



Companies Act 1985

1985 CHAPTER 6

PART XX

WINDING UP OF COMPANIES REGISTERED UNDER THIS ACT OR THE FORMER COMPANIES ACTS

CHAPTER V

PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP

Proof and ranking of claims

611 Debts of all descriptions may be proved

- (1) In every winding up (subject, in the case of insolvent companies, to the application in accordance with this Act of the law of bankruptcy) all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, are admissible to proof against the company.
- (2) A just estimate is to be made (so far as possible) of the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

612 Application of bankruptcy rules (England and Wales)

- (1) In the winding up of an insolvent company registered in England and Wales the same rules prevail and are to be observed with regard to the respective rights of secured and unsecured creditors, and to debts provable and to the valuation of annuities and future and contingent liabilities, as are in force for the time being under the law of bankruptcy in England and Wales with respect to the estates of persons adjudged bankrupt

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- (2) All those who in any such case would be entitled to prove for and receive dividends out of the company's assets may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

613 Ranking of claims (Scotland)

- (1) In the winding up of a company registered in Scotland, the following provisions of the Bankruptcy (Scotland) Act 1913—
- (a) sections 45 to 62 regarding voting and ranking for payment of dividends,
 - (b) section 96 (reckoning of majorities), and
 - (c) section 105 (interruption of prescription),
- apply, so far as is consistent with this Act, in like manner as they apply in the sequestration of a bankrupt's estate, with the substitutions specified below, and with any other necessary modifications.
- (2) The substitutions to be made in those sections of the Act of 1913 are as follows—
- (a) for references to sequestration, substitute references to winding up,
 - (b) for references to the sheriff, substitute references to the court,
 - (c) for references to the trustee, substitute references to the liquidator, and
 - (d) for references to the bankrupt, substitute references to the company.

614 Preferential payments

- (1) In a winding up the preferential debts listed in Schedule 19 shall be paid in priority to all other debts, but with the exceptions and reservations specified in that Schedule.
- (2) The preferential debts shall—
- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions, and
 - (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.
- (3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the preferential debts shall be discharged forthwith so far as the assets are sufficient to meet them; and in the case of the debts to which priority is given by paragraph 8 of Schedule 19 (social security payments), formal proof of them is not required except in so far as is otherwise provided by general rules.
- (4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within 3 months next before the date of a winding-up order, the preferential debts are a first charge on the goods or effects so distrained on, or the proceeds of their sale; but in respect of any money paid under such a charge, the landlord or other person has the same rights of priority as the person to whom the payment is made.

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Effect of winding up on antecedent and other transactions

615 Fraudulent preference

- (1) Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a company within 6 months before the commencement of its winding up which, had it been made or done by or against an individual within 6 months before the presentation of a bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, is in the event of the company being wound up deemed a fraudulent preference of its creditors and invalid accordingly.
- (2) Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors is void to all intents.
- (3) In the application of this section to Scotland, " bankruptcy petition " means petition for sequestration.

616 Liabilities and rights of those fraudulently preferred (England and Wales)

- (1) Where in the case of a company wound up in England and Wales anything made or done is void under section 615 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred is subject to the same liabilities, and has the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.
- (2) The value of the person's interest is determined as at the date of the transaction constituting the fraudulent preference, and as if the interest were free of all incumbrances other than those to which the charge for the company's debt was then subject.
- (3) On an application made to the court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the court has jurisdiction to determine any question with respect to the payment arising between the person to whom the payment was made and the surety or guarantor, and to grant relief in respect of it.
- (4) The court's jurisdiction under subsection (3) is exercisable notwithstanding that the determination of the question is not necessary for the purposes of the winding up; and the court may for the purposes of that subsection give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.
- (5) Subsections (3) and (4) apply, with the necessary modifications, in relation to transactions other than the payment of money as they apply in relation to payments.

617 Effect of floating charge

- (1) Where a company is being wound up, a floating charge on its undertaking or property created within 12 months of the commencement of the winding up is invalid (unless it is proved that the company immediately after the creation of the charge was solvent), except to the amount of any cash paid to the company at the time of or subsequently

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to the creation of, and in consideration for, the charge, together with interest on that amount.

- (2) Interest under this section is at the rate of 5 per cent, per annum or such other rate as may for the time being be prescribed by order of the Treasury in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Where a company is being wound up in Scotland, a floating charge over all or any part of its property is not to be held an alienation or preference voidable by statute (other than by the provisions of this section) or at common law on the ground of insolvency or notour bankruptcy.

618 Disclaimer of onerous property (England and Wales)

- (1) Where any part of the property of a company which is being wound up consists of land (of any tenure) burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding its possessor to the performance of any onerous act or to the payment of any sum of money, the liquidator may, with the leave of the court and subject to the provisions of this section and the next, disclaim the property.
- (2) The power to disclaim is exercisable notwithstanding that the liquidator has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation to it; and the disclaimer must be in writing signed by him.
- (3) The power is exercisable at any time within 12 months after the commencement of the winding up or such extended period as may be allowed by the court; but where any such property has not come to the liquidator's knowledge within one month after the commencement of the winding up, he may disclaim at any time within 12 months after he has become aware of it or such extended period as may be so allowed.
- (4) The disclaimer operates to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, and the company's property, in or in respect of the property disclaimed; but it does not (except so far as is necessary for the purpose of releasing the company and its property from liability) affect the rights or liabilities of any other person.
- (5) This section does not apply in the case of a winding up in Scotland.

619 Further provisions about disclaimer under s. 618

- (1) The court, before or on granting leave to disclaim under section 618, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter, as the court thinks just.
- (2) The liquidator is not entitled to disclaim property under section 618 in a case where application in writing has been made to him by persons interested in the property requiring him to decide whether he will or will not disclaim and he has not within 28 days after the receipt of the application (or such further period as may be allowed by the court) given notice to the applicant that he intends to apply to the court for leave to disclaim.
- (3) In the case of a contract, if the liquidator after such an application does not within that period or further period disclaim the contract, the company is deemed to have adopted it.

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- (4) 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 company, 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; and any damages payable under the order to such a person may be proved by him as a debt in the winding up.
- (5) The court may, on an application by a person who either claims an interest in disclaimed property or is under a liability not discharged by this Act in respect of disclaimed property, and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or its delivery to any persons entitled to it, or to whom it may seem just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the court thinks just
- (6) On such a vesting order being made, the property comprised in it vests accordingly in the person named in that behalf in the order, without conveyance or assignment for that purpose.
- (7) Part I of Schedule 20 has effect for the protection of third parties where the property disclaimed is of a leasehold nature.
- (8) A person injured by the operation of a disclaimer under section 618 and this section is deemed a creditor of the company to the amount of the injury, and may accordingly prove the debt in the winding up.

620 Liability for rentcharge on company's land after disclaimer

- (1) Where on a disclaimer under section 618 land in England and Wales vests subject to a rentcharge in the Crown or any other person, that does not impose on the Crown or that other person, or on its or his successors in title, any personal liability in respect of the rentcharge.
- (2) But this section does not affect any liability in respect of sums accruing due after the Crown or other person, or some person claiming through or under it or him, has taken possession or control of the land or has entered into occupation of it.
- (3) This section applies to land whenever vesting, and to sums whenever accrued.

621 Effect of execution or attachment (England and Wales)

- (1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to it, and the company is subsequently wound up, he is not entitled to retain the benefit of the execution or attachment against the liquidator in the winding up 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 sheriff any goods of a company on which execution has been levied in all cases acquires a good title to them against the liquidator, and

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- (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 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 " the sheriff " includes any officer charged with the execution of a writ or other process.
- (5) This section does not apply in the case of a winding up in Scotland.

622 Duties of sheriff where goods seized in execution (England and Wales)

- (1) The following applies where a company'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 sheriff 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 sheriff 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 £250 a company's goods are sold or money is paid in order to avoid sale, the sheriff 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 sheriff of a petition for the winding up of the company 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 sheriff 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 " the sheriff " includes any officer charged with the execution of a writ or other process.
- (7) The money sum for the time being specified in subsection (3) is subject to increase or reduction by regulations under section 664; but no increase or reduction of it affects any case where the goods are sold, or the payment to avoid sale is made, before the coming into force of the increase or reduction.
- (8) This section does not apply in the case of a winding up in Scotland.

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623 Effect of diligence within 60 days of winding up

- (1) The following applies in the case of the winding up of a company registered in Scotland.
- (2) The winding up is equivalent as at the date of its commencement, to an arrestment in execution and decree of furthcoming, and to an executed or completed poinding; and—
 - (a) no arrestment or poinding of the funds or effects of the company executed on or after the 60th day prior to that date is effectual, and
 - (b) those funds or effects (or their proceeds if sold) shall be made forthcoming to the liquidator:

But any arrester or poinder before that date who is thus deprived of the benefit of his diligence has preference out of those funds or effects for the expense bona fide incurred by him in the diligence.

- (3) As at the date of its commencement, the winding up is equivalent to a decree of adjudication of the heritable estates of the company for the payment of its whole debts, principal and interest, accumulated at that date, subject to such preferable heritable rights and securities as existed at that date and are valid and unchallengeable, and the right to poind the ground provided below in this section.
- (4) Sections 108 to 113 and 116 of the Bankruptcy (Scotland) Act 1913 apply (so far as is consistent with this Act) to the realisation of heritable estates affected by such heritable rights and securities as are mentioned above ; and for the purposes of this Act those sections are modified as follows—
 - (a) " sequestration" and " trustee" mean respectively " winding up " and " liquidator ", and
 - (b) " the Lord Ordinary or the court " means " the court " as defined by this Act with respect to Scotland.
- (5) No poinding of the ground which has not been carried into execution by sale of the effects 60 days before the date of commencement of the winding up is available (except to the extent provided below) in any question with the liquidator.

However, no creditor who holds a security over the heritable estate preferable to the right of the liquidator is prevented from executing a poinding of the ground after that date; but that poinding is, in competition with the liquidator, available only for interest on the debt for the current half-yearly term, and for arrears of interest for one year immediately before the commencement of that term.

- (6) This section, so far as relating to any estate or effects of the company situated in Scotland, applies in the case of a company registered in England as in the case of one registered in Scotland.

Offences of fraud, deception, etc., before and in course of winding up; fraudulent trading and its consequences

624 Fraud, etc. in anticipation of winding up

- (1) When a company is ordered to be wound up by the court, or passes a resolution for voluntary winding up, any person, being a past or present officer of the company, is

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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 company's property to the value of £120 or more, or concealed any debt due to or from the company,
 - (b) fraudulently removed any part of the company's property to the value of £120 or more, or
 - (c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the company's property or affairs, or
 - (d) made any false entry in any book or paper affecting or relating to the company's property or affairs, or
 - (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's property or affairs, or
 - (f) pawned, pledged or disposed of any property of the company 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 company's business).
- (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) For purposes of this section, " officer " includes a shadow director.
- (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 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 company 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 regulations under section 664.

625 Transactions in fraud of creditors

- (1) When a company 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 an officer of the company—
- (a) with intent to defraud creditors of the company, 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 company's property, or

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- (b) with that intent, has concealed or removed any part of the company's property since, or within 2 months before, the date of any unsatisfied judgment or order for the payment of money obtained against the company.
- (2) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

626 Misconduct in course of winding up

- (1) When a company is being wound up, whether by or under the supervision of the court or voluntarily, any person, being a past or present officer of the company, 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 company's property, and how and to whom and for what consideration and when the company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the company's business), or
 - (b) does not deliver up to the liquidator (or as he directs) all such part of the company'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 company 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 for the period of a month to inform the liquidator of it, or
 - (e) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the company'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 company'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 company's creditors within the 12 months immediately preceding the commencement of the winding up.
- (3) For purposes of this section, " officer " includes a shadow director.
- (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 company or to defeat the law.
- (5) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

627 Falsification of company's books

- (1) When a company is being wound up, an officer or contributory of the company commits an offence if he destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person.

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

628 Material omissions from statements relating to company affairs

- (1) When a company is being wound up, whether by or under the supervision of the court or voluntarily, any person, being a past or present officer of the company, commits an offence if he makes any material omission in any statement relating to the company's affairs.
- (2) When a company 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) For purposes of this section, " officer" includes a shadow director.
- (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.

629 False representations to creditors

- (1) When a company is being wound up, whether by or under the supervision of the court or voluntarily, any person, being a past or present officer of the company—
- (a) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company'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) For purposes of this section, " officer" includes a shadow director.
- (3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

630 Responsibility of individuals for company's fraudulent trading

- (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.
- (2) The court, on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any persons who were knowingly parties to the carrying on of the business in the manner above mentioned are to be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the court may direct.
- (3) On the hearing of the application, the official receiver or the liquidator (as the case may be) may himself give evidence or call witnesses.

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- (4) Where the court makes such 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 company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company 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.
- (5) For purposes of subsection (4), " 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) given in good faith and without notice of any of the matters on the ground of which the declaration is made.
- (6) This section has effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under subsection (2) is to be made; and where the declaration is made in the case of a winding up in England and Wales, it is deemed a final judgment within section 1(1)(g) of the Bankruptcy Act 1914.

631 Assessment of damages against delinquent directors, etc.

- (1) The following applies if in the course of winding up a company it appears that a person who has taken part in its formation or promotion, or any past or present director, manager or liquidator, or an officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company.
- (2) 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 promoter, director, manager, liquidator or officer and compel him—
 - (a) to repay or restore the money or property, or any part of it, respectively with interest at such rate as the court thinks just, or
 - (b) to contribute such sum to the company's assets by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just
- (3) This section has effect notwithstanding that the offence is one for which the offender may be criminally liable.
- (4) If in the case of a winding up in England and Wales an order for payment of money is made under this section, the order is deemed a final judgment within section 1(1)(g) of the Bankruptcy Act 1914.

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632 Prosecution of delinquent officers and members of company

- (1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company 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 to the prosecuting authority.
- (2) " The prosecuting authority " means—
 - (a) in the case of a winding up in England and Wales, the Director of Public Prosecutions, and
 - (b) in the case of a winding up in Scotland, the Lord Advocate.
- (3) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, he shall—
 - (a) forthwith report the matter to the prosecuting authority, and
 - (b) furnish to that authority 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 authority requires.
- (4) Where a report is made to him under subsection (3), the prosecuting authority may, if he thinks fit, refer the matter to the Secretary of State for further enquiry ; and the Secretary of State—
 - (a) shall thereupon investigate the matter, and
 - (b) for the purpose of his investigation may exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 to investigate a company's affairs.
- (5) If it appears to the court in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty as above-mentioned, and that no report with respect to the matter has been made by the liquidator to the prosecuting authority under subsection (3), 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; and on a report being made accordingly this section has effect as though the report had been made in pursuance of subsection (3).

633 Obligations arising under s. 632

- (1) For the purpose of an investigation by the Secretary of State under section 632(4), any obligation imposed on a person by any provision of this Act to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in that subsection 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 632(4) may be used in evidence against him.
- (3) Where criminal proceedings are instituted by the prosecuting authority or the Secretary of State following any report or reference under section 632, it is the duty of the liquidator and every officer and agent of the company past and present (other than the defendant or defender) to give to that authority or the Secretary of State (as the

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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 company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

- (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 prosecuting authority 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 company to enable him to do so) direct that the costs shall be borne by the liquidator personally.

Supplementary provisions as to winding up

634 Disqualification for appointment as liquidator

- (1) A body corporate is not qualified for appointment as liquidator of a company, whether in a winding up by or under the supervision of the court or in a voluntary winding up.
- (2) Any appointment made in contravention of this section is void; and a body corporate which acts as liquidator of a company is liable to a fine.

635 Corrupt inducement affecting appointment as liquidator

A person who gives or agrees or offers to give to any member or creditor of a company 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 company's liquidator is liable to a fine.

636 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 company, or by the registrar of companies, 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.

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637 Notification that company is in liquidation

- (1) When a company is being wound up, whether by or under supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company, or a liquidator of the company, or a receiver or manager of the company's property, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.
- (2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, is liable to a fine.

638 In a winding up, certain 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) If the company is registered in England and Wales, 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 company'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 power of attorney, proxy paper, writ, order, certificate, or other instrument or writing relating solely to the property of any company 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) If the company is registered in Scotland, the following documents are exempt from stamp duty—
 - (a) every conveyance relating solely to property which forms part of the company's assets and which, after the execution of the conveyance, is or remains the company's property for the benefit of its creditors.
 - (b) every power of attorney, commission, factory, articles of roup or sale, submission and every other instrument and writing whatsoever relating solely to the company's property, and
 - (c) every deed or writing forming part of the proceedings in the winding up.

" Conveyance " here includes assignation, instrument, discharge, writing and deed.

639 Company's books to be evidence

Where a company is being wound up, all books and papers of the company and of the liquidators are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in them.

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640 Disposal of books and papers

- (1) When a company has been wound up and is about to be dissolved, its books and papers and those of the liquidators may be disposed of as follows—
 - (a) in the case of a winding up by or subject to the supervision of the court, in such way as the court directs;
 - (b) in the case of a members' voluntary winding up, in such way as the company by extraordinary resolution directs, and
 - (c) in the case of a creditors' voluntary winding up, in such way as the committee of inspection or, if there is no such committee, the company's creditors may direct
- (2) After 5 years from the company's dissolution no responsibility rests on the company, the liquidators, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to a person claiming to be interested in it.
- (3) Provision may be made by general rules—
 - (a) for enabling the Secretary of State to prevent for such period as he thinks proper (but not exceeding 5 years from the company's dissolution), the destruction of the books and papers of a company which has been wound up, and
 - (b) for enabling any creditor or contributory of the company to make representations to the Secretary of State and to appeal to the court from any direction which may be given by the Secretary of State in the matter.
- (4) If a person acts in contravention of general rules made for the purposes of this section, or of any direction of the Secretary of State under them, he is liable to a fine.

641 Information as to pending liquidations

- (1) If the winding up of a company 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 registrar of companies 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.

642 Unclaimed assets (England and Wales)

- (1) This section applies if, where a company is being wound up in England and Wales, it appears (either from any statement sent to the registrar under section 641 or otherwise) that a liquidator has in his hands or under his control any money—
 - (a) representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for 6 months after the date of their receipt, or
 - (b) held by the company in trust in respect of dividends or other sums due to any person as a member of the company.
- (2) The liquidator shall forthwith pay the money in question to the Insolvency Services Account at the Bank of England, and is entitled to the prescribed certificate of receipt

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for the money so paid, and that certificate is an effectual discharge to him in respect of it

- (3) For the purpose of ascertaining and getting in any money payable into the Bank of England in pursuance of this section, the like powers may be exercised, and by the like authority, as are exercisable under section 153 of the Bankruptcy Act 1914 for the purpose of ascertaining and getting in the sums, funds and dividends referred to in that section.
- (4) Any person claiming to be entitled to money paid into the Bank of England under this section may apply to the Secretary of State for payment; and the Secretary of State may, on a certificate by the liquidator that the person claiming is entitled, make an order for payment to that person of the sum due.
- (5) Any person dissatisfied with a decision of the Secretary of State in respect of a claim made under this section may appeal to the High Court.

643 Unclaimed dividends, etc. (Scotland)

- (1) The following applies where a company registered in Scotland has been wound up, and is about to be dissolved.
- (2) The liquidator shall lodge in a joint stock bank of issue in Scotland (not being a bank in or of which the liquidator is acting partner, manager, agent or cashier) in the name of the Accountant of Court the whole unclaimed dividends and unapplied or undistributable balances, and the deposit receipts shall be transmitted to the Accountant of Court.
- (3) The provisions of section 153 of the Bankruptcy (Scotland) Act 1913 (so far as consistent with this Act) apply with any necessary modifications to sums lodged in a bank under this section as they apply to sums deposited under that section.

644 Resolutions passed at adjourned meetings

Where a resolution is passed at an adjourned meeting of a company'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.

Supplementary powers of court

645 Meetings to ascertain wishes of creditors or contributories

- (1) The court may—
 - (a) as to all matters relating to the winding up of a company, 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

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- (3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act of each creditor's debt.

646 Judicial notice of signature of court officers

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, or of the Court of Session or a sheriff court in Scotland, or of the High Court in Northern Ireland, and also
- (b) of the official seal or stamp of the several offices of the High Court in England and Wales or Northern Ireland, or of the Court of Session, 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.

647 Commission for receiving evidence

- (1) When a company is wound up in England and Wales or in Scotland, 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
 - (b) to the sheriff principal for a specified sheriffdom in Scotland, or
 - (c) to the High Court in Northern Ireland or a specified Northern Ireland County Court,(" 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 (or, in Scotland, the sheriff principal to whom it 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 or sheriff principal 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 or sheriff principal 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) This section extends to Northern Ireland.

648 Court order for examination of persons in Scotland

- (1) The court may direct the examination in Scotland of any person for the time being in Scotland (whether a contributory of the company or not), in regard to the trade, dealings, affairs or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested by reason of his being a contributory.

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- (2) The order or commission to take the examination shall be directed to the sheriff principal of the sheriffdom in which the person to be examined is residing or happens to be for the time; and the sheriff principal shall summon the person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.
- (3) The sheriff principal may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with the report the books and papers produced, if the originals are required and specified by the order or commission, or otherwise copies or extracts authenticated by the sheriff.
- (4) If a person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff principal shall proceed against him as a witness or haver duly cited ; and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.
- (5) The sheriff principal is entitled to such fees, and the witness is entitled to such allowances, as sheriffs principal when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.
- (6) If any objection is stated to the sheriff principal by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff principal may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court

649 Costs of application for leave to proceed (Scottish companies)

Where a petition or application for leave to proceed with an action or proceeding against a company which is being wound up in Scotland is unopposed and is granted by the court, the costs of the petition or application shall, unless the court otherwise directs, be added to the amount of the petitioner's or applicant's claim against the company.

650 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.