



Insolvency Act 1985

1985 CHAPTER 65

PART I

INSOLVENCY PRACTITIONERS

Qualification

1 Unqualified persons not to act as insolvency practitioners

- (1) Any person who acts as an insolvency practitioner in relation to a company or an individual at a time when he is not qualified to do so shall be liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (2) A person acts as an insolvency practitioner in relation to a company by acting—
 - (a) as its liquidator, administrator or administrative receiver ; or
 - (b) as supervisor of a composition or scheme approved by it under Chapter II of Part II of this Act.
- (3) A person acts as an insolvency practitioner in relation to an individual by acting—
 - (a) as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate;
 - (b) as trustee under a deed which is a deed of arrangement made for the benefit of his creditors or, in Scotland, a trust deed for his creditors;
 - (c) as supervisor of a composition or scheme proposed by him and approved under Chapter I of Part III of this Act; or
 - (d) in the case of a deceased individual to the administration of whose estate this section applies by virtue of an order under section 228 below, as administrator of that estate.

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- (4) References in this section to an individual include, except in so far as the context otherwise requires, references to a partnership and to any debtor within the meaning of the Bankruptcy (Scotland) Act 1985.
- (5) In this section—
- " administrative receiver " has the same meaning as in Part II of this Act;
 - " company " means a company within the meaning given by section 735(1) of the 1985 Act or a company which may be wound up under Part XXI of that Act;
 - " interim trustee " and " permanent trustee " have the same meanings as in the Bankruptcy (Scotland) Act 1985 ;
 - " liquidator " includes provisional liquidator.
- (6) Nothing in this section shall apply in relation to anything done by the official receiver.

2 Qualification of 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 to act as an insolvency practitioner by virtue of section 3 below; or
 - (b) he holds an authorisation granted under section 5 below.
- (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 or, in Scotland, caution for the proper performance of his functions; and
 - (b) that security or caution 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;
 - (b) he is subject to a disqualification order made under sections 296 to 299 of the 1985 Act or Chapter I of Part II of this Act; or
 - (c) he is a patient within the meaning of Part VII of the Mental Health Act 1983 or section 125(1) of the Mental Health (Scotland) Act 1984.

Authorisation of members of recognised professional bodies

3 Authorisation of members of recognised professional bodies

- (1) A member of a recognised professional body is authorised to act as an insolvency practitioner if he is permitted so to act by or under the rules of that body.
- (2) The Secretary of State may by order declare a body which appears to him to fall within subsection (3) below to be a recognised professional body for the purposes of this

section; and any such order may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within that subsection.

- (3) This subsection applies to any body which 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.
- (4) Any order under subsection (2) above shall have 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.
- (5) In this section references to members of a recognised professional body are references to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question.

Authorisation by relevant authority

4 Applications for authorisation

- (1) An application for authorisation under section 5 below—
 - (a) shall be made in such manner as the relevant 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 relevant authority may direct that notice of the making of the application shall be published in such manner as may be specified in the direction.
- (2) At any time after receiving the application and before determining it the relevant authority may require the applicant to furnish additional information.
- (3) Directions and requirements given or imposed under subsection (1) or (2) above may differ as between different applications.
- (4) Any information to be furnished to the relevant authority under this section shall, if it so requires, be in such form or verified in such manner as it may specify,
- (5) An application for authorisation under section 5 below may be withdrawn before it is granted or refused.
- (6) Any sums received under this section by a relevant authority other than the Secretary of State may be retained by that authority; and any sums received under this section by the Secretary of State shall be paid into the Consolidated Fund.

5 Grant, refusal and withdrawal of authorisation

- (1) The relevant authority may, on an application duly made in accordance with section 4 above and after being furnished with all such information as it may require under that section, grant or refuse the application.

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- (2) The relevant 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 shall, unless previously withdrawn, continue in force for such period not exceeding the prescribed maximum as may be specified in the authorisation.
- (4) An authorisation granted under this section may be withdrawn by the relevant 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) above, that the holder of the authorisation has failed to comply with any provision of this Part or of any regulations made under it or, in purported compliance with any such provision, has furnished the relevant authority with false, inaccurate or misleading information.
- (5) An authorisation granted under this section may be withdrawn by the relevant authority at the request or with the consent of the holder of the authorisation.

6 Notices

- (1) Where the relevant authority grants an authorisation, it shall give written notice of that fact to the applicant, specifying the date on which the authorisation takes effect.
- (2) Where the relevant authority proposes to refuse an application or to withdraw an authorisation under section 5(4) above, 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 under subsection (2) above shall state the date on which it is proposed that the withdrawal should take effect.
- (4) A notice under subsection (2) above shall give particulars of the rights exercisable under sections 7 and 8 below by a person on whom the notice is served.

7 Right to make representations

- (1) A person on whom a notice is served under section 6(2) above may within fourteen days after the date of service make written representations to the relevant authority.
- (2) The relevant authority shall have regard to any representations made in accordance with this section in determining whether to refuse the application or withdraw the authorisation, as the case may be.

8 Reference to Tribunal

- (1) Where a person is served with a notice under section 6(2) above, he may—
 - (a) at any time within twenty-eight days after the date of service of the notice; or

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- (b) at any time after the making by him of any representations in accordance with section 7 above and before the end of the period of twenty-eight days after the date of the service on him of a notice by the relevant authority that the authority does not propose to alter its decision in consequence of the representations give written notice to the relevant authority requiring the case to be referred to the Tribunal referred to in subsection (6) below.
- (2) Where a requirement is made in accordance with subsection (1) above, then, unless the relevant authority —
- (a) has decided or decides to grant the application or, as the case may be, not to withdraw the authorisation ; and
 - (b) within seven 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.
- (3) On a reference under this section the Tribunal shall—
- (a) investigate the case ; and
 - (b) make a report to the relevant authority stating what would in their opinion be the appropriate decision in the matter and the reasons for that opinion ;
- and it shall be the duty of the relevant authority to decide the matter accordingly.
- (4) 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 relevant authority shall serve him with a written notice of the decision made by it in accordance with the report.
- (5) The relevant authority may, if it thinks fit, publish the report of the Tribunal.
- (6) For the purposes Of this section there shall be a tribunal—
- (a) which shall be known as the Insolvency Practitioners Tribunal (in this Part referred to as " the Tribunal "); and
 - (b) in relation to which the provisions of Schedule 1 "to this Act shall apply.

9 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 paragraph (a) of subsection (1) of section 8 above has expired without the making of any requirement under that subsection or of any representations under section 7 above; or
- (b) the relevant authority has given a notice such as is mentioned in paragraph (b) of that subsection and the period so mentioned has expired without the, making of any such requirement,

the relevant authority May give written notice of the refusal or withdrawal to the person concerned in accordance with the proposal in the notice given by it under section 6(2) above.

Supplemental

10 Regulations, rules and orders

- (1) The Secretary of State may make regulations for the purpose of giving effect to this Part.

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- (2) Without prejudice to the generality of subsection (1) above or to any provision of this 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 acting as an insolvency practitioner 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 this Part to make regulations, rules or orders shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Any rule or regulation under this Part may make different provision with respect to different cases or descriptions of cases, including different provision for different areas.

11 Interpretation of Part I

In this Part—

" prescribed " means prescribed by regulations made by the Secretary of State ;

" the relevant authority " means—

- (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 above, the Secretary of State ;

" the Tribunal" means the Insolvency Practitioners Tribunal.