

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 17: Authorisation of insolvency practitioners

86. This section amends Part 13 of the Insolvency Act 1986 to introduce a new regime for the partial authorisation of insolvency practitioners. Currently, individuals who are authorised to act as an insolvency practitioner are authorised in relation to all categories of appointment. Under the new regime, a person may be authorised to act only in relation to companies; only in relation to individuals; or in relation to both. The new regime is intended to remove unnecessary barriers to entry to the insolvency practitioner profession and improve competition. It will also reduce the cost of training for applicants who wish to specialise.
87. The main amendments are made by *subsections (2) and (3)*. A new section 390A will be inserted to provide that an insolvency practitioner who is partially authorised will be authorised to act only in relation to companies, or only in relation to individuals. It will also provide for a person to be fully authorised to act as an insolvency practitioner and practise in all categories of appointment. Individuals who are already authorised to act as an insolvency practitioner will be fully authorised.
88. As regards Scotland, the definition of “individual” is extended by section 388(3) of the Insolvency Act 1986. The effect is that an insolvency practitioner who acts as permanent or interim trustee in the sequestration of the estate of a Scottish partnership or another entity by virtue of section 6 of the Bankruptcy (Scotland) Act 1985 is acting as an insolvency practitioner in relation to an individual. This means that an insolvency practitioner who is partially authorised in relation to individuals will be able to take appointments in relation to the sequestration of a Scottish partnership, whereas an individual who is partially authorised in relation to companies will not. No partially authorised insolvency practitioner will be able to accept an appointment in relation to a partnership which is not a Scottish partnership. This type of insolvency will require an individual to be fully authorised as they may need to have knowledge of both company and individual insolvency law.
89. A new section 390B will be inserted to deal with the question of whether insolvency practitioners who are partially authorised may accept appointments to act in relation to a current or former member of a partnership where the member has outstanding liabilities in relation to the partnership. An insolvency practitioner who is partially authorised in relation to companies will not be able to accept an appointment if the company is such a member. Neither will an insolvency practitioner who is partially authorised in relation to individuals unless the partnership is a Scottish partnership. If an insolvency practitioner who is partially authorised in relation to companies becomes aware that they have been appointed to act in relation to a company which is or was a member of a partnership and has outstanding liabilities in relation to the partnership, they will commit an offence if they continue to act in that insolvency without the court’s permission. The same will apply to an insolvency practitioner who is partially authorised in relation to individuals unless the partnership is a Scottish partnership.

*These notes refer to the Deregulation Act 2015 (c.20)
which received Royal Assent on 26 March 2015*

There is provision for the insolvency practitioner to be able to continue to act for a limited period without committing an offence whilst the court's permission is sought. There is also provision for the insolvency practitioner to be able to continue to act for a limited period (without committing an offence) whilst applying for a court order appointing a fully authorised person to act in his or her place.

90. *Subsection (4)* amends the Insolvency Act 1986 to enable the Secretary of State to recognise a professional body for the purposes of granting either full or partial authorisations to its insolvency specialist members, or for the purposes of granting only partial authorisations, provided that the body regulates the practice of a profession and maintains and enforces certain rules. The Secretary of State may revoke a professional body's recognition where it appears that the body no longer meets the relevant requirements. The Secretary of State may also revoke a professional body's recognition to provide both full and partial authorisations and replace it with recognition to provide partial authorisations only. The Secretary of State will be able to make provisions to treat the body's insolvency specialist members as fully or partially authorised, as the case may be, for a specified period after recognition is revoked, or revoked and replaced. Bodies already recognised under existing provisions will be recognised as if capable of providing their insolvency specialist members with full and partial authorisation (see *subsection (6)*).
91. Under section 415A of the Insolvency Act 1986 the Secretary of State has the power to charge professional bodies a fee in connection with the granting or maintenance of recognition of the body. *Subsection (5)* amends section 415A to enable the Secretary of State to vary the fee depending on whether a body is recognised to provide full and partial authorisations or partial authorisations only and to ensure that the Secretary of State can refuse or revoke recognition of such a body where the fee is not paid.
92. Part 13 of the Insolvency Act 1986 forms part of the law of England and Wales and Scotland and the section will too. The section comes into force on a day to be appointed by the Secretary of State in a commencement order.