of his liability to future calls as well as calls already made.

**83** *omitted*

## **CHAPTER 2**

### **VOLUNTARY WINDING UP (INTRODUCTORY AND GENERAL)**

#### *Resolutions for, and commencement of, voluntary winding up*

#### **[84. Circumstances in which CIO may be wound up voluntarily**

(1) A CIO may be wound up voluntarily if its members pass a resolution that it be wound up voluntarily.

(2) A under subsection (1) must be passed—

(a) at a general meeting of the CIO—

(i) by a 75% majority of those voting (including those voting by proxy or by post, if voting that way is permitted); or

(ii) where the CIO's constitution permits the members to make decisions otherwise than by voting, by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting; or

(b) unanimously, otherwise than at a general meeting.

(3) In this Act “a resolution for voluntary winding up” means a resolution passed under subsection (1).

(4) Before the members of a CIO pass a resolution for voluntary winding up, they must give written notice of the resolution to the holder of any qualifying floating charge to which section 72A applies.

(5) Where notice is given under subsection (4) a resolution for voluntary winding-up may be passed only—

(a) after the end of the period of five business days beginning with the day on which the notice was given; or

(b) if the person to whom the notice was given has consented in writing to the passing of the resolution.

(6) If a resolution for voluntary winding up is to be proposed at a general meeting of a CIO, the person calling the meeting must give notice of not less than 14 days to—

(a) all members of the CIO entitled to vote at the meeting or, where the CIO’s constitution permits the members to make decisions otherwise than by voting, all members entitled to take part in the decision to be made as to whether to pass the resolution at the meeting; and

(b) any charity trustee of the CIO who is not also a member of the CIO entitled to vote at that meeting or, where the CIO’s constitution permits the members to make decisions otherwise than by voting, who is not also a member entitled to take part in the decision to be made as to whether to pass the resolution at the meeting;

and the notice must contain particulars of the resolution that is to be proposed.

(7) For the purposes of calculating the period of notice to be given under subsection (6) the following are to be excluded—

(a) the day of the meeting; and

(b) the day on which notice is given.

(8) If a qualifying majority agrees, a resolution for voluntary winding up which is to be proposed at a general meeting may be passed without the notice provisions in subsection (6) being satisfied.

(9) Where a resolution for voluntary winding up is passed otherwise than at a general meeting it is treated as having been passed on the date on which the last member agreed to it, unless the CIO’s constitution provides that it is to be treated as having been passed on a later date.

(10) A copy of every resolution for voluntary winding up or (in the case of a resolution that is not in writing) a written memorandum setting out its terms must be sent to the Charity Commission within 15 days of the date on which it is passed.

(11) If a CIO fails to comply with subsection (10), an offence is committed by the liquidator and by every charity trustee of the CIO who is in default.

(12) In this section—

“qualifying majority means—

(a) in relation to a CIO whose members take decisions by voting, a majority—

(i) in number of the members having a right to attend and vote at the meeting; and

(ii) who together represent not less than the requisite percentage of the total voting rights at that meeting of all the members;

(b) in relation to a CIO whose members take decisions otherwise than by voting, all of the members having the right to attend the meeting and to take part in the decisions to be made at that meeting;

“requisite percentage” means 90%; or such higher percentage (not exceeding 95%) as may be specified in the CIO’s constitution for the purposes of this section.]

### **85. Notice of resolution to wind up**

(1) When a CIO has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the CIO and every charity trustee of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

For the purposes of this subsection the liquidator is deemed a charity trustee of the CIO.

### **86. Commencement of winding up**

A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up.

#### *Consequences of resolution to wind up*

### **87. Effect on business and status of CIO**

(1) In case of a voluntary winding up, the CIO shall from the commencement of the winding up cease to carry on its activities, except so far as may be required for its beneficial winding up.

(2) However, the corporate state and corporate powers of the CIO, notwithstanding anything to the contrary in its constitution, continue until the CIO is dissolved.

### **88. Avoidance of share transfers, etc after winding-up resolution**

[...] any alteration in the status of the CIO's members, made after the commencement of a voluntary winding up, is void.

#### *Declaration of solvency*

### **89. Statutory declaration of solvency**

(1) Where it is proposed to wind up a CIO voluntarily, the charity trustees (or, in the case of a CIO having more than two charity trustees, the majority of them) may at a charity trustees' meeting make a statutory declaration to the effect that they have made a full inquiry into the CIO's affairs and that, having done so, they have formed the opinion that the CIO will be able to pay its debts in full, together with interest at the official rate (as defined in section 251), within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.

(2) Such a declaration by the charity trustees has no effect for purposes of this Act unless—

(a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and

(b) it embodies a statement of the CIO's assets and liabilities as at the latest practicable date before the making of the declaration.

(3) The declaration shall be delivered to the Charity Commission before the expiration of 15 days immediately following the date on which the resolution for winding up is passed.

(4) A charity trustee making a declaration under this section without having reasonable grounds for the opinion that the CIO will be able to pay its debts in full, together with interest at the official rate, within the period specified is liable to imprisonment or a fine, or both.

(5) If the CIO is wound up in pursuance of a resolution passed within 5 weeks after the making of the declaration, and its debts (together with interest at the official rate) are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the charity trustee did not have reasonable grounds for his opinion.

(6) If a declaration required by subsection (3) to be delivered to the Charity Commission is not so delivered within the time prescribed by that subsection, the CIO and every charity trustee in default is liable to a fine and, for continued contravention, to a daily default fine.

### **90. Distinction between “members’” and “creditors’” voluntary winding up**

A winding up in the case of which a charity trustees' statutory declaration under section 89 has been made is a “members' voluntary winding up”; and a winding up in the case of which such a declaration has not been made is a “creditors' voluntary winding up”.

## **CHAPTER 3**

### **MEMBERS' VOLUNTARY WINDING UP**

#### **91. Appointment of liquidator**

(1) In a members' voluntary winding up, the CIO in general meeting shall appoint one or more liquidators for the purpose of winding up the CIO's affairs and distributing its assets.

(2) On the appointment of a liquidator all the powers of the charity trustees cease, except so far as the CIO in general meeting or the liquidator sanctions their continuance.

#### **92. Power to fill vacancy in office of liquidator**

(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the CIO, the CIO in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the constitution, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

#### **92A Progress report to CIO at year's end (England and Wales)**

(1) Subject to sections 96 and 102, in the event of the winding up of a CIO continuing for more than one year, the liquidator must-

(a) for each prescribed period produce a progress report relating to the prescribed matters; and

(b) within such period commencing with the end of the period referred to in paragraph (a) as may be prescribed send a copy of the progress report to-

(i) the members of the CIO; and

(ii) such other persons as may be prescribed.

(2) A liquidator who fails to comply with this section is liable to a fine.

#### **93 omitted**

#### **94. Final meeting prior to dissolution**

(1) As soon as the CIO's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the CIO's property has been disposed of, and thereupon shall call a general meeting of the CIO for the purpose of laying before it the account, and giving an explanation of it.

(2) The meeting shall be called by advertisement in the Gazette, specifying its time, place and object and published at least one month before the meeting.

(3) Within one week after the meeting, the liquidator shall send to the Charity Commission a copy of the account, and shall make a return to it of the holding of the meeting and of its date.

(4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.

(5) If a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned above, make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made, the provisions of subsection (3) as to the making of the return are deemed complied with.

(6) If the liquidator fails to call a general meeting of the CIO as required by subsection (1), he is liable to a fine.

## **95. Effect of CIO's insolvency**

(1) This section applies where the liquidator is of the opinion that the CIO will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the charity trustees' declaration under section 89.

(2) [omitted].

(2A) In the case of the winding up of a CIO, the liquidator—

(a) shall summon a meeting of creditors for a day not later than the 28th day after the day on which he formed that opinion;

(b) shall send notices of the creditors' meeting to the creditors not less than 7 days before the day on which that meeting is to be held;

(c) shall cause notice of the creditors' meeting to be advertised once in the Gazette;

(d) may cause notice of the meeting to be advertised in such other manner as he thinks fit; and

(e) shall during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the CIO as they may reasonably require;

and the notice of the creditors' meeting shall state the duty imposed by paragraph (e) above.

(3) The liquidator shall also—

(a) make out a statement in the prescribed form as to the affairs of the CIO;

(b) lay that statement before the creditors' meeting; and

(c) attend and preside at that meeting.

(4) The statement as to the affairs of the CIO shall show—

(a) particulars of the CIO's assets, debts and liabilities;

(b) the names and addresses of the CIO's creditors;

(c) the securities held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as may be prescribed.

(4A) The statement as to the affairs of the CIO shall be verified by the liquidator-

(a) in the case of a winding up of a CIO in England and Wales, by a statement of truth; and

(b) [omitted]

(5) – (7) [omitted]

(8) If the liquidator without reasonable excuse fails to comply with this section, he is liable to a fine.

## **96. Conversion to creditors' voluntary winding up**

As from the day on which the creditors' meeting is held under section 95, this Act has effect as if—

- (a) the charity trustees' declaration under section 89 had not been made; and
  - (b) the creditors' meeting and the CIO meeting at which it was resolved that the CIO be wound up voluntarily were the meetings mentioned in section 98 in the next Chapter;
- and accordingly the winding up becomes a creditors' voluntary winding up.

## **CHAPTER 4**

### **Creditors' Voluntary Winding Up**

#### **97. Application of this Chapter**

- (1) Subject as follows, this Chapter applies in relation to a creditors' voluntary winding up.
- (2) Sections 98 and 99 do not apply where, under section 96 in Chapter III, a members' voluntary winding up has become a creditors' voluntary winding up.

#### **98. Meeting of creditors**

(1) [omitted]

(1A) In the case of the winding up of a CIO, the CIO—

- (a) shall cause a meeting of its creditors to be summoned for a day not later than the 14th day after the day on which there is to be held the CIO meeting at which the resolution for voluntary winding up is to be proposed;
- (b) shall cause the notices of the creditors' meeting to be sent to the creditors not less than 7 days before the day on which that meeting is to be held;
- (c) shall cause notice of the creditors' meeting to be advertised once in the Gazette; and
- (d) may cause notice to be advertised in such other manner as the charity trustees think fit.

(2) The notice of the creditors' meeting shall state either—

- (a) the name and address of a person qualified to act as an insolvency practitioner in relation to the CIO who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the CIO's affairs as they may reasonably require; or
- (b) a place in the relevant locality where, on the two business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the CIO's creditors will be available for inspection free of charge.

(3) – (5) [omitted]

(6) If the CIO without reasonable excuse fails to comply with subsection [...] (1A) or (2), it is guilty of an offence and liable to a fine.

#### **99. Charity trustees to lay statement of affairs before creditors**

(1) The charity trustees of the CIO shall—

- (a) make out a statement in the prescribed form as to the affairs of the CIO;
  - (b) cause that statement to be laid before the creditors' meeting under section 98; and
  - (c) appoint one of their number to preside at that meeting;
- and it is the duty of the charity trustee so appointed to attend the meeting and preside over it.

(2) The statement as to the affairs of the CIO shall show—

- (a) particulars of the CIO's assets, debts and liabilities;
- (b) the names and addresses of the CIO's creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and

(e) such further or other information as may be prescribed.

(2A) The statement as to the affairs of the CIO shall be verified by some or all of the charity trustees-

(a) in the case of a winding up of a CIO, by a statement of truth;

(b) [...].

(3) If—

(a) the charity trustees without reasonable excuse fail to comply with subsection (1), (2) or (2A); or

(b) any charity trustee without reasonable excuse fails to comply with subsection (1), so far as requiring him to attend and preside at the creditors' meeting,

the charity trustees are or (as the case may be) the charity trustee is guilty of an offence and liable to a fine.

### **100. Appointment of liquidator**

(1) The creditors and the CIO at their respective meetings mentioned in section 98 may nominate a person to be liquidator for the purpose of winding up the CIO's affairs and distributing its assets.

(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 CIO.

(3) In the case of different persons being nominated, any charity trustee, member or creditor of the CIO may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either—

(a) directing that the person nominated as liquidator by the CIO shall be liquidator instead of or jointly with the person nominated by the creditors, or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

### **101. Appointment of liquidation committee**

(1) The creditors at the meeting to be held under section 98 or at any subsequent meeting may, if they think fit, appoint a committee ("the liquidation committee") of not more than 5 persons to exercise the functions conferred on it by or under this Act.

(2) If such a committee is appointed, the CIO may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding 5.

(3) However, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the CIO ought not to be members of the liquidation committee; and if the creditors so resolve—

(a) the persons mentioned in the resolution are not then, unless the court otherwise directs, qualified to act as members of the committee; and

(b) on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(4) [omitted]

### **102. Creditors' meeting where winding up converted under s 96**

Where, in the case of a winding up which was, under section 96 in Chapter 3, converted to a creditors' voluntary winding up, a creditors' meeting is held in accordance with section 95, any appointment made or committee established by that meeting is deemed to have been made or established by a meeting held in accordance with section 98 in this Chapter.

### **103. Cesser of charity trustees' powers**

On the appointment of a liquidator, all the powers of the charity trustees cease, except so far as the liquidation committee (or, if there is no such committee, the creditors) sanction their continuance.

### **104. Vacancy in office of liquidator**

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the court) the creditors may fill the vacancy.

### **104A. Progress report to CIO and creditors at year's end (England and Wales)**

- (1) If the winding up of a CIO continues for more than one year, the liquidator must-
  - (a) for each prescribed period produce a progress report relating to the prescribed matters; and
  - (b) within such period commencing with the end of the period referred to in paragraph (a) as may be prescribed send a copy of the progress report to-
    - (i) the members and creditors of the CIO; and
    - (ii) such other persons as may be prescribed.
- (2) A liquidator who fails to comply with this section is liable to a fine.

**105** *omitted*

### **106. Final meeting prior to dissolution**

- (1) As soon as the CIO's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the CIO's property has been disposed of, and thereupon shall call a general meeting of the CIO and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.
- (2) Each such meeting shall be called by advertisement in the Gazette specifying the time, place and object of the meeting, and published at least one month before it.
- (3) Within one week after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall send to the Charity Commission a copy of the account, and shall make a return to him of the holding of the meetings and of their dates.
- (4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.
- (5) However, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by subsection (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such return being made the provisions of that subsection as to the making of the return are, in respect of that meeting, deemed complied with.
- (6) If the liquidator fails to call a general meeting of the CIO or a meeting of the creditors as required by this section, he is liable to a fine.

## **CHAPTER 5**

### **Provisions Applying to Both Kinds of Voluntary Winding Up**

#### **107. Distribution of CIO's property**

Subject to the provisions of this Act as to preferential payments, the CIO's property in a voluntary winding up shall on the winding up be applied in satisfaction of the CIO's liabilities *pari passu* and, subject to that application, [shall be applied in accordance with the directions contained in the CIO's constitution pursuant to section 206(2)(c) of the Charities Act 2011; and for this purpose the

liquidator may require the charity trustees of the CIO to take any necessary action to secure that application].

#### **108. Appointment or removal of liquidator by the court**

- (1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.
- (2) The court may, on cause shown, remove a liquidator and appoint another.

#### **109. Notice by liquidator of his appointment**

- (1) The liquidator shall, within 14 days after his appointment, publish in the Gazette and deliver to the Charity Commission [...] a notice of his appointment in the form prescribed by statutory instrument made by the Secretary of State.
- (2) If the liquidator fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

#### **110. Acceptance of shares, etc, as consideration for sale of CIO property**

- (1) This section applies, in the case of a CIO proposed to be, or being, wound up voluntarily, where the whole or part of the CIO's business or property is proposed to be transferred or sold—
  - (a) [to a company (“the transferee company”), whether or not the latter is a company registered under the Companies Act 2006, or]
  - (b) to a limited liability partnership (the “transferee limited liability partnership”).
- (2) With the requisite sanction, the liquidator of the CIO being, or proposed to be, wound up (“the transferor CIO”) may receive, in compensation or part compensation for the transfer or sale—
  - (a) in the case of the transferee company, shares, policies or other like interests in the transferee company [to be applied in accordance with the directions contained in the CIO’s constitution pursuant to section 206(2)(c) of the Charities Act 2011], or
  - (b) in the case of the transferee limited liability partnership, membership in the transferee limited liability partnership [to be applied in accordance with the directions contained in the CIO’s constitution pursuant to section 206(2)(c) of the Charities Act 2011].
- (3) The sanction requisite under subsection (2) is—
  - (a) in the case of a members' voluntary winding up, that of a special resolution of the [members of the CIO], conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, and
  - (b) in the case of a creditors' voluntary winding up, that of either the court or the liquidation committee.
- (4) [omitted]
- (5) A sale or arrangement in pursuance of this section is binding on members of the transferor CIO.
- (6) A special resolution is not invalid for purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but, if an order is made within a year for winding up the CIO by the court, the special resolution is not valid unless sanctioned by the court.
- [(7) For the purposes of this section, a resolution of the members of a CIO is to be treated as a special resolution if it is passed—
  - (a) at a general meeting of the CIO—
    - (i) by a 75% majority of those voting (including those voting by proxy or by post, if voting that way is permitted); or
    - (ii) where the CIO’s constitution permits the members to make decisions otherwise than by voting, by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting; or

(b) unanimously, otherwise than at a general meeting. ]

[ (8) Subject to subsection (10), if a resolution mentioned in subsection (3)(a) is to be proposed at a general meeting of a CIO, the person calling the meeting must give notice of not less than 14 days to—

(a) all members of the CIO entitled to vote at that meeting or take part in the decision to be made as to whether to pass the resolution at that meeting; and

(b) any charity trustee of the CIO who is not also a member of the CIO entitled to vote at that meeting or, where the CIO's constitution permits the members to make decisions otherwise than by voting, who is not also a member entitled to take part in the decision to be made as to whether to pass the resolution at that meeting;

and the notice mentioned must contain particulars of the resolution that is to be proposed.]

[ (9) For the purposes of calculating the period of notice to be given under subsection (8) the following are to be excluded—

(a) the day of the meeting; and

(b) the day on which notice is given.]

[ (10) If a qualifying majority agrees, a resolution under subsection (3)(a) which is to be proposed at a general meeting of a CIO may be passed without the notice provisions in subsection (8) being satisfied.]

[ (11) In this section “qualifying majority” has the meaning given by section 84.]

**111 omitted**

#### **112. Reference of questions to court**

(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a CIO, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the CIO were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the CIO, or otherwise as may be prescribed, to the Charity Commission, who shall enter it in its records relating to the CIO.

**113 omitted**

#### **114. No liquidator appointed or nominated by CIO**

(1) This section applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the CIO.

(2) The powers of the charity trustees shall not be exercised, except with the sanction of the court or (in the case of a creditors' voluntary winding up) so far as may be necessary to secure compliance with sections 98 (creditors' meeting) and 99 (statement of affairs), during the period before the appointment or nomination of a liquidator of the CIO.

(3) Subsection (2) does not apply in relation to the powers of the charity trustees—

(a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of, and

(b) to do all such other things as may be necessary for the protection of the CIO's assets.

(4) If the charity trustees of the CIO without reasonable excuse fail to comply with this section, they are liable to a fine.

### **115. Expenses of voluntary winding up**

All expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the CIO's assets in priority to all other claims.

### **116. Saving for certain rights**

The voluntary winding up of a CIO does not bar the right of any creditor or contributory to have it wound up by the court; but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

## **CHAPTER 6**

### **Winding Up by the Court**

#### *Jurisdiction (England and Wales)*

### **117. High Court and county court jurisdiction**

(1) The High Court has jurisdiction to wind up any CIO.

(2) [...] the county court of the district in which the CIO's principal office is situated has concurrent jurisdiction with the High Court to wind up the CIO.

(3) [omitted]

(4) The Lord Chancellor may, with the concurrence of the Lord Chief Justice, by order in a statutory instrument exclude a county court from having winding-up jurisdiction, and for the purposes of that jurisdiction may attach its district, or any part thereof, to any other country court, and may by statutory instrument revoke or vary any such order.

In exercising the powers of this section, the Lord Chancellor shall provide that a county court is not to have winding-up jurisdiction unless it has for the time being jurisdiction for the purposes of Parts 8 to 11 of this Act (individual insolvency).

(5) Every court in England and Wales having winding-up jurisdiction has for the purposes of that jurisdiction all the powers of the High Court; and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of a judge of that court or otherwise in relation to winding up.

(6) For the purposes of this section, a CIO's "principal office" is the place which has longest been its principal office during the 6 months immediately preceding the presentation of the petition for winding up.

(7) [omitted]

(8) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to execute his functions under this section.

### **118. Proceedings taken in wrong court**

(1) Nothing in section 117 invalidates a proceeding by reason of its being taken in the wrong court.

(2) The winding up of a CIO by the court, or any proceedings in the winding up, may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

### **119. Proceedings in county court; case stated for High Court**

(1) If any question arises in any winding-up proceedings in a county court which all the parties to the proceedings, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court.

(2) Thereupon the special case and the proceedings (or such of them as may be required) shall be transmitted to the High Court for the purposes of the determination.

**120 to 121 omitted**

### *Grounds and effect of winding-up petition*

#### **122. Circumstances in which CIO may be wound up by the court**

(1) A CIO may be wound up by the court if—

- (a) the members of the CIO have passed a resolution that the CIO be wound up by the court (“resolution for court winding up”);
- (b) the CIO does not commence its business within a year of its registration in the register of charities or suspends its business for a whole year;
- (c) the CIO is unable to pay its debts;
- (d) at the time when a moratorium for the CIO under section 1A comes to an end, no voluntary arrangement approved under Part 1 has effect in relation to the CIO;
- (e) it is just and equitable in the opinion of the court that the CIO should be wound up.]

[(2) The resolution for court winding up must be passed by the members of the CIO in accordance with section 84(2).]

[(3) Subsections (6) to (12) of section 84 apply in relation to a resolution for court winding up as they apply to a resolution for voluntary winding up.]

#### **123. Definition of inability to pay debts**

(1) A CIO is deemed unable to pay its debts—

- (a) if a creditor (by assignment or otherwise) to whom the CIO is indebted in a sum exceeding £750 then due has served on the CIO, by leaving it at the CIO's principal office, a written demand (in the prescribed form) requiring the CIO to pay the sum so due and the CIO has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or
- (b) if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the CIO is returned unsatisfied in whole or in part, or
- (c) [omitted]
- (d) [omitted]
- (e) if it is proved to the satisfaction of the court that the CIO is unable to pay its debts as they fall due.

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

(3) The money sum for the time being specified in subsection (1)(a) is subject to increase or reduction by order under section 416 in Part 15.

#### **124. Application for winding up**

(1) Subject to the provisions of this section, an application to the court for the winding up of a CIO shall be by petition presented either by the CIO, or the charity trustees, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation or a temporary administrator (within the meaning of Article 38 of the EC Regulation) [...], or by all or any of those parties, together or separately.

(2) – (3) [omitted]

(3A) A winding-up petition on the ground set out in section [122(1)(d)] may only be presented by one or more creditors.

(4) – (4A) [omitted]

(5) Where a CIO is being wound up voluntarily, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section; but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

#### **124A to 124C omitted**

#### **125. Powers of court on hearing of petition**

(1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit; but the court shall not refuse to make a winding-up order on the ground only that the CIO's assets have been mortgaged to an amount equal to or in excess of those assets, or that the CIO has no assets.

(2) If the petition is presented by members of the CIO as contributories on the ground that it is just and equitable that the CIO should be wound up, the court, if it is of opinion—

(a) that the petitioners are entitled to relief either by winding up the CIO or by some other means, and

(b) that in the absence of any other remedy it would be just and equitable that the CIO should be wound up,

shall make a winding-up order; but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the CIO wound up instead of pursuing that other remedy.

#### **126. Power to stay or restrain proceedings against CIO**

(1) At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the CIO, or any creditor or contributory, may—

(a) where any action or proceeding against the CIO is pending in the High Court or Court of Appeal in England and Wales [...], apply to the court in which the action or proceeding is pending for a stay of proceedings therein, and

(b) where any other action or proceeding is pending against the CIO, apply to the court having jurisdiction to wind up the CIO to restrain further proceedings in the action or proceeding;

and the court to which application is so made may (as the case may be) stay [...] or restrain the proceedings accordingly on such terms as it thinks fit.

(2) [omitted]

#### **127. Avoidance of property dispositions, etc**

(1) In a winding up by the court, any disposition of the CIO's property [...] made after the commencement of the winding up is, unless the court otherwise orders, void.

(2) This section has no effect in respect of anything done by an administrator of a CIO while a winding-up petition is suspended under paragraph 40 of Schedule B1.

### **128. Avoidance of attachments, etc**

(1) Where a CIO is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the CIO after the commencement of the winding up is void.

(2) [omitted]

#### *Commencement of winding up*

### **129. Commencement of winding up by the court**

(1) If, before the presentation of a petition for the winding up of a CIO by the court, a resolution has been passed by the CIO for voluntary winding up, the winding up of the CIO is deemed to have commenced at the time of the passing of the resolution; and unless the court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

(1A) Where the court makes a winding-up order by virtue of paragraph 13(1)(e) of Schedule B1, the winding up is deemed to commence on the making of the order.

(2) In any other case, the winding up of a CIO by the court is deemed to commence at the time of the presentation of the petition for winding up.

### **130. Consequences of winding-up order**

(1) On the making of a winding-up order, a copy of the order must forthwith be forwarded by the CIO (or otherwise as may be prescribed) to the Charity Commission, who shall enter it in its records relating to the CIO.

(2) When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the CIO or its property, except by leave of the court and subject to such terms as the court may impose.

(3) [omitted]

(4) An order for winding up a CIO operates in favour of all the creditors and of all contributories of the CIO as if made on the joint petition of a creditor and of a contributory.

#### *Investigation procedures*

### **131. CIO's statement of affairs**

(1) Where the court has made a winding-up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the CIO.

(2) The statement shall show—

- (a) particulars of the CIO's assets, debts and liabilities;
- (b) the names and addresses of the CIO's creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed or as the official receiver may require.

(2A) The statement shall be verified by the persons required to submit it—

- (a) in the case of an appointment of a provisional liquidator or a winding up by the court in England and Wales, by a statement of truth; and
- (b) [...]

(3) The persons referred to in subsection (1) are—

- (a) those who are or have been charity trustees of the CIO;

(b) those who have taken part in the formation of the CIO at any time within one year before the relevant date;

(c) those who are in the CIO's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;

(d) [those who are or have been within that year officers of, or in the employment of, a company or a CIO which is, or within that year was, a charity trustee of the CIO].

(4) Where any persons are required under this section to submit a statement of affairs to the official receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the official receiver.

(5) The official receiver, if he thinks fit, may—

(a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above; or

(b) either when giving the notice mentioned in subsection (4) or subsequently, extend the period so mentioned;

and where the official receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) In this section—

“employment” includes employment under a contract for services; and

“the relevant date” means—

(a) in a case where a provisional liquidator is appointed, the date of his appointment; and

(b) in a case where no such appointment is made, the date of the winding-up order.

(7) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine.

(8) [omitted]

### **132. Investigation by official receiver**

(1) Where a winding-up order is made by the court, it is the duty of the official receiver to investigate—

(a) if the CIO has failed, the causes of the failure; and

(b) generally, the promotion, formation, business, dealings and affairs of the CIO,

and to make such report (if any) to the court as he thinks fit.

(2) The report is, in any proceedings, prima facie evidence of the facts stated in it.

### **133. Public examination of charity trustees**

(1) Where a CIO is being wound up by the court, the official receiver [...] may at any time before the dissolution of the CIO apply to the court for the public examination of any person who—

(a) is or has been an charity trustee of the CIO; or

(b) has acted as liquidator or administrator of the CIO or as receiver or manager [...]; or

(c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the CIO.

(2) Unless the court otherwise orders, the official receiver [...] shall make an application under subsection (1) if he is requested in accordance with the rules to do so by—

(a) one-half, in value, of the CIO's creditors; or

(b) three-quarters, in value, of the CIO's contributories.

(3) On an application under subsection (1), the court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of the CIO or as to the conduct of the activities the CIO undertakes in furtherance of its charitable purposes and its affairs, or his conduct or dealings in relation to the CIO.

(4) The following may take part in the public examination of a person under this section and may question that person concerning the matters mentioned in subsection (3), namely—

- (a) the official receiver;
- (b) the liquidator of the CIO;
- (c) any person who has been appointed as special manager of the CIO's property or business;
- (d) any creditor of the CIO who has tendered a proof [...] in the winding up;
- (e) any contributory of the CIO.

### **134. Enforcement of s 133**

(1) If a person without reasonable excuse fails at any time to attend his public examination under section 133, he is guilty of a contempt of court and liable to be punished accordingly.

(2) In a case where a person without reasonable excuse fails at any time to attend his examination under section 133 or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under that section, the court may cause a warrant to be issued to a constable or prescribed charity trustee of the court—

- (a) for the arrest of that person; and
- (b) for the seizure of any books, papers, records, money or goods in that person's possession.

(3) In such a case the court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.

### *Appointment of liquidator*

### **135. Appointment and powers of provisional liquidator**

(1) Subject to the provisions of this section, the court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally.

(2) In England and Wales, the appointment of a provisional liquidator may be made at any time before the making of a winding-up order; and either the official receiver or any other fit person may be appointed.

(3) [omitted]

(4) The provisional liquidator shall carry out such functions as the court may confer on him.

(5) When a liquidator is provisionally appointed by the court, his powers may be limited by the order appointing him.

### **136. Functions of official receiver in relation to office of liquidator**

(1) The following provisions of this section have effect, subject to section 140 below, on a winding-up order being made by the court.

(2) The official receiver, by virtue of his office, becomes the liquidator of the CIO and continues in office until another person becomes liquidator under the provisions of this Part.

(3) The official receiver is, by virtue of his office, the liquidator during any vacancy.

(4) At any time when he is the liquidator of the CIO, the official receiver may summon separate meetings of the CIO's creditors and contributories for the purpose of choosing a person to be liquidator of the CIO in place of the official receiver.

(5) It is the duty of the official receiver—

(a) as soon as practicable in the period of 12 weeks beginning with the day on which the winding-up order was made, to decide whether to exercise his power under subsection (4) to summon meetings, and

(b) if in pursuance of paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the court and to the CIO's creditors and contributories, and

(c) (whether or not he has decided to exercise that power) to exercise his power to summon meetings under subsection (4) if he is at any time requested, in accordance with the rules, to do so by one-quarter, in value, of the CIO's creditors;

and accordingly, where the duty imposed by paragraph (c) arises before the official receiver has performed a duty imposed by paragraph (a) or (b), he is not required to perform the latter duty.

(6) A notice given under subsection (5)(b) to the CIO's creditors shall contain an explanation of the creditors' power under subsection (5)(c) to require the official receiver to summon meetings of the CIO's creditors and contributories.

### **137. Appointment by Secretary of State**

(1) In a winding up by the court of a CIO the official receiver may, at any time when he is the liquidator of the CIO, apply to the Secretary of State for the appointment of a person as liquidator in his place.

(2) If meetings are held in pursuance of a decision under section 136(5)(a), but no person is chosen to be liquidator as a result of those meetings, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.

(3) On an application under subsection (1), or a reference made in pursuance of a decision under subsection (2), the Secretary of State shall either make an appointment or decline to make one.

(4) Where a liquidator has been appointed by the Secretary of State under subsection (3), the liquidator shall give notice of his appointment to the CIO's creditors or, if the court so allows, shall advertise his appointment in accordance with the directions of the court.

(5) In that notice or advertisement the liquidator shall—

(a) state whether he proposes to summon a meeting of the CIO's creditors under section 141 below for the purpose of determining (together with any meeting of contributories) whether a liquidation committee should be established under that section, and

(b) if he does not propose to summon such a meeting, set out the power of the CIO's creditors under that section to require him to summon one.

**138** *omitted*

### **139. Choice of liquidator at meetings of creditors and contributories**

(1) This section applies where a CIO is being wound up by the court and separate meetings of the CIO's creditors and contributories are summoned for the purpose of choosing a person to be liquidator of the CIO.

(2) The creditors and the contributories at their respective meetings may nominate a person to be liquidator.

(3) 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 contributories.

(4) In the case of different persons being nominated, any contributory or creditor may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either—

(a) appointing the person nominated as liquidator by the contributories to be a liquidator instead of, or jointly with, the person nominated by the creditors; or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

#### **140. Appointment by the court following administration or voluntary arrangement**

(1) Where a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect, the court may appoint as liquidator of the CIO the person whose appointment as administrator has ceased to have effect.

(2) Where a winding-up order is made at a time when there is a supervisor of a voluntary arrangement approved in relation to the CIO under Part I, the court may appoint as liquidator of the CIO the person who is the supervisor at the time when the winding-up order is made.

(3) Where the court makes an appointment under this section, the official receiver does not become the liquidator as otherwise provided by section 136(2), and he has no duty under section 136(5)(a) or (b) in respect of the summoning of creditors' or contributories' meetings.

#### *Liquidation committees*

#### **141. Liquidation committee (England and Wales)**

(1) Where a winding-up order has been made by the court and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator, those meetings may establish a committee (“the liquidation committee”) to exercise the functions conferred on it by or under this Act.

(2) The liquidator (not being the official receiver) may at any time, if he thinks fit, summon separate meetings of the CIO's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is so determined, of establishing it.

The liquidator (not being the official receiver) shall summon such a meeting if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the CIO's creditors.

(3) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator, and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the committee shall be established in accordance with the rules, unless the court otherwise orders.

(4) The liquidation committee is not to be able or required to carry out its functions at any time when the official receiver is liquidator; but at any such time its functions are vested in the Secretary of State except to the extent that the rules otherwise provide.

(5) Where there is for the time being no liquidation committee, and the liquidator is a person other than the official receiver, the functions of such a committee are vested in the Secretary of State except to the extent that the rules otherwise provide.

**142 omitted**

#### *The liquidator's functions*

#### **143. General functions in winding up by the court**

(1) The functions of the liquidator of a CIO which is being wound up by the court are to secure that the assets of the CIO are got in, realised and distributed to the CIO's creditors and, if there is a surplus, [applied in accordance with the directions contained in the CIO's constitution pursuant to section 206(2)(c) of the Charities Act 2011].

(2) It is the duty of the liquidator of a CIO which is being wound up by the court, if he is not the official receiver—

- (a) to furnish the official receiver with such information,
- (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
- (c) to give the official receiver such other assistance,

as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up.

#### **144. Custody of CIO's property**

(1) When a winding-up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator (as the case may be) shall take into his custody or under his control all the property and things in action to which the CIO is or appears to be entitled.

(2) [omitted]

#### **145. Vesting of CIO property in liquidator**

(1) When a CIO is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the CIO or held by trustees on its behalf shall vest in the liquidator by his official name; and thereupon the property to which the order relates vests accordingly.

(2) The liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the CIO and recovering its property.

#### **146. Duty to summon final meeting**

(1) Subject to the next subsection, if it appears to the liquidator of a CIO which is being wound by the court that the winding up of the CIO is for practical purposes complete and the liquidator is not the official receiver, the liquidator shall summon a final meeting of the CIO's creditors which—

- (a) shall receive the liquidator's report of the winding up, and
- (b) shall determine whether the liquidator should have his release under section 174 in Chapter 7 of this Part.

(2) The liquidator may, if he thinks fit, give the notice summoning the final meeting at the same time as giving notice of any final distribution of the CIO's property but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the liquidator is able to report to the meeting that the winding up of the CIO is for practical purposes complete.

(3) In the carrying out of his functions in the winding up it is the duty of the liquidator to retain sufficient sums from the CIO's property to cover the expenses of summoning and holding the meeting required by this section.

### *General powers of court*

#### **147. Power to stay [...] winding up**

(1) The court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in the winding up ought to be stayed [...], make an order staying [...] the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) The court may, before making an order, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the CIO, or otherwise as may be prescribed, to the Charity Commission, who shall enter it in his records relating to the CIO.

#### **148. Settlement of list of contributories and application of assets**

(1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required and shall cause the CIO's assets to be collected, and applied in discharge of its liabilities.

(2) If it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.

(3) In settling the list, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

#### **149. Debts due from contributory to CIO**

(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him (or from the estate of the person who he represents) to the CIO, exclusive of any money payable by him or the estate by virtue of any call.

(2) [omitted]

(3) In the case of any CIO [...] when all the creditors are paid in full (together with interest at the official rate), any money due on any account whatever to a contributory from the CIO may be allowed to him by way of set-off against any subsequent call.

#### **150. Power to make calls**

(1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the CIO's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the CIO's debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

#### **151. Payment into bank of money due to CIO**

(1) The court may order any contributory, purchaser or other person from whom money is due to the CIO to pay the amount due into the Bank of England (or any branch of it) to the account of the liquidator instead of to the liquidator, and such an order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All money and securities paid or delivered into the Bank of England (or branch) in the event of a winding up by the court are subject in all respects to the orders of the court.

#### **152. Order on contributory to be conclusive evidence**

(1) An order made by the court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, but subject to any right of appeal.

(2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings [...].

### **153. Power to exclude creditors not proving in time**

The court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

### **[154. Application of surplus**

The court shall make such directions as it considers necessary to secure the application of the surplus in accordance with the directions contained in the CIO's constitution pursuant to section 206(2)(c) of the Charities Act 2011.]

### **155. Inspection of books by creditors, etc**

(1) The court may, at any time after making a winding-up order, make such order for inspection of the CIO's books and papers by creditors and contributories as the court thinks just; and any books and papers in the CIO's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this section excludes or restricts any statutory rights of a government department or person acting under the authority of a government department.

(3) For the purposes of subsection (2) above, references to a government department shall be construed as including references to any part of the Scottish Administration.

### **156. Payment of expenses of winding up**

The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the court thinks just.

*157 omitted*

### **158. Power to arrest absconding contributory**

The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be kept safely until such time as the court may order.

### **159. Powers of court to be cumulative**

Powers conferred on the court by this Act are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of the CIO, or the estate of any contributory or debtor, for the recovery of any call or other sums.

### **160. Delegation of powers to liquidator (England and Wales)**

(1) Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England and Wales in respect of the following matters—

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories,

(b) the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,

(c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator,

(d) the making of calls,  
(e) the fixing of a time within which debts and claims must be proved,  
to be exercised or performed by the liquidator as an charity trustee of the court, and subject to the court's control.

(2) But the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either that special leave or the sanction of the liquidation committee.

**161 to 162 omitted**

## **CHAPTER 7**

### **Liquidators**

#### *Preliminary*

#### **163. Style and title of liquidators**

(1) The liquidator of a CIO shall be described—

(a) where a person other than the official receiver is liquidator, by the style of “the liquidator” of the particular CIO, or

(b) where the official receiver is liquidator, by the style of “the official receiver and liquidator” of the particular CIO;

and in neither case shall he be described by an individual name.

#### **164. Corrupt inducement affecting appointment**

A person who gives, or agrees or offers to give, to any member or creditor of a CIO any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the CIO's liquidator is liable to a fine.

#### *Liquidator's powers and duties*

#### **165. Voluntary winding up**

(1) This section has effect where a CIO is being wound up voluntarily, but subject to section 166 below in the case of a creditors' voluntary winding up.

(2) The liquidator may—

(a) in the case of a member's voluntary winding up, with the sanction of a special resolution of the [members of the CIO], and

(b) in the case of a creditors' voluntary winding up, with the sanction of the court or the liquidation committee (or, if there is no such committee, a meeting of the CIO's creditors),

exercise any of the powers specified in Part 1 of Schedule 4 to this Act (payment of debts, compromise of claims, etc).

(3) The liquidator may, without sanction, exercise either of the powers specified in Part 2 of that Schedule (institution and defence of proceedings; carrying on the business of the CIO) and any of the general powers specified in Part 3 of that Schedule.

(4) The liquidator may—

(a) exercise the court's power of settling a list of contributories (which list is prima facie evidence of the liability of the persons named in it to be contributories),

(b) exercise the court's power of making calls,

(c) summon general meetings of the CIO for the purpose of obtaining its sanction by special resolution or for any other purpose he may think fit.

(5) The liquidator shall pay the CIO's debts and adjust the rights of the contributories among themselves.

(6) Where the liquidator in exercise of the powers conferred on him by this Act disposes of any property of the CIO to a person who is connected with the CIO (within the meaning of section 249 in Part 7), he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

[(7) For the purposes of this section, a resolution of the members of a CIO is to be treated as a special resolution if it is passed—

(a) at a general meeting of the CIO—

(i) by a 75% majority of those voting at the general meeting of the CIO (including those voting by proxy or by post, if voting that way is permitted); or

(ii) where the CIO's constitution permits the members to make decisions otherwise than by voting, by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting; or

(b) unanimously, otherwise than at a general meeting.]

[(8) Subject to subsection (10), if a resolution under subsection (2)(a) is to be proposed at a general meeting of a CIO, the person calling the meeting must give notice of not less than 14 days to—

(a) all members of the CIO entitled to vote at that meeting or take part in the decision to be made as to whether to pass the resolution at the meeting; and

(b) any charity trustee of the CIO who is not also a member of the CIO entitled to vote at the meeting or, where the CIO's constitution permits the members to make decisions otherwise than by voting, who is not also a member entitled to take part in the decision to be made as to whether to pass the resolution at the meeting;

and the notice must contain particulars of the resolution that is to be proposed.]

[(9) For the purpose of calculating the period of notice to be given under subsection (8) the following are to be excluded—

(a) the day of the meeting; and

(b) the day on which notice is given.]

[(10) If a qualifying majority agrees, a resolution under subsection (2)(a) which is to be proposed at a general meeting of a CIO may be passed without the notice provisions of subsection (8) being satisfied.]

[(11) In this section “qualifying majority” has the meaning given by section 84.]

## **166. Creditors' voluntary winding up**

(1) This section applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the CIO.

(1A) The exercise by the liquidator of the power specified in paragraph 6 of Schedule 4 to this Act (power to sell any of the CIO's property) shall not be challengeable on the ground of any prior inhibition.

(2) The powers conferred on the liquidator by section 165 shall not be exercised, except with the sanction of the court, during the period before the holding of the creditors' meeting under section 98 in Chapter 4.

(3) Subsection (2) does not apply in relation to the power of the liquidator—

(a) to take into his custody or under his control all the property to which the CIO is or appears to be entitled;

(b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and

(c) to do all such other things as may be necessary for the protection of the CIO's assets.

(4) The liquidator shall attend the creditors' meeting held under section 98 and shall report to the meeting on any exercise by him of his powers (whether or not under this section or under section 112 or 165).

(5) If default is made—

(a) by the CIO in complying with subsection (1A) or (2) of section 98, or

(b) by the charity trustees in complying with subsection (1), (2) or (2A) of section 99,

the liquidator shall, within 7 days of the relevant day, apply to the court for directions as to the manner in which that default is to be remedied.

(6) “The relevant day” means the day on which the liquidator was nominated by the CIO or the day on which he first became aware of the default, whichever is the later.

(7) If the liquidator without reasonable excuse fails to comply with this section, he is liable to a fine.

### **167. Winding up by the court**

(1) Where a CIO is being wound up by the court, the liquidator may—

(a) with the sanction of the court or the liquidation committee, exercise any of the powers specified in Parts 1 and 2 of Schedule 4 to this Act (payment of debts; compromise of claims, etc; institution and defence of proceedings; carrying on of the business of the CIO), and

(b) with or without that sanction, exercise any of the general powers specified in Part 3 of that Schedule.

(2) 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 CIO to a person who is connected with the CIO (within the meaning of section 249 in Part 7), 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 liquidation committee, give notice to the committee of that exercise of his powers.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section is subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

### **168. Supplementary powers (England and Wales)**

(1) This section applies in the case of a CIO being wound up by the court.

(2) The liquidator may summon meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by resolution (either at the meeting appointing the liquidator or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories (as the case may be).

(3) The liquidator may apply to the court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up.

(4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the assets and their distribution among the creditors.

(5) If any person is aggrieved by an act or decision of the liquidator, that person may apply to the court; and the court may confirm, reverse or modify the act or decision complained of, and make such order in the case as it thinks just.

(5A) Where at any time after a winding up petition has been presented to the court against any person (including an insolvent partnership or other body which may be wound up under Part 5 of the Act as an unregistered company), whether by virtue of the provisions of the Insolvent

Partnerships Order 1994 or not, the attention of the court is drawn to the fact that the person in question is a member of an insolvent partnership, the court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(5B) Any order or directions under subsection (5A) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.

(5C) Where the court makes an order for the winding up of an insolvent partnership under—

- (a) section 72(1)(a) of the Financial Services Act 1986;
- (b) section 92(1)(a) of the Banking Act 1987; or
- (c) section 367(3)(a) of the Financial Services and Markets Act 2000,

the court may make an order as to the future conduct of the winding up proceedings, and any such order may apply any provisions of the Insolvent Partnerships Order 1994 with any necessary modifications.

**169** *omitted*

#### **170. Enforcement of liquidator's duty to make returns, etc**

(1) If a liquidator who has made any default—

- (a) in filing, delivering or making any return, account or other document, or
- (b) in giving any notice which he is by law required to file, deliver, make or give,

fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the court has the following powers.

(2) On an application made by any creditor or contributory of the CIO, or by the Charity Commission, the court may make an order directing the liquidator to make good the default within such time as may be specified in the order.

(3) The court's order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(4) Nothing in this section prejudices the operation of any enactment imposing penalties on a liquidator in respect of any such default as is mentioned above.

#### *Removal; vacation of office*

#### **171. Removal, etc (voluntary winding up)**

(1) This section applies with respect to the removal from office and vacation of office of the liquidator of a CIO which is being wound up voluntarily.

(2) Subject to the next subsection, the liquidator may be removed from office only by an order of the court or—

- (a) in the case of a members' voluntary winding up, by a general meeting of the CIO summoned specially for that purpose, or
- (b) in the case of a creditors' voluntary winding up, by a meeting of the CIO's creditors summoned specially for that purpose in accordance with the rules.

(3) Where the liquidator was appointed by the court under section 108 in Chapter 5, a meeting such as is mentioned in subsection (2) above shall be summoned for the purpose of replacing him only if he thinks fit or the court so directs or the meeting is requested, in accordance with the rules—

- (a) [in the case of a members' voluntary winding up –

(i) where the members of the CIO take decisions otherwise than by voting, all of the members of the CIO having at the date of the request a right to vote at the meeting; or

(ii) in any other case, by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting], or

(b) in the case of a creditors' voluntary winding up, by not less than one-half, in value, of the CIO's creditors.

(4) A liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the CIO.

(5) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the Charity Commission.

(6) Where—

(a) in the case of a members' voluntary winding up, a final meeting of the CIO has been held under section 94 in Chapter 3, or

(b) in the case of a creditors' voluntary winding up, final meetings of the CIO and of the creditors have been held under section 106 in Chapter 4,

the liquidator whose report was considered at the meeting or meetings shall vacate office as soon as he has complied with subsection (3) of that section and has given notice to the Charity Commission that the meeting or meetings have been held and of the decisions (if any) of the meeting or meetings.

## **172. Removal, etc (winding up by the court)**

(1) This section applies with respect to the removal from office and vacation of office of the liquidator of a CIO which is being wound up by the court, or of a provisional liquidator.

(2) Subject as follows, the liquidator may be removed from office only by an order of the court or by a meeting of the CIO's creditors summoned specially for that purpose in accordance with the rules; and a provisional liquidator may be removed from office only by an order of the court.

(3) Where—

(a) the official receiver is liquidator otherwise than in succession under section 136(3) to a person who held office as a result of a nomination by a meeting of the CIO's creditors or contributories, or

(b) the liquidator was appointed by the court otherwise than under section 139(4)(a) or 140(1), or was appointed by the Secretary of State,

a meeting of the CIO's creditors shall be summoned for the purpose of replacing him only if he thinks fit, or the court so directs, or the meeting is requested, in accordance with the rules, by not less than one-quarter, in value, of the creditors.

(4) If appointed by the Secretary of State, the liquidator may be removed from office by a direction of the Secretary of State.

(5) A liquidator or provisional liquidator, not being the official receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the CIO.

(6) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.

(7) [omitted]

(8) Where a final meeting has been held under section 146 (liquidator's report on completion of winding up), the liquidator whose report was considered at the meeting shall vacate office as soon as he has given notice to the court and the Charity Commission that the meeting has been held and of the decisions (if any) of the meeting.

## *Release of liquidator*

### **173. Release (voluntary winding up)**

(1) This section applies with respect to the release of the liquidator of a CIO which is being wound up voluntarily.

(2) A person who has ceased to be a liquidator shall have his release with effect from the following time, that is to say—

(a) in the case of a person who has been removed from office by a general meeting of the CIO or by a meeting of the CIO's creditors that has not resolved against his release or who has died, the time at which notice is given to the Charity Commission in accordance with the rules that that person has ceased to hold office;

(b) in the case of a person who has been removed from office by a meeting of the CIO's creditors that has resolved against his release, or by the court, or who has vacated office under section 171(4) above, such time as the Secretary of State may, on the application of that person, determine;

(c) in the case of a person who has resigned, such time as may be prescribed;

(d) in the case of a person who has vacated office under subsection (6)(a) of section 171, the time at which he vacated office;

(e) in the case of a person who has vacated office under subsection (6)(b) of that section—

(i) if the final meeting of the creditors referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine, and

(ii) if that meeting has not resolved against that person's release, the time at which he vacated office.

(3) [omitted]

(4) Where a liquidator has his release under subsection (2), he is, with effect from the time specified in that subsection, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator.

But nothing in this section prevents the exercise, in relation to a person who has had his release under subsection (2), of the court's powers under section 212 of this Act (summary remedy against delinquent charity trustees, liquidators, etc).

### **174. Release (winding up by the court)**

(1) This section applies with respect to the release of the liquidator of a CIO which is being wound up by the court, or of a provisional liquidator.

(2) Where the official receiver has ceased to be liquidator and a person becomes liquidator in his stead, the official receiver has his release with effect from the following time, that is to say—

(a) in a case where that person was nominated by a meeting of creditors or contributories, or was appointed by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced;

(b) in a case where that person is appointed by the court, such time as the court may determine.

(3) If the official receiver while he is a liquidator gives notice to the Secretary of State that the winding up is for practical purposes complete, he has his release with effect from such time as the Secretary of State may determine.

(4) A person other than the official receiver who has ceased to be a liquidator has his release with effect from the following time, that is to say—

(a) in the case of a person who has been removed from office by a meeting of creditors that has not resolved against his release or who has died, the time at which notice is given to the court in accordance with the rules that that person has ceased to hold office;

(b) in the case of a person who has been removed from office by a meeting of creditors that has resolved against his release, or by the court or the Secretary of State, or who has vacated office under section 172(5) or (7), such time as the Secretary of State may, on an application by that person, determine;

(c) in the case of a person who has resigned, such time as may be prescribed;

(d) in the case of a person who has vacated office under section 172(8)—

(i) if the final meeting referred to in that subsection has resolved against that person's release, such time as the Secretary of State may, on an application by that person, determine, and

(ii) if that meeting has not so resolved, the time at which that person vacated office.

(5) A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the court may, on an application by him, determine.

(6) Where the official receiver or a liquidator or provisional liquidator has his release under this section, he is, with effect from the time specified in the preceding provisions of this section, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator or provisional liquidator.

But nothing in this section prevents the exercise, in relation to a person who has had his release under this section, of the court's powers under section 212 (summary remedy against delinquent charity trustees, liquidators, etc).

(7) [omitted]

## CHAPTER 8

### Provisions of General Application in Winding Up

#### *Preferential debts*

#### **175. Preferential debts (general provision)**

(1) In a winding up the CIO's preferential debts (within the meaning given by section 386 in Part 12) shall be paid in priority to all other debts.

(2) Preferential debts—

(a) rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and

(b) so far as the assets of the CIO available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the CIO, and shall be paid accordingly out of any property comprised in or subject to that charge.

#### **176. Preferential charge on goods distrained**

(1) This section applies where a CIO is being wound up by the court and is without prejudice to section 128 (avoidance of attachments, etc).

(2) Where any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of the CIO in the period of 3 months ending with the date of the winding-up order, those goods or effects, or the proceeds of their sale, shall be charged for the benefit of the CIO with the preferential debts of the CIO to the extent that the CIO's property is for the time being insufficient for meeting them.

(3) Where by virtue of a charge under subsection (2) any person surrenders any goods or effects to a CIO or makes a payment to a CIO, that person ranks, in respect of the amount of the proceeds of sale of those goods or effects by the liquidator or (as the case may be) the amount of the payment, as a preferential creditor of the CIO, except as against so much of the CIO's property as is available for the payment of preferential creditors by virtue of the surrender or payment.

*Property subject to a floating charge*

**176ZA. Payment of expenses of winding up (England and Wales)**

(1) The expenses of winding up, so far as the assets of the CIO available for payment of general creditors are insufficient to meet them, have priority over any claims to property comprised in or subject to any floating charge created by the CIO and shall be paid out of any such property accordingly.

(2) In subsection (1)—

(a) the reference to assets of the CIO available for payment of general creditors does not include any amount made available under section 176A(2)(a);

(b) the reference to claims to property comprised in or subject to a floating charge is to the claims of—

(i) the holders of debentures secured by, or holders of, the floating charge, and

(ii) any preferential creditors entitled to be paid out of that property in priority to them.

(3) Provision may be made by rules restricting the application of subsection (1), in such circumstances as may be prescribed, to expenses authorised or approved—

(a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them, or

(b) by the court.

(4) References in this section to the expenses of the winding up are to all expenses properly incurred in the winding up, including the remuneration of the liquidator.

**176A. Share of assets for unsecured creditors**

(1) This section applies where a floating charge relates to property of a CIO—

(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 CIO'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 CIO if—

(a) the CIO'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 CIO if or in so far as it is disapplied by—

(a) a voluntary arrangement in respect of the CIO, or

(b) [omitted]

(5) Subsection (2) shall also not apply to a CIO 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 CIO'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 CIO.

(7) An order under subsection (2) prescribing part of a CIO's net property may, in particular, provide for its calculation—

- (a) as a percentage of the CIO's net property, or
- (b) as an aggregate of different percentages of different parts of the CIO'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)(a) 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.

### *Special managers*

#### **177. Power to appoint special manager**

(1) Where a CIO has gone into liquidation or a provisional liquidator has been appointed, the court may, on an application under this section, appoint any person to be the special manager of the business or property of the CIO.

(2) The application may be made by the liquidator or provisional liquidator in any case where it appears to him that the nature of the business or property of the CIO, or the interests of the CIO's creditors or contributories [...], require the appointment of another person to manage the CIO's business or property.

(3) The special manager has such powers as may be entrusted to him by the court.

(4) The court's power to entrust powers to the special manager includes power to direct that any provision of this Act that has effect in relation to the provisional liquidator or liquidator of a CIO shall have the like effect in relation to the special manager for the purposes of the carrying out by him of any of the functions of the provisional liquidator or liquidator.

(5) The special manager shall—

- (a) give such security [...] as may be prescribed;
- (b) prepare and keep such accounts as may be prescribed; and
- (c) produce those accounts in accordance with the rules to the Secretary of State or to such other persons as may be prescribed.

### *Disclaimer (England and Wales only)*

#### **178. Power to disclaim onerous property**

(1) This and the next two sections apply to a CIO that is being wound up.

(2) Subject as follows, the liquidator may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.

(3) The following is onerous property for the purposes of this section—

- (a) any unprofitable contract, and
- (b) any other property of the CIO which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

(4) A disclaimer under this section—

- (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the CIO in or in respect of the property disclaimed; but
  - (b) does not, except so far as is necessary for the purpose of releasing the CIO from any liability, affect the rights or liabilities of any other person.
- (5) A notice of disclaimer shall not be given under this section in respect of any property if—
- (a) a person interested in the property has applied in writing to the liquidator or one of his predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not, and
  - (b) the period of 28 days beginning with the day on which that application was made, or such longer period as the court may allow, has expired without a notice of disclaimer having been given under this section in respect of that property.
- (6) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed a creditor of the CIO to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

### **179. Disclaimer of leaseholds**

- (1) The disclaimer under section 178 of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the CIO as underlessee or mortgagee and either—
- (a) no application under section 181 below is made with respect to that property before the end of the period of 14 days beginning with the day on which the last notice served under this subsection was served; or
  - (b) where such an application has been made, the court directs that the disclaimer shall take effect.
- (2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 181, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

### **180. Land subject to rentcharge**

- (1) The following applies where, in consequence of the disclaimer under section 178 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in the next subsection as “the proprietor”).
- (2) The proprietor and the successors in title of the proprietor are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

### **181. Powers of court (general)**

- (1) This section and the next apply where the liquidator has disclaimed property under section 178.
- (2) An application under this section may be made to the court by—
- (a) any person who claims an interest in the disclaimed property, or
  - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.
- (3) Subject as follows, the court may on the application make an order, on such terms as it thinks fit, for the vesting of the disclaimed property in, or for its delivery to—
- (a) a person entitled to it or a trustee for such a person, or
  - (b) a person subject to such a liability as is mentioned in subsection (2)(b) or a trustee for such a person.

(4) The court shall not make an order under subsection (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of any order under this section shall be taken into account in assessing for the purpose of section 178(6) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(6) An order under this section vesting property in any person need not be completed by conveyance, assignment or transfer.

### **182. Powers of court (leaseholds)**

(1) The court shall not make an order under section 181 vesting property of a leasehold nature in any person claiming under the CIO as underlessee or mortgagee except on terms making that person—

(a) subject to the same liabilities and obligations as the CIO was subject to under the lease at the commencement of the winding up, or

(b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.

(2) For the purposes of an order under section 181 relating to only part of any property comprised in a lease, the requirements of subsection (1) apply as if the lease comprised only the property to which the order relates.

(3) Where subsection (1) applies and no person claiming under the CIO as underlessee or mortgagee is willing to accept an order under section 181 on the terms required by virtue of that subsection, the court may, by order under that section, vest the CIO's estate or interest in the property in any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the CIO) to perform the lessee's covenants in the lease.

The court may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the CIO.

(4) Where subsection (1) applies and a person claiming under the CIO as underlessee or mortgagee declines to accept an order under section 181, that person is excluded from all interest in the property.

### *Execution, attachment and the Scottish equivalents*

### **183. Effect of execution or attachment (England and Wales)**

(1) Where a creditor has issued execution against the goods or land of a CIO or has attached any debt due to it, and the CIO is subsequently wound up, he is not entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the commencement of the winding up.

(2) However—

(a) if a creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which he had notice is substituted, for the purpose of subsection (1), for the date of commencement of the winding up;

(b) a person who purchases in good faith under a sale by the enforcement officer or other officer charged with the execution of the writ any goods of a CIO on which execution has been levied in all cases acquires a good title to them against the liquidator; and

(c) the rights conferred by subsection (1) on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(3) For the purposes of this Act—

(a) an execution against goods is completed by seizure and sale, or by the making of a charging order under section 1 of the Charging Orders Act 1979;

(b) an attachment of a debt is completed by receipt of the debt; and

(c) an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order under section 1 of the Act above-mentioned.

(4) In this section “goods” includes all chattels personal; and “enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003.

(5) This section does not apply in the case of a winding up in Scotland.

#### **184. Duties of officers charged with execution of writs and other processes (England and Wales)**

(1) The following applies where a CIO's goods are taken in execution and, before their sale or the completion of the execution (by the receipt or recovery of the full amount of the levy), notice is served on the enforcement officer, or other officer, charged with execution of the writ or other process, that a provisional liquidator has been appointed or that a winding-up order has been made, or that a resolution for voluntary winding up has been passed.

(2) The enforcement officer or other officer shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator; but the costs of execution are a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part of them, for the purpose of satisfying the charge.

(3) If under an execution in respect of a judgment for a sum exceeding £500 a CIO's goods are sold or money is paid in order to avoid sale, the enforcement officer or other officer shall deduct the costs of the execution from the proceeds of sale or the money paid and retain the balance for 14 days.

(4) If within that time notice is served on the enforcement officer or other officer of a petition for the winding up of the CIO having been presented, or of a meeting having been called at which there is to be proposed a resolution for voluntary winding up, and an order is made or a resolution passed (as the case may be), the enforcement officer or other officer shall pay the balance to the liquidator, who is entitled to retain it as against the execution creditor.

(5) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(6) In this section, “goods” includes all chattels personal; and “enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003.

(7) The money sum for the time being specified in subsection (3) is subject to increase or reduction by order under section 416 in Part 15.

(8) [omitted]

#### **185. omitted**

### *Miscellaneous matters*

#### **186. Rescission of contracts by the court**

(1) The court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the CIO, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just.

(2) Any damages payable under the order to such a person may be proved by him as a debt in the winding up.

#### **187. Power to make over assets to employees**

(1) On the winding up of a CIO (whether by the court or voluntarily), the liquidator may, subject to the following provisions of this section, make [an ex-gratia payment authorised, before the commencement of the winding up, by the Charity Commission under section 106 of the Charities Act 2011 or the Attorney General].

(2) [The liquidator may, after the winding up has commenced, make any relevant payment if the CIO's liabilities have been fully satisfied and provision has been made for the expenses of the winding up.]

[(2A) For the purposes of subsection (2) a payment is a relevant payment if it is an ex-gratia payment authorised, after the commencement of the winding up, by the Charity Commission under section 106 of the Charities Act 2011 or the Attorney General.]

(3) [Any payment which may be made by a CIO under this section (that is, a payment after the commencement of its winding up) may be made out of the CIO's assets which are available to [be applied in accordance with the directions contained in the CIO's constitution in compliance with section 206(2)(c) of the Charities Act 2011].

(4) On a winding up by the court, the exercise by the liquidator of his powers under this section is subject to the court's control, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of the power.

(5) Subsections (1) and (2) above have effect notwithstanding anything in any rule of law or in section 107 of this Act (property of CIO after satisfaction of liabilities to be distributed among members).

### **188. Notification that CIO is in liquidation**

(1) When a CIO is being wound up, whether by the court or voluntarily—

(a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the CIO, or a liquidator of the CIO or a receiver or manager of the CIO's property, and

(b) all the CIO's websites,

must contain a statement that the CIO is being wound up.

(2) If default is made in complying with this section, the CIO and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any charity trustee of the CIO, any liquidator of the CIO and any receiver or manager, is liable to a fine.

### **189. Interest on debts**

(1) In a winding up interest is payable in accordance with this section on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.

(2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the CIO went into liquidation.

(3) All interest under this section ranks equally, whether or not the debts on which it is payable rank equally.

(4) The rate of interest payable under this section in respect of any debt ("the official rate" for the purposes of any provision of this Act in which that expression is used) is whichever is the greater of—

(a) the rate specified in section 17 of the Judgments Act 1838 on the day on which the CIO went into liquidation, and

(b) the rate applicable to that debt apart from the winding up.

(5) [omitted]

### **190. Documents exempt from stamp duty**

(1) In the case of a winding up by the court, or of a creditors' voluntary winding up, the following has effect as regards exemption from duties chargeable under the enactments relating to stamp duties.

(2) [...] the following documents are exempt from stamp duty—

(a) every assurance relating solely to freehold or leasehold property, or to any estate, right or interest in, any real or personal property, which forms part of the CIO's assets and which, after the execution of the assurance, either at law or in equity, is or remains part of those assets, and

(b) every writ, order, certificate, or other instrument or writing relating solely to the property of any CIO which is being wound up as mentioned in subsection (1), or to any proceeding under such a winding up.

“Assurance” here includes deed, conveyance, assignment and surrender.

(3) [omitted]

### **191. CIO's books to be evidence**

Where a CIO is being wound up, all books and papers of the CIO and of the liquidators are, as between the contributories of the CIO, prima facie evidence of the truth of all matters purporting to be recorded in them.

### **192. Information as to pending liquidations**

(1) If the winding up of a CIO is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Charity Commission a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.

(2) If a liquidator fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

**193** *omitted*

### **194. Resolutions passed at adjourned meetings**

Where a resolution is passed at an adjourned meeting of a CIO's creditors or contributories, the resolution is treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

### **195. Meetings to ascertain wishes of creditors or contributories**

(1) The court may—

(a) as to all matters relating to the winding up of a CIO, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence), and

(b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory.

### **196. Judicial notice of court documents**

(1) In all proceedings under this Part, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court shall take judicial notice—

(a) of the signature of any officer of the High Court or of a county court in England and Wales, [...], and also

(b) of the official seal or stamp of the several offices of the High Court in England and Wales, [...], appended to or impressed on any document made, issued or signed under the provisions of this Act [...]; or any official copy of such a document.

### **197. Commission for receiving evidence**

(1) When a CIO is wound up [...] the court may refer the whole or any part of the examination of witnesses—

(a) to a specified county court in England and Wales, or  
[...],

(“specified” meaning specified in the order of the winding-up court).

(2) Any person exercising jurisdiction as a judge of the court to which the reference is made [...] shall then, by virtue of this section, be a commissioner for the purpose of taking the evidence of those witnesses.

(3) The judge [...] has in the matter referred the same power of summoning and examining witnesses, of requiring the production and delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order. These powers are in addition to any which the judge [...] might lawfully exercise apart from this section.

(4) The examination so taken shall be returned or reported to the court which made the order in such manner as that court requests.

(5) [...]

**198 – 199 omitted**

### **200. Affidavits etc in United Kingdom and overseas**

(1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in the United Kingdom, or elsewhere in Her Majesty’s dominions, before any court, judge or person lawfully authorised to take and receive affidavits, or before any of Her Majesty’s consuls or vice-consuls in any place outside Her dominions.

(2) All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

## **CHAPTER 9**

### **Dissolution of CIOs After Winding Up**

#### **201. Dissolution (voluntary winding up)**

(1) This section applies, in the case of a CIO wound up voluntarily, where the liquidator has sent to the Charity Commission his final account and return under section 94 (members' voluntary) or section 106 (creditors' voluntary).

(2) [The Charity Commission must remove the CIO from the register of charities on the expiration of 3 months from the date on which it received the account and return and the CIO is dissolved on the date on which it is removed from the register.]

(3) However, the court may, on the application of the liquidator or any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the CIO is to take effect for such time as the court thinks fit.

(4) It is the duty of the person on whose application an order of the court under this section is made within 7 days after the making of the order to deliver to the Charity Commission a copy of

the order [...]; and if that person fails to do so he is liable to a fine and, for continued contravention, to a daily default fine.

[(5) Where the Charity Commission removes a CIO from the register of charities in accordance with this section, it must publish a notice, in such manner as it thinks fit, stating—

- (a) that the CIO has been removed from the register of charities; and
- (b) the date on which the CIO was so removed.]

[(6) In determining the manner in which to publish a notice under subsection (5) the Charity Commission must have regard in particular to—

- (a) the location of the CIO's principal office;
- (b) the area in which the CIO operated; and
- (c) the charitable purposes of the CIO.]

## **202. Early dissolution (England and Wales)**

(1) This section applies where an order for the winding up of a CIO has been made by the court.

(2) The official receiver, if—

- (a) he is the liquidator of the CIO, and
- (b) it appears to him—
  - (i) that the realisable assets of the CIO are insufficient to cover the expenses of the winding up, and
  - (ii) that the affairs of the CIO do not require any further investigation,

may at any time apply to the Charity Commission for the early dissolution of the CIO.

(3) Before making that application, the official receiver shall give not less than 28 days' notice of his intention to do so to the CIO's creditors and contributories and, if there is an administrative receiver of the CIO, to that receiver.

(4) With the giving of that notice the official receiver ceases (subject to any directions under the next section) to be required to perform any duties imposed on him in relation to the CIO, its creditors or contributories by virtue of any provision of this Act, apart from a duty to make an application under subsection (2) of this section.

(5) [The Charity Commission must remove the CIO from the register of charities on the expiration of 3 months from the date on which it received the official receiver's application under subsection (2) and the CIO is dissolved on the date on which it is removed from the register. However the Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give directions under section 203 at any time before the end of that period.]

[(6) Where the Charity Commission removes a CIO from the register of charities in accordance with this section, it must publish a notice, in such manner as it thinks fit, stating—

- (a) that the CIO has been removed from the register of charities; and
- (b) the date on which the CIO was so removed.]

[(7) In determining the manner in which to publish a notice under subsection (6), the Charity Commission must have regard in particular to—

- (a) the location of the CIO's principal office;
- (b) the area in which the CIO operated; and
- (c) the charitable purposes of the CIO.]

## **203. Consequence of notice under s 202**

(1) Where a notice has been given under section 202(3), the official receiver or any creditor or contributory of the CIO, or the administrative receiver of the CIO (if there is one) may apply to the Secretary of State for directions under this section.

- (2) The grounds on which that application may be made are—
- (a) that the realisable assets of the CIO are sufficient to cover the expenses of the winding up;
  - (b) that the affairs of the CIO do require further investigation; or
  - (c) that for any other reason the early dissolution of the CIO is inappropriate.
- (3) Directions under this section—
- (a) are directions making such provision as the Secretary of State thinks fit for enabling the winding up of the CIO to proceed as if no notice had been given under section 202(3), and
  - (b) may, in the case of an application under section 202(5), include a direction deferring the date at which the dissolution of the CIO is to take effect for such period as the Secretary of State thinks fit.
- (4) An appeal to the court lies from any decision of the Secretary of State on an application for directions under this section.
- (5) It is the duty of the person on whose application any directions are given under this section, or in whose favour an appeal with respect to an application for such directions is determined, within 7 days after the giving of the directions or the determination of the appeal, to deliver to the Charity Commission [...] such a copy of the directions or determination as is prescribed.
- (6) If a person without reasonable excuse fails to deliver a copy as required by subsection (5), he is liable to a fine and, for continued contravention, to a daily default fine.

**204** *omitted*

**205. Dissolution otherwise than under ss 202–203**

- (1) This section applies where the Charity Commission receives—
- (a) a notice served for the purposes of section 172(8) (final meeting of creditors and vacation of office by liquidator), or
  - (b) a notice from the official receiver that the winding up of a CIO by the court is complete.
- (2) [The Charity Commission must remove the CIO from the register of charities on the expiration of 3 months from the date on which it received the notice and the CIO is dissolved on the date on which it is removed from the register.]
- (3) The Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give a direction deferring the date at which the dissolution of the CIO is to take effect for such period as the Secretary of State thinks fit.
- (4) An appeal to the court lies from any decision of the Secretary of State on an application for a direction under subsection (3).
- (5) [omitted]
- (6) It is the duty of the person—
- (a) on whose application a direction is given under subsection (3);
  - (b) in whose favour an appeal with respect to an application for such a direction is determined; or
  - (c) [omitted],
- within 7 days after the giving of the direction, the determination of the appeal or the making of the order, to deliver to the Charity Commission [...] such a copy of the direction, determination or order as is prescribed.
- (7) If a person without reasonable excuse fails to deliver a copy as required by subsection (6), he is liable to a fine and, for continued contravention to a daily default fine.
- (8) Where the Charity Commission removes a CIO from the register of charities in accordance with this section, it must publish a notice, in such manner as it thinks fit, stating—

- (a) that the CIO has been removed from the register of charities; and
  - (b) the date on which the CIO was so removed.
- (9) In determining the manner in which to publish a notice under subsection (8), the Charity Commission must have regard in particular to—
- (a) the location of the CIO's principal office;
  - (b) the area in which the CIO operated; and
  - (c) the charitable purposes of the CIO.]

## CHAPTER 10

### **Malpractice before and during Liquidation; Penalisation of CIOs and charity trustees; Investigations and Prosecutions**

#### *Offences of fraud, deception, etc*

#### **206. Fraud, etc in anticipation of winding up**

(1) When a CIO is ordered to be wound up by the court, or passes a resolution for voluntary winding up, any person, being a past or present charity trustee of the CIO, is deemed to have committed an offence if, within the 12 months immediately preceding the commencement of the winding up, he has—

- (a) concealed any part of the CIO's property to the value of £500 or more, or concealed any debt due to or from the CIO, or
- (b) fraudulently removed any part of the CIO's property to the value of £500 or more, or
- (c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the CIO's property or affairs, or
- (d) made any false entry in any book or paper affecting or relating to the CIO's property or affairs, or
- (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the CIO's property or affairs, or
- (f) pawned, pledged or disposed of any property of the CIO which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the activities undertaken by the CIO in furtherance of its charitable purposes).

(2) Such a person is deemed to have committed an offence if within the period above mentioned he has been privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of subsection (1); and he commits an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in paragraphs (a) to (f) of that subsection, or is privy to the doing by others of any of the things mentioned in paragraphs (c) to (e) of it.

(3) [...]

(4) It is a defence—

- (a) for a person charged under paragraph (a) or (f) of subsection (1) (or under subsection (2) in respect of the things mentioned in either of those two paragraphs) to prove that he had no intent to defraud, and
- (b) for a person charged under paragraph (c) or (d) of subsection (1) (or under subsection (2) in respect of the things mentioned in either of those two paragraphs) to prove that he had no intent to conceal the state of affairs of the CIO or to defeat the law.

(5) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(f), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in such circumstances, is guilty of an offence.

(6) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

(7) The money sums specified in paragraphs (a) and (b) of subsection (1) are subject to increase or reduction by order under section 416 in Part 15.

### **207. Transactions in fraud of creditors**

(1) When a CIO is ordered to be wound up by the court or passes a resolution for voluntary winding up, a person is deemed to have committed an offence if he, being at the time a charity trustee of the CIO—

(a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the CIO's property, or

(b) has concealed or removed any part of the CIO's property since, or within 2 months before, the date of any unsatisfied judgment or order for the payment of money obtained against the CIO.

(2) A person is not guilty of an offence under this section—

(a) by reason of conduct constituting an offence under subsection (1)(a) which occurred more than 5 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 CIO's creditors.

(3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

### **208. Misconduct in course of winding up**

(1) When a CIO is being wound up, whether by the court or voluntarily, any person, being a past or present charity trustee of the CIO, commits an offence if he—

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the CIO's property, and how and to whom and for what consideration and when the CIO disposed of any part of that property (except such part as has been disposed of in the ordinary way of the CIO's business), or

(b) does not deliver up to the liquidator (or as he directs) all such part of the CIO's property as is in his custody or under his control, and which he is required by law to deliver up, or

(c) does not deliver up to the liquidator (or as he directs) all books and papers in his custody or under his control belonging to the CIO and which he is required by law to deliver up, or

(d) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the liquidator as soon as practicable, or

(e) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the CIO's property or affairs.

(2) Such a person commits an offence if after the commencement of the winding up he attempts to account for any part of the CIO's property by fictitious losses or expenses; and he is deemed to have committed that offence if he has so attempted at any meeting of the CIO's creditors within the 12 months immediately preceding the commencement of the winding up.

(3) [...]

(4) It is a defence—

(a) for a person charged under paragraph (a), (b) or (c) of subsection (1) to prove that he had no intent to defraud, and

(b) for a person charged under paragraph (e) of that subsection to prove that he had no intent to conceal the state of affairs of the CIO or to defeat the law.

(5) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

### **209. Falsification of CIO's books**

(1) When a CIO is being wound up, a charity trustee or contributory of the CIO commits an offence if he destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is

privity to the making of any false or fraudulent entry in any register, book of account or document belonging to the CIO with intent to defraud or deceive any person.

(2) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

### **210. Material omissions from statement relating to CIO's affairs**

(1) When a CIO is being wound up, whether by the court or voluntarily, any person, being a past or present charity trustee of the CIO, commits an offence if he makes any material omission in any statement relating to the CIO's affairs.

(2) When a CIO has been ordered to be wound up by the court, or has passed a resolution for voluntary winding up, any such person is deemed to have committed that offence if, prior to the winding up, he has made any material omission in any such statement.

(3) [...]

(4) It is a defence for a person charged under this section to prove that he had no intent to defraud.

(5) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

### **211. False representations to creditors**

(1) When a CIO is being wound up, whether by the court or voluntarily, any person, being a past or present charity trustee of the CIO—

(a) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the CIO's creditors or any of them to an agreement with reference to the CIO's affairs or to the winding up, and

(b) is deemed to have committed that offence if, prior to the winding up, he has made any false representation, or committed any other fraud, for that purpose.

(2) [...]

(3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

### *Penalisation of directors and officers*

### **212. Summary remedy against delinquent directors, liquidators, etc**

(1) This section applies if in the course of the winding up of a CIO it appears that a person who—

(a) is or has been an charity trustee of the CIO,

(b) has acted as liquidator or administrative receiver of the CIO, or

(c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the CIO,

has misapplied or retained, or become accountable for, any money or other property of the CIO, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the CIO.

(2) The reference in subsection (1) to any misfeasance or breach of any fiduciary or other duty in relation to the CIO includes, in the case of a person who has acted as liquidator of the CIO, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator of the CIO.

(3) The court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the person falling within subsection (1) and compel him—

(a) to repay, restore or account for the money or property or any part of it, with interest at such rate as the court thinks just, or

(b) to contribute such sum to the CIO's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just.

(4) The power to make an application under subsection (3) in relation to a person who has acted as liquidator of the CIO is not exercisable, except with the leave of the court, after he has had his release.

(5) The power of a contributory to make an application under subsection (3) is not exercisable except with the leave of the court, but is exercisable notwithstanding that he will not benefit from any order the court may make on the application.

### **213. Fraudulent trading**

(1) If in the course of the winding up of a CIO it appears that any business of the CIO has been carried on with intent to defraud creditors of the CIO or creditors of any other person, or for any fraudulent purpose, the following has effect.

(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 CIO's assets as the court thinks proper.

### **214. Wrongful trading**

(1) Subject to subsection (3) below, if in the course of the winding up of a CIO it appears that subsection (2) of this section applies in relation to a person who is or has been a charity trustee of the CIO, the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the CIO's assets as the court thinks proper.

(2) This subsection applies in relation to a person if—

(a) the CIO has gone into insolvent liquidation,

(b) at some time before the commencement of the winding up of the CIO, that person knew or ought to have concluded that there was no reasonable prospect that the CIO would avoid going into insolvent liquidation, and

(c) that person was a charity trustee of the CIO at that time;

but the court shall not make a declaration under this section in any case where the time mentioned in paragraph (b) above was before 28th April 1986.

(3) The court shall not make a declaration under this section with respect to any person if it is satisfied that after the condition specified in subsection (2)(b) was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the CIO's creditors as (assuming him to have known that there was no reasonable prospect that the CIO would avoid going into insolvent liquidation) he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a charity trustee of a CIO ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that charity trustee in relation to the CIO, and

(b) the general knowledge, skill and experience that that charity trustee has.

(5) The reference in subsection (4) to the functions carried out in relation to a CIO by a charity trustee of the CIO includes any functions which he does not carry out but which have been entrusted to him.

(6) For the purposes of this section a CIO goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(7) [...]

(8) This section is without prejudice to section 213.

## **215. Proceedings under ss 213, 214**

- (1) On the hearing of an application under section 213 or 214, the liquidator may himself give evidence or call witnesses.
- (2) Where under either section the court makes a declaration, it may give such further directions as it thinks proper for giving effect to the declaration; and in particular, the court may—
  - (a) provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the CIO to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the CIO held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf, and
  - (b) from time to time make such further order as may be necessary for enforcing any charge imposed under this subsection.
- (3) For the purposes of subsection (2), “assignee”—
  - (a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but
  - (b) does not include an assignee for valuable consideration (not including consideration by way of marriage or the formation of a civil partnership) given in good faith and without notice of any of the matters on the ground of which the declaration is made.
- (4) Where the court makes a declaration under either section in relation to a person who is a creditor of the CIO, it may direct that the whole or any part of any debt owed by the CIO to that person and any interest thereon shall rank in priority after all other debts owed by the CIO and after any interest on those debts.
- (5) Sections 213 and 214 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

## **216. Restriction on re-use of CIO names**

- (1) This section applies to a person where a CIO (“the liquidating CIO”) has gone into insolvent liquidation on or after the appointed day and he was a charity trustee of the CIO at any time in the period of 12 months ending with the day before it went into liquidation.
- (2) For the purposes of this section, a name is a prohibited name in relation to such a person if—
  - (a) it is a name by which the liquidating CIO was known at any time in that period of 12 months, or
  - (b) it is a name which is so similar to a name falling within paragraph (a) as to suggest an association with that CIO.
- (3) Except with leave of the court or in such circumstances as may be prescribed, a person to whom this section applies shall not at any time in the period of 5 years beginning with the day on which the liquidating CIO went into liquidation—
  - (a) be a charity trustee of any other CIO that is known by a prohibited name, or
  - (b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such CIO, or
  - (c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a CIO) under a prohibited name.
- (4) If a person acts in contravention of this section, he is liable to imprisonment or a fine, or both.
- (5) In subsection (3) “the court” means any court having jurisdiction to wind up CIOs; and on an application for leave under that subsection, the Secretary of State or the official receiver may appear and call the attention of the court to any matters which seem to him to be relevant.

(6) References in this section, in relation to any time, to a name by which a CIO is known are to the name of the CIO at that time or to any name under which the CIO carries on business at that time.

(7) For the purposes of this section a CIO goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(8) [omitted]

### **217. Personal liability for debts, following contravention of s 216**

(1) A person is personally responsible for all the relevant debts of a CIO if at any time—

(a) in contravention of section 216, he is involved in the management of the CIO, or

(b) as a person who is involved in the management of the CIO, he acts or is willing to act on instructions given (without the leave of the court) by a person whom he knows at that time to be in contravention in relation to the CIO of section 216.

(2) Where a person is personally responsible under this section for the relevant debts of a CIO, he is jointly and severally liable in respect of those debts with the CIO and any other person who, whether under this section or otherwise, is so liable.

(3) For the purposes of this section the relevant debts of a CIO are—

(a) in relation to a person who is personally responsible under paragraph (a) of subsection (1), such debts and other liabilities of the CIO as are incurred at a time when that person was involved in the management of the CIO, and

(b) in relation to a person who is personally responsible under paragraph (b) of that subsection, such debts and other liabilities of the CIO as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.

(4) For the purposes of this section, a person is involved in the management of a CIO if he is a charity trustee of the CIO or if he is concerned, whether directly or indirectly, or takes part, in the management of the CIO.

(5) For the purposes of this section a person who, as a person involved in the management of a CIO, has at any time acted on instructions given (without the leave of the court) by a person whom he knew at that time to be in contravention in relation to the CIO of section 216 is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

(6) [omitted]

### **218. Prosecution of delinquent charity trustees and members of CIO**

(1) If it appears to the court in the course of a winding up by the court that any past or present charity trustee, or any member, of the CIO has been guilty of any offence in relation to the CIO for which he is criminally liable, the court may (either on the application of a person interested in the winding up or of its own motion) direct the liquidator to refer the matter

(a) in the case of a winding up of a CIO, to the Secretary of State, and

(b) [omitted]

(2) *repealed*

(3) If in the case of a winding up of a CIO by the court it appears to the liquidator, not being the official receiver, that any past or present charity trustee of the CIO, or any member of it, has been guilty of an offence in relation to the CIO for which he is criminally liable, the liquidator shall report the matter to the official receiver.

(4) If it appears to the liquidator in the course of a voluntary winding up that any past or present charity trustee of the CIO, or any member of it, has been guilty of an offence in relation to the CIO for which he is criminally liable, he shall forthwith report the matter—

(a) in the case of a winding up of a CIO, to the Secretary of State, and

(b) [omitted]

and shall furnish to the Secretary of State [...] such information and give to him such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as the Secretary of State [...] requires.

(5) Where a report is made to the Secretary of State under subsection (4) he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the CIO as appear to him to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act 1985 [to investigate the CIO's affairs as if the CIO were a company].

(6) If it appears to the court in the course of a voluntary winding up that—

(a) any past or present charity trustee of the CIO, or any member of it, has been guilty as above-mentioned, and

(b) no report with respect to the matter has been made by the liquidator under subsection (4),

the court may (on the application of any person interested in the winding up or of its own motion) direct the liquidator to make such a report. On a report being made accordingly, this section has effect as though the report had been made in pursuance of subsection (4).

## **219. Obligations arising under s 218**

(1) For the purpose of an investigation by the Secretary of State in consequence of a report made to him under section 218(4), any obligation imposed on a person by any provision of the Companies Act 1985 to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in section 218(5) is to be regarded as an obligation similarly to assist the Secretary of State in his investigation.

(2) An answer given by a person to a question put to him in exercise of the powers conferred by section 218(5) may be used in evidence against him.

(2A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

(a) no evidence relating to the answer may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(2B) Subsection (2A) applies to any offence other than—

(a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or

(b) [...].

(3) Where criminal proceedings are instituted by the Director of Public Prosecutions [...] or the Secretary of State following any report or reference under section 218, it is the duty of the liquidator and every charity trustee and agent of the CIO past and present (other than the defendant [...]) to give to the Director of Public Prosecutions [...] or the Secretary of State (as the case may be) all assistance in connection with the prosecution which he is reasonably able to give. For this purpose “agent” includes any banker or solicitor of the CIO and any person employed by the CIO as auditor, whether that person is or is not a charity trustee of the CIO.

(4) If a person fails or neglects to give assistance in the manner required by subsection (3), the court may, on the application of the Director of Public Prosecutions [...] or the Secretary of State (as the case may be) direct the person to comply with that subsection; and if the application is made with respect to a liquidator, the court may (unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the CIO to enable him to do so) direct that the costs shall be borne by the liquidator personally.

**PART 5**  
**Winding up of unregistered companies**

*omitted*

**PART 6**  
**Miscellaneous Provisions Applying to CIOs which are Insolvent or in Liquidation**

*Office-holders*

**230. Holders of office to be qualified insolvency practitioners**

(1) *repealed*

(2) Where an administrative receiver of a CIO is appointed, he must be a person who is so qualified.

(3) Where a CIO goes into liquidation, the liquidator must be a person who is so qualified.

(4) Where a provisional liquidator is appointed, he must be a person who is so qualified.

(5) Subsections (3) and (4) are without prejudice to any enactment under which the official receiver is to be, or may be, liquidator or provisional liquidator.

**231. Appointment to office of two or more persons**

(1) This section applies if an appointment or nomination of any person to the office of administrative receiver, liquidator or provisional liquidator—

(a) relates to more than one person, or

(b) has the effect that the office is to be held by more than one person.

(3) The appointment or nomination shall declare whether any act required or authorised under any enactment to be done by the administrative receiver, liquidator or provisional liquidator is to be done by all or any one or more of the persons for the time being holding the office in question.

**232. Validity of office-holder's acts**

The acts of an individual as administrative receiver, liquidator or provisional liquidator of a CIO are valid notwithstanding any defect in his appointment, nomination or qualifications.

*Management by administrators, liquidators, etc*

**233. Supplies of gas, water, electricity, etc**

(1) This section applies in the case of a CIO where—

(a) the CIO enters administration, or

(b) an administrative receiver is appointed, or

(ba) a moratorium under section 1A is in force, or

(c) a voluntary arrangement approved under Part I, has taken effect, or

(d) the CIO goes into liquidation, or

(e) a provisional liquidator is appointed;

and “the office-holder” means the administrator, the administrative receiver, the nominee, the supervisor of the voluntary arrangement, the liquidator or the provisional liquidator, as the case may be.

(2) If a request is made by or with the concurrence of the office-holder for the giving, after the effective date, of any of the supplies mentioned in the next subsection, the supplier—

- (a) may make it a condition of the giving of the supply that the office-holder personally guarantees the payment of any charges in respect of the supply, but
- (b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the CIO before the effective date are paid.

(3) The supplies referred to in subsection (2) are—

- (a) a supply of gas by a gas supplier within the meaning of Part I of the Gas Act 1986;
- (b) a supply of electricity by an electricity supplier within the meaning of Part I of the Electricity Act 1989;
- (c) a supply of water by a water undertaker [...],
- (d) supply of communications services by a provider of a public electronic communications service.

(4) “The effective date” for the purposes of this section is whichever is applicable of the following dates—

- (a) the date on which the CIO entered administration,
- (b) the date on which the administrative receiver was appointed (or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed),
- (ba) the date on which the moratorium came into force,
- (c) the date on which the voluntary arrangement took effect,
- (d) the date on which the CIO went into liquidation,
- (e) the date on which the provisional liquidator was appointed.

(5) The following applies to expressions used in subsection (3)—

- (a) *repealed*
- (b) *repealed*
- (c) *repealed*
- (d) “communications services” do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003).

### **234. Getting in the CIO's property**

(1) This section applies in the case of a CIO where—

- (a) the CIO enters administration, or
- (b) an administrative receiver is appointed, or
- (c) the CIO goes into liquidation, or
- (d) a provisional liquidator is appointed;

and “the office-holder” means the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.

(2) Where any person has in his possession or control any property, books, papers or records to which the CIO appears to be entitled, the court may require that person forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder.

(3) Where the office-holder—

- (a) seizes or disposes of any property which is not property of the CIO, and
- (b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the next subsection has effect.

(4) In that case the office-holder—

(a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office-holder's own negligence, and

(b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

### **235. Duty to co-operate with office-holder**

(1) This section applies as does section 234; and it also applies, in the case of a CIO in respect of which a winding-up order has been made by the court, as if references to the office-holder included the official receiver, whether or not he is the liquidator.

(2) Each of the persons mentioned in the next subsection shall—

(a) give to the office-holder such information concerning the CIO and its promotion, formation, business, dealings, affairs or property as the office-holder may at any time after the effective date reasonably require, and

(b) attend on the office-holder at such times as the latter may reasonably require.

(3) The persons referred to above are—

(a) those who are or have at any time been charity trustees of the CIO,

(b) those who have taken part in the formation of the CIO at any time within one year before the effective date,

(c) those who are in the employment of the CIO, or have been in its employment (including employment under a contract for services) within that year, and are in the office-holder's opinion capable of giving information which he requires,

(d) [those who are, or have within that year been, officers of or in the employment (including employment under a contract for services) of, a company or a CIO which is, or within that year was, a charity trustee of the CIO in question], and

(e) in the case of a CIO being wound up by the court, any person who has acted as administrator, administrative receiver or liquidator of the CIO.

(4) For the purposes of subsections (2) and (3), “the effective date” is whichever is applicable of the following dates—

(a) the date on which the CIO entered administration,

(b) the date on which the administrative receiver was appointed or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed,

(c) the date on which the provisional liquidator was appointed, and

(d) the date on which the CIO went into liquidation.

(5) If a person without reasonable excuse fails to comply with any obligation imposed by this section, he is liable to a fine and, for contravention, to a daily default fine.

### **236. Inquiry into CIO's dealings, etc**

(1) This section applies as does section 234; and it also applies in the case of a CIO in respect of which a winding-up order has been made by the court as if references to the office-holder included the official receiver, whether or not he is the liquidator.

(2) The court may, on the application of the office-holder, summon to appear before it—

(a) any charity trustee of the CIO,

(b) any person known or suspected to have in his possession any property of the CIO or supposed to be indebted to the CIO, or

(c) any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the CIO.

(3) The court may require any such person as is mentioned in subsection (2)(a) to (c) to submit to the court an account of his dealings with the CIO or to produce any books, papers or other records in his possession or under his control relating to the CIO or the matters mentioned in paragraph (c) of the subsection.

(3A) An account submitted to the court under subsection (3) must be contained in--

(a) a witness statement verified by a statement of truth; and

(b) [...].

(4) The following applies in a case where—

(a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or

(b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.

(5) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed charity trustee of the court—

(a) for the arrest of that person, and

(b) for the seizure of any books, papers, records, money or goods in that person's possession.

(6) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

### **237. Court's enforcement powers under s 236**

(1) If it appears to the court, on consideration of any evidence obtained under section 236 or this section, that any person has in his possession any property of the CIO, the court may, on the application of the office-holder, order that person to deliver the whole or any part of the property to the office-holder at such time, in such manner and on such terms as the court thinks fit.

(2) If it appears to the court, on consideration of any evidence so obtained, that any person is indebted to the CIO, the court may, on the application of the office-holder, order that person to pay to the office-holder, at such time and in such manner as the court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the court thinks fit.

(3) The court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under section 236 or this section shall be examined in any part of the United Kingdom where he may for the time being be, or in a place outside the United Kingdom.

(4) Any person who appears or is brought before the court under section 236 or this section may be examined on oath, either orally or (except in Scotland) by interrogatories, concerning the CIO or the matters mentioned in section 236(2)(c).

### *Adjustment of prior transactions (administration and liquidation)*

### **238. Transactions at an undervalue (England and Wales)**

(1) This section applies in the case of a CIO where—

(a) the CIO enters administration, or

(b) the CIO goes into liquidation;

and “the office-holder” means the administrator or the liquidator, as the case may be.

(2) Where the CIO has at a relevant time (defined in section 240) entered into a transaction with any person at an undervalue, the office-holder may apply to the court for an order under this section.

(3) Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the CIO had not entered into that transaction.

(4) For the purposes of this section and section 241, a CIO enters into a transaction with a person at an undervalue if—

(a) the CIO makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the CIO to receive no consideration, or

(b) the CIO enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the CIO.

(5) The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied—

(a) that the CIO which entered into the transaction did so in good faith and for the purpose of carrying on its business, and

(b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the CIO.

### **239. Preferences (England and Wales)**

(1) This section applies as does section 238.

(2) Where the CIO has at a relevant time (defined in the next section) given a preference to any person, the office-holder may apply to the court for an order under this section.

(3) Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the CIO had not given that preference.

(4) For the purposes of this section and section 241, a CIO gives a preference to a person if—

(a) that person is one of the CIO's creditors or a surety or guarantor for any of the CIO's debts or other liabilities, and

(b) the CIO does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the CIO going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.

(5) The court shall not make an order under this section in respect of a preference given to any person unless the CIO which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b).

(6) A CIO which has given a preference to a person connected with the CIO (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (5).

(7) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

### **240. "Relevant time" under ss 238, 239**

(1) Subject to the next subsection, the time at which a CIO enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given—

(a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the CIO (otherwise than by reason only of being its employee), at a time in the period of 2 years ending with the onset of insolvency (which expression is defined below),

(b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of 6 months ending with the onset of insolvency,

(c) in either case, at a time between the making of an administration application in respect of the CIO and the making of an administration order on that application, and

(d) in either case, at a time between the filing with the court of a copy of notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 and the making of an appointment under that paragraph.

(2) Where a CIO enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (1)(a) or (b), that time is not a relevant time for the purposes of section 238 or 239 unless the CIO—

(a) is at that time unable to pay its debts within the meaning of section 123 in Chapter 6 of Part 4, or

(b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction or preference;

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a CIO with a person who is connected with the CIO.

(3) For the purposes of subsection (1), the onset of insolvency is—

(a) in a case where section 238 or 239 applies by reason of an administrator of a CIO being appointed by administration order, the date on which the administration application is made,

(b) in a case where section 238 or 239 applies by reason of an administrator of a CIO being appointed under paragraph 14 or 22 of Schedule B1 following filing with the court of a copy of a notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,

(c) in a case where section 238 or 239 applies by reason of an administrator of a CIO being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect,

(d) in a case where section 238 or 239 applies by reason of a CIO going into liquidation either following conversion of administration into winding up by virtue of Article 37 of the EC Regulation or at the time when the appointment of an administrator ceases to have effect, the date on which the CIO entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed), and

(e) in a case where section 238 or 239 applies by reason of a CIO going into liquidation at any other time, the date of the commencement of the winding up.

#### **241. Orders under ss 238, 239**

(1) Without prejudice to the generality of sections 238(3) and 239(3), an order under either of those sections with respect to a transaction or preference entered into or given by a CIO may (subject to the next subsection)—

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the CIO,

(b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred,

(c) release or discharge (in whole or in part) any security given by the CIO,

(d) require any person to pay, in respect of benefits received by him from the CIO, such sums to the office-holder as the court may direct,

(e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be under such new or revived obligations to that person as the court thinks appropriate,

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the

security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference, and

(g) provide for the extent to which any person whose property is vested by the order in the CIO, or on whom obligations are imposed by the order, is to be able to prove in the winding up of the CIO for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under section 238 or 239 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the CIO in question entered into the transaction or (as the case may be) the person to whom the preference was given; but such an order—

(a) shall not prejudice any interest in property which was acquired from a person other than the CIO and was acquired in good faith and for value, or prejudice any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction or preference in good faith and for value to pay a sum to the office-holder, except where that person was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the CIO.

(2A) Where a person has acquired an interest in property from a person other than the CIO in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

(a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or

(b) he was connected with, or was an associate of, either the CIO in question or the person with whom that CIO entered into the transaction or to whom that CIO gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of paragraph (a) or (as the case may be) paragraph (b) of subsection (2) that the interest was acquired or the benefit was received otherwise than in good faith.

(3) For the purposes of subsection (2A)(a), the relevant surrounding circumstances are (as the case may require)—

(a) the fact that the CIO in question entered into the transaction at an undervalue; or

(b) the circumstances which amounted to the giving of the preference by the CIO in question;

and subsections (3A) to (3C) have effect to determine whether, for those purposes, a person has notice of the relevant proceedings.

(3A) Where section 238 or 239 applies by reason of a CIO's entering administration, a person has notice of the relevant proceedings if he has notice that—

(a) an administration application has been made,

(b) an administration order has been made,

(c) a copy of a notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 has been filed, or

(d) notice of the appointment of an administrator has been filed under paragraph 18 or 29 of that Schedule.

(3B) Where section 238 or 239 applies by reason of a CIO's going into liquidation at the time when the appointment of an administrator of the CIO ceases to have effect, a person has notice of the relevant proceedings if he has notice that—

(a) an administration application has been made,

(b) an administration order has been made,

(c) a copy of a notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 has been filed,

(d) notice of the appointment of an administrator has been filed under paragraph 18 or 29 of that Schedule, or

(e) the CIO has gone into liquidation.

(3C) In a case where section 238 or 239 applies by reason of the CIO in question going into liquidation at any other time, a person has notice of the relevant proceedings if he has notice—

(a) where the CIO goes into liquidation on the making of a winding-up order, of the fact that the petition on which the winding-up order is made has been presented or of the fact that the CIO has gone into liquidation;

(b) in any other case, of the fact that the CIO has gone into liquidation.

(4) The provisions of sections 238 to 241 apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the CIO had no power to enter into or give.

#### **242 to 243 omitted**

#### **244. Extortionate credit transactions**

(1) This section applies as does section 238, and where the CIO is, or has been, a party to a transaction for, or involving, the provision of credit to the CIO.

(2) The court may, on the application of the office-holder, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending with the day on which the CIO entered administration or went into liquidation.

(3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

(a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or

(b) it otherwise grossly contravened ordinary principles of fair dealing;

and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.

(4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit, that is to say—

(a) provision setting aside the whole or part of any obligation created by the transaction,

(b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held,

(c) provision requiring any person who is or was a party to the transaction to pay to the office-holder any sums paid to that person, by virtue of the transaction, by the CIO,

(d) provision requiring any person to surrender to the office-holder any property held by him as security for the purposes of the transaction,

(e) provision directing accounts to be taken between any persons.

(5) The powers conferred by this section are exercisable in relation to any transaction concurrently with any powers exercisable in relation to that transaction as a transaction at an undervalue [...].

#### **245. Avoidance of certain floating charges**

(1) This section applies as does section 238 [...].

(2) Subject as follows, a floating charge on the CIO's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—

(a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the CIO at the same time as, or after, the creation of the charge,

- (b) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after the creation of the charge, of any debt of the CIO, and
  - (c) the amount of such interest (if any) as is payable on the amount falling within paragraph (a) or (b) in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.
- (3) Subject to the next subsection, the time at which a floating charge is created by a CIO is a relevant time for the purposes of this section if the charge is created—
- (a) in the case of a charge which is created in favour of a person who is connected with the CIO, at a time in the period of 2 years ending with the onset of insolvency,
  - (b) in the case of a charge which is created in favour of any other person, at a time in the period of 12 months ending with the onset of insolvency,
  - (c) in either case, at a time between the making of an administration application in respect of the CIO and the making of an administration order on that application, or
  - (d) in either case, at a time between the filing with the court of a copy of notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 and the making of an appointment under that paragraph.
- (4) Where a CIO creates a floating charge at a time mentioned in subsection (3)(b) and the person in favour of whom the charge is created is not connected with the CIO, that time is not a relevant time for the purposes of this section unless the CIO—
- (a) is at that time unable to pay its debts within the meaning of section 123 in Chapter 6 of Part 4, or
  - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction under which the charge is created.
- (5) For the purposes of subsection (3), the onset of insolvency is—
- (a) in a case where this section applies by reason of an administrator of a CIO being appointed by administration order, the date on which the administration application is made,
  - (b) in a case where this section applies by reason of an administrator of a CIO being appointed under paragraph 14 or 22 of Schedule B1 following filing with the court of a copy of notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,
  - (c) in a case where this section applies by reason of an administrator of a CIO being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect, and
  - (d) in a case where this section applies by reason of a CIO going into liquidation, the date of the commencement of the winding up.
- (6) For the purposes of subsection (2)(a) the value of any goods or services supplied by way of consideration for a floating charge is the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the CIO.

#### **246. Unenforceability of liens on books, etc**

- (1) This section applies in the case of a CIO where—
- (a) the CIO enters administration, or
  - (b) the CIO goes into liquidation, or
  - (c) a provisional liquidator is appointed;

and “the office-holder” means the administrator, the liquidator or the provisional liquidator, as the case may be.

(2) Subject as follows, a lien or other right to retain possession of any of the books, papers or other records of the CIO is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the office-holder.

(3) This does not apply to a lien on documents which give a title to property and are held as such.

#### **246A Remote attendance at meetings**

(1) Subject to subsection (2), this section applies to—

- (a) any meeting of the creditors of a CIO summoned under this Act or the rules, or
- (b) any meeting of the members or contributories of a CIO summoned by the office-holder under this Act or the rules, other than a meeting of the members of a CIO in a members' voluntary winding up.

(2) [omitted]

(3) Where the person summoning a meeting (“the convener”) considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(4) Where a meeting is conducted and held in the manner referred to in subsection (3), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(5) For the purposes of this section—

- (a) person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and
- (b) a person is able to exercise the right to vote at a meeting when—
  - (i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
  - (ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(6) The convener of a meeting which is to be conducted and held in the manner referred to in subsection (3) shall make whatever arrangements the convener considers appropriate to—

- (a) enable those attending the meeting to exercise their rights to speak or vote, and
- (b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(7) Where in the reasonable opinion of the convener—

- (a) a meeting will be attended by persons who will not be present together at the same place, and
- (b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under this Act or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(8) In making the arrangements referred to in subsection (6) and in forming the opinion referred to in subsection (7)(b), the convener must have regard to the legitimate interests of the creditors, members or contributories and others attending the meeting in the efficient despatch of the business of the meeting.

(9) If—

- (a) the notice of a meeting does not specify a place for the meeting,
- (b) the convener is requested in accordance with the rules to specify a place for the meeting, and

(c) that request is made—

- (i) in the case of a meeting of creditors or contributories, by not less than ten percent in value of the creditors or contributories, or
- (ii) in the case of a meeting of members, by members representing not less than ten percent of the total voting rights of all the members having at the date of the request a right to vote at the meeting,

it shall be the duty of the convener to specify a place for the meeting.

(10) In this section, “the office-holder”, in relation to a CIO, means—

- (a) its liquidator, provisional liquidator, administrator, or administrative receiver, or
- (b) where a voluntary arrangement in relation to the CIO is proposed or has taken effect under Part 1, the nominee or the supervisor of the voluntary arrangement.

#### **246B. Use of websites**

(1) Subject to subsection (2), where any provision of this Act or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—

- (a) in accordance with the rules, and
- (b) in such circumstances as may be prescribed.

(2) [omitted]

(3) In this section, “the office-holder” means—

- (a) the liquidator, provisional liquidator, administrator, or administrative receiver of a CIO, or
- (b) where a voluntary arrangement in relation to a CIO is proposed or has taken effect under Part 1, the nominee or the supervisor of the voluntary arrangement.

## **PART 7**

### **Interpretation for First Group of Parts**

#### **247. “Insolvency” and “go into liquidation”**

(1) In this Group of Parts, except in so far as the context otherwise requires, “insolvency”, in relation to a CIO, includes the approval of a voluntary arrangement under Part 1, or the appointment of an administrator or administrative receiver.

(2) For the purposes of any provision in this Group of Parts, a CIO goes into liquidation if it passes a resolution for voluntary winding up or an order for its winding up is made by the court at a time when it has not already gone into liquidation by passing such a resolution.

(3) The reference to a resolution for voluntary winding up in subsection (2) includes a reference to a resolution which is deemed to occur by virtue of—

- (a) paragraph 83(6)(b) of Schedule B1, or
- (b) an order made following conversion of administration or a voluntary arrangement into winding up by virtue of Article 37 of the EC Regulation.

#### **248. “Secured creditor”, etc**

(1) In this Group of Parts, except in so far as the context otherwise requires—

- (a) “secured creditor”, in relation to a CIO, means a creditor of the CIO who holds in respect of his debt a security over property of the CIO, and “unsecured creditor” is to be read accordingly; and
- (b) “security” means—

- (i) in relation to England and Wales, any mortgage, charge, lien or other security
- (ii) [omitted]

#### **249. “Connected” with a CIO**

For the purposes of any provision in this Group of Parts, a person is connected with a CIO if—

- (a) he is a charity trustee [...] of the CIO or an associate of such a charity trustee [...], or
- (b) he is an associate of the CIO;

and “associate” has the meaning given by section 435 in Part 18 of this Act.

#### **250 omitted**

#### **251. Expressions used generally**

In this Group of Parts, except in so far as the context otherwise requires—

“administrative receiver” means—

- (a) an administrative receiver as defined by section 29(2) in Chapter 1 of Part 3, or
- (b) [omitted]

“agent” does not include a person’s counsel acting as such;

“books and papers” and “books or papers” includes accounts, deeds, writing and documents;

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain;

“chattel leasing agreement” means an agreement for the bailment [...] of goods which is capable of subsisting for more than 3 months;

“contributory” has the meaning given by section 79;

“the court”, in relation to a CIO, means a court having jurisdiction to wind up the CIO;

“charity trustee” includes any person occupying the position of charity trustee, by whatever name called;

“document” includes summons, notice, order and other legal process, and registers;

“floating charge” means a charge which, as created, was a floating charge [...];

“the Gazette” means—

- (a) as respects CIOs, the London Gazette;
- (b) [omitted];

“the official rate”, in relation to interest, means the rate payable under section 189(4);

“prescribed” means prescribed by the rules;

“receiver” [...]

“retention of title agreement” means an agreement for the sale of goods to a CIO, being an agreement—

- (a) which does not constitute a charge on the goods, but
- (b) under which, if the seller is not paid and the CIO is wound up, the seller will have priority over all other creditors of the CIO as respects the goods or any property representing the goods;

“the rules” means rules under section 411 in Part 15; and

*other definitions repealed*

**The Third Group of Parts**  
**Miscellaneous Matters Bearing on both CIO and Individual**  
**Insolvency; General Interpretation; Final Provisions**

**PART 12**

**Preferential Debts in CIO and Individual Insolvency**

**386. Categories of preferential debts**

(1) A reference in this Act to the preferential debts of a CIO or an individual is to the debts listed in Schedule 6 to this Act (contributions to occupational pension schemes; remuneration, etc of employees; levies on coal and steel production); and references to preferential creditors are to be read accordingly.

(2) In that Schedule “the debtor” means the CIO or the individual concerned.

(3) Schedule 6 is to be read with Schedule 4 to the Pension Schemes Act 1993 (occupational pension scheme contributions).

**387. "The relevant date"**

(1) This section explains references in Schedule 6 to the relevant date (being the date which determines the existence and amount of a preferential debt).

(2) For the purposes of section 4 in Part I (meetings to consider CIO voluntary arrangement), the relevant date in relation to a CIO which is not being wound up is—

(a) if the CIO is in administration, the date on which it entered administration, and

(b) if the CIO is not in administration, the date on which the voluntary arrangement takes effect.

(2A) For the purposes of paragraph 31 of Schedule A1 (meetings to consider CIO voluntary arrangement where a moratorium under section 1A is in force), the relevant date in relation to a CIO is the date of filing.

(3) In relation to a CIO which is being wound up, the following applies—

(a) if the winding up is by the court, and the winding-up order was made immediately upon the discharge of an administration order, the relevant date is the date on which the CIO entered administration;

(aa) if the winding up is by the court and the winding-up order was made following conversion of administration into winding up by virtue of Article 37 of the EC Regulation, the relevant date is the date on which the CIO entered administration;

(ab) if the CIO is deemed to have passed a resolution for voluntary winding up by virtue of an order following conversion of administration into winding up under Article 37 of the EC Regulation, the relevant date is the date on which the CIO entered administration;

(b) if the case does not fall within paragraph (a), (aa) or (ab) and the CIO—

(i) is being wound up by the court, and

(ii) had not commenced to be wound up voluntarily before the date of the making of the winding-up order,

the relevant date is the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment has been made, the date of the winding-up order;

(ba) if the case does not fall within paragraph (a), (aa), (ab) or (b) and the CIO is being wound up following administration pursuant to paragraph 83 of Schedule B1, the relevant date is the date on which the CIO entered administration;

(c) if the case does not fall within paragraph (a), (aa), (ab), (b) or (ba), the relevant date is the date of the passing of the resolution for the winding up of the CIO.

(3A) In relation to a CIO which is in administration (and to which no other provision of this section applies) the relevant date is the date on which the CIO enters administration.

(4) In relation to a CIO in receivership (where section 40 or, as the case may be, section 59 applies), the relevant date is—

- (a) in England and Wales, the date of the appointment of the receiver by debenture-holders,
- (b) [omitted]

(5) – (6) [omitted]

## **PART 13**

### **Insolvency Practitioners and their Qualification**

*Restrictions on unqualified persons acting as liquidator, trustee in bankruptcy, etc*

#### **388. Meaning of “act as insolvency practitioner”**

(1) A person acts as an insolvency practitioner in relation to a CIO by acting—

- (a) as its liquidator, provisional liquidator, administrator or administrative receiver, or
- (b) where a voluntary arrangement in relation to the CIO is proposed or approved under Part I, as nominee or supervisor.

(2) [omitted]

(2A) [omitted]

(2B) In relation to a voluntary arrangement proposed under Part 1 or 8, a person acts as nominee if he performs any of the functions conferred on nominees under the Part in question.

(3) [omitted]

(4) In this section—

“administrative receiver” has the meaning given by section 251 of Part 7;  
[...].

(5) Nothing in this section applies to anything done by—

- (a) the official receiver, or
- (b) [omitted]

(6) Nothing in this section applies to anything done (whether in the United Kingdom or elsewhere) in relation to insolvency proceedings under the EC Regulation in a Member State other than the United Kingdom.

#### **389. Acting without qualification an offence**

(1) A person who acts as an insolvency practitioner in relation to a CIO at a time when he is not qualified to do so is liable to imprisonment or a fine, or to both.

(1A) This section is subject to section 389A.

(2) This section does not apply to the official receiver [...].

#### **389A. Authorisation of nominees and supervisors**

(1) Section 389 does not apply to a person acting, in relation to a voluntary arrangement proposed or approved under Part 1 [...], as nominee or supervisor if he is authorised so to act.

(2) For the purposes of subsection (1) and those Parts, an individual to whom subsection (3) does not apply is authorised to act as nominee or supervisor in relation to such an arrangement if—

(a) he is a member of a body recognised for the purpose by the Secretary of State or of a body recognised for the purposes of Article 348A(2)(a) of the Insolvency (Northern Ireland) Order 1989 by the Department of Enterprise, Trade and Investment for Northern Ireland, and

(b) there is in force security [...] for the proper performance of his functions and that security [...] meets the prescribed requirements with respect to his so acting in relation to the arrangement.

- (3) This subsection applies to a person if—
- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
  - (aa) a moratorium period under a debt relief order applies in relation to him (under Part 7A of this Act),
  - (b) he is subject to a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002,
  - (c) he is a patient within the meaning of section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003, or
  - (d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as nominee or supervisor.
- (4) The Secretary of State may by order declare a body which appears to him to fall within subsection (5) to be a recognised body for the purposes of subsection (2)(a).
- (5) A body may be recognised if it maintains and enforces rules for securing that its members—
- (a) are fit and proper persons to act as nominees or supervisors, and
  - (b) meet acceptable requirements as to education and practical training and experience.
- (6) For the purposes of this section, a person is a member of a body only if he is subject to its rules when acting as nominee or supervisor (whether or not he is in fact a member of the body).
- (7) An order made under subsection (4) in relation to a body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within subsection (5).
- (8) An order of the Secretary of State under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision for members of the body in question to continue to be treated as members of a recognised body for a specified period after the revocation takes effect.

**389B** *omitted*

*The requisite qualification, and the means of obtaining it*

**390. Persons not qualified to act as insolvency practitioners**

- (1) A person who is not an individual is not qualified to act as an insolvency practitioner.
- (2) A person is not qualified to act as an insolvency practitioner at any time unless at that time—
- (a) he is authorised so to act by virtue of membership of a professional body recognised under section 391 below, being permitted so to act by or under the rules of that body, or
  - (b) he holds an authorisation granted by a competent authority under section 393; or
  - (c) he holds an authorisation granted by the Department of Enterprise, Trade and Investment for Northern Ireland under Article 352 of the Insolvency (Northern Ireland) Order 1989.
- (3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless—
- (a) there is in force at that time security [...] for the proper performance of his functions, and
  - (b) that security [...] meets the prescribed requirements with respect to his so acting in relation to that other person.
- (4) A person is not qualified to act as an insolvency practitioner at any time if at that time—
- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
  - (aa) a moratorium period under a debt relief order applies in relation of him,

(b) he is subject to a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002,

(c) he is a patient within the meaning of section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 or has had a guardian appointed to him under the Adults with Incapacity (Scotland) Act 2000 (asp 4), or

(d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as an insolvency practitioner.

(5) A person is not qualified to act as an insolvency practitioner while a bankruptcy restrictions order or a debt relief restrictions order is in force in respect of him.

[(6) This section does not apply to a body corporate appointed as an interim manager under section 76(3)(g) of the Charities Act 2011.]

### **391. Recognised professional bodies**

(1) The Secretary of State may by order declare a body which appears to him to fall within subsection (2) below to be a recognised professional body for the purposes of this section.

(2) A body may be recognised if it regulates the practice of a profession and maintains and enforces rules for securing that such of its members as are permitted by or under the rules to act as insolvency practitioners—

(a) are fit and proper persons so to act, and

(b) meet acceptable requirements as to education and practical training and experience.

(3) References to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question.

The reference in section 390(2) above to membership of a professional body recognised under this section is to be read accordingly.

(4) An order made under subsection (1) in relation to a professional body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within subsection (2).

(5) An order of the Secretary of State under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision whereby members of the body in question continue to be treated as authorised to act as insolvency practitioners for a specified period after the revocation takes effect.

### **392. Authorisation by competent authority**

(1) Application may be made to a competent authority for authorisation to act as an insolvency practitioner.

(2) The competent authorities for this purpose are—

(a) in relation to a case of any description specified in directions given by the Secretary of State, the body or person so specified in relation to cases of that description, and

(b) in relation to a case not falling within paragraph (a), the Secretary of State.

(3) The application—

(a) shall be made in such manner as the competent authority may direct,

(b) shall contain or be accompanied by such information as that authority may reasonably require for the purpose of determining the application, and

(c) shall be accompanied by the prescribed fee;

and the authority may direct that notice of the making of the application shall be published in such manner as may be specified in the direction.

(4) At any time after receiving the application and before determining it the authority may require the applicant to furnish additional information.

- (5) Directions and requirements given or imposed under subsection (3) or (4) may differ as between different applications.
- (6) Any information to be furnished to the competent authority under this section shall, if it so requires, be in such form or verified in such manner as it may specify.
- (7) An application may be withdrawn before it is granted or refused.
- (8) Any sums received under this section by a competent authority other than the Secretary of State may be retained by the authority; and any sums so received by the Secretary of State shall be paid into the Consolidated Fund.
- (9) Subsection (3)(c) shall not have effect in respect of an application made to the Secretary of State (but this subsection is without prejudice to section 415A).

### **393. Grant, refusal and withdrawal of authorisation**

- (1) The competent authority may, on an application duly made in accordance with section 392 and after being furnished with all such information as it may require under that section, grant or refuse the application.
- (2) The authority shall grant the application if it appears to it from the information furnished by the applicant and having regard to such other information, if any, as it may have—
- (a) that the applicant is a fit and proper person to act as an insolvency practitioner, and
  - (b) that the applicant meets the prescribed requirements with respect to education and practical training and experience.
- (3) An authorisation granted under this section, if not previously withdrawn, continues in force for one year.
- (3A) But where an authorisation is granted under this section the competent authority must, before its expiry (and without a further application made in accordance with section 392) grant a further authorisation under this section taking effect immediately after the expiry of the previous authorisation, unless it appears to the authority that the subject of the authorisation no longer complies with subsection (2)(a) and (b).
- (4) An authorisation granted under this section may be withdrawn by the competent authority if it appears to it—
- (a) that the holder of the authorisation is no longer a fit and proper person to act as an insolvency practitioner, or
  - (b) without prejudice to paragraph (a), that the holder—
    - (i) has failed to comply with any provision of this Part or of any regulations made under this Part or Part 15, or
    - (ii) in purported compliance with any such provision, has furnished the competent authority with false, inaccurate or misleading information.
- (5) An authorisation granted under this section may be withdrawn by the competent authority at the request or with the consent of the holder of the authorisation.
- (6) Where an authorisation granted under this section is withdrawn—
- (a) subsection (3A) does not require a further authorisation to be granted, or
  - (b) if a further authorisation has already been granted at the time of the withdrawal, the further authorisation is also withdrawn.

### **394. Notices**

- (1) Where a competent authority grants an authorisation under section 393, it shall give written notice of that fact to the applicant, specifying the date on which the authorisation takes effect.
- (2) Where the authority proposes to refuse an application, or to withdraw an authorisation under section 393(4), it shall give the applicant or holder of the authorisation written notice of its intention to do so, setting out particulars of the grounds on which it proposes to act.

(3) In the case of a proposed withdrawal the notice shall state the date on which it is proposed that the withdrawal should take effect.

(4) A notice under subsection (2) shall give particulars of the rights exercisable under the next two sections by a person on whom the notice is served.

### **395. Right to make representations**

(1) A person on whom a notice is served under section 394(2) may within 14 days after the date of service make written representations to the competent authority.

(2) The competent authority shall have regard to any representations so made in determining whether to refuse the application or withdraw the authorisation, as the case may be.

### **396. Reference to Tribunal**

(1) The Insolvency Practitioners Tribunal (“the Tribunal”) continues in being; and the provisions of Schedule 7 apply to it.

(2) Where a person is served with a notice under section 394(2), he may—

(a) at any time within 28 days after the date of service of the notice, or

(b) at any time after the making by him of representations under section 395 and before the end of the period of 28 days after the date of the service on him of a notice by the competent authority that the authority does not propose to alter its decision in consequence of the representations,

give written notice to the authority requiring the case to be referred to the Tribunal.

(3) Where a requirement is made under subsection (2), then, unless the competent authority—

(a) has decided or decides to grant the application or, as the case may be, not to withdraw the authorisation, and

(b) within 7 days after the date of the making of the requirement, gives written notice of that decision to the person by whom the requirement was made,

it shall refer the case to the Tribunal.

### **397. Action of Tribunal on reference**

(1) On a reference under section 396 the Tribunal shall—

(a) investigate the case, and

(b) make a report to the competent authority stating what would in their opinion be the appropriate decision in the matter and the reasons for that opinion,

and it is the duty of the competent authority to decide the matter accordingly.

(2) The Tribunal shall send a copy of the report to the applicant or, as the case may be, the holder of the authorisation; and the competent authority shall serve him with a written notice of the decision made by it in accordance with the report.

(3) The competent authority may, if he thinks fit, publish the report of the Tribunal.

### **398. Refusal or withdrawal without reference to Tribunal**

Where in the case of any proposed refusal or withdrawal of an authorisation either—

(a) the period mentioned in section 396(2)(a) has expired without the making of any requirement under that subsection or of any representations under section 395, or

(b) the competent authority has given a notice such as is mentioned in section 396(2)(b) and the period so mentioned has expired without the making of any such requirement,

the competent authority may give written notice of the refusal or withdrawal to the person concerned in accordance with the proposal in the notice given under section 394(2).

## PART 14

### Public Administration (England and Wales)

#### *Official receivers*

#### **399. Appointment, etc of official receivers**

(1) For the purposes of this Act the official receiver, in relation to any [...] winding up or [...] is any person who by virtue of the following provisions of this section or section 401 below is authorised to act as the official receiver in relation to that [...] winding up [...].

(2) The Secretary of State may (subject to the approval of the Treasury as to numbers) appoint persons to the office of official receiver, and a person appointed to that office (whether under this section or section 70 of the Bankruptcy Act 1914)—

(a) shall be paid out of money provided by Parliament such salary as the Secretary of State may with the concurrence of the Treasury direct,

(b) shall hold office on such other terms and conditions as the Secretary of State may with the concurrence of the Treasury direct, and

(c) may be removed from office by a direction of the Secretary of State.

(3) Where a person holds the office of official receiver, the Secretary of State shall from time to time attach him either to the High Court or to a county court having jurisdiction for the purposes of the second Group of Parts of this Act.

(4) Subject to any directions under subsection (6) below, an official receiver attached to a particular court is the person authorised to act as the official receiver in relation to every [...] winding up [...] falling within the jurisdiction of that court.

(5) The Secretary of State shall ensure that there is, at all times, at least one official receiver attached to the High Court and at least one attached to each county court having jurisdiction for the purposes of the second Group of Parts; but he may attach the same official receiver to two or more different courts.

(6) The Secretary of State may give directions with respect to the disposal of the business of official receivers, and such directions may, in particular—

(a) authorise an official receiver attached to one court to act as the official receiver in relation to any case or description of cases falling within the jurisdiction of another court;

(b) provide, where there is more than one official receiver authorised to act as the official receiver in relation to cases falling within the jurisdiction of any court, for the distribution of their business between or among themselves.

(7) A person who at the coming into force of section 222 of the Insolvency Act 1985 (replaced by this section) is an official receiver attached to a court shall continue in office after the coming into force of that section as an official receiver attached to that court under this section.

#### **400. Functions and status of official receivers**

(1) In addition to any functions conferred on him by this Act, a person holding the office of official receiver shall carry out such other functions as may from time to time be conferred on him by the Secretary of State.

(2) In the exercise of the functions of his office a person holding the office of official receiver shall act under the general directions of the Secretary of State and shall also be an officer of the court in relation to which he exercises those functions.

(3) Any property vested in his official capacity in a person holding the office of official receiver shall, on his dying, ceasing to hold office or being otherwise succeeded in relation to the bankruptcy or winding up in question by another official receiver, vest in his successor without any conveyance, assignment or transfer.

#### **401. Deputy official receivers and staff**

(1) The Secretary of State may, if he thinks it expedient to do so in order to facilitate the disposal of the business of the official receiver attached to any court, appoint an officer of his department to act as deputy to that official receiver.

(2) Subject to any directions given by the Secretary of State under section 399 or 400, a person appointed to act as deputy to an official receiver has, on such conditions and for such period as may be specified in the terms of his appointment, the same status and functions as the official receiver to whom he is appointed deputy.

Accordingly, references in this Act (except section 399(1) to (5)) to an official receiver include a person appointed to act as his deputy.

(3) An appointment made under subsection (1) may be terminated at any time by the Secretary of State.

(4) The Secretary of State may, subject to the approval of the Treasury as to numbers and remuneration and as to the other terms and conditions of the appointments, appoint charity trustees of his department to assist official receivers in the carrying out of their functions.

#### **402 omitted**

#### *Insolvency Service finance, accounting and investment*

#### **403. Insolvency Services Account**

(1) All money received by the Secretary of State in respect of proceedings under this Act as it applies to England and Wales shall be paid into the Insolvency Services Account kept by the Secretary of State with the Bank of England; and all payments out of money standing to the credit of the Secretary of State in that account shall be made by the Bank of England in such manner as he may direct.

(2) Whenever the cash balance standing to the credit of the Insolvency Services Account is in excess of the amount which in the opinion of the Secretary of State is required for the time being to answer demands in respect of bankrupts' estates or companies' estates, the Secretary of State shall—

(a) notify the excess to the National Debt Commissioners, and

(b) pay into the Insolvency Services Investment Account (“the Investment Account”) kept by the Commissioners with the Bank of England the whole or any part of the excess as the Commissioners may require for investment in accordance with the following provisions of this Part.

(3) Whenever any part of the money so invested is, in the opinion of the Secretary of State, required to answer any demand in respect of bankrupt's estates or CIOs' estates, he shall notify to the National Debt Commissioners the amount so required and the Commissioners—

(a) shall thereupon repay to the Secretary of State such sum as may be required to the credit of the Insolvency Services Account, and

(b) for that purpose may direct the sale of such part of the securities in which the money has been invested as may be necessary.

#### **404. Investment Account**

Any money standing to the credit of the Investment Account (including any money received by the National Debt Commissioners by way of interest on or proceeds of any investment under this section) may be invested by the Commissioners, in accordance with such directions as may be given by the Treasury, in any manner for the time being specified in Part II of Schedule 1 to the Trustee Investments Act 1961.

**405. repealed**

**406. Interest on money received by liquidators or trustees in bankruptcy and invested**

Where under rules made by virtue of paragraph 16 of Schedule 8 to this Act (investment of money received by CIO liquidators) [or paragraph 21 of Schedule 9 to this Act (investment of money received by trustee in bankruptcy) a CIO or a bankrupt's estate] has become entitled to any sum by way of interest, the Secretary of State shall certify that sum and the amount of tax payable on it to the National Debt Commissioners; and the Commissioners shall pay, out of the Investment Account—

- (a) into the Insolvency Services Account, the sum so certified less the amount of tax so certified, and
- (b) to the Commissioners of Inland Revenue, the amount of tax so certified.

**407. Unclaimed dividends and undistributed balances**

(1) The Secretary of State shall from time to time pay into the Consolidated Fund out of the Insolvency Services Account so much of the sums standing to the credit of that Account as represents—

- (a) dividends which were declared before such date as the Treasury may from time to time determine and have not been claimed, and
- (b) balances ascertained before that date which are too small to be divided among the persons entitled to them.

(2) For the purposes of this section the sums standing to the credit of the Insolvency Services Account are deemed to include any sums paid out of that Account and represented by any sums or securities standing to the credit of the Investment Account.

(3) The Secretary of State may require the National Debt Commissioners to pay out of the Investment Account into the Insolvency Services Account the whole or part of any sum which he is required to pay out of that account under subsection (1); and the Commissioners may direct the sale of such securities standing to the credit of the Investment Account as may be necessary for that purpose.

**408. Adjustment of balances**

(1) The Treasury may direct the payment out of the Consolidated Fund of sums into—

- (a) the Insolvency Services Account;
- (b) the Investment Account.

(2) The Treasury shall certify to the House of Commons the reason for any payment under subsection (1).

(3) The Secretary of State may pay sums out of the Insolvency Services Account into the Consolidated Fund.

(4) The National Debt Commissioners may pay sums out of the Investment Account into the Consolidated Fund.

**409. Annual financial statement and audit**

(1) The National Debt Commissioners shall for each year ending on 31st March prepare a statement of the sums credited and debited to the Investment Account in such form and manner as the Treasury may direct and shall transmit it to the Comptroller and Auditor General before the end of November next following the year.

(2) The Secretary of State shall for each year ending 31st March prepare a statement of the sums received or paid by him under section 403 above in such form and manner as the Treasury may

direct and shall transmit each statement to the Comptroller and Auditor General before the end of November next following the year.

(3) Every such statement shall include such additional information as the Treasury may direct.

(4) The Comptroller and Auditor General shall examine, certify and report on every such statement and shall lay copies of it, and of his report, before Parliament.

### *Supplementary*

#### **410. Extent of this Part**

This Part of this Act extends to England and Wales only.

## **PART 15**

### **Subordinate Legislation**

#### *General insolvency rules*

#### **411. Company insolvency rules**

(1) Rules may be made—

(a) in relation to England and Wales, by the Lord Chancellor with the concurrence of the Secretary of State and, in the case of rules that affect court procedure, with the concurrence of the Lord Chief Justice, or

[...],

for the purpose of giving effect to Parts 1 to 7 of this Act or the EC Regulation.

(1A) and (1B) [omitted]

(2) Without prejudice to the generality of subsection (1), [...], or to any provision of those Parts by virtue of which rules under this section may be made with respect to any matter, rules under this section may contain—

(a) any such provision as is specified in Schedule 8 to this Act or corresponds to provision contained immediately before the coming into force of section 106 of the Insolvency Act 1985 in rules made, or having effect as if made, under section 663(1) or (2) of the Companies Act 1985, and

(b) such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor or, as the case may be, the Secretary of State [...] necessary or expedient.

(2A) For the purposes of subsection (2), a reference in Schedule 8 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of the EC Regulation (in so far as the provision of this Act relates to a matter to which the EC Regulation applies).

(2B) Rules under this section for the purpose of giving effect to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.

(2C) and (2D) [omitted]

(3) In Schedule 8 to this Act “liquidator” includes a provisional liquidator [...]; and references above in this section to Parts 1 to 7 of this Act [...] are to be read as including the Companies Acts so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

(3A) [omitted]

(4) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Regulations made by the Secretary of State or the Treasury under a power conferred by rules under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

(6) Nothing in this section prejudices any power to make rules of court.

(7) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.

**412** *omitted*

### **413. Insolvency Rules Committee**

(1) The committee established under section 10 of the Insolvency Act 1976 (advisory committee on bankruptcy and winding-up rules) continues to exist for the purpose of being consulted under this section.

(2) The Lord Chancellor shall consult the committee before making any rules under section 411 [...] other than rules which contain a statement that the only provision made by the rules is provision applying rules made under section 411, with or without modifications, for the purposes of provision made by any of sections 23 to 26 of the Water Industry Act 1991 or Schedule 3 to that Act or by any of sections 59 to 65 of, or Schedule 6 or 7 to, the Railways Act 1993.

(3) Subject to the next subsection, the committee shall consist of—

- (a) a judge of the High Court attached to the Chancery Division;
- (b) a circuit judge;
- (c) a registrar in bankruptcy of the High Court;
- (d) the registrar of a county court;
- (e) a practising barrister;
- (f) a practising solicitor; and
- (g) a practising accountant;

and the appointment of any person as a member of the committee shall be made in accordance with subsection (3A) or (3B).

(3A) The Lord Chief Justice must appoint the persons referred to in paragraphs (a) to (d) of subsection (3), after consulting the Lord Chancellor.

(3B) The Lord Chancellor must appoint the persons referred to in paragraphs (e) to (g) of subsection (3), after consulting the Lord Chief Justice.

(4) The Lord Chancellor may appoint as additional members of the committee any persons appearing to him to have qualifications or experience that would be of value to the committee in considering any matter with which it is concerned.

(5) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.

### *Fees orders*

#### **414. Fees orders (CIO insolvency proceedings)**

(1) There shall be paid in respect of—

- (a) proceedings under any of Parts 1 to 7 of this Act, and
- (b) the performance by the official receiver or the Secretary of State of functions under those Parts,

such fees as the competent authority may with the sanction of the Treasury by order direct.

(2) That authority is—

- (a) in relation to England and Wales, the Lord Chancellor, and
- (b) [...]

(3) The Treasury may by order direct by whom and in what manner the fees are to be collected and accounted for.

(4) The Lord Chancellor may, with the sanction of the Treasury, by order provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for fees payable by virtue of this section.

(5) An order under this section may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor, [...] or (as the case may be) the Treasury necessary or expedient.

(6) An order under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

(7) Fees payable by virtue of this section shall be paid into the Consolidated Fund.

(8) References in subsection (1) to Parts 1 to 7 of this Act are to be read as including the Companies Acts so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

(8A) to (8C) [omitted]

(9) Nothing in this section prejudices any power to make rules of court; [...].

**415** *omitted*

#### **415A. Fees orders (general)**

(A1) [omitted]

(1) The Secretary of State—

(a) may by order require a body to pay a fee in connection with the grant or maintenance of recognition of the body under section 391, and

(b) may refuse recognition, or revoke an order of recognition under section 391(1) by a further order, where a fee is not paid.

(2) The Secretary of State—

(a) may by order require a person to pay a fee in connection with the grant or maintenance of authorisation of the person under section 393, and

(b) may disregard an application or withdraw an authorisation where a fee is not paid.

(3) The Secretary of State may by order require the payment of fees in respect of—

(a) the operation of the Insolvency Services Account;

(b) payments into and out of that Account.

(4) The following provisions of section 414 apply to fees under this section as they apply to fees under that section—

(a) subsection (3) (manner of payment),

(b) subsection (5) (additional provision),

(c) subsection (6) (statutory instrument),

(d) subsection (7) (payment into Consolidated Fund), and

(e) subsection (9) (saving for rules of court).

*Specification, increase and reduction of money sums relevant in the operation of this Act*

#### **416. Monetary limits (CIO winding up)**

(1) The Secretary of State may by order in a statutory instrument increase or reduce any of the money sums for the time being specified in the following provisions in the first Group of Parts—

[...]

section 123(1)(a) (minimum debt for service of demand on CIO by unpaid creditor);

section 184(3) (minimum value of judgment, affecting sheriff's duties on levying execution);

section 206(1)(a) and (b) (minimum value of CIO property concealed or fraudulently removed, affecting criminal liability of CIO's charity trustee).

(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 being specified in section [...] 123(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) applies, is subject to annulment in pursuance of a resolution of either House of Parliament.

**417** *omitted*

#### **417A. Money sums (CIO moratorium)**

(1) The Secretary of State may by order increase or reduce any of the money sums for the time being specified in the following provisions of Schedule A1 to this Act—

paragraph 17(1) (maximum amount of credit which CIO may obtain without disclosure of moratorium);

paragraph 41(4) (minimum value of CIO property concealed or fraudulently removed, affecting criminal liability of CIO's charity trustee).

(2) An order under this section may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.

(3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

**418** *omitted*

### *Insolvency practice*

#### **419. Regulations for purposes of Part 13**

(1) The Secretary of State may make regulations for the purpose of giving effect to Part 13 of this Act; and “prescribed” in that Part means prescribed by regulations made by the Secretary of State.

(2) Without prejudice to the generality of subsection (1) or to any provision of that Part by virtue of which regulations may be made with respect to any matter, regulations under this section may contain—

(a) provision as to the matters to be taken into account in determining whether a person is a fit and proper person to act as an insolvency practitioner;

(b) provision prohibiting a person from so acting in prescribed cases, being cases in which a conflict of interest will or may arise;

(c) provision imposing requirements with respect to—

(i) the preparation and keeping by a person who acts as an insolvency practitioner of prescribed books, accounts and other records, and

(ii) the production of those books, accounts and records to prescribed persons;

(d) provision conferring power on prescribed persons—

(i) to require any person who acts or has acted as an insolvency practitioner to answer any inquiry in relation to a case in which he is so acting or has so acted, and

- (ii) to apply to a court to examine such a person or any other person on oath concerning such a case;
  - (e) provision making non-compliance with any of the regulations a criminal offence; and
  - (f) such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient.
- (3) Any power conferred by Part 13 or this Part to make regulations, rules or orders is exercisable by statutory instrument subject to annulment by resolution of either House of Parliament.
- (4) Any rule or regulation under Part 13 or this Part may make different provision with respect to different cases or descriptions of cases, including different provision for different areas.

**420 to 422 omitted**

## **PART 16**

### **Provisions Against Debt Avoidance (England and Wales only)**

#### **423. Transactions defrauding creditors**

- (1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—
- (a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;
  - (b) he enters into a transaction with the other in consideration of marriage or the formation of a civil partnership; or
  - (c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself.
- (2) Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for—
- (a) restoring the position to what it would have been if the transaction had not been entered into, and
  - (b) protecting the interests of persons who are victims of the transaction.
- (3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose—
- (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or
  - (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.
- (4)[In this section “the court” means—
- (a) the High Court; or
  - (b) any county court having jurisdiction to wind up the CIO].
- (5) In relation to a transaction at an undervalue, references here and below to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in the following two sections the person entering into the transaction is referred to as “the debtor”.

#### **424. Those who may apply for an order under s 423**

- (1) An application for an order under section 423 shall not be made in relation to a transaction except—
- (a) in a case where the debtor [...] is being wound up or is in administration, by the official receiver, by [...] the liquidator or administrator [...] or (with the leave of the court) by a victim of the transaction;

- (b) in a case where a victim of the transaction is bound by a voluntary arrangement approved under Part 1 or Part 8 of this Act, by the supervisor of the voluntary arrangement or by any person who (whether or not so bound) is such a victim; or
- (c) in any other case, by a victim of the transaction.

(2) An application made under any of the paragraphs of subsection (1) is to be treated as made on behalf of every victim of the transaction.

#### **425. Provision which may be made by order under s 423**

(1) Without prejudice to the generality of section 423, an order made under that section with respect to a transaction may (subject as follows)—

- (a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;
- (b) require any property to be so vested if it represents, in any person's hands, the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) any security given by the debtor;
- (d) require any person to pay to any other person in respect of benefits received from the debtor such sums as the court may direct;
- (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction to be under such new or revived obligations as the court thinks appropriate;
- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.

(2) An order under section 423 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order—

- (a) shall not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and
- (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

(3) For the purposes of this section the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under section 423 may be made in respect of the transaction.

(4) In this section “security” means any mortgage, charge, lien or other security.

## **PART 17**

### **Miscellaneous and General**

**426 to 429** *omitted*

#### **430. Provision introducing Schedule of punishments**

(1) Schedule 10 to this Act has effect with respect to the way in which offences under this Act are punishable on conviction.

(2) In relation to an offence under a provision of this Act specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third

column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.

(3) The fourth column of the Schedule shows, in relation to an offence, the maximum punishment by way of fine or imprisonment under this Act which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily) a reference to a period of years or months being to a term of imprisonment of that duration.

(4) The fifth column shows, (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsequent conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Schedule).

(5) For the purpose of any enactment in this Act whereby a charity trustee of a CIO who is in default is liable to a fine or penalty, the expression “charity trustee who is in default” means any charity trustee of the CIO who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

### **431. Summary proceedings**

(1) Summary proceedings for any offence under any of Parts 1 to 7 of this Act may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a body corporate at any place at which the body corporate has a place of business, and against any other person at any place at which he is for the time being.

(2) Notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980, an information relating to such an offence which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within 3 years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.

(3) [omitted]

(4) For purposes of this section, a certificate of the Director of Public Prosecutions, [...] or the Secretary of State (as the case may be) as to the date on which such evidence as is referred to above came to his knowledge is conclusive evidence.

### **432. Offences by bodies corporate**

(1) This section applies to offences under this Act other than those excepted by subsection (4).

(2) Where a body corporate is guilty of an offence to which this section applies and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate [to be read as including a charity trustee of a CIO] or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) The offences excepted from this section are those under sections 30, 39, [...], 85, 89, 164, 188, 201, 206, 207, 208, 209, 210 and 211 and those under paragraphs 16(2), 17(3)(a), 18(3)(a), 19(3)(a), 22(1) [...] of Schedule A1.

### **433. Admissibility in evidence of statements of affairs, etc**

(1) In any proceedings (whether or not under this Act)—

(a) a statement of affairs prepared for the purposes of any provision of this Act which is derived from the Insolvency Act 1985,

(aa) and (ab) [omitted]

(b) any other statement made in pursuance of a requirement imposed by or under any such provision or by or under rules made under this Act,

may be used in evidence against any person making or concurring in making the statement.

(2) However, in criminal proceedings in which any such person is charged with an offence to which this subsection applies—

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than—

(a) an offence under section 22(6), 47(6), 48(8), [...], 95(8), 98(6), 99(3)(a), 131(7), 192(2), 208(1)(a) or (d) or (2), 210, 235(5) [...] or paragraph 4(3)(a) of Schedule 7;

(b) an offence which is—

(i) created by rules made under this Act, and

(ii) designated for the purposes of this subsection by such rules or by regulations made by the Secretary of State;

(c) an offence which is—

(i) created by regulations made under any such rules, and

(ii) designated for the purposes of this subsection by such regulations;

(d) an offence under section 1, 2 or 5 of the Perjury Act 1911 (false statements made on oath or made otherwise than on oath); or

(e) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).

(4) Regulations under subsection (3)(b)(ii) shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

#### **434. Crown application**

For the avoidance of doubt it is hereby declared that provisions of this Act which derive from the Insolvency Act 1985 bind the Crown so far as affecting or relating to the following matters, namely—

(a) remedies against, or against the property of, companies or individuals;

(b) priorities of debts;

(c) transactions at an undervalue or preferences;

(d) voluntary arrangements approved under Part 1 or Part 8, and

(e) discharge from bankruptcy.

## **PART 17A**

### **Supplementary Provisions**

#### **434A. Introductory**

The provisions of this Part have effect for the purposes of—

(a) the First Group of Parts, and

(b) sections 411, 413, 414, 416 [...] in Part 15.

#### **434B. Representation of corporations at meetings**

(1) If a corporation is a creditor or debenture-holder, it may by resolution of its directors or other governing body authorise a person or persons to act as its representative or representatives—

(a) at any meeting of the creditors of a CIO held in pursuance of this Act or of rules made under it, or

(b) at any meeting of a CIO held in pursuance of the provisions contained in a debenture or trust deed.

(2) Where the corporation authorises only one person, that person is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor or debenture-holder.

(3) Where the corporation authorises more than one person, any one of them is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor or debenture-holder.

(4) Where the corporation authorises more than one person and more than one of them purport to exercise a power under subsection (3)—

(a) if they purport to exercise the power in the same way, the power is treated as exercised in that way;

(b) if they do not purport to exercise the power in the same way, the power is treated as not exercised.

#### **434C. Legal professional privilege**

In proceedings against a person for an offence under this Act nothing in this Act is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege (in Scotland, confidentiality of communications).

#### **434D. Enforcement of CIO's filing obligations**

(1) This section applies where a CIO has made default in complying with any obligation under this Act—

(a) to deliver a document to the Charity Commission; or

(b) to give notice to the Charity Commission of any matter.

(2) The Charity Commission, or any member or creditor of the CIO, may give notice to the CIO requiring it to comply with the obligation.

(3) If the CIO fails to make good the default within 14 days after service of the notice, the Charity Commission or any member or creditor of the CIO, may apply to the court for an order directing the CIO, and any specified charity trustee of it, to make good the default within a specified time.

(4) The court's order may provide that all costs [...] of or incidental to the application are to be borne by the CIO or by any charity trustees of it responsible for the default.

(5) This section does not affect the operation of any enactment imposing penalties on a CIO or its officers in respect of any such default.

**434E** *omitted*

## **PART 18**

### **Interpretation**

#### **435. Meaning of “associate”**

(1) For the purposes of this Act any question whether a person is an associate of another person is to be determined in accordance with the following provisions of this section (any provision that a

person is an associate of another person being taken to mean that they are associates of each other).

(2) A person is an associate of an individual if that person is—

- (a) the individual's husband or wife or civil partner;
- (b) a relative of—
  - (i) the individual, or
  - (ii) the individual's husband, wife or civil partner, or
- (c) the husband or wife or civil partner of a relative of—
  - (i) the individual; or
  - (ii) the individual's husband or wife or civil partner.

(3) A person is an associate of any person with whom he is in partnership, and of the husband or wife or civil partner or a relative of any individual with whom he is in partnership; and a Scottish firm is an associate of any person who is a member of the firm.

(4) A person is an associate of any person whom he employs or by whom he is employed.

(5) A person in his capacity as trustee of a trust other than—

- (a) a trust arising under any of the second Group of Parts or the Bankruptcy (Scotland) Act 1985, or
- (b) pension scheme or an employees' share scheme,

is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that other person or an associate of that other person.

(6) A company is an associate of another company —

- (a) if the same person has control of both, or a person has control of one and persons who are his associates, or he and persons who are his associates, have control of the other, or
- (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(7) A company is an associate of another person if that person has control of it or if that person and persons who are his associates together have control of it.

(8) For the purposes of this section a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating—

- (a) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child, and
- (b) an illegitimate child as the legitimate child of his mother and reputed father;

and references in this section to a husband or wife include a former husband or wife and a reputed husband or wife and references to a civil partner include a former civil partner and a reputed civil partner.

(9) For the purposes of this section any director or other officer of a company is to be treated as employed by that company.

(10) For the purposes of this section a person is to be taken as having control of a company if—

- (a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions, or
- (b) he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has control of it;

and where two or more persons together satisfy either of the above conditions, they are to be taken as having control of the company.

(11) In this section “company” includes any body corporate (whether incorporated in Great Britain or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company have effect with any necessary modifications.

#### **436. Expressions used generally**

(1) In this Act, except in so far as the context otherwise requires (and subject to Parts 7 and 11)—

“the appointed day” means the day on which this Act comes into force under section 443;

“associate” has the meaning given by section 435;

“body corporate” includes a body incorporated outside Great Britain, but does not include

(a) a corporation sole, or

(b) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;

“business” includes a trade or profession;

“the Companies Acts” means the Companies Acts (as defined in section 2 of the Companies Act 2006) as they have effect in Great Britain;

“conditional sale agreement” and “hire-purchase agreement” have the same meanings as in the Consumer Credit Act 1974;

“distress” includes use of the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, and references to levying distress, seizing goods and related expressions shall be construed accordingly;

“the EC Regulation” means Council Regulation (EC) No 1346/2000;

“EEA State” means a state that is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“employees’ share scheme” means a scheme for encouraging or facilitating the holding of shares in or debentures of a company by or for the benefit of—

(a) the bona fide employees of former employees of—

(i) the company,

(ii) any subsidiary of the company,

(iii) the company’s holding company or any subsidiary of the company’s holding company, or

(b) the spouses, civil partners, surviving spouses, surviving civil partners, or minor children or step-children of such employees or former employees;

“modifications” includes additions, alterations and omissions and cognate expressions shall be construed accordingly;

“property” includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

“records” includes computer records and other non-documentary records;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978; and

“transaction” includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.

(2) The following expressions have the same meaning in this Act as in the Companies Acts with the substitution, in relation to CIOs, of references to charity trustees for references to directors—

[...]

“debenture” (see section 738 of that Act);

“holding company” (see sections 1159 and 1160 of, and Schedule 6 to, that Act);

[...]

“share” (see section 540 of that Act);

“subsidiary” (see sections 1159 and 1160 of, and Schedule 6 to, that Act).

#### **436A. Proceedings under EC Regulation: modified definition of property**

In the application of this Act to proceedings by virtue of Article 3 of the EC Regulation, a reference to property is a reference to property which may be dealt with in the proceedings.

#### **436B. References to things in writing**

(1) A reference in this Act to a thing in writing includes that thing in electronic form.

(2) Subsection (1) does not apply to the following provisions—

(a) to (c) [omitted]

(d) section 111(2) (dissent from arrangement under s 110),

(e) [omitted]

(f) section 123(1) (definition of inability to pay debts),

(g) section 198(3) (duties of sheriff principal as regards examination),

(h) and (i) [omitted].

## **PART 19**

### **Final Provisions**

**437 to 442** *omitted*

#### **443. Commencement**

This Act comes into force on the day appointed under section 236(2) of the Insolvency Act 1985 for the coming into force of Part 3 of that Act (individual insolvency and bankruptcy), immediately after that Part of that Act comes into force for England and Wales.

#### **444. Citation**

This Act may be cited as the Insolvency Act 1986.

## **SCHEDULE A1**

### **Moratorium Where Charity Trustees Propose Voluntary Arrangement**

#### **PART 1**

#### **Introductory**

##### ***Interpretation***

**1.** In this Schedule—

“the beginning of the moratorium” has the meaning given by paragraph 8(1),

“the date of filing” means the date on which the documents for the time being referred to in paragraph 7(1) are filed or lodged with the court,

“hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

[...]

“moratorium” means a moratorium under section 1A,

“the nominee” includes any person for the time being carrying out the functions of a nominee under this Schedule,

[...]

### ***Eligible CIOs***

**2.** [A CIO is eligible for a moratorium unless it is excluded from being eligible by virtue of paragraph 4.]

### **3 omitted**

**4. (1)** A CIO is excluded from being eligible for a moratorium if, on the date of filing—

(a) the CIO is in administration,

(b) the CIO is being wound up,

(c) there is an administrative receiver of the CIO,

(d) voluntary arrangement has effect in relation to the CIO,

(e) there is a provisional liquidator of the CIO,

(f) a moratorium has been in force for the CIO at any time during the period of 12 months ending with the date of filing and—

(i) no voluntary arrangement had effect at the time at which the moratorium came to an end, or

(ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely,

(fa) an administrator appointed under paragraph 22 of Schedule B1 has held office in the period of 12 months ending with the date of filing, or

(g) a voluntary arrangement in relation to the CIO which had effect in pursuance of a proposal under section 1(3) has come to an end prematurely and, during the period of 12 months ending with the date of filing, an order under section 5(3)(a) has been made.

(2) Sub-paragraph (1)(b) does not apply to a CIO which, by reason of a winding-up order made after the date of filing, is treated as being wound up on that date.

### **4A to 5 omitted**

## **PART 2**

### **Obtaining a Moratorium**

#### ***Nominee’s statement***

**6. (1)** Where the charity trustees of a CIO wish to obtain a moratorium, they shall submit to the nominee—

(a) a document setting out the terms of the proposed voluntary arrangement,

(b) a statement of the CIO's affairs containing—

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and

(ii) such other information as may be prescribed, and

(c) any other information necessary to enable the nominee to comply with sub-paragraph

(2) which he requests from them.

(2) The nominee shall submit to the charity trustees a statement in the prescribed form indicating whether or not, in his opinion—

(a) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,

(b) the CIO is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its activities, and

(c) meetings of the CIO and its creditors should be summoned to consider the proposed voluntary arrangement.

(3) In forming his opinion on the matters mentioned in sub-paragraph (2), the nominee is entitled to rely on the information submitted to him under sub-paragraph (1) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (2)(b) to the CIO's activities is to those activities as the CIO proposes to carry on during the moratorium.

### ***Documents to be submitted to court***

7. (1) To obtain a moratorium the charity trustees of a CIO must file [...] with the court—

(a) a document setting out the terms of the proposed voluntary arrangement,

(b) a statement of the CIO's affairs containing—

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and

(ii) such other information as may be prescribed,

(c) a statement that the CIO is eligible for a moratorium,

(d) a statement from the nominee that he has given his consent to act, and

(e) a statement from the nominee that, in his opinion—

(i) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,

(ii) the CIO is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its activities, and

(iii) meetings of the CIO and its creditors should be summoned to consider the proposed voluntary arrangement.

(2) Each of the statements mentioned in sub-paragraph (1)(b) to (e), except so far as it contains the particulars referred to in paragraph (b)(i), must be in the prescribed form.

(3) The reference in sub-paragraph (1)(e)(ii) to the CIO's activities is to those activities as the CIO proposes to carry them on during the moratorium.

(4) The Secretary of State may by regulations modify the requirements of this paragraph as to the documents required to be filed [...] with the court in order to obtain a moratorium.

### ***Duration of moratorium***

8. (1) A moratorium comes into force when the documents for the time being referred to in paragraph 7(1) are filed or lodged with the court and references in this Schedule to “the beginning of the moratorium” shall be construed accordingly.

(2) A moratorium ends at the end of the day on which the meetings summoned under paragraph 29(1) are first held (or, if the meetings are held on different days, the later of those days), unless it is extended under paragraph 32.

(3) If either of those meetings has not first met before the end of the period of 28 days beginning with the day on which the moratorium comes into force, the moratorium ends at the end of the day on which those meetings were to be held (or, if those meetings were summoned to be held on different days, the later of those days), unless it is extended under paragraph 32.

(4) If the nominee fails to summon either meeting within the period required by paragraph 29(1), the moratorium ends at the end of the last day of that period.

(5) If the moratorium is extended (or further extended) under paragraph 32, it ends at the end of the day to which it is extended (or further extended).

(6) Sub-paragraphs (2) to (5) do not apply if the moratorium comes to an end before the time concerned by virtue of—

(a) paragraph 25(4) (effect of withdrawal by nominee of consent to act),

(b) an order under paragraph 26(3), 27(3) or 40 (challenge of actions of nominee or charity trustees), or

(c) a decision of one or both of the meetings summoned under paragraph 29.

(7) If the moratorium has not previously come to an end in accordance with sub-paragraphs (2) to (6), it ends at the end of the day on which a decision under paragraph 31 to approve a voluntary arrangement takes effect under paragraph 36.

(8) The Secretary of State may by order increase or reduce the period for the time being specified in sub-paragraph (3).

### ***Notification of beginning of moratorium***

**9.** (1) When a moratorium comes into force, the charity trustees shall notify the nominee of that fact forthwith.

(2) If the charity trustees without reasonable excuse fail to comply with sub-paragraph (1), each of them is liable to imprisonment or a fine, or both.

**10.** (1) When a moratorium comes into force, the nominee shall, in accordance with the rules—

(a) advertise that fact forthwith, and

(b) notify the Charity Commission, the CIO and any petitioning creditor of the CIO of whose claim he is aware of that fact.

(2) In sub-paragraph (1)(b), “petitioning creditor” means a creditor by whom a winding-up petition has been presented before the beginning of the moratorium, as long as the petition has not been dismissed or withdrawn.

(3) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he is liable to a fine.

### ***Notification of end of moratorium***

**11.** (1) When a moratorium comes to an end, the nominee shall, in accordance with the rules—

(a) advertise that fact forthwith, and

(b) notify the court, the Charity Commission, the CIO and any creditor of the CIO of whose claim he is aware of that fact.

(2) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he is liable to a fine.

## **PART 3**

### **Effects of Moratorium**

#### ***Effect on creditors, etc***

**12.** (1) During the period for which a moratorium is in force for a CIO—

(a) no petition may be presented for the winding up of the CIO,

(b) no meeting of the CIO may be called or requisitioned except with the consent of the nominee or the leave of the court and subject (where the court gives leave) to such terms as the court may impose,

- (c) no resolution may be passed or order made for the winding up of the CIO,
- (d) no administration application may be made in respect of the CIO,
- (da) no administrator of the CIO may be appointed under paragraph 14 or 22 of Schedule B1,
- (e) no administrative receiver of the CIO may be appointed,
- (f) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the CIO in respect of a failure by the CIO to comply with any term or condition of its tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose,
- (g) no other steps may be taken to enforce any security over the CIO's property, or to repossess goods in the CIO's possession under any hire-purchase agreement, except with the leave of the court and subject to such terms as the court may impose, and
- (h) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the CIO or its property except with the leave of the court and subject to such terms as the court may impose.

(2) Where a petition, other than an excepted petition, for the winding up of the CIO has been presented before the beginning of the moratorium, section 127 shall not apply in relation to any disposition of property, transfer of shares or alteration in status made during the moratorium or at a time mentioned in paragraph 37(5)(a).

(3) [...]

(4) Paragraph (a) of sub-paragraph (1) does not apply to an excepted petition and, where such a petition has been presented before the beginning of the moratorium or is presented during the moratorium, paragraphs (b) and (c) of that sub-paragraph do not apply in relation to proceedings on the petition.

[(5) For the purposes of this paragraph “excepted petition” means a petition presented by the Attorney General or the Charity Commission under section 113 of the Charities Act 2011.]

**13.** (1) This paragraph applies where there is an uncrystallised floating charge on the property of a CIO for which a moratorium is in force.

(2) If the conditions for the holder of the charge to give a notice having the effect mentioned in sub-paragraph (4) are met at any time, the notice may not be given at that time but may instead be given as soon as practicable after the moratorium has come to an end.

(3) If any other event occurs at any time which (apart from this sub-paragraph) would have the effect mentioned in sub-paragraph (4), then—

- (a) the event shall not have the effect in question at that time, but
- (b) if notice of the event is given to the CIO by the holder of the charge as soon as is practicable after the moratorium has come to an end, the event is to be treated as if it had occurred when the notice was given.

(4) The effect referred to in sub-paragraphs (2) and (3) is—

- (a) causing the crystallisation of the floating charge, or
- (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the CIO.

(5) Application may not be made for leave under paragraph 12(1)(g) or (h) with a view to obtaining—

- (a) the crystallisation of the floating charge, or
- (b) the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the CIO.

**14.** Security granted by a CIO at a time when a moratorium is in force in relation to the CIO may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the CIO.

#### ***Effect on CIO***

**15.** (1) Paragraphs 16 to 23 apply in relation to a CIO for which a moratorium is in force.

(2) The fact that a CIO enters into a transaction in contravention of any of paragraphs 16 to 22 does not—

- (a) make the transaction void, or
- (b) make it to any extent unenforceable against the CIO.

#### ***CIO invoices, etc***

**16.** (1) Every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the CIO, and all the CIO's websites, must also contain the nominee's name and a statement that the moratorium is in force for the CIO.

(2) If default is made in complying with sub-paragraph (1), the CIO and (subject to sub paragraph (3)) any charity trustee of the CIO is liable to a fine.

(3) A charity trustee of the CIO is only liable under sub-paragraph (2) if, without reasonable excuse, he authorises or permits the default.

#### ***Obtaining credit during moratorium***

**17.** (1) The CIO may not obtain credit to the extent of £250 or more from a person who has not been informed that a moratorium is in force in relation to the CIO.

(2) The reference to the CIO obtaining credit includes the following cases—

- (a) where goods are bailed [...] to the CIO under a hire-purchase agreement, or agreed to be sold to the CIO under a conditional sale agreement, and
- (b) where the CIO is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) Where the CIO obtains credit in contravention of sub-paragraph (1)—

- (a) the CIO is liable to a fine, and
- (b) if any charity trustee of the CIO knowingly and wilfully authorised or permitted the contravention, he is liable to imprisonment or a fine, or both.

(4) The money sum specified in sub-paragraph (1) is subject to increase or reduction by order under section 417A in Part 15.

#### ***Disposals and payments***

**18.** (1) Subject to sub-paragraph (2), the CIO may only dispose of any of its property if—

- (a) there are reasonable grounds for believing that the disposal will benefit the CIO, and
- (b) the disposal is approved by the committee established under paragraph 35(1) or, where there is no such committee, by the nominee.

(2) Sub-paragraph (1) does not apply to a disposal made in the ordinary way of the CIO's business.

(3) If the CIO makes a disposal in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the court—

- (a) the CIO is liable to a fine, and
- (b) if any charity trustee of the CIO authorised or permitted the contravention, without reasonable excuse, he is liable to imprisonment or a fine, or both.

**19.** (1) Subject to sub-paragraph (2), the CIO may only make any payment in respect of any debt or other liability of the CIO in existence before the beginning of the moratorium if—

- (a) there are reasonable grounds for believing that the payment will benefit the CIO, and
- (b) the payment is approved by the committee established under paragraph 35(1) or, where there is no such committee, by the nominee.

(2) Sub-paragraph (1) does not apply to a payment required by paragraph 20(6).

(3) If the CIO makes a payment in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the court—

- (a) the CIO is liable to a fine, and
- (b) if any charity trustee of the CIO authorised or permitted the contravention, without reasonable excuse, he is liable to imprisonment or a fine, or both.

### ***Disposal of charged property, etc***

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

- (a) any property of the CIO is subject to a security, or
- (b) any goods are in the possession of the CIO under a hire-purchase agreement.

(2) If the holder of the security consents, or the court gives leave, the CIO may dispose of the property as if it were not subject to the security.

(3) If the owner of the goods consents, or the court gives leave, the CIO may dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the CIO.

(4) Where property subject to a security which, as created, was a floating charge is disposed of under sub-paragraph (2), the holder of the security has the same priority in respect of any property of the CIO directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) Sub-paragraph (6) applies to the disposal under sub-paragraph (2) or (as the case may be) sub-paragraph (3) of—

- (a) any property subject to a security other than a security which, as created, was a floating charge, or
- (b) any goods in the possession of the CIO under a hire-purchase agreement.

(6) It shall be a condition of any consent or leave under sub-paragraph (2) or (as the case may be) sub-paragraph (3) that—

- (a) the net proceeds of the disposal, and
- (b) where those proceeds are less than such amount as may be agreed, or determined by the court, to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(7) Where a condition imposed in pursuance of sub-paragraph (6) relates to two or more securities, that condition requires—

- (a) the net proceeds of the disposal, and
- (b) where paragraph (b) of sub-paragraph (6) applies, the sums mentioned in that paragraph,

to be applied towards discharging the sums secured by those securities in the order of their priorities.

(8) Where the court gives leave for a disposal under sub-paragraph (2) or (3), the charity trustees shall, within 14 days after leave is given, send an office copy of the order giving leave to the Charity Commission.

(9) If the charity trustees without reasonable excuse fail to comply with sub-paragraph (8), they are liable to a fine.

**21** *omitted*

**22.** (1) If the CIO—

(a) without any consent or leave under paragraph 20, disposes of any of its property which is subject to a security otherwise than in accordance with the terms of the security,

(b) without any consent or leave under paragraph 20, disposes of any goods in the possession of the CIO under a hire-purchase agreement otherwise than in accordance with the terms of the agreement, or

(c) fails to comply with any requirement imposed by paragraph 20 [...],

it is liable to a fine.

(2) If any charity trustee of the CIO, without reasonable excuse, authorises or permits any such disposal or failure to comply, he is liable to imprisonment or a fine, or both.

**23** *omitted*

## **PART 4**

### **Nominees**

#### ***Monitoring of CIO's activities***

**24.** (1) During a moratorium, the nominee shall monitor the CIO's affairs for the purpose of forming an opinion as to whether—

(a) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 31(7), the proposed arrangement with those modifications has a reasonable prospect of being approved and implemented, and

(b) the CIO is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its activities.

(2) The charity trustees shall submit to the nominee any information necessary to enable him to comply with sub-paragraph (1) which he requests from them.

(3) In forming his opinion on the matters mentioned in sub-paragraph (1), the nominee is entitled to rely on the information submitted to him under sub-paragraph (2) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (1)(b) to the CIO's activities is to those activities as the CIO proposes to carry them on during the remainder of the moratorium.

#### ***Withdrawal of consent to act***

**25.** (1) The nominee may only withdraw his consent to act in the circumstances mentioned in this paragraph.

(2) The nominee must withdraw his consent to act if, at any time during a moratorium—

(a) he forms the opinion that—

(i) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 31(7), the proposed arrangement with those modifications no longer has a reasonable prospect of being approved or implemented, or

(ii) the CIO will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its activities,

(b) he becomes aware that, on the date of filing, the CIO was not eligible for a moratorium, or

- (c) the charity trustees fail to comply with their duty under paragraph 24(2).
- (3) The reference in sub-paragraph (2)(a)(ii) to the CIO's activities is to those activities as the CIO proposes to carry them on during the remainder of the moratorium.
- (4) If the nominee withdraws his consent to act, the moratorium comes to an end.
- (5) If the nominee withdraws his consent to act he must, in accordance with the rules, notify the court, the Charity Commission, the CIO and any creditor of the CIO of whose claim he is aware of his withdrawal and the reason for it.
- (6) If the nominee without reasonable excuse fails to comply with sub-paragraph (5), he is liable to a fine.

### ***Challenge of nominee's actions, etc***

**26.** (1) If any creditor, charity trustee or member of the CIO, or any other person affected by a moratorium, is dissatisfied by any act, omission or decision of the nominee during the moratorium, he may apply to the court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1) the court may—

- (a) confirm, reverse or modify any act or decision of the nominee,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(4) An order under sub-paragraph (3) may (among other things) bring the moratorium to an end and make such consequential provision as the court thinks fit.

**27.** (1) Where there are reasonable grounds for believing that—

- (a) as a result of any act, omission or decision of the nominee during the moratorium, the CIO has suffered loss, but
- (b) the CIO does not intend to pursue any claim it may have against the nominee,

any creditor of the CIO may apply to the court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1) the court may—

- (a) order the CIO to pursue any claim against the nominee,
- (b) authorise any creditor to pursue such a claim in the name of the CIO, or
- (c) make such other order with respect to such a claim as it thinks fit,

unless the court is satisfied that the act, omission or decision of the nominee was in all the circumstances reasonable.

(4) An order under sub-paragraph (3) may (among other things)—

- (a) impose conditions on any authority given to pursue a claim,
- (b) direct the CIO to assist in the pursuit of a claim,
- (c) make directions with respect to the distribution of anything received as a result of the pursuit of a claim,
- (d) bring the moratorium to an end and make such consequential provision as the court thinks fit.

(5) On an application under sub-paragraph (1) the court shall have regard to the interests of the members and creditors of the CIO generally.

### ***Replacement of nominee by court***

**28.** (1) The court may—

(a) on an application made by the charity trustees in a case where the nominee has failed to comply with any duty imposed on him under this Schedule or has died, or

(b) on an application made by the charity trustees or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(2) A person may only be appointed as a replacement nominee under this paragraph if he submits to the court a statement indicating his consent to act.

## **PART 5**

### **Consideration and Implementation of Voluntary Arrangement**

#### ***Summoning of meetings***

**29.** (1) Where a moratorium is in force, the nominee shall summon meetings of the CIO and its creditors for such a time, date (within the period for the time being specified in paragraph 8(3)) and place as he thinks fit.

(2) The persons to be summoned to a creditors' meeting under this paragraph are every creditor of the CIO of whose claim the nominee is aware.

#### ***Conduct of meetings***

**30.** (1) Subject to the provisions of paragraphs 31 to 35, the meetings summoned under paragraph 29 shall be conducted in accordance with the rules.

(2) A meeting so summoned may resolve that it be adjourned (or further adjourned).

(3) After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.

#### ***Approval of voluntary arrangement***

**31.** (1) The meetings summoned under paragraph 29 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3) The modifications shall not include one by virtue of which the proposal ceases to be a proposal such as is mentioned in section 1.

(4) A meeting summoned under paragraph 29 shall not approve any proposal or modification which affects the right of a secured creditor of the CIO to enforce his security, except with the concurrence of the creditor concerned.

(5) Subject to sub-paragraph (6), a meeting so summoned shall not approve any proposal or modification under which—

(a) any preferential debt of the CIO is to be paid otherwise than in priority to such of its debts as are not preferential debts, or

(b) a preferential creditor of the CIO is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(6) The meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(7) The charity trustees of the CIO may, before the beginning of the period of seven days which ends with the meetings (or either of them) summoned under paragraph 29 being held, give notice to the nominee of any modifications of the proposal for which the charity trustees intend to seek the approval of those meetings.

(8) References in this paragraph to preferential debts and preferential creditors are to be read in accordance with section 386 in Part 12 of this Act.

### ***Extension of moratorium***

**32.** (1) Subject to sub-paragraph (2), a meeting summoned under paragraph 29 which resolves that it be adjourned (or further adjourned) may resolve that the moratorium be extended (or further extended), with or without conditions

(2) The moratorium may not be extended (or further extended) to a day later than the end of the period of two months which begins—

(a) where both meetings summoned under paragraph 29 are first held on the same day, with that day,

(b) in any other case, with the day on which the later of those meetings is first held.

(3) At any meeting where it is proposed to extend (or further extend) the moratorium, before a decision is taken with respect to that proposal, the nominee shall inform the meeting—

(a) of what he has done in order to comply with his duty under paragraph 24 and the cost of his actions for the CIO, and

(b) of what he intends to do to continue to comply with that duty if the moratorium is extended (or further extended) and the expected cost of his actions for the CIO.

(4) Where, in accordance with sub-paragraph (3)(b), the nominee informs a meeting of the expected cost of his intended actions, the meeting shall resolve whether or not to approve that expected cost.

(5) If a decision not to approve the expected cost of the nominee's intended actions has effect under paragraph 36, the moratorium comes to an end.

(6) A meeting may resolve that a moratorium which has been extended (or further extended) be brought to an end before the end of the period of the extension (or further extension).

(7) The Secretary of State may by order increase or reduce the period for the time being specified in sub-paragraph (2).

**33.** (1) The conditions which may be imposed when a moratorium is extended (or further extended) include a requirement that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(2) A person may only be appointed as a replacement nominee by virtue of sub-paragraph (1) if he submits to the court a statement indicating his consent to act.

(3) At any meeting where it is proposed to appoint a replacement nominee as a condition of extending (or further extending) the moratorium—

(a) the duty imposed by paragraph 32(3)(b) on the nominee shall instead be imposed on the person proposed as the replacement nominee, and

(b) paragraphs 32(4) and (5) and 36(1)(e) apply as if the references to the nominee were to that person.

**34.** (1) If a decision to extend, or further extend, the moratorium takes effect under paragraph 36, the nominee shall, in accordance with the rules, notify the Charity Commission and the court.

(2) If the moratorium is extended, or further extended, by virtue of an order under paragraph 36(5), the nominee shall, in accordance with the rules, send a copy of the order to the Charity Commission.

(3) If the nominee without reasonable excuse fails to comply with this paragraph, he is liable to a fine.

#### ***Moratorium committee***

**35.** (1) A meeting summoned under paragraph 29 which resolves that the moratorium be extended (or further extended) may, with the consent of the nominee, resolve that a committee be established to exercise the functions conferred on it by the meeting.

(2) The meeting may not so resolve unless it has approved an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.

(3) Any expenses, not exceeding the amount of the estimate, incurred by the committee in the exercise of its functions shall be reimbursed by the nominee.

(4) The committee shall cease to exist when the moratorium comes to an end.

#### ***Effectiveness of decisions***

**36.** (1) Sub-paragraph (2) applies to references to one of the following decisions having effect, that is, a decision, under paragraph 31, 32 or 35, with respect to—

- (a) the approval of a proposed voluntary arrangement,
- (b) the extension (or further extension) of a moratorium,
- (c) the bringing of a moratorium to an end,
- (d) the establishment of a committee, or
- (e) the approval of the expected cost of a nominee's intended actions.

(2) The decision has effect if, in accordance with the rules—

- (a) it has been taken by both meetings summoned under paragraph 29, or
- (b) (subject to any order made under sub-paragraph (5)) it has been taken by the creditors' meeting summoned under that paragraph.

(3) If a decision taken by the creditors' meeting under any of paragraphs 31, 32 or 35 with respect to any of the matters mentioned in sub-paragraph (1) differs from one so taken by the CIO meeting with respect to that matter, a member of the CIO may apply to the court.

(4) An application under sub-paragraph (3) shall not be made after the end of the period of 28 days beginning with—

- (a) the day on which the decision was taken by the creditors' meeting, or
- (b) where the decision of the CIO meeting was taken on a later day, that day.

(5) On an application under sub-paragraph (3), the court may—

- (a) order the decision of the CIO meeting to have effect instead of the decision of the creditors' meeting, or
- (b) make such other order as it thinks fit.

#### ***Effect of approval of voluntary arrangement***

**37.** (1) This paragraph applies where a decision approving a voluntary arrangement has effect under paragraph 36.

(2) The approved voluntary arrangement—

- (a) takes effect as if made by the CIO at the creditors' meeting, and
- (b) binds every person who in accordance with the rules—
  - (i) was entitled to vote at that meeting (whether or not he was present or represented at it), or
  - (ii) would have been so entitled if he had had notice of it,

as if he were a party to the voluntary arrangement.

(3) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of sub-paragraph (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the CIO shall at that time become liable to pay to that person the amount payable under the arrangement.

(4) Where a petition for the winding up of the CIO, other than an excepted petition within the meaning of paragraph 12, was presented before the beginning of the moratorium, the court shall dismiss the petition.

(5) The court shall not dismiss a petition under sub-paragraph (4)—

(a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required by paragraph 30(3) has been made to the court, or

(b) at any time when an application under paragraph 38 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

### ***Challenge of decisions***

**38.** (1) Subject to the following provisions of this paragraph, any of the persons mentioned in sub-paragraph (2) may apply to the court on one or both of the following grounds—

(a) that a voluntary arrangement approved at one or both of the meetings summoned under paragraph 29 and which has taken effect unfairly prejudices the interests of a creditor [...] or contributory of the CIO,

(b) that there has been some material irregularity at or in relation to either of those meetings.

(2) The persons who may apply under this paragraph are—

(a) a person entitled, in accordance with the rules, to vote at either of the meetings,

(b) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it, and

(c) the nominee.

(3) An application under this paragraph shall not be made—

(a) after the end of the period of 28 days beginning with the first day on which each of the reports required by paragraph 30(3) has been made to the court, or

(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within sub-paragraph (2)(b) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on an application under this paragraph the court is satisfied as to either of the grounds mentioned in sub-paragraph (1), it may do any of the following—

(a) revoke or suspend—

(i) any decision approving the voluntary arrangement which has effect under paragraph 36, or

(ii) in a case falling within sub-paragraph (1)(b), any decision taken by the meeting in question which has effect under that paragraph,

(b) give a direction to any person—

- (i) for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the charity trustees may make, or
  - (ii) in a case falling within sub-paragraph (1)(b), for the summoning of a further CIO or (as the case may be) creditors' meeting to reconsider the original proposal.
- (5) Where at any time after giving a direction under sub-paragraph (4)(b)(i) the court is satisfied that the charity trustees do not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect under paragraph 36.
- (6) Where the court gives a direction under sub-paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect of the moratorium.
- (7) Sub-paragraph (8) applies in a case where the court, on an application under this paragraph—
- (a) gives a direction under sub-paragraph (4)(b), or
  - (b) revokes or suspends a decision under sub-paragraph (4)(a) or (5).
- (8) In such a case, the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—
- (a) things done under the voluntary arrangement since it took effect, and
  - (b) such things done since that time as could not have been done if a moratorium had been in force in relation to the CIO when they were done.
- (9) Except in pursuance of the preceding provisions of this paragraph, a decision taken at a meeting summoned under paragraph 29 is not invalidated by any irregularity at or in relation to the meeting.

### ***Implementation of voluntary arrangement***

- 39.** (1) This paragraph applies where a voluntary arrangement approved by one or both of the meetings summoned under paragraph 29 has taken effect.
- (2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—
- (a) by virtue of the approval of the arrangement, on the nominee, or
  - (b) by virtue of paragraph 31(2), on a person other than the nominee,
- shall be known as the supervisor of the voluntary arrangement.
- (3) If any of the CIO's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court.
- (4) On an application under sub-paragraph (3) the court may—
- (a) confirm, reverse or modify any act or decision of the supervisor,
  - (b) give him directions, or
  - (c) make such other order as it thinks fit.
- (5) The supervisor—
- (a) may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement, and
  - (b) is included among the persons who may apply to the court for the winding up of the CIO or for an administration order to be made in relation to it.
- (6) The court may, whenever—
- (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
  - (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,

make an order appointing a person who is qualified to act as an insolvency practitioner, or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

(7) The power conferred by sub-paragraph (6) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

## **PART 6**

### **Miscellaneous**

#### ***Challenge of charity trustees' actions***

**40.** (1) This paragraph applies in relation to acts or omissions of the charity trustees of a CIO during a moratorium.

(2) A creditor [...] of the CIO may apply to the court for an order under this paragraph on the ground—

(a) that the CIO's affairs, activities or property are being or have been managed by the charity trustees in a manner which is unfairly prejudicial to—

(i) the interest of its creditors [...] generally;

(ii) the interest of some part of its creditors [...] (including at least the petitioner); or

(b) that any actual or proposed act or omission of the charity trustees is or would be so prejudicial.

(3) An application for an order under this paragraph may be made during or after the moratorium.

(4) On an application for an order under this paragraph the court may—

(a) make such order as it thinks fit for giving relief in respect of the matters complained of,

(b) adjourn the hearing conditionally or unconditionally, or

(c) make an interim order or any other order that it thinks fit.

(5) An order under this paragraph may in particular—

(a) regulate the management by the charity trustees of the CIO's affairs, business and property during the remainder of the moratorium,

(b) require the charity trustees to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained they have omitted to do,

(c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the court may direct,

(d) bring the moratorium to an end and make such consequential provision as the court thinks fit.

(6) In making an order under this paragraph the court shall have regard to the need to safeguard the interests of persons who have dealt with the CIO in good faith and for value.

(7) Sub-paragraph (8) applies where—

(a) the appointment of an administrator has effect in relation to the CIO and that appointment was in pursuance of—

(i) an administration application made, or

(ii) a notice of intention to appoint filed,

before the moratorium came into force, or

(b) the CIO is being wound up in pursuance of a petition presented before the moratorium came into force.

(8) No application for an order under this paragraph may be made by a creditor or member of the CIO; but such an application may be made instead by the administrator or (as the case may be) the liquidator.

## *Offences*

**41.** (1) This paragraph applies where a moratorium has been obtained for a CIO.

(2) If, within the period of 12 months ending with the day on which the moratorium came into force, a person who was at the time a charity trustee of the CIO—

- (a) did any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
- (b) was privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,

he is to be treated as having committed an offence at that time.

(3) If, at any time during the moratorium, a person who is a charity trustee of the CIO—

- (a) does any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
- (b) is privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,

he commits an offence.

(4) Those things are—

- (a) concealing any part of the CIO's property to the value of £500 or more, or concealing any debt due to or from the CIO, or
- (b) fraudulently removing any part of the CIO's property to the value of £500 or more, or
- (c) concealing, destroying, mutilating or falsifying any book or paper affecting or relating to the CIO's property or affairs, or
- (d) making any false entry in any book or paper affecting or relating to the CIO's property or affairs, or
- (e) fraudulently parting with, altering or making any omission in any document affecting or relating to the CIO's property or affairs, or
- (f) pawning, pledging or disposing of any property of the CIO which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the CIO's activities).

(5) [...].

(6) It is a defence—

- (a) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (a) or (f) of sub-paragraph (4) to prove that he had no intent to defraud, and
- (b) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (c) or (d) of sub-paragraph (4) to prove that he had no intent to conceal the state of affairs of the CIO or to defeat the law.

(7) Where a person pawns, pledges or disposes of any property of a CIO in circumstances which amount to an offence under sub-paragraph (2) or (3), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in circumstances which—

- (a) would, if a moratorium were obtained for the CIO within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under sub-paragraph (2), or
- (b) amount to an offence under sub-paragraph (3),

commits an offence.

(8) A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.

(9) The money sums specified in paragraphs (a) and (b) of sub-paragraph (4) are subject to increase or reduction by order under section 417A in Part 15.

**42.** (1) If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for a CIO, a person who is a charity trustee of the CIO—

- (a) makes any false representation, or
- (b) fraudulently does, or omits to do, anything,

he commits an offence.

(2) Sub-paragraph (1) applies even if no moratorium or extension is obtained.

(3) [...].

(4) A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.

#### ***Void provisions in floating charge documents***

**43.** (1) A provision in an instrument creating a floating charge is void if it provides for—

- (a) obtaining a moratorium, or
- (b) anything done with a view to obtaining a moratorium (including any preliminary decision or investigation),

to be an event causing the floating charge to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the CIO or a ground for the appointment of a receiver.

(2) In sub-paragraph (1), “receiver” includes a manager and a person who is appointed both receiver and manager.

**44** *omitted*

#### ***Subordinate legislation***

**45.** (1) Regulations or an order made by the Secretary of State under this Schedule may make different provision for different cases.

(2) Regulations so made may make such consequential, incidental, supplemental and transitional provision as may appear to the Secretary of State necessary or expedient.

(3) Any power of the Secretary of State to make regulations under this Schedule may be exercised by amending or repealing any enactment contained in this Act (including one contained in this Schedule) or contained in the Company Directors Disqualification Act 1986.

(4) Regulations [...] or an order made by the Secretary of State under this Schedule shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(5) [...]

## **SCHEDULE B1**

### **Administration**

#### *Nature of Administration*

#### ***Administration***

**1.** (1) For the purposes of this Act “administrator” of a CIO means a person appointed under this Schedule to manage the CIO's affairs, activities and property.

(2) For the purposes of this Act—

- (a) a CIO is “in administration” while the appointment of an administrator of the CIO has effect,
- (b) a CIO “enters administration” when the appointment of an administrator takes effect,

- (c) a CIO ceases to be in administration when the appointment of an administrator of the CIO ceases to have effect in accordance with this Schedule, and
- (d) a CIO 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.

2. A person may be appointed as administrator of a CIO—
- (a) by administration order of the court under paragraph 10,
  - (b) by the holder of a floating charge under paragraph 14, or
  - (c) by the CIO or its charity trustees under paragraph 22.

***Purpose of administration***

3. (1) The administrator of a CIO must perform his functions with the objective of—
- (a) rescuing the CIO as a going concern, or
  - (b) achieving a better result for the CIO's creditors as a whole than would be likely if the CIO 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 CIO must perform his functions in the interests of the CIO'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 CIO'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 CIO as a whole.

4. The administrator of a CIO must perform his functions as quickly and efficiently as is reasonably practicable.

***Status of administrator***

5. An administrator is an officer of the court (whether or not he is appointed by the court).

***General restrictions***

6. A person may be appointed as administrator of a CIO only if he is qualified to act as an insolvency practitioner in relation to the CIO.
7. A person may not be appointed as administrator of a CIO which is in administration (subject to the provisions of paragraphs 90 to 97 and 100 to 103 about replacement and additional administrators).
8. (1) A person may not be appointed as administrator of a CIO 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 38.
- (3) Sub-paragraph (1)(b) is subject to paragraphs 37 and 38.

**9** *omitted*

### *Appointment of Administrator by Court*

#### ***Administration order***

**10.** An administration order is an order appointing a person as the administrator of a CIO.

#### ***Conditions for making order***

- 11.** The court may make an administration order in relation to a CIO only if satisfied—
- (a) that the CIO 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***

- 12.** (1) An application to the court for an administration order in respect of a CIO (an “administration application”) may be made only by—
- (a) the CIO,
  - (b) the charity trustees of the CIO,
  - (c) one or more creditors of the CIO,
  - (d) the designated officer for a magistrates' court in the exercise of the power conferred by section 87A of the Magistrates' Courts Act 1980 (c 43) (fine imposed on company), or
  - (e) a combination of persons listed in paragraphs (a) to (d).
- (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 CIO,
  - (b) any person who is or may be entitled to appoint an administrative receiver of the CIO,
  - (c) any person who is or may be entitled to appoint an administrator of the CIO under paragraph 14, 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 section 7(4)(b).

#### ***Powers of court***

- 13.** (1) On hearing an administration application the 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 section 125;

- (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 charity trustees or the CIO;
  - (b) make provision conferring a discretion on the court or on a person qualified to act as an insolvency practitioner in relation to the CIO.
- (4) This paragraph is subject to paragraph 39.

#### *Appointment of Administrator by Holder of Floating Charge*

##### ***Power to appoint***

- 14.** (1) The holder of a qualifying floating charge in respect of a CIO's property may appoint an administrator of the CIO.
- (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 CIO,
  - (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 section 29(2), or
  - (d) [...].
- (3) For the purposes of sub-paragraph (1) a person is the holder of a qualifying floating charge in respect of a CIO's property if he holds one or more debentures of the CIO secured—
- (a) by a qualifying floating charge which relates to the whole or substantially the whole of the CIO's property,
  - (b) by a number of qualifying floating charges which together relate to the whole or substantially the whole of the CIO's property, or
  - (c) by charges and other forms of security which together relate to the whole or substantially the whole of the CIO's property and at least one of which is a qualifying floating charge.

##### ***Restrictions on power to appoint***

- 15.** (1) A person may not appoint an administrator under paragraph 14 unless—
- (a) he has given at least two business days' written notice to the holder of any prior floating charge which satisfies paragraph 14(2), or
  - (b) the holder of any prior floating charge which satisfies paragraph 14(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.
- (3) [...]

**16.** An administrator may not be appointed under paragraph 14 while a floating charge on which the appointment relies is not enforceable.

- 17.** An administrator of a CIO may not be appointed under paragraph 14 if—
- (a) a provisional liquidator of the CIO has been appointed under section 135, or
  - (b) an administrative receiver of the CIO is in office.

***Notice of appointment***

**18.** (1) A person who appoints an administrator of a CIO under paragraph 14 shall file with the 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 CIO'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 charity trustees of the CIO (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***

**19.** The appointment of an administrator under paragraph 14 takes effect when the requirements of paragraph 18 are satisfied.

**20.** A person who appoints an administrator under paragraph 14—

- (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 18 are satisfied, and
- (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

***Invalid appointment: indemnity***

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

- (a) a person purports to appoint an administrator under paragraph 14, and
- (b) the appointment is discovered to be invalid.

(2) The 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 CIO or Charity trustees*

***Power to appoint***

- 22.** (1) A CIO may appoint an administrator.  
(2) The charity trustees of a CIO may appoint an administrator.

***Restrictions on power to appoint***

- 23.** (1) This paragraph applies where an administrator of a CIO is appointed—  
(a) under paragraph 22, or  
(b) on an administration application made by the CIO or its charity trustees.  
(2) An administrator of the CIO may not be appointed under paragraph 22 during the period of 12 months beginning with the date on which the appointment referred to in sub-paragraph (1) ceases to have effect.
- 24.** (1) If a moratorium for a CIO under Schedule A1 ends on a date when no voluntary arrangement is in force in respect of the CIO, 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 CIO ends if—  
(a) the arrangement was made during a moratorium for the CIO under Schedule A1, and  
(b) the arrangement ends prematurely (within the meaning of section 7B).  
(3) While this paragraph applies, an administrator of the CIO may not be appointed under paragraph 22.
- 25.** An administrator of a CIO may not be appointed under paragraph 22 if—  
(a) a petition for the winding up of the CIO 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 CIO is in office.

***Notice of intention to appoint***

- 26.** (1) A person who proposes to make an appointment under paragraph 22 shall give at least five business days' written notice to—  
(a) any person who is or may be entitled to appoint an administrative receiver of the CIO, and  
(b) any person who is or may be entitled to appoint an administrator of the CIO under paragraph 14.  
(2) A person who proposes to make an appointment under paragraph 22 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.
- 27.** (1) A person who gives notice of intention to appoint under paragraph 26 shall file with the 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 CIO is or is likely to become unable to pay its debts,
- (b) that the CIO 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 23 to 25, 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.

**28.** (1) An appointment may not be made under paragraph 22 unless the person who makes the appointment has complied with any requirement of paragraphs 26 and 27 and—

- (a) the period of notice specified in paragraph 26(1) has expired, or
- (b) each person to whom notice has been given under paragraph 26(1) has consented in writing to the making of the appointment.

(2) An appointment may not be made under paragraph 22 after the period of ten business days beginning with the date on which the notice of intention to appoint is filed under paragraph 27(1).

### ***Notice of appointment***

**29.** (1) A person who appoints an administrator of a CIO under paragraph 22 shall file with the 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 22,
- (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.

(4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by charity trustees of the CIO (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.

**30.** In a case in which no person is entitled to notice of intention to appoint under paragraph 26(1) (and paragraph 28 therefore does not apply)—

- (a) the statutory declaration accompanying the notice of appointment must include the statements and information required under paragraph 27(2), and
- (b) paragraph 29(2)(c) shall not apply.

#### ***Commencement of appointment***

**31.** The appointment of an administrator under paragraph 22 takes effect when the requirements of paragraph 29 are satisfied.

**32.** A person who appoints an administrator under paragraph 22—

- (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 29 are satisfied, and
- (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

**33.** If before the requirements of paragraph 29 are satisfied the CIO enters administration by virtue of an administration order or an appointment under paragraph 14—

- (a) the appointment under paragraph 22 shall not take effect, and
- (b) paragraph 32 shall not apply.

#### ***Invalid appointment: indemnity***

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

- (a) a person purports to appoint an administrator under paragraph 22, and
- (b) the appointment is discovered to be invalid.

(2) The 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***

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

- (a) is made by the holder of a qualifying floating charge in respect of the CIO's property, and
- (b) includes a statement that the application is made in reliance on this paragraph.

(2) The court may make an administration order—

- (a) whether or not satisfied that the CIO 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 14.

##### ***Intervention by holder of floating charge***

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

- (a) an administration application in respect of a CIO is made by a person who is not the holder of a qualifying floating charge in respect of the CIO's property, and

(b) the holder of a qualifying floating charge in respect of the CIO's property applies to the 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 CIO in liquidation***

**37.** (1) This paragraph applies where the holder of a qualifying floating charge in respect of a CIO's property could appoint an administrator under paragraph 14 but for paragraph 8(1)(b).

(2) The holder of the qualifying floating charge may make an administration application.

(3) If the 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.

**38.** (1) The liquidator of a CIO may make an administration application.

(2) If the 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 CIO,
- (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.

#### ***Effect of administrative receivership***

**39.** (1) Where there is an administrative receiver of a CIO the court must dismiss an administration application in respect of the CIO 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 sections 238 to 240 (transaction at undervalue and preference) if an administration order were made,
- (c) the court thinks that the security by virtue of which the receiver was appointed would be avoided under section 245 (avoidance of floating charge) if an administration order were made, or
- (d) the court thinks that the security by virtue of which the receiver was appointed would be challengeable under section 242 (gratuitous alienations) or 243 (unfair preferences) [...].

(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***

**40.** (1) A petition for the winding up of a CIO—

- (a) shall be dismissed on the making of an administration order in respect of the CIO, and
- (b) shall be suspended while the CIO is in administration following an appointment under paragraph 14.

[(2) Sub-paragraph (1)(b) does not apply to a petition presented by the Attorney General or the Charity Commission under section 113 of the Charities Act 2011.]

(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 court for directions under paragraph 63.

#### ***Dismissal of administrative or other receiver***

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

(2) Where a CIO is in administration, any receiver of part of the CIO'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 CIO which was in his custody or under his control immediately before he vacated office, and
- (b) he need not take any further steps under section 40 or 59.

(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 CIO,
- (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 43.

#### ***Moratorium on insolvency proceedings***

**42.** (1) This paragraph applies to a CIO in administration.

(2) No resolution may be passed for the winding up of the CIO.

(3) No order may be made for the winding up of the CIO.

[(4) Sub-paragraph (3) does not apply to a petition presented by the Attorney General or the Charity Commission under section 113 of the Charities Act 2011.]

(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 court for directions under paragraph 63.

#### ***Moratorium on other legal process***

**43.** (1) This paragraph applies to a CIO in administration.

(2) No step may be taken to enforce security over the CIO's property except—

- (a) with the consent of the administrator, or
- (b) with the permission of the court.

(3) No step may be taken to repossess goods in the CIO'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 CIO except—
  - (a) with the consent of the administrator, or
  - (b) with the permission of the court.
- (5) [...]
- (6) No legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the CIO or property of the CIO except—
  - (a) with the consent of the administrator, or
  - (b) with the permission of the court.
- (6A) An administrative receiver of the CIO 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***

- 44.** (1) This paragraph applies where an administration application in respect of a CIO 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 14 is filed with the court until—
- (a) the appointment of the administrator takes effect, or
  - (b) the period of five 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 27(1) until—
- (a) the appointment of the administrator takes effect, or
  - (b) the period specified in paragraph 28(2) expires without an administrator having been appointed.
- (5) The provisions of paragraphs 42 and 43 shall apply (ignoring any reference to the consent of the administrator).
- (6) If there is an administrative receiver of the CIO when the administration application is made, the provisions of paragraphs 42 and 43 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 court for—
- (a) the presentation of a petition for the winding up of the CIO under a provision mentioned in paragraph 42(4),
  - (b) the appointment of an administrator under paragraph 14,
  - (c) the appointment of an administrative receiver of the CIO, or
  - (d) the carrying out by an administrative receiver (whenever appointed) of his functions.

### ***Publicity***

**45.** (1) While a CIO is in administration, every business document issued by or on behalf of the CIO or the administrator, and all of the CIO's websites, must state—

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

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

- (a) the administrator,
- (b) a charity trustee of the CIO, and
- (c) the CIO.

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

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

whether in hard copy, electronic or any other form.

### *Process of Administration*

#### ***Announcement of administrator's appointment***

**46.** (1) This paragraph applies where a person becomes the administrator of a CIO.

(2) As soon as is reasonably practicable the administrator shall—

- (a) send a notice of his appointment to the CIO, 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 CIO'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 Charity Commission 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 14, the date on which he receives notice under paragraph 20, and
- (c) in the case of an administrator appointed under paragraph 22, the date on which he receives notice under paragraph 32.

(7) The 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 CIO's affairs*

**47.** (1) As soon as is reasonably practicable after appointment the administrator of a CIO 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 CIO.

(2) The statement must—

- (a) be verified by a statement of truth in accordance with Civil Procedure Rules,
- (b) be in the prescribed form,
- (c) give particulars of the CIO's property, debts and liabilities,
- (d) give the names and addresses of the CIO'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 a charity trustee of the CIO,
- (b) a person who took part in the formation of the CIO during the period of one year ending with the date on which the CIO enters administration,
- (c) a person employed by the CIO during that period, and
- [(d) a person who is or has been during that period an officer or employee of a company or a CIO which is or has been during that year a charity trustee of the CIO].

(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.

(5) [...]

**48.** (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 47(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 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 47(1).

#### *Administrator's proposals*

**49.** (1) The administrator of a CIO 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 3(1)(a) or (b) cannot be achieved.

(3) Proposals under this paragraph may include—

- (a) a proposal for a voluntary arrangement under Part I of this Act (although this paragraph is without prejudice to section 4(3));
  - (b) [...]
- (4) The administrator shall send a copy of the statement of his proposals—
- (a) to the Charity Commission,
  - (b) to every creditor of the CIO of whose claim and address he is aware, and
  - (c) to every member of the CIO of whose address he is aware.
- (5) The administrator shall comply with sub-paragraph (4)—
- (a) as soon as is reasonably practicable after the CIO enters administration, and
  - (b) in any event, before the end of the period of eight weeks beginning with the day on which the CIO 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 CIO 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 107.

#### ***Creditors' meeting***

- 50.** (1) In this Schedule “creditors' meeting” means a meeting of creditors of a CIO summoned by the administrator—
- (a) in the prescribed manner, and
  - (b) giving the prescribed period of notice to every creditor of the CIO of whose claim and address he is aware.
- (2) A period prescribed under sub-paragraph (1)(b) may be varied in accordance with paragraph 107.
- (3) A creditors' meeting shall be conducted in accordance with the rules.

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

- 51.** (1) Each copy of an administrator's statement of proposals sent to a creditor under paragraph 49(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 CIO enters administration, and
  - (b) in any event, within the period of ten weeks beginning with the date on which the CIO 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 107.
- (5) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

- 52.** (1) Paragraph 51(1) shall not apply where the statement of proposals states that the administrator thinks—

- (2) that the CIO has sufficient property to enable each creditor of the CIO to be paid in full,
  - (a) that the CIO has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a), or

- (b) that neither of the objectives specified in paragraph 3(1)(a) and (b) can be achieved.
- (3) But the administrator shall summon an initial creditors' meeting if it is requested—
  - (a) by creditors of the CIO whose debts amount to at least 10% of the total debts of the CIO,
  - (b) in the prescribed manner, and
  - (c) in the prescribed period.
- (4) A meeting requested under sub-paragraph (2) must be summoned for a date in the prescribed period.
- (5) The period prescribed under sub-paragraph (3) may be varied in accordance with paragraph 107.

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

**53.** (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 court,
  - (b) the Charity Commission, 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***

**54.** (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 CIO 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 CIO 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 court,
- (b) the Charity Commission, 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***

**55.** (1) This paragraph applies where an administrator reports to the 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 40(1)(b);
- (e) make any other order (including an order making consequential provision) that the court thinks appropriate.

#### ***Further creditors' meetings***

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

- (a) it is requested in the prescribed manner by creditors of the CIO whose debts amount to at least 10% of the total debts of the CIO, or
- (b) he is directed by the 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***

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

(2) A creditors' committee shall carry out functions conferred on it by or under this Act.

(3) A creditors' committee may require the administrator—

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

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

**58.** (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***

**59.** (1) The administrator of a CIO may do anything necessary or expedient for the management of the affairs, activities and property of the CIO.

(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 CIO in good faith and for value need not inquire whether the administrator is acting within his powers.

**60.** The administrator of a CIO has the powers specified in Schedule 1 to this Act.

**61.** The administrator of a CIO—

(a) may remove a charity trustee of the CIO, and

(b) may appoint a charity trustee of the CIO (whether or not to fill a vacancy).

**62.** The administrator of a CIO may call a meeting of members or creditors of the CIO.

**63.** The administrator of a CIO may apply to the court for directions in connection with his functions.

**64.** (1) A CIO in administration or a charity trustee of a CIO 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***

**65.** (1) The administrator of a CIO may make a distribution to a creditor of the CIO.

(2) Section 175 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 CIO who is neither secured nor preferential unless the court gives permission.

**66.** The administrator of a CIO may make a payment otherwise than in accordance with paragraph 65 or paragraph 13 of Schedule 1 if he thinks it likely to assist achievement of the purpose of administration.

#### ***General duties***

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

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

- (a) any proposals approved under paragraph 53,
- (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 54.

(2) If the court gives directions to the administrator of a CIO in connection with any aspect of his management of the CIO's affairs, activities 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 53,
- (b) the directions are consistent with any proposals or revision approved under paragraph 53 or 54,
- (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 53 or 54, or
- (d) the court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under paragraph 53 or 54.

#### ***Administrator as agent of CIO***

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

#### ***Charged property: floating charge***

**70.** (1) The administrator of a CIO 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 CIO which directly or indirectly represents the property disposed of.

#### ***Charged property: non-floating charge***

**71.** (1) The court may by order enable the administrator of a CIO 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 CIO.

(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 Charity Commission 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***

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

(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 CIO.

(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 Charity Commission 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***

**73.** (1) An administrator's statement of proposals under paragraph 49 may not include any action which—

- (a) affects the right of a secured creditor of the CIO to enforce his security,
- (b) would result in a preferential debt of the CIO being paid otherwise than in priority to its non-preferential debts, or
- (c) would result in one preferential creditor of the CIO 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 I of this Act (although this sub-paragraph is without prejudice to section 4(3)).
- (c) and (d) [omitted].

(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 CIO***

**74.** (1) A creditor [...] of a CIO in administration may apply to the 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 [...] 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 [...] creditors).

(2) A creditor [...] of a CIO 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 71 or 72.
- (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 I,
  - (b) and (ba) [omitted], or
  - (c) proposals or a revision approved under paragraph 53 or 54 more than 28 days before the day on which the application for the order under this paragraph is made.

### ***Misfeasance***

- 75.** (1) The court may examine the conduct of a person who—
- (a) is or purports to be the administrator of a CIO, or
  - (b) has been or has purported to be the administrator of a CIO.
- (2) An examination under this paragraph may be held only on the application of—
- (a) the official receiver,
  - (b) the administrator of the CIO,
  - (c) the liquidator of the CIO,
  - (d) a creditor of the CIO, or
  - (e) a contributory of the CIO.
- (3) An application under sub-paragraph (2) must allege that the administrator—
- (a) has misapplied or retained money or other property of the CIO,
  - (b) has become accountable for money or other property of the CIO,
  - (c) has breached a fiduciary or other duty in relation to the CIO, 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 CIO'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 CIO's administrator.

(6) An application under sub-paragraph (2) may be made in respect of an administrator who has been discharged under paragraph 98 only with the permission of the court.

### *Ending Administration*

#### ***Automatic end of administration***

**76.** (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 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 six months by consent.

**77.** (1) An order of the court under paragraph 76—

(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 76 the administrator shall as soon as is reasonably practicable notify the Charity Commission.

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

**78.** (1) In paragraph 76(2)(b) “consent” means consent of—

(a) each secured creditor of the CIO, and

(b) if the CIO has unsecured debts, creditors whose debts amount to more than 50% of the CIO'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 52(1)(b) “consent” means—

(a) consent of each secured creditor of the CIO, or

(b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—

(i) each secured creditor of the CIO, and

(ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the CIO, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(3) Consent for the purposes of paragraph 76(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 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—

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

***Court ending administration on application of administrator***

- 79.** (1) On the application of the administrator of a CIO the court may provide for the appointment of an administrator of the CIO to cease to have effect from a specified time.
- (2) The administrator of a CIO shall make an application under this paragraph if—
- (a) he thinks the purpose of administration cannot be achieved in relation to the CIO,
  - (b) he thinks the CIO should not have entered administration, or
  - (c) a creditors' meeting requires him to make an application under this paragraph.
- (3) The administrator of a CIO 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 CIO.
- (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***

- 80.** (1) This paragraph applies where an administrator of a CIO is appointed under paragraph 14 or 22.
- (2) If the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the CIO he may file a notice in the prescribed form—
- (a) with the court, and
  - (b) with the Charity Commission.
- (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 CIO 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 CIO 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***

- 81.** (1) On the application of a creditor of a CIO the court may provide for the appointment of an administrator of the CIO 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***

**82.** [(1) This paragraph applies where a winding-up order is made for the winding up of a CIO in administration on a petition presented by the Attorney General or the Charity Commission under section 113 of the Charities Act 2011.]

(2) This paragraph also applies where a provisional liquidator of a CIO in administration is appointed following the presentation of an excepted petition.

- (3) The 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***

**83.** (1) This paragraph applies in England and Wales where the administrator of a CIO thinks—

- (a) that the total amount which each secured creditor of the CIO 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 CIO (if there are any).

(2) [omitted].

(3) The administrator may send to the Charity Commission a notice that this paragraph applies.

[(4) On receipt of a notice under sub-paragraph (3) the Charity Commission must publish it in such manner as it thinks fit.]

[(4A) In determining the manner in which to publish the notice under sub-paragraph (3) the Charity Commission must have regard in particular to—

- (a) the location of the principal office of the CIO;
- (b) the area in which the CIO operates; and
- (c) the charitable purposes of the CIO.]

(5) If an administrator sends a notice under sub-paragraph (3) 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) On the [publication] of a notice under sub-paragraph (3)—

- (a) the appointment of an administrator in respect of the CIO shall cease to have effect, and
- (b) the CIO shall be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the notice is [published].

(7) The liquidator for the purposes of the winding up shall be—

- (a) a person nominated by the creditors of the CIO in the prescribed manner and within the prescribed period, or
  - (b) if no person is nominated under paragraph (a), the administrator.
- (8) In the application of Part 4 to a winding up by virtue of this paragraph—
- (a) section 85 shall not apply,
  - (b) section 86 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 (3),
  - (c) section 89 does not apply,
  - (d) sections 98, 99 and 100 shall not apply,
  - (e) section 129 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 (3), and
  - (f) any creditors' committee which is in existence immediately before the CIO ceases to be in administration shall continue in existence after that time as if appointed as a liquidation committee under section 101.

***Moving from administration to dissolution***

- 84.** (1) If the administrator of a CIO thinks that the CIO has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the Charity Commission.
- (2) The court may on the application of the administrator of a CIO disapply sub-paragraph (1) in respect of the CIO.
- [(3) On receipt of a notice under sub-paragraph (1) the Charity Commission must publish it in such manner as it thinks fit.
- (3A) In determining the manner in which to publish a copy of the notice under sub-paragraph (3) the Charity Commission must have regard in particular to—
- (a) the location of the principal office of the CIO;
  - (b) the area in which the CIO operates; and
  - (c) the charitable purposes of the CIO.]
- (4) The appointment of the administrator shall cease to have effect on [publication] of the notice by the Charity Commission in accordance with paragraph (3).
- (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 three months beginning with the date of [publication] of a notice in respect of a CIO under sub-paragraph (1) the CIO is deemed to be dissolved.
- (7) On an application in respect of a CIO 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 CIO the administrator shall as soon as is reasonably practicable notify the Charity Commission.
- (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***

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

- (a) the court makes an order under this Schedule providing for the appointment of an administrator of a CIO to cease to have effect, and
- (b) the administrator was appointed by administration order.

(2) The court shall discharge the administration order.

***Notice to Charity Commission where administration ends***

**86.** (1) This paragraph applies where the 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 Charity Commission 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***

**87.** (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 court,
- (b) in the case of an administrator appointed under paragraph 14, 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 22(1), by notice in writing to the CIO, or
- (d) in the case of an administrator appointed under paragraph 22(2), by notice in writing to the charity trustees of the CIO.

***Removal of administrator from office***

**88.** The court may by order remove an administrator from office.

***Administrator ceasing to be qualified***

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

(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 court,
- (b) in the case of an administrator appointed under paragraph 14, 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 22(1), to the CIO, or
- (d) in the case of an administrator appointed under paragraph 22(2), to the charity trustees of the CIO.

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

***Supplying vacancy in office of administrator***

**90.** Paragraphs 91 to 95 apply where an administrator—

- (a) dies,
- (b) resigns,
- (c) is removed from office under paragraph 88, or
- (d) vacates office under paragraph 89.

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

- (a) a creditors' committee of the CIO,
- (b) the CIO,
- (c) the charity trustees of the CIO,
- (d) one or more creditors of the CIO, 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 CIO,
- (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.

**92.** Where the administrator was appointed under paragraph 14 the holder of the floating charge by virtue of which the appointment was made may replace the administrator.

**93.** (1) Where the administrator was appointed under paragraph 22(1) by the CIO 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 CIO's property, or
- (b) where consent is withheld, with the permission of the court.

**94.** (1) Where the administrator was appointed under paragraph 22(2) the charity trustees of the CIO 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 CIO's property, or
- (b) where consent is withheld, with the permission of the court.

**95.** The court may replace an administrator on the application of a person listed in paragraph 91(1) if the court—

- (a) is satisfied that a person who is entitled to replace the administrator under any of paragraphs 92 to 94 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***

**96.** (1) This paragraph applies where an administrator of a CIO is appointed under paragraph 14 by the holder of a qualifying floating charge in respect of the CIO's property.

(2) The holder of a prior qualifying floating charge in respect of the CIO's property may apply to the 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.

(4) [...].

***Substitution of administrator appointed by CIO or charity trustees: creditors' meeting***

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

(a) an administrator of a CIO is appointed by a CIO or charity trustees under paragraph 22, and

(b) there is no holder of a qualifying floating charge in respect of the CIO's property.

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

(3) A creditors' 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***

**98.** (1) Where a person ceases to be the administrator of a CIO (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 court of notice of his death,

(b) in the case of an administrator appointed under paragraph 14 or 22, 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 52(1)(b), a resolution shall be taken as passed if (and only if) passed with the approval of—

(a) each secured creditor of the CIO, 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 CIO, and

(ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the CIO, 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 court's powers under paragraph 75.

### ***Vacation of office: charges and liabilities***

**99.** (1) This paragraph applies where a person ceases to be the administrator of a CIO (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 CIO’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 70 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***

**100.** (1) In this Schedule—

(a) a reference to the appointment of an administrator of a CIO includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator of a CIO, and

(b) a reference to the appointment of a person as administrator of a CIO 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 CIO.

(2) The appointment of a number of persons to act as administrator of a CIO 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.

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

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

(3) But a reference to the administrator of a CIO in paragraphs 87 to 99 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 45(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 CIO, this paragraph applies only in relation to those functions.

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

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

**103.** (1) Where a CIO 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 CIO.

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

(a) a person or group listed in paragraph 12(1)(a) to (e), or

(b) the person or persons acting as the administrator of the CIO.

(3) Where a CIO entered administration by virtue of an appointment under paragraph 14, 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 court on the application of the person or persons acting as the administrator of the CIO.

(4) Where a CIO entered administration by virtue of an appointment under paragraph 22(1), an appointment under sub-paragraph (1) above must be made either by the court on the application of the person or persons acting as the administrator of the CIO or—

(a) by the CIO, and

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

(5) Where a CIO entered administration by virtue of an appointment under paragraph 22(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 CIO or—

(a) by the charity trustees of the CIO, and

(b) respect of the CIO'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 CIO.

### ***Presumption of validity***

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

### ***Majority decision of charity trustees***

**105.** A reference in this Schedule to something done by the charity trustees of a CIO includes a reference to the same thing done by a majority of the charity trustees of a CIO.

### ***Penalties***

**106.** (1) A person who is guilty of an offence under this Schedule is liable to a fine (in accordance with section 430 and Schedule 10).

(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 section 430 and Schedule 10)—

- (a) paragraph 20,
- (b) paragraph 32,
- (c) paragraph 46,
- (d) paragraph 48,
- (e) paragraph 49,
- (f) paragraph 51,
- (g) paragraph 53,
- (h) paragraph 54,
- (i) paragraph 56,
- (j) paragraph 71,
- (k) paragraph 72,
- (l) paragraph 77,
- (m) paragraph 78,
- (n) paragraph 80,
- (o) paragraph 84,
- (p) paragraph 86, and
- (q) paragraph 89.

### ***Extension of time limit***

**107.** (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 CIO—

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

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

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

**108.** (1) A period specified in paragraph 49(5), 50(1)(b) or 51(2) may be varied in respect of a CIO by the administrator with consent.

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

- (a) each secured creditor of the CIO, and

(b) if the CIO has unsecured debts, creditors whose debts amount to more than 50% of the CIO'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 52(1)(b) “consent” means—

(a) consent of each secured creditor of the CIO, or

(b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—

(i) each secured creditor of the CIO, and

(ii) preferential creditors whose debts amount to more than 50% of the total preferential debts of the CIO, 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—

(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 court, and

(d) may not be used to extend a period after expiry.

**109.** Where a period is extended under paragraph 107 or 108, a reference to the period shall be taken as a reference to the period as extended.

#### ***Amendment of provision about time***

**110.** (1) The Secretary of State 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—

(a) must be made by statutory instrument, and

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

#### ***Interpretation***

**111.** (1) In this Schedule—

“administrative receiver” has the meaning given by section 251,

“administrator” has the meaning given by paragraph 1 and, where the context requires, includes a reference to a former administrator,

“correspondence” includes correspondence by telephonic or other electronic means,

“creditors' meeting” has the meaning given by paragraph 50,

“enters administration” has the meaning given by paragraph 1,

“floating charge” means a charge which is a floating charge on its creation,

“in administration” has the meaning given by paragraph 1,

“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 CIO's property has the meaning given by paragraph 14,

“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 3, and

“unable to pay its debts” has the meaning given by section 123.

(1A) and (1B) [omitted]

(2) *repealed.*

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

**111A to 116** *omitted*

## **SCHEDULE 1**

### **Powers of Administrator or Administrative Receiver**

- 1.** Power to take possession of, collect and get in the property of the CIO and, for that purpose, to take such proceedings as may seem to him expedient.
- 2.** Power to sell or otherwise dispose of the property of the CIO by public auction or private contract [...].
- 3.** Power to raise or borrow money and grant security therefore over the property of the CIO.
- 4.** Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.
- 5.** Power to bring or defend any action or other legal proceedings in the name and on behalf of the CIO.
- 6.** Power to refer to arbitration any question affecting the CIO.
- 7.** Power to effect and maintain insurances in respect of the business and property of the CIO.
- 8.** Power to use the CIO's seal.
- 9.** Power to do all acts and to execute in the name and on behalf of the CIO any deed, receipt or other document.
- 10.** Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the CIO.
- 11.** Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.

12. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the CIO.

13. Power to make any payment which is necessary or incidental to the performance of his functions.

14. Power to carry on the activities of the CIO.

15. Power to establish subsidiaries of the CIO.

16. Power to transfer to subsidiaries of the CIO the whole or any part of the activities and property of the CIO.

17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the CIO, and to take a lease or tenancy of any property required or convenient for the business of the CIO.

18. Power to make any arrangement or compromise on behalf of the CIO.

19 *omitted*

20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the CIO and to receive dividends, and to accede to trust deeds for the creditors of any such person.

21. Power to present or defend a petition for the winding up of the CIO.

22. Power to change the situation of the CIO's principal office.

23. Power to do all other things incidental to the exercise of the foregoing powers.

## **SCHEDULE 2 (powers of a Scottish receiver)**

*omitted*

### **SCHEDULE 2A**

#### **Exceptions to prohibition on appointment of administrative receiver: supplementary provisions**

This Schedule is not reproduced here

## **SCHEDULE 3 (orders pronounced in vacation (Scotland))**

*omitted*

## **SCHEDULE 4**

### **Powers of Liquidator in a winding up**

#### **PART 1**

##### **Powers exercisable without sanction**

1. Power to pay any class of creditors in full.
2. Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the CIO, or whereby the CIO may be rendered liable.

3 *omitted*

- 3A. Power to bring legal proceedings under section 213, 214, 238, 239 [...] or 423.

#### **PART 2**

##### **Powers exercisable without sanction in voluntary winding up, with sanction in winding up by the court**

4. Power to bring or defend any action or other legal proceeding in the name and on behalf of the CIO.
5. Power to carry on the activities of the CIO so far as may be necessary for its beneficial winding up.

#### **PART 3**

##### **Powers exercisable without sanction in any winding up**

6. Power to sell any of the CIO's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.
- 6A. In the case of a winding up of a CIO, power to compromise, on such terms as may be agreed—
  - (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the CIO and a contributory or alleged contributory or other debtor or person apprehending liability to the CIO, and
  - (b) subject to paragraph 2 in Part 1 of this Schedule, all questions in any way relating to or affecting the assets or the winding up of the CIO,and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.
7. Power to do all acts and execute, in the name and on behalf of the CIO, all deeds, receipts, and other documents and for that purpose to use, when necessary, the CIO's seal.
8. Power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

9. Power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the CIO, with the same effect with respect to the CIO's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the CIO in the course of its activities.

10. Power to raise on the security of the assets of the CIO any money requisite.

11. Power to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money, due from a contributory or his estate which cannot conveniently be done in the name of the CIO

In all such cases the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.

12. Power to appoint an agent to do any business which the liquidator is unable to do himself.

13. Power to do all such other things as may be necessary for winding up the CIO's affairs and distributing its assets.

#### **SCHEDULE 4ZA (Conditions for making a debt relief order)**

*omitted*

#### **SCHEDULE 4ZB (Debt relief restrictions orders and undertakings)**

*omitted*

#### **SCHEDULE 4A (Bankruptcy restrictions)**

*omitted*

#### **SCHEDULE 5 (Powers of trustee in bankruptcy)**

*omitted*

#### **SCHEDULE 6 (The categories of preferential debts)**

There are now only two categories of preferential debt likely to be of relevance to CIOs: contributions to occupational pension schemes, and remuneration of employees.

The Schedule, which is not reproduced here, is modified by the Regulations as follows:

in paragraph 14: omit sub-paragraphs (1)(b) and (c).

#### **SCHEDULE 7 (Insolvency Practitioners Tribunal)**

This Schedule is not reproduced here.

## **SCHEDULE 8 (Provisions capable of inclusion in company insolvency rules)**

The Schedule, which is not reproduced here, is modified by the Regulations as follows:

- in paragraph 14: omit the words “or in the Bankruptcy (Scotland) Act 1985;
- in paragraph 29: omit “, 66”.

## **SCHEDULE 9 (Provisions capable of inclusion in individual insolvency rules)**

*omitted*

## **SCHEDULE 10**

### **Punishment of offences under this Act**

The Schedule, which is not reproduced here, is modified by the Regulations as follows:

in the table, after the entry relating to section 67(8) insert:

|        |                                                                              |         |                                     |                                       |
|--------|------------------------------------------------------------------------------|---------|-------------------------------------|---------------------------------------|
| 84(11) | Failing to comply with requirement to send resolution to Charity Commission. | Summary | One-fifth of the statutory maximum. | One-fiftieth of the statutory maximum |
|--------|------------------------------------------------------------------------------|---------|-------------------------------------|---------------------------------------|

## **SCHEDULE 11**

### **Transitional provisions and savings**

This Schedule is not reproduced here.

## **SCHEDULES 12 to 14 (Repeals and consequential amendments)**

*omitted*