



Insolvency Act 1985

1985 CHAPTER 65

PART II

COMPANY INSOLVENCY ETC

CHAPTER VI

WINDING UP

Winding up by the court

66 Company'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 company.
- (2) A statement submitted under this section shall be verified by affidavit by the persons required to submit it and shall show—
 - (a) particulars of the company's assets, debts and liabilities ;
 - (b) the names and addresses of the company'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.
- (3) The persons referred to in subsection (1) above are—
 - (a) those who are or have been officers of the company;
 - (b) those who have taken part in the formation of the company at any time within one year before the relevant date;

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- (c) those who are in the company'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 which is, or within that year was, an officer of the company.
- (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 subsection (5) below) before the end of the period of twenty-one 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) above 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 shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-tenth of the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (8) In the application of this section to Scotland references to the official receiver shall be construed as references to the liquidator or, in a case where a provisional liquidator is appointed, the provisional liquidator.

67 Investigation by the official receiver

- (1) Where a winding-up order is made by the court in England and Wales, it shall be the duty of the official receiver to investigate—
- (a) if the company has failed, the causes of the failure ; and
 - (b) generally, the promotion, formation, business, dealings and affairs of the company,
- and to make such report (if any) to the court as he thinks fit.
- (2) A report by the official receiver under this section shall, in any proceedings, be prima facie evidence of the facts stated therein.

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68 Public examination of officers

- (1) Where a company is being wound up by the court, the official receiver or, in Scotland, the liquidator may at any time before the dissolution of the company apply to the court for the public examination of any person who—
 - (a) is or has been an officer of the company ; or
 - (b) has acted as liquidator or administrator of the company or as receiver or manager or, in Scotland, receiver of its property; or
 - (c) not being a person falling within paragraph (a) or (b) above, is or has been concerned, or has taken part, in the promotion, formation or management of the company.
- (2) Unless the court otherwise orders, the official receiver or, in Scotland, the liquidator shall make an application under subsection (1) above if he is requested in accordance with the rules to do so by—
 - (a) one-half, in value, of the company's creditors ; or
 - (b) three-quarters, in value, of the company's contributories.
- (3) On an application under subsection (1) above, 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 company or as to the conduct of its business and affairs or his conduct or dealings in relation to the company.
- (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) above, namely—
 - (a) the official receiver ;
 - (b) the liquidator of the company ;
 - (c) any person who has been appointed as special manager of the company's property or business ;
 - (d) any creditor of the company who has tendered a proof or, in Scotland, submitted a claim in the winding up;
 - (e) any contributory of the company.
- (5) If a person without reasonable excuse fails at any time to attend his public examination under this section, he shall be guilty of contempt of court and liable to be punished accordingly.
- (6) In a case where a person without reasonable excuse fails at any time to attend his examination under this section 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 this section, the court may cause a warrant to be issued to a constable or prescribed officer 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 ;and 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 such time as the court may order.

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69 General functions of liquidators

- (1) The functions of the liquidator of a company which is being wound up by the court shall be to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.
- (2) It shall be the duty of the liquidator of a company which is being wound up by the court in England and Wales, 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.
- (3) The provisional liquidator of a company shall carry out such functions as the court may confer on him.

70 Functions of official receiver in relation to office of liquidator

- (1) The following provisions of this section have effect, subject to section 73 below, on a winding-up order being made by the court in England and Wales.
- (2) The official receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator under the following provisions of this Chapter.
- (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 company, the official receiver may—
 - (a) summon separate meetings of the company's creditors and contributories for the purpose of choosing a person to be liquidator of the company in place of the official receiver; or
 - (b) apply to the Secretary of State for the appointment of a person as liquidator of the company in place of the official receiver.
- (5) It shall be the duty of the official receiver—
 - (a) as soon as practicable in the period of twelve weeks beginning with the day on which the winding-up order was made to decide whether to exercise his power under subsection (4)(a) above to summon meetings and
 - (b) if in pursuance of paragraph (a) above 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 company'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)(a) above if he is at any time requested, in accordance with the rules, to do so by one-quarter, in value, of the company's creditors;and, accordingly, where the duty imposed by paragraph (c) above arises before the official receiver has performed a duty imposed by paragraph (a) or (b) above, he shall not be required to perform the latter duty.

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- (6) A notice given under subsection (5)(b) above to the company's creditors shall contain an explanation of the creditors' power under subsection (5)(c) above to require the official receiver to summon meetings of the company's creditors and contributories.
- (7) If meetings are held in pursuance of a decision under subsection (5)(a) above but no person is chosen to be liquidator of the company as a result of those meetings, it shall be the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.
- (8) On an application under subsection (4)(b) above, or a reference made in pursuance of a decision under subsection (7) above, the Secretary of State shall either make an appointment or decline to make one.
- (9) Where a liquidator has been appointed by the Secretary of State under subsection (8) above, the liquidator shall give notice of his appointment to the company's creditors or, if the court so allows, shall advertise his appointment in accordance with the directions of the court and in that notice or advertisement shall—
 - (a) state whether he proposes to summon a general meeting of the company's creditors under section 74 below for the purpose of determining (together with any meeting of contributories) whether a 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 company's creditors under that section to require him to summon one.

71 Appointment of liquidator in Scotland

- (1) Where a winding-up order has been made by the court in Scotland, the liquidator appointed by the court under section 535 of the 1985 Act (in this section referred to as " the interim liquidator ") shall continue in office until another person becomes liquidator in his place under this section or section 72 below.
- (2) The interim liquidator shall, subject to subsection (3) below, as soon as practicable in the period of twenty-eight days beginning with the day on which the winding-up order was made or such longer period as the court may allow, summon separate meetings of the company's creditors and contributories for the purpose of choosing a person (who may be the person who is the interim liquidator) to be liquidator of the company in place of the interim liquidator.
- (3) If it appears to the interim liquidator, in any case where a company is being wound up on grounds including its inability to pay its debts, that it would be inappropriate to summon under subsection (2) above a meeting of the company's contributories, he may summon only a meeting of the company's creditors for the purpose mentioned in that subsection.
- (4) If one or more meetings are held in pursuance of this section but no person is appointed or nominated by the meeting or meetings, the interim liquidator shall make a report to the court which shall appoint either the interim liquidator or some other person to be liquidator of the company.
- (5) A person who becomes liquidator of the company in place of the interim liquidator shall, unless he is appointed by the court, forthwith notify the court of that fact.

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72 Choice of liquidator at meetings of creditors and contributories

- (1) This section applies where a company is being wound up by the court and separate meetings of the company's creditors and contributories are summoned for the purpose of choosing a person to be liquidator of the company.
- (2) The creditors and the contributories at their respective meetings may nominate a person to be liquidator of the company.
- (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 of the company may, within seven 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 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.

73 Appointment of liquidator by the court following administration or voluntary arrangement

- (1) Where a winding-up order is made immediately upon the discharge of an administration order, the court may appoint as liquidator of the company the person who has ceased on the discharge of the administration order to be the administrator of the company.
- (2) Where a winding-up order is made at a time when there is a supervisor of a composition or scheme approved in relation to the company under Chapter II of this Part, the court may appoint as liquidator of the company the person who is the supervisor at the time when the winding-up order is made.
- (3) Where the court makes an appointment under subsection (1) or (2) above, subsections (2) and (5)(a) and (b) of section 70 above shall not apply in relation to the winding up.

74 Committee of creditors etc. in England and Wales

- (1) Where a winding-up order has been made by the court in England and Wales and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator of the company, those meetings may establish a committee to exercise the functions conferred on it by or under this Part or the 1985 Act.
- (2) The liquidator of a company, not being the official receiver, may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is determined that one should be established, of establishing it; and the liquidator of a company who is not 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 company's creditors.
- (3) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator of a company, and either the meeting of creditors or the meeting of contributories decides that a committee should be established under this section but

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the other meeting does not so decide or decides that a committee should not be so established, the committee shall be established in accordance with the rules, unless the court otherwise orders.

- (4) A committee established under this section shall not be able or required to carry out its functions at any time when the official receiver is the liquidator of the company; but at any such time the functions of such a committee shall be vested in the Secretary of State except to the extent that the rules otherwise provide.
- (5) Where in the case of any winding up there is for the time being no committee established under this section and the liquidator is a person other than the official receiver, the functions of such a committee shall be vested in the Secretary of State except to the extent that the rules otherwise provide.

75 Committee of creditors etc. in Scotland

- (1) Where a winding-up order has been made by the court in Scotland and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator of the company or, under section 71(3) above, only a meeting of the company's creditors has been summoned for that purpose, those meetings or, as the case may be, that meeting may establish a committee to exercise the functions conferred on it by or under this Part or the 1985 Act.
- (2) The liquidator of the company may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is determined that one should be established, of establishing it.
- (3) A liquidator appointed by the court otherwise than under section 72(4)(a) above shall be required to summon meetings under subsection (2) above if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.
- (4) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator of a company, and either the meeting of creditors or the meeting of contributories decides that a committee should be established under this section but the other meeting does not so decide or decides that a committee should not be so established, the committee shall be established in accordance with the rules, unless the court otherwise orders.
- (5) Where in the case of any winding up there is for the time being no committee established under this section, the functions of such a committee shall be vested in the court except to the extent that the rules otherwise provide.
- (6) In addition to the powers and duties conferred and imposed on it by this Act and the 1985 Act, a committee established under this section shall have such of the powers and duties of commissioners in a sequestration as may be conferred and imposed on such committees by the rules.

76 Power of official receiver to apply for early dissolution

- (1) The official receiver may at any time apply to the registrar of companies for the early dissolution of a company in respect of which a winding-up order has been made by the court in England and Wales if—
 - (a) he is the liquidator of the company ; and

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- (b) it appears to him—
 - (i) that the realisable assets of the company are insufficient to cover the expenses of the winding up; and
 - (ii) that the affairs of the company do not require any further investigation.
- (2) Before making an application to the registrar under subsection (1) above, the official receiver shall give not less than twenty-eight days' notice of his intention to do so to the company's creditors and contributories and, if there is an administrative receiver of the company, to that receiver.
- (3) With the giving with respect to a company of a notice under subsection (2) above the official receiver shall (subject to any directions under this section) cease to be required to perform any duties imposed on him in relation to the company, its creditors or its contributories by virtue of any provision of this Part or the 1985 Act, apart from a duty to make an application under subsection (1) above.
- (4) Where a notice has been given with respect to a company under subsection (2) above, the official receiver or any creditor or contributory of the company or the administrative receiver of the company (if there is one) may apply to the Secretary of State for directions under this section.
- (5) The grounds on which an application for directions may be made under subsection (4) above are—
 - (a) that the realisable assets of the company are sufficient to cover the expenses of the winding up;
 - (b) that the affairs of the company do require further investigation; or
 - (c) that for any other reason the early dissolution of the company is inappropriate.
- (6) On the receipt of an application under subsection (1) above the registrar shall forthwith register it and, at the end of the period of three months beginning with the day of its registration, the company shall be dissolved; but 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 this section at any time before the end of that period.
- (7) Directions under this section are directions making such provision as the Secretary of State thinks fit for enabling the winding up of the company to proceed as if no notice had been given under subsection (2) above and may, in the case of an application under subsection (6) above, include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.
- (8) An appeal to the court shall lie from any decision of the Secretary of State on an application for directions under this section.
- (9) 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 seven days after the giving of the directions or the determination of the appeal, to deliver to the registrar for registration such a copy of the directions or determination as is prescribed.
- (10) If a person without reasonable excuse fails to deliver a copy as required by subsection (9) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

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77 Early dissolution of company in Scotland

- (1) Where a winding-up order has been made by the court in Scotland, if after a meeting or meetings have been held under section 71 above it appears to the liquidator that the realisable assets of the company are insufficient to cover the expenses of the winding up, he may apply to the court for an order that the company be dissolved.
- (2) Where the liquidator makes an application under subsection (1) above, if the court is satisfied that the realisable assets of the company are insufficient to cover the expenses of the winding up and it appears to the court appropriate to do so, the court shall make an order that the company be dissolved in accordance with this section.
- (3) A copy of the order shall within fourteen days from its date be forwarded by the liquidator to the registrar of companies who shall forthwith register it; and, at the end of the period of three months beginning with the day of its registration, the company shall be dissolved.
- (4) The court may, on an application by any person who appears to the court to have an interest, order that the date at which the dissolution of the company is to take effect shall be deferred for such period as the court thinks fit.
- (5) It is the duty of the person on whose application an order is made under subsection (4) above, within seven days after the making of the order, to deliver to the registrar of companies such a copy of the order as is prescribed.
- (6) If the liquidator without reasonable excuse fails to comply with the requirements of subsection (3) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.
- (7) If a person without reasonable excuse fails to deliver a copy as required by subsection (5) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum, and for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.

78 Duty of liquidator to summon final meeting

- (1) Subject to subsection (2) below, if it appears to the liquidator of a company which is being wound up by the court that the winding up of the company is for practical purposes complete and the liquidator is not the official receiver, the liquidator shall summon a final general meeting of the company'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 80 below.
- (2) The liquidator may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the company'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 company is for practical purposes complete.
- (3) In the carrying out of his functions in the winding up it shall be the duty of the liquidator of a company to retain sufficient sums from the company's property to cover the expenses of summoning and holding the meeting required by this section.

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79 Removal of liquidator and vacation of office

- (1) This section applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up by the court or of a provisional liquidator.
- (2) Subject to the following provisions of this section, a liquidator may be removed from office only by an order of the court or by a general meeting of the company'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 a liquidator otherwise than in succession under section 70(3) above to a person who held office as a result of a nomination by a meeting of the company's creditors or contributories; or
 - (b) a liquidator was appointed by the court otherwise than under section 72(4)(a) or 73(1) above, or was appointed by the Secretary of State,a general meeting of the company's creditors shall be summoned for the purpose of replacing him only if the liquidator 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 company's creditors.
- (4) A liquidator who was appointed by the Secretary of State 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 company.
- (6) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.
- (7) Where an order is made under section 77-above for the dissolution of the company, the liquidator shall vacate office when the dissolution of the company takes effect in accordance with that section.
- (8) Where a final meeting has been held under section 78 above, the liquidator whose report was considered at the meeting shall vacate office as soon as he has given notice to the court and the registrar of companies that the meeting has been held and of the decisions (if any) of the meeting.

80 Release of liquidator

- (1) This section applies with respect to the release of the liquidator of a company which is being wound up by the court or of a provisional liquidator.
- (2) Where the official receiver has ceased to be a liquidator and a person becomes liquidator in his stead, the official receiver shall have his release with effect from the following time, that is to say—
 - (a) in a case where that person was nominated by a general meeting of the company's 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.

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- (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 shall have 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 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 company's 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 general meeting of the company's creditors that has resolved against his release or by the court or the Secretary of State or who has vacated office under section 79(5) or (7) above, 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 subsection (8) of section 79 above—
 - (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 resolved against that person's release, the time at which he vacated office.
- (5) A person who has ceased to hold office as a provisional liquidator shall have his release with effect from such time as the court may, on an application by that person, determine.
- (6) Where the official receiver or a liquidator or provisional liquidator has his release under this section, he shall, with effect from the time specified in the preceding provisions of this section, be 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 shall prevent the exercise, in relation to a person who has had his release under this section, of the court's powers under section 19 above.
- (7) In the application of this section to a case where the order for winding up has been made by the court in Scotland, the references to a determination by the Secretary of State as to the time from which a person who has ceased to be liquidator shall have his release shall be construed as references to such a determination by the Accountant of Court.

81 Dissolution of company

- (1) On the receipt by the registrar of companies of a notice served for the purposes of section 79(8) above or of a notice from the official receiver that the winding up of a company by the court is complete, the registrar shall forthwith register the notice and, subject to subsections (2) and (4) below, at the end of the period of three months beginning with the day of its registration, the company shall be dissolved.
- (2) 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

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the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.

- (3) An appeal to the court shall lie from any decision of the Secretary of State on an application for a direction under subsection (2) above.
- (4) Subsection (2) above shall not apply in a case where the winding-up order was made by the court in Scotland, but in such a case the court may, on an application by any person appearing to the court to have an interest, order that the date at which the dissolution of the company is to take effect shall be deferred for such period as the court thinks fit.
- (5) It is the duty of the person—
 - (a) on whose application a direction is given under subsection (2) above;
 - (b) in whose favour an appeal with respect to an application for such a direction is determined; or
 - (c) on whose application an order is made under subsection (4) above,within seven days after the giving of the direction, the determination of the appeal or the making of the order, to deliver to the registrar for registration such a copy of the direction, determination or order as is prescribed.
- (6) If a person without reasonable excuse falls to deliver a copy as required by subsection (5) above, he shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum and, for continued contravention, to a daily default fine not exceeding one-fiftieth of the statutory maximum.