



Small Business, Enterprise and Employment Act 2015

2015 CHAPTER 26

PART 10

INSOLVENCY

Regulation of insolvency practitioners: amendments to existing regime

141 Court sanction of insolvency practitioners in public interest cases

After section 391N of the Insolvency Act 1986 (inserted by section 140) insert—

“Court sanction of insolvency practitioners in public interest cases

391O Direct sanctions orders

- (1) For the purposes of this Part a “direct sanctions order” is an order made by the court against a person who is acting as an insolvency practitioner which—
- (a) declares that the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;
 - (b) declares that the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the order;
 - (c) declares that the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the order or until such time as the requirements so specified are complied with;
 - (d) requires the person to comply with such other requirements as may be specified in the order while acting as an insolvency practitioner;
 - (e) requires the person to make such contribution as may be specified in the order to one or more creditors of a company, individual or insolvent

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partnership in relation to which the person is acting or has acted as an insolvency practitioner.

- (2) Where the court makes a direct sanctions order, the relevant recognised professional body must take all necessary steps to give effect to the order.
- (3) A direct sanctions order must not be made against a person whose authorisation to act as an insolvency practitioner was granted by the Department of Enterprise, Trade and Investment in Northern Ireland (see section 390A(2)(b)).
- (4) A direct sanctions order must not specify a contribution as mentioned in subsection (1)(e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.
- (5) In this section and section 391P—
 - “the court” means the High Court or, in Scotland, the Court of Session;
 - “relevant recognised professional body”, in relation to a person who is acting as an insolvency practitioner, means the recognised professional body by virtue of which the person is authorised so to act.

391P Application for, and power to make, direct sanctions order

- (1) The Secretary of State may apply to the court for a direct sanctions order to be made against a person if it appears to the Secretary of State that it would be in the public interest for the order to be made.
- (2) The Secretary of State must send a copy of the application to the relevant recognised professional body.
- (3) The court may make a direct sanctions order against a person where, on an application under this section, the court is satisfied that condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person.
- (4) The conditions are set out in section 391Q.
- (5) In deciding whether to make a direct sanctions order against a person the court must have regard to the extent to which—
 - (a) the relevant recognised professional body has taken action against the person in respect of the failure mentioned in condition 1, and
 - (b) that action is sufficient to address the failure.

391Q Direct sanctions order: conditions

- (1) Condition 1 is that the person, in acting as an insolvency practitioner or in connection with any appointment as such, has failed to comply with—
 - (a) a requirement imposed by the rules of the relevant recognised professional body;
 - (b) any standards, or code of ethics, for the insolvency-practitioner profession adopted from time to time by the relevant recognised professional body.
- (2) Condition 2 is that the person—

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- (a) is not a fit and proper person to act as an insolvency practitioner;
 - (b) is a fit and proper person to act as an insolvency practitioner only in relation to companies, but the person's authorisation is not so limited; or
 - (c) is a fit and proper person to act as an insolvency practitioner only in relation to individuals, but the person's authorisation is not so limited.
- (3) Condition 3 is that it is appropriate for the person's authorisation to act as an insolvency practitioner to be suspended for a period or until one or more requirements are complied with.
- (4) Condition 4 is that it is appropriate to impose other restrictions on the person acting as an insolvency practitioner.
- (5) Condition 5 is that loss has been suffered as a result of the failure mentioned in condition 1 by one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.
- (6) In this section “relevant recognised professional body” has the same meaning as in section 391O.

391R Direct sanctions direction instead of order

- (1) The Secretary of State may give a direction (a “direct sanctions direction”) in relation to a person acting as an insolvency practitioner to the relevant recognised professional body (instead of applying, or continuing with an application, for a direct sanctions order against the person) if the Secretary of State is satisfied that—
- (a) condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person (see section 391Q), and
 - (b) it is in the public interest for the direction to be given.
- (2) But the Secretary of State may not give a direct sanctions direction in relation to a person without that person's consent.
- (3) A direct sanctions direction may require the relevant recognised professional body to take all necessary steps to secure that—
- (a) the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;
 - (b) the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the direction;
 - (c) the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the direction or until such time as the requirements so specified are complied with;
 - (d) the person must comply with such other requirements as may be specified in the direction while acting as an insolvency practitioner;
 - (e) the person makes such contribution as may be specified in the direction to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

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- (4) A direct sanctions direction must not be given in relation to a person whose authorisation to act as an insolvency practitioner was granted by the Department of Enterprise, Trade and Investment in Northern Ireland (see section 390A(2)(b)).
- (5) A direct sanctions direction must not specify a contribution as mentioned in subsection (3)(e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.
- (6) In this section “relevant recognised professional body” has the same meaning as in section 3910.”

Commencement Information

- II** S. 141 in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by [S.I. 2015/1689](#), [reg. 3\(a\)](#) (with [Sch. para. 18](#))

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