

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10: INSOLVENCY

Office-holder actions

Section 117: Power for administrator to bring claim for fraudulent or wrongful trading

710. This section amends the Insolvency Act 1986 to permit an administrator to bring an action for wrongful or fraudulent trading where a director (or in the case of fraudulent trading, any person) has caused the business of an insolvent company to trade wrongfully or fraudulently.
711. Sections 246ZA and 246ZB mirror the analogous provisions which apply to liquidators under sections 213 and 214 of the Insolvency Act 1986.

Section 118: Power for liquidator or administrator to assign causes of action

712. This section amends the Insolvency Act 1986 to allow a liquidator or administrator ('the office-holder') to assign causes of action that arise on a company going into liquidation or administration.
713. The causes of action to which the section relates are actions which already exist within insolvency law (or are introduced by section 117) whereby liquidators and administrators can take action on behalf of the body of creditors to recover monies or reverse certain transactions where the directors and others have acted in a way that has caused harm to creditors.
714. The section allows the office-holder to assign not only the right to bring the action itself but also the proceeds of such an action.

Section 119: Application of proceeds of office-holder claims

715. This section amends the Insolvency Act 1986 to clarify the order of priority for the distribution of proceeds arising from an office-holder claim or from the assignment (or assignation in Scotland) of such a claim (see section 118). New section 176ZB codifies the legal position established by case law by providing that the proceeds of these types of claim do not form part of the company's property which is available for the satisfaction of debts owed to a creditor with floating charge security.