



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IV

#### WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

##### Modifications etc. (not altering text)

- C1** Pt. 4 (ss. 73-219) modified by [Company Directors Disqualification Act 1986](#) (c. 46, SIF 27), **ss. 21(2), 25**  
Pt. 4 modified by [Criminal Justice \(Scotland\) Act 1987](#) (c. 41, SIF 39:1), **ss. 30(6), 35(4), 47(4)(a)**  
Pt. 4 modified by [Criminal Justice Act 1988](#) (c. 33, SIF 39:1), ss. 86(5), 123, **Sch. 8 para. 16**  
Pt. 4 modified (1.2.1993) by [Friendly Societies Act 1992](#) (c. 40), s. 23, **Sch. 10 para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3** (as amended (13.3.2018) by S.I. 2018/208, regs. 1(3), 3)  
Pt. 4 modified (E.W.S.) (31.3.1996) by 1995 c. 20, s. 110(1), **Sch. 4 para. 3(4)**; S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, Sch. 2) (which modifying Act was itself repealed (1.4.1996) by 1995 c. 40, ss. 6(1), 7(2), Sch. 5 (with **Sch. 3**, paras. 3, 16))  
Pt. 4 modified (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 3(4)**  
Pt. 4 modified (24.3.2003) by 2002 c. 29, ss. 426(8), 458(1)(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4))
- C2** Pt. 4 (ss. 73-219) extended (with modifications) by [Building Societies Act 1986](#) (1986 c. 53), ss. 54(3)(a)(5)(a), 90, 126(3), **Sch. 15** (as amended (13.3.2018) by S.I. 2018/208, regs. 1(3), 2(2))
- C3** Pts. I-VII (ss. 1-251) applied (with modifications) by S.I. 1989/1276, **arts. 2, 3**  
Pt. IV (ss. 73-219) applied (with modifications) (1.2.1993) by [Friendly Societies Act 1992](#) (c. 40), ss. 21(1), 22, 23, **Sch. 10 para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**  
Pt. IV applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 8(4)(5)(8)(9)** (as amended (1.7.2005) by S.I. 2005/1516, **art. 4**)  
Pt. IV applied (1.12.1994) by S.I. 1994/2421, art. 10(2)(3)(6), Sch. 4 Pt. II, **Sch. 7** (as amended (1.7.2005) by S.I. 2005/1516, **art. 5**)
- C4** Pts. 1-4, 6, 7 applied to limited liability partnerships (with modifications) (E.W.S.) (6.4.2001) by S.I. 2001/1090, **reg. 5**, **Schs. 3, 4** (as amended (4.3.2004) by S.I. 2004/355, **art. 10** and (1.10.2005) by S.I. 2005/1989, **reg. 3**, **Sch. 2** (with **reg. 4**))
- C5** Pt. IV: power to apply or incorporate conferred (6.4.2001) by 2000 c. 12, s. 14(1); S.I. 2000/3316, **art. 2**

**Status:** Point in time view as at 05/04/1993. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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| <p>Pt. IV: power to apply (with modifications) conferred (20.11.2003) by <a href="#">Health and Social Care (Community Health and Standards) Act 2003 (c. 43)</a>, <b>ss. 25(6), 26</b></p> <p>Pt. 4: power to apply (with modifications) conferred (E.W.) (1.3.2007) by <a href="#">National Health Service Act 2006 (c. 41)</a>, <b>ss. 54(8), 55, 277</b></p> <p><b>C6</b> First Group of Parts (Pts. 1-7) applied (with modifications) (15.12.2006) by <a href="#">The Banks (Former Authorised Institutions) (Insolvency) Order 2006 (S.I. 2006/3107)</a>, art. 3, <b>Sch.</b> (as amended (1.4.2013) by <a href="#">S.I. 2013/472</a>, art. 1(1), <b>Sch. 2 para. 117</b>; and (13.3.2018) by <a href="#">S.I. 2018/208</a>, regs. 1(3), <b>11</b></p> <p><b>C7</b> Pt. IV amended (1.12.2001) by <a href="#">2000 c. 8, s. 371(2)(b)</a>; <a href="#">S.I. 2001/3538</a>, <b>art. 2(1)</b></p> <p><b>C8</b> Pt. IV (except s. 185) modified (S.) (prosp.) by <a href="#">Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)</a>, <b>ss. 45(5), 227(3)</b> (subject to s. 45(1) and with ss. 45(6), 223)</p> |
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## CHAPTER I

### PRELIMINARY

#### *Modes of winding up*

#### **73 Alternative modes of winding up.**

- (1) The winding up of a company, within the meaning given to that expression by section 735 of the Companies Act, may be either voluntary (Chapters II, III, IV and V in this Part) or by the court (Chapter VI).
- (2) This Chapter, and Chapters VII to X, relate to winding up generally, except where otherwise stated.

#### *Contributories*

#### **74 Liability as contributories of present and past members.**

- (1) When a company is wound up, every present and past member is liable to contribute to its assets to any amount sufficient for payment of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.
- (2) This is subject as follows—
  - (a) a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;
  - (b) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
  - (c) a past member is not liable to contribute, unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of the Companies Act and this Act;
  - (d) in the case of a company limited by shares, no contribution is required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member;
  - (e) nothing in the Companies Act or this Act invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

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- (f) a sum due to any member of the company (in his character of a member) by way of dividends, profits or otherwise is not deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.
- (3) In the case of a company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be contributed by him to the company's assets in the event of its being wound up; but if it is a company with a share capital, every member of it is liable (in addition to the amount so undertaken to be contributed to the assets), to contribute to the extent of any sums unpaid on shares held by him.

## **75 Directors, etc. with unlimited liability.**

- (1) In the winding up of a limited company, any director or manager (whether past or present) whose liability is under the Companies Act unlimited is liable, in addition to his liability (if any) to contribute as an ordinary member, to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company.
- (2) However—
- (a) a past director or manager is not liable to make such further contribution if he has ceased to hold office for a year or more before the commencement of the winding up;
  - (b) a past director or manager is not liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
  - (c) subject to the company's articles, a director or manager is not liable to make such further contribution unless the court deems it necessary to require that contribution in order to satisfy the company's debts and liabilities, and the expenses of the winding up.

## **76 Liability of past directors and shareholders.**

- (1) This section applies where a company is being wound up and—
- (a) it has under Chapter VII of Part V of the Companies Act (redeemable shares; purchase by a company of its own shares) made a payment out of capital in respect of the redemption or purchase of any of its own shares (the payment being referred to below as “the relevant payment”), and
  - (b) the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets (apart from this section) is not sufficient for payment of its debts and liabilities, and the expenses of the winding up.
- (2) If the winding up commenced within one year of the date on which the relevant payment was made, then—
- (a) the person from whom the shares were redeemed or purchased, and
  - (b) the directors who signed the statutory declaration made in accordance with section 173(3) of the Companies Act for purposes of the redemption or purchase (except a director who shows that he had reasonable grounds for forming the opinion set out in the declaration,

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are, so as to enable that insufficiency to be met, liable to contribute to the following extent to the company's assets.

- (3) A person from whom any of the shares were redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his shares; and the directors are jointly and severally liable with that person to contribute that amount.
- (4) A person who has contributed any amount to the assets in pursuance of this section may apply to the court for an order directing any other person jointly and severally liable in respect of that amount to pay him such amount as the court thinks just and equitable.
- (5) Sections 74 and 75 do not apply in relation to liability accruing by virtue of this section.
- (6) This section is deemed included in Chapter VII of Part V of the Companies Act for the purposes of the Secretary of State's power to make regulations under section 179 of that Act.

## 77 Limited company formerly unlimited.

- (1) This section applies in the case of a company being wound up which was at some former time registered as unlimited but has re-registered—
  - (a) as a public company under section 43 of the Companies Act (or the former corresponding provision, section 5 of the <sup>M1</sup>Companies Act 1980), or
  - (b) as a limited company under section 51 of the Companies Act (or the former corresponding provision, section 44 of the <sup>M2</sup>Companies Act 1967).
- (2) Notwithstanding section 74(2)(a) above, a past member of the company who was a member of it at the time of re-registration, if the winding up commences within the period of 3 years beginning with the day on which the company was re-registered, is liable to contribute to the assets of the company in respect of debts and liabilities contracted before that time.
- (3) If no persons who were members of the company at that time are existing members of it, a person who at that time was a present or past member is liable to contribute as above notwithstanding that the existing members have satisfied the contributions required to be made by them under the Companies Act and this Act

This applies subject to section 74(2)(a) above and to subsection (2) of this section, but notwithstanding section 74(2)(c).

- (4) Notwithstanding section 74(2)(d) and (3), there is no limit on the amount which a person who, at that time, was a past or present member of the company is liable to contribute as above.

### Marginal Citations

**M1** 1980 c. 22

**M2** 1967 c. 81.

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## **78 Unlimited company formerly limited.**

- (1) This section applies in the case of a company being wound up which was at some former time registered as limited but has been re-registered as unlimited under section 49 of the Companies Act (or the former corresponding provision, section 43 of the Companies Act 1967).
- (2) A person who, at the time when the application for the company to be re-registered was lodged, was a past member of the company and did not after that again become a member of it is not liable to contribute to the assets of the company more than he would have been liable to contribute had the company not been re-registered.

## **79 Meaning of “contributory”.**

- (1) In this Act and the Companies Act the expression “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.
- (2) The reference in subsection (1) to persons liable to contribute to the assets does not include a person so liable by virtue of a declaration by the court under section 213 (imputed responsibility for company’s fraudulent trading) or section 214 (wrongful trading) in Chapter X of this Part.
- (3) A reference in a company’s articles to a contributory does not (unless the context requires) include a person who is a contributory only by virtue of section 76.

This section is deemed included in Chapter VII of Part V of the Companies Act for the purposes of the Secretary of State’s power to make regulations under section 179 of that Act.

## **80 Nature of contributory’s liability.**

The liability of a contributory creates a debt (in England and Wales in the nature of a speciality) accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

## **81 Contributories in case of death of a member.**

- (1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives, and the heirs and legatees of heritage of his heritable estate in Scotland, are liable in a due course of administration to contribute to the assets of the company in discharge of his liability and are contributories accordingly.
- (2) Where the personal representatives are placed on the list of contributories, the heirs or legatees of heritage need not be added, but they may be added as and when the court thinks fit.
- (3) If in England and Wales the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment out of it of the money due.

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## 82 Effect of contributory's bankruptcy.

- (1) The following applies if a contributory becomes bankrupt, either before or after he has been placed on the list of contributories.
- (2) His trustee in bankruptcy represents him for all purposes of the winding up, and is a contributory accordingly.
- (3) The trustee may be called on to admit to proof against the bankrupt's estate, or otherwise allow to be paid out of the bankrupt's assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the company's assets.
- (4) There may be proved against the bankrupt's estate the estimated value of his liability to future calls as well as calls already made.

## 83 Companies registered under Companies Act, Part XXII, Chapter II

- (1) The following applies in the event of a company being wound up which has been registered under section 680 of the Companies Act (or previous corresponding provisions in the <sup>M3</sup>Companies Act 1948 or earlier Acts).
- (2) Every person is a contributory, in respect of the company's debts and liabilities contracted before registration, who is liable—
  - (a) to pay, or contribute to the payment of, any debt or liability so contracted, or
  - (b) to pay, or contribute to the payment of, any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or
  - (c) to pay, or contribute to the amount of, the expenses of winding up the company, so far as relates to the debts or liabilities above mentioned.
- (3) Every contributory is liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability.
- (4) In the event of the death, bankruptcy or insolvency of any contributory, provisions of this Act, with respect to the personal representatives, to the heirs and legatees of heritage of the heritable estate in Scotland of deceased contributories and to the trustees of bankrupt or insolvent contributories respectively, apply.

### Marginal Citations

M3 1948 c. 38.

## CHAPTER II

### VOLUNTARY WINDING UP (INTRODUCTORY AND GENERAL)

#### *Resolutions for, and commencement of, voluntary winding up*

## 84 Circumstances in which company may be wound up voluntarily.

- (1) A company may be wound up voluntarily—
  - (a) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles

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- provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring it be wound up voluntarily;
- (b) if the company resolves by special resolution that it be wound up voluntarily;
  - (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.
- (2) In this Act the expression “a resolution for voluntary winding up” means a resolution passed under any of the paragraphs of subsection (1).
- (3) A resolution passed under paragraph (a) of subsection (1), as well as a special resolution under paragraph (b) and an extraordinary resolution under paragraph (c), is subject to section 380 of the Companies Act (copy of resolution to be forwarded to registrar of companies within 15 days).

**Modifications etc. (not altering text)**

**C9** S. 84 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

**C10** S. 84(3) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(2)(3)** (with ss. 126(3)-(11)); S.I. 1998/3178, **arts. 2, 3**

S. 84(3) applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4, **Sch. 2**

**85 Notice of resolution to wind up.**

- (1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.
- (2) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

For purposes of this subsection the liquidator is deemed an officer of the company.

**86 Commencement of winding up.**

A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up.

*Consequences of resolution to wind up*

**87**

- (1) In case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.
- (2) However, the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until the company is dissolved.

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## 88 Avoidance of share transfers, etc. after winding-up resolution.

Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the company's members, made after the commencement of a voluntary winding up, is void.

### Modifications etc. (not altering text)

- C11** S. 88 excluded (26.12.2003) by [The Financial Collateral Arrangements \(No.2\) Regulations 2003 \(S.I. 2003/3226\)](#), **reg. 10(2)**
- C12** S. 88 excluded by [The Financial Market and Insolvency \(Settlement Finality\) Regulations 1999 \(S.I. 1999/2979\)](#), **reg. 16(3)** (as amended (2.2.2006) by [The Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2006 \(S.I. 2006/50\)](#), **reg. 2(8)(10)** and as amended (1.10.2009) by [The Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009 \(S.I. 2009/1972\)](#), **reg. 6(a)**)

### *Declaration of solvency*

## 89 Statutory declaration of solvency.

- (1) Where it is proposed to wind up a company voluntarily, the directors (or, in the case of a company having more than two directors, the majority of them) may at a directors' meeting make a statutory declaration to the effect that they have made a full inquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest at the official rate (as defined in section 251), within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.
- (2) Such a declaration by the directors has no effect for purposes of this Act unless—
  - (a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and
  - (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.
- (3) The declaration shall be delivered to the registrar of companies before the expiration of 15 days immediately following the date on which the resolution for winding up is passed.
- (4) A director making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within the period specified is liable to imprisonment or a fine, or both.
- (5) If the company is wound up in pursuance of a resolution passed within 5 weeks after the making of the declaration, and its debts (together with interest at the official rate) are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.
- (6) If a declaration required by subsection (3) to be delivered to the registrar is not so delivered within the time prescribed by that subsection, the company and every officer in default is liable to a fine and, for continued contravention, to a daily default fine.



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**Modifications etc. (not altering text)**

**C13** S. 89(3) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(5)** (with s. 126(3)-(11)); S.I. 1998/3178, **arts. 2, 3**,

**90 Distinction between “members” and “creditors” voluntary winding up.**

A winding up in the case of which a directors’ statutory declaration under section 89 has been made is a “members’ voluntary winding up”; and a winding up in the case of which such a declaration has not been made is a “creditors’ voluntary winding up”.

**CHAPTER III**

**MEMBERS’ VOLUNTARY WINDING UP**

**91 Appointment of liquidator.**

- (1) In a members’ voluntary winding up, the company in general meeting shall appoint one or more liquidators for the purpose of winding up the company’s affairs and distributing its assets.
- (2) On the appointment of a liquidator all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance.

**Modifications etc. (not altering text)**

**C14** S. 91(1)(2) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**  
Ss. 91-93 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4, **Sch. 2**

**92 Power to fill vacancy in office of liquidator.**

- (1) If a vacancy occurs by death resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.
- (2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.
- (3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

**Modifications etc. (not altering text)**

**C15** Ss. 91-93 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4, **Sch. 2**  
S. 92(1)(2)(3)(4) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

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VALID FROM 06/04/2010

### **[<sup>F1</sup>92A Progress report to company at year's end (England and Wales)**

- (1) Subject to sections 96 and 102, in the event of the winding up of a company registered in England and Wales continuing for more than one year, the liquidator must—
  - (a) for each prescribed period produce a progress report relating to the prescribed matters; and
  - (b) within such period commencing with the end of the period referred to in paragraph (a) as may be prescribed send a copy of the progress report to—
    - (i) the members of the company; and
    - (ii) such other persons as may be prescribed.
- (2) A liquidator who fails to comply with this section is liable to a fine.]

#### **Textual Amendments**

- F1** S. 92A added (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), **art. 6(1)** (with art. 12(1))

### **93 General company meeting at each year's end.**

- (1) Subject to sections 96 and 102, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Secretary of State may allow.
- (2) The liquidator shall lay before the meeting an account of his acts and dealings, and of the conduct of the winding up, during the preceding year.
- (3) If the liquidator fails to comply with this section, he is liable to a fine.

#### **Modifications etc. (not altering text)**

- C16** Ss. 91-93 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4, **Sch. 2**  
**C17** S. 93(1) modified (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(2), **Sch. 3**

### **94 Final meeting prior to dissolution.**

- (1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving an explanation of it.
- (2) The meeting shall be called by advertisement in the Gazette, specifying its time, place and object and published at least one month before the meeting.

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- (3) Within one week after the meeting, the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meeting and of its date.
- (4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.
- (5) If a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned above, make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made, the provisions of subsection (3) as to the making of the return are deemed complied with.
- (6) If the liquidator fails to call a general meeting of the company as required by subsection (1), he is liable to a fine.

**Modifications etc. (not altering text)**

- C18** Ss. 94, 106 applied with modifications by [Building Societies Act 1986 \(c. 53, SIF 16\)](#), **ss. 54(3)(a)(5)** (a), 90, 126(3), Sch. 15 para. 56(1)
- C19** S. 94 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), **Sch. 2**  
S. 94 modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\)](#), **Sch. 3**
- C20** S. 94(3) amended (1.7.1999) by [1998 c. 46, s. 125](#), **Sch. 8 para. 23(1)-(3)** (with s. 126(3)-(11)); [S.I. 1998/3178, arts. 2, 3](#)

**95 Effect of company's insolvency.**

- (1) This section applies where the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration under section 89.
- (2) The liquidator shall—
  - (a) summon a meeting of creditors for a day not later than the 28th day after the day on which he formed that opinion;
  - (b) send notices of the creditors' meeting to the creditors by post not less than 7 days before the day on which that meeting is to be held;
  - (c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in 2 newspapers circulating in the relevant locality (that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period); and
  - (d) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;and the notice of the creditors' meeting shall state the duty imposed by paragraph (d) above.
- (3) The liquidator shall also—
  - (a) make out a statement in the prescribed form as to the affairs of the company;
  - (b) lay that statement before the creditors' meeting; and
  - (c) attend and preside at that meeting.

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- (4) The statement as to the affairs of the company shall be verified by affidavit by the liquidator 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.
- (5) Where the company’s principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duty imposed by subsection (2)(c) applies separately in relation to each of those localities.
- (6) Where the company had no place of business in Great Britain during the relevant period, references in subsections (2)(c) and (5) to the company’s principal place of business in Great Britain are replaced by references to its registered office.
- (7) In this section “the relevant period” means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.
- (8) If the liquidator without reasonable excuse fails to comply with this section, he is liable to a fine.

**Modifications etc. (not altering text)**

- C21** S. 95 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)  
 S. 95 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)

**96 Conversion to creditors’ voluntary winding up.**

As from the day on which the creditors’ meeting is held under section 95, this Act has effect as if—

- (a) the directors’ declaration under section 89 had not been made; and
- (b) the creditors’ meeting and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in section 98 in the next Chapter;

and accordingly the winding up becomes a creditors’ voluntary winding up.

## CHAPTER IV

### CREDITORS’ VOLUNTARY WINDING UP

**97 Application of this Chapter.**

- (1) Subject as follows, this Chapter applies in relation to a creditors’ voluntary winding up.
- (2) Sections 98 and 99 do not apply where, under section 96 in Chapter III, a members’ voluntary winding up has become a creditors’ voluntary winding up.

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**Modifications etc. (not altering text)**

**C22** S. 97 applied (with modifications) (S.) (6.4.2001) by **S.S.I. 2001/128**, reg. 4(1), **Sch. 2**

**98 Meeting of creditors.**

- (1) The company shall—
- (a) cause a meeting of its creditors to be summoned for a day not later than the 14th day after the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;
  - (b) cause the notices of the creditors’ meeting to be sent by post to the creditors not less than 7 days before the day on which that meeting is to be held; and
  - (c) cause notice of the creditors’ meeting to be advertised once in the Gazette and once at least in two newspapers circulating in the relevant locality (that is to say the locality in which the company’s principal place of business in Great Britain was situated during the relevant period).
- (2) The notice of the creditors’ meeting shall state either—
- (a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the company’s affairs as they may reasonably require; or
  - (b) a place in the relevant locality where, on the two business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company’s creditors will be available for inspection free of charge.
- (3) Where the company’s principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duties imposed by subsections (1)(c) and (2)(b) above apply separately in relation to each of those localities.
- (4) Where the company had no place of business in Great Britain during the relevant period, references in subsections (1)(c) and (3) to the company’s principal place of business in Great Britain are replaced by references to its registered office.
- (5) In this section “the relevant period” means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.
- (6) If the company without reasonable excuse fails to comply with subsection (1) or (2), it is guilty of an offence and liable to a fine.

**99 Directors to lay statement of affairs before creditors.**

- (1) The directors of the company shall—
- (a) make out a statement in the prescribed forms as to the affairs of the company;
  - (b) cause that statement to be laid before the creditors’ meeting under section 98; and
  - (c) appoint one of their number to preside at that meeting;

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and it is the duty of the director so appointed to attend the meeting and preside over it.

- (2) The statement as to the affairs of the company shall be verified by affidavit by some or all of the directors 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.
- (3) If—
- (a) the directors without reasonable excuse fail to comply with subsection (1) or (2); or
  - (b) any director without reasonable excuse fails to comply with subsection (1), so far as requiring him to attend and preside at the creditors' meeting,
- the directors are or (as the case may be) the director is guilty of an offence and liable to a fine.

#### **100 Appointment of liquidator.**

- (1) The creditors and the company at their respective meetings mentioned in section 98 may nominate a person to be liquidator for the purpose of winding up the company's affairs and distributing its assets.
- (2) 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 company.
- (3) In the case of different persons being nominated, any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either—
  - (a) directing that the person nominated as liquidator by the company shall 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.

#### **Modifications etc. (not altering text)**

**C23** S. 100 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)

**C24** S. 100(1)(3) modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\)](#), [Sch. 3](#)

#### **101 Appointment of liquidation committee.**

- (1) The creditors at the meeting to be held under section 98 or at any subsequent meeting may, if they think fit, appoint a committee ("the liquidation committee") of not more than 5 persons to exercise the functions conferred on it by or under this Act.
- (2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding 5.

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- (3) However, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the liquidation committee; and if the creditors so resolve—
- (a) the persons mentioned in the resolution are not then, unless the court otherwise directs, qualified to act as members of the committee; and
  - (b) on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.
- (4) In Scotland, the liquidation committee has, in addition to the powers and duties conferred and imposed on it by this Act, such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on liquidation committees by the rules.

**Modifications etc. (not altering text)**

- C25** S. 101 amended (1.12.2001) by [2000 c. 8, ss. 365\(5\)\(b\), 371\(2\)\(b\)](#); [S.I. 2001/3538, art. 2\(1\)](#)  
S. 101 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)
- C26** S. 101(2) modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\)](#), [Sch. 3](#)

## **102 Creditors' meeting where winding up converted under s. 96.**

Where, in the case of a winding up which was under section 96 in Chapter III, converted to a creditors' voluntary winding up, a creditors' meeting is held in accordance with section 95, any appointment made or committee established by that meeting is deemed to have been made or established by a meeting held in accordance with section 98 in this Chapter.

**Modifications etc. (not altering text)**

- C27** S. 102 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)

## **103 Cesser of directors' powers.**

On the appointment of a liquidator, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no such committee, the creditors) sanction their continuance.

## **104 Vacancy in office of liquidator.**

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the court), the creditors may fill the vacancy.

**Modifications etc. (not altering text)**

- C28** S. 104 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)

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VALID FROM 06/04/2010

**[<sup>F2</sup>104A Progress report to company and creditors at year's end (England and Wales)**

- (1) If the winding up of a company registered in England and Wales continues for more than one year, the liquidator must—
  - (a) for each prescribed period produce a progress report relating to the prescribed matters; and
  - (b) within such period commencing with the end of the period referred to in paragraph (a) as may be prescribed send a copy of the progress report to—
    - (i) the members and creditors of the company; and
    - (ii) such other persons as may be prescribed.
- (2) A liquidator who fails to comply with this section is liable to a fine.]

**Textual Amendments**

- F2** S. 104A added (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), **art. 6(3)** (with art. 12(1))

**105 Meetings of company and creditors at each year's end.**

- (1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Secretary of State may allow.
- (2) The liquidator shall lay before each of the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.
- (3) If the liquidator fails to comply with this section, he is liable to a fine.
- (4) Where under section 96 a members' voluntary winding up has become a creditors' voluntary winding up, and the creditors' meeting under section 95 is held 3 months or less before the end of the first year from the commencement of the winding up, the liquidator is not required by this section to summon a meeting of creditors at the end of that year.

**Modifications etc. (not altering text)**

- C29** S. 105 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**
- C30** S. 105 modified (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(2), **Sch. 3**

**106 Final meeting prior to dissolution.**

- (1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the



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company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.

- (2) Each such meeting shall be called by advertisement in the Gazette specifying the time, place and object of the meeting, and published at least one month before it.
- (3) Within one week after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates.
- (4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.
- (5) However, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by subsection (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such return being made the provisions of that subsection as to the making of the return are, in respect of that meeting, deemed complied with.
- (6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he is liable to a fine.

**Modifications etc. (not altering text)**

- C31** Ss. 94, 106 applied (with modifications) by [Building Societies Act 1986 \(c. 53, SIF 16\)](#), ss. 54(3)(a)(5) (a), 90, 126(3), [Sch. 15 para. 56\(1\)](#)
- C32** S. 106 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)
- C33** S. 106 modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\)](#), [Sch. 3](#)
- C34** S. 106(3)(5) amended (1.7.1999) by [1998 c. 46, s. 125, Sch. 8 para. 23\(2\)\(3\)](#) (with s. 126(3)-(11)); S>I. 1998/3178, arts. 2, 3

## CHAPTER V

### PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP

#### 107 Distribution of company's property.

Subject to the provisions of this Act as to preferential payments, the company's property in a voluntary winding up shall on the winding up be applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the articles otherwise provide) be distributed among the members according to their rights and interests in the company.

**Modifications etc. (not altering text)**

- C35** S. 107 restricted (6.3.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), reg. 46, [Sch. para. 2\(2\)](#)

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### **108 Appointment or removal of liquidator by the court.**

- (1) If from any cause whatever there is not liquidator acting, the court may appoint a liquidator.
- (2) The court may, on cause shown, remove a liquidator and appoint another.

### **109 Notice by liquidator of his appointment.**

- (1) The liquidator shall, within 14 days after his appointment, publish in the Gazette and deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by statutory instrument made by the Secretary of State.
- (2) If the liquidator fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

#### **Modifications etc. (not altering text)**

**C36** S. 109 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)

**C37** S. 109(1) amended (1.7.1999) by [1998 c. 46, s. 125, Sch. 8 para. 23\(4\)\(5\)](#) (with [s. 126\(3\)-\(11\)](#)); [S.I. 1998/3178, arts. 2, 3](#)

### **110 Acceptance of shares, etc., as consideration for sale of company property.**

- (1) This section applies, in the case of a company proposed to be, or being, wound up voluntarily, where the whole or part of the company's business or property is proposed to be transferred or sold to another company ("the transferee company"), whether or not the latter is a company within the meaning of the Companies Act.
- (2) With the requisite sanction, the liquidator of the company being, or proposed to be, wound up ("the transferor company") may receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company.
- (3) The sanction requisite under subsection (2) is—
  - (a) in the case of a members' voluntary winding up, that of a special resolution of the company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, and
  - (b) in the case of a creditors' voluntary winding up, that of either the court or the liquidation committee.
- (4) Alternatively to subsection (2), the liquidator may (with that sanction) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto), participate in the profits of, or receive any other benefit from, the transferee company.
- (5) A sale or arrangement in pursuance of this section is binding on members of the transferor company.
- (6) A special resolution is not invalid for purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but, if an order is made within a year for winding up the company by the court, the special resolution is not valid unless sanctioned by the court.

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## 111 Dissent from arrangement under s. 110.

- (1) This section applies in the case of a voluntary winding up where, for the purposes of section 110(2) or (4), there has been passed a special resolution of the transferor company providing the sanction requisite for the liquidator under that section.
- (2) If a member of the transferor company who did not vote in favour of the special resolution expresses his dissent from it in writing, addressed to the liquidator and left at the company's registered office within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration under this section.
- (3) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.
- (4) For purposes of an arbitration under this section, the provisions of the <sup>M4</sup>Companies Clauses Consolidation Act 1845 or, in the case of a winding up in Scotland, the <sup>M5</sup>Companies Clauses Consolidation (Scotland) Act 1845 with respect to the settlement of disputes by arbitration are incorporated with this Act, and—
  - (a) in the construction of those provisions this Act is deemed the special Act and “the company” means the transferor company, and
  - (b) any appointment by the incorporated provisions directed to be made under the hand of the secretary or any two of the directors may be made in writing by the liquidator (or, if there is more than one liquidator, then any two or more of them).

### Modifications etc. (not altering text)

- C38** S. 111 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)  
S. 111 modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\), Sch. 3](#)

### Marginal Citations

- M4** 1845 c. 16.  
**M5** 1845 c. 17.

## 112 Reference of questions to court.

- (1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.
- (2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.
- (3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall enter it in his records relating to the company.

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**Modifications etc. (not altering text)**

- C39** S. 112 amended (1.12.2001) by 2000 c. 8, s. 365(2); S.I. 2001/3538, art. 2(1)  
 S. 112 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
- C40** S. 112(3) amended (1.7.1999) by 1998 c. 46, s. 125, Sch. 8 para. 23(2)(3) (with s. 126(3)-(11)); S.I. 1998/3178, arts. 2, 3

**113 Court’s power to control proceedings (Scotland).**

If the court, on the application of the liquidator in the winding up of a company registered in Scotland, so directs, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.

**Modifications etc. (not altering text)**

- C41** S. 113 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

**114 No liquidator appointed or nominated by company.**

- (1) This section applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the company.
- (2) The powers of the directors shall not be exercised, except with the sanction of the court or (in the case of a creditors’ voluntary winding up) so far as may be necessary to secure compliance with sections 98 (creditors’ meeting) and 99 (statement of affairs), during the period before the appointment or nomination of a liquidator of the company.
- (3) Subsection (2) does not apply in relation to the powers of the directors—
  - (a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of, and
  - (b) to do all such other things as may be necessary for the protection of the company’s assets.
- (4) If the directors of the company without reasonable excuse fail to comply with this section, they are liable to a fine.

**Modifications etc. (not altering text)**

- C42** S. 114 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

**115 Expenses of voluntary winding up.**

All expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company’s assets in priority to all other claims.

**Modifications etc. (not altering text)**

- C43** S. 115 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

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## 116 Saving for certain rights.

The voluntary winding up of a company does not bar the right of any creditor or contributory to have it wound up by the court; but in the case of an application by a contributory the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

## CHAPTER VI

### WINDING UP BY THE COURT

#### *Jurisdiction (England and Wales)*

## 117 High Court and county court jurisdiction.

- (1) The High Court has jurisdiction to wind up any company registered in England and Wales.
- (2) Where the amount of a company's share capital paid up or credited as paid up does not exceed £120,000, then (subject to this section) the county court of the district in which the company's registered office is situated has concurrent jurisdiction with the High Court to wind up the company.
- (3) The money sum for the time being specified in subsection (2) is subject to increase or reduction by order under section 416 in Part XV.
- (4) The Lord Chancellor may by order in a statutory instrument exclude a county court from having winding-up jurisdiction, and for the purposes of that jurisdiction may attach its district, or any part thereof, to any other county court, and may by statutory instrument revoke or vary any such order.

In exercising the powers of this section, the Lord Chancellor shall provide that a county court is not to have winding-up jurisdiction unless it has for the time being jurisdiction for the purposes of Parts VIII to XI of this Act (individual insolvency).

- (5) Every court in England and Wales having winding-up jurisdiction has for the purposes of that jurisdiction all the powers of the High Court; and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of a judge of that court or otherwise in relation to winding up.
- (6) For the purposes of this section, a company's "registered office" is the place which has longest been its registered office during the 6 months immediately preceding the presentation of the petition for winding up.

### Modifications etc. (not altering text)

- C44** S. 117 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(3), **Sch. 3 Pt. II para. 6**  
S. 117 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 5**  
S. 117 modified (1.12.1994) by S.I. 1994/2421, art. 9(a), **Sch. 5 para. 1**  
S. 117 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 10(1), **Sch. 6 para. 1**  
S. 117 applied (with modifications) (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 5**; S.I. 2001/766, **art. 2(1)(a)** (subject to art. 3)

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### **118 Proceedings taken in wrong court.**

- (1) Nothing in section 117 invalidates a proceeding by reason of its being taken in the wrong court.
- (2) The winding up of a company by the court in England and Wales, or any proceedings in the winding up, may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

### **119 Proceedings in county court; case stated for High Court.**

- (1) If any question arises in any winding-up proceedings in a county court which all the parties to the proceedings, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court.
- (2) Thereupon the special case and the proceedings (or such of them as may be required) shall be transmitted to the High Court for the purposes of the determination.

#### *Jurisdiction (Scotland)*

### **120 Court of Session and sheriff court jurisdiction.**

- (1) The Court of Session has jurisdiction to wind up any company registered in Scotland.
- (2) When the Court of Session is in vacation, the jurisdiction conferred on that court by this section may (subject to the provisions of this Part) be exercised by the judge acting as vacation judge <sup>[F3]</sup>in pursuance of section 4 of the Administration of Justice (Scotland) Act 1933].
- (3) Where the amount of a company's share capital paid up or credited as paid up does not exceed £120,000, the sheriff court of the sheriffdom in which the company's registered office is situated has concurrent jurisdiction with the Court of Session to wind up the company; but—
  - (a) the Court of Session may, if it thinks expedient having regard to the amount of the company's assets to do so—
    - (i) remit to a sheriff court any petition presented to the Court of Session for winding up such a company, or
    - (ii) require such a petition presented to a sheriff court to be remitted to the Court of Session; and
  - (b) the Court of Session may require any such petition as above mentioned presented to one sheriff court to be remitted to another sheriff court; and
  - (c) in a winding up in the sheriff court the sheriff may submit a stated case for the opinion of the Court of Session on any question of law arising in that winding up.
- (4) For purposes of this section, the expression “registered office” means the place which has longest been the company's registered office during the 6 months immediately preceding the presentation of the petition for winding up.
- (5) The money sum for the time being specified in subsection (3) is subject to increase or reduction by order under section 416 in Part XV.

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### Textual Amendments

**F3** Words repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2](#)

### Modifications etc. (not altering text)

**C45** [S. 120](#) extended (with modifications) by [S.I. 1989/638, regs. 19\(2\)](#), 21  
[S. 120](#) applied (with modifications) (2.4.2001) by [2000 c. 39, s. 8, Sch. 4 Pt. I para. 5](#); [S.I. 2001/766, art. 2\(1\)\(a\)](#) (subject to [art. 3](#))

## 121 Power to remit winding up to Lord Ordinary.

- (1) The Court of Session may, by Act of Sederunt, make provision for the taking of proceedings in a winding up before one of the Lords Ordinary; and, where provision is so made, the Lord Ordinary has, for the purposes of the winding up all the powers and jurisdiction of the court.
- (2) However, the Lord Ordinary may report to the Inner House any matter which may arise in the course of a winding up.

*Grounds and effect of winding-up petition*

## 122 Circumstances in which company may be wound up by the court.

- (1) A company may be wound up by the court if—
  - (a) the company has by special resolution resolved that the company be wound up by the court,
  - (b) being a public company which was registered as such on its original incorporation, the company has not been issued with a certificate under section 117 of the Companies Act (public company share capital requirements) and more than a year has expired since it was so registered,
  - (c) it is an old public company, within the meaning of the Consequential Provisions Act,
  - (d) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
  - (e) [<sup>F4</sup>except in the case of a private company limited by shares or by guarantee,]the number of members is reduced below 2,
  - (f) the company is unable to pay its debts,
  - (g) the court is of the opinion that it is just and equitable that the company should be wound up.
- (2) In Scotland, a company which the Court of Session has jurisdiction to wind up may be wound up by the Court if there is subsisting a floating charge over property comprised in the company's property and undertaking, and the court is satisfied that the security of the creditor entitled to the benefit of the floating charge is in jeopardy.

For this purpose a creditor's security is deemed to be in jeopardy if the Court is satisfied that events have occurred or are about to occur which render it unreasonable in the creditor's interests that the company should retain power to dispose of the property which is subject to the floating charge.

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### Textual Amendments

**F4** Words in s. 122(1)(e) inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para.8**

### Modifications etc. (not altering text)

- C46** S. 122 applied (with modifications) by S.I. 1994/2421, art. 8, **Sch. 4 Pt. II para. 6(a)**  
**C47** S. 122(1)(b) excluded (27.7.1999) by 1999 c. 20, ss. 2(5), 5(1), **Sch. 2 Pt. II para. 9(b)** (with s. 15)  
**C48** S. 122(1)(f) modified by S.I. 1989/1058, **reg. 18(2)**  
 S. 122(1)(f) extended (1.4.1992) by S.I. 1992/613, **reg. 49(2)**  
 S. 122(1)(f): power to modify conferred (E.W.) (6.3.1992) by 1992 c. 14, s. 14(3), **Sch. 4 para. 10(1)**  
 (with s. 118(1)(2))

## 123 Definition of inability to pay debts.

- (1) A company is deemed unable to pay its debts—
- (a) if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company's registered office, a written demand (in the prescribed form) requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or
  - (b) if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or
  - (c) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or
  - (d) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company, or
  - (e) if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.
- (2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.
- (3) The money sum for the time being specified in subsection (1)(a) is subject to increase or reduction by order under section 416 in Part XV.

### Modifications etc. (not altering text)

- C49** S. 123 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8, **Sch. 4 Pt. II para. 7(a)**  
 S. 123 applied (1.10.1996) by 1996 c. 52, s. 7, **Sch. 1 Pt. II para. 14(2)**; S.I. 1996/2402, **art. 3**  
 (subject to transitional provisions and savings in Sch.)  
**C50** S. 123 applied (17.2.2009 for certain purposes, otherwise 21.2.2009) by **Banking Act 2009 (c. 1), ss. 166(3), 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3, Sch. para. 3**



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## 124 Application for winding up.

- (1) Subject to the provisions of this section, an application to the court for the winding up of a company shall be by petition presented either by the company, or the directors, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories [<sup>F5</sup>or by the clerk of a magistrates' court in the exercise of the power conferred by section 87A of the Magistrates' Courts Act 1980 (enforcement of fines imposed on companies)], or by all or any of those parties, together or separately.
- (2) Except as mentioned below, a contributory is not entitled to present a winding-up petition unless either—
  - (a) the number of members is reduced below 2, or
  - (b) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder.
- (3) A person who is liable under section 76 to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in section 122(1) (f) and (g), and subsection (2) above does not then apply; but unless the person is a contributory otherwise than under section 76, he may not in his character as contributory petition on any other ground.

This subsection is deemed included in Chapter VII of Part V of the Companies Act (redeemable shares; purchase by a company of its own shares) for the purposes of the Secretary of State's power to make regulations under section 179 of that Act.

- (4) A winding-up petition may be presented by the Secretary of State—
  - (a) if the ground of the petition is that in section 122(1)(b) or (c), or [<sup>F6</sup>(b) in a case falling within section 124A below.]
- (5) Where a company is being wound up voluntarily in England and Wales, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section; but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

### Textual Amendments

- F5** Words inserted (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 62(2)(b), 123, [Sch. 8 para. 16](#)
- F6** [S. 124\(4\)\(b\)](#) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 60(2), 213(2)

### Modifications etc. (not altering text)

- C51** [S. 124](#) excluded (S.) (27.7.1992) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 19\)](#), ss. 14(3), 15(9); S.I. 1992/1599, [art. 5](#)
- C52** [S. 124](#) extended (E.W.) by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 87A (as inserted (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 62(1), 123, [Sch. 8 para. 16](#))
- C53** [S. 124](#) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(1)(a), [Sch. 4 Pt. II para. 8](#), [Sch. 6 para. 2](#)

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### [<sup>F7</sup>124A Petition for winding up on grounds of public interest.

- (1) Where it appears to the Secretary of State from—
- (a) any report made or information obtained under Part XIV of the <sup>M6</sup> Companies Act 1985 (company investigations, &c.),
  - (b) any report made under section 94 or 177 of the <sup>M7</sup> Financial Services Act 1986 or any information obtained under section 105 of that Act,
  - (c) any information obtained under section 2 of the <sup>M8</sup> Criminal Justice Act 1987 or section 52 of the <sup>M9</sup> Criminal Justice (Scotland) Act 1987 (fraud investigations), or
  - (d) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),
- that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.
- (2) This section does not apply if the company is already being wound up by the court.]

#### Textual Amendments

**F7** S. 124A inserted by Companies Act 1989 (c. 40, SIF 27), ss. 60(3), 213(2)

#### Marginal Citations

**M6** 1985 c. 6(27).  
**M7** 1986 c.60(69).  
**M8** 1987 c.38(39:1).  
**M9** 1987 c.41(39:1).

VALID FROM 08/10/2004

### [<sup>F8</sup>124B Petition for winding up of SE

- (“) Where—
- (a) an SE whose registered office is in Great Britain is not in compliance with Article 7 of Council Regulation (EC) No 2157/2001 on the Statute for a European company (the “EC Regulation”)(location of head office and registered office), and
  - (b) it appears to the Secretary of State that the SE should be wound up, he may present a petition for it to be wound up if the court thinks it is just and equitable for it to be so.
- (2) This section does not apply if the SE is already being wound up by the court.
- (3) In this section “SE” has the same meaning as in the EC Regulation.]

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#### Textual Amendments

- F8** S. 124B inserted (8.10.2004) by [The European Public Limited-Liability Company Regulations 2004 \(S.I. 2004/2326\)](#), [reg. 73\(3\)](#)

VALID FROM 18/08/2006

#### [<sup>F9</sup>124C Petition for winding up of SCE

- (1) Where, in the case of an SCE whose registered office is in Great Britain—
  - (a) there has been such a breach as is mentioned in Article 73(1) of Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE)(the “European Cooperative Society Regulation”)(winding up by the court or other competent authority), and
  - (b) it appears to the Financial Services Authority that the SCE should be wound up,the Authority may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.
- (2) Where, in the case of an SCE whose registered office is in Great Britain—
  - (a) the SCE is not in compliance with Article 6 of the European Cooperative Society Regulation (location of head office and registered office, and
  - (b) it appears to the Financial Service Authority that the SCE should be wound up,the Authority may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.
- (3) This section does not apply if the SCE is already being wound up by the court.
- (4) In this section “SCE” has the same meaning as in the European Cooperative Society Regulation.]

#### Textual Amendments

- F9** S. 124C inserted (18.8.2006) by [The European Cooperative Society Regulations 2006 \(S.I. 2006/2078\)](#), [reg. 33\(1\)](#)

#### 125 Powers of court on hearing of petition.

- (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit; but the court shall not refuse to make a winding-up order on the ground only that the company’s assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.
- (2) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion—

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- (a) that the petitioners are entitled to relief either by winding up the company or by some other means, and
- (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding-up order; but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

**Modifications etc. (not altering text)**

- C54** S. 125 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), [Sch. 4 Pt. II para. 9](#)  
 S. 125 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 10(1)(a), [Sch. 6 para. 3](#)

**126 Power to stay or restrain proceedings against company.**

- (1) At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—
- (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England and Wales or Northern Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein, and
  - (b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;
- and the court to which the application is so made may (as the case may be) stay, sist or restrain the proceedings accordingly on such terms as it thinks fit.
- (2) In the case of a company registered under section 680 of the Companies Act (pre-1862 companies; companies formed under legislation other than the Companies Acts) or the previous corresponding legislation, where the application to stay, sist or restrain is by a creditor, this section extends to actions and proceedings against any contributory of the company.

**Modifications etc. (not altering text)**

- C55** S. 126 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), [ss. 154, 155, 161\(4\)](#); [S.I. 1991/878](#), art. 2, [Sch.](#)  
 S. 126 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), [Sch. 2](#)  
**C56** S. 126(2) modified (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(2), [Sch. 3](#)

**127 Avoidance of property dispositions, etc.**

In a winding up by the court, any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the court otherwise orders, void.

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**Modifications etc. (not altering text)**

- C57** S. 127 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 164(3), 175(4), 182(4), **Sch. 22 para. 11(4)**; S.I. 1991/878, art. 2, **Sch.**  
S. 127 excluded (15.8.1995) by S.I. 1995/2049, **reg. 21(4)-(8)**
- C58** S. 127 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 7(2)**; S.I. 1991/878, art. 2, **Sch.**  
S. 127 excluded (11.12.1999) by S.I. 1999/2979, **reg. 16(3)**  
S. 127 excluded (11.12.1999) by S.I. 1999/2979, **reg. 19(3)**
- C59** S. 127 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, **reg. 4(1)**, **Sch. 2**  
S. 127 modified (S.) (6.4.2001) by S.S.I. 2001/128, **reg. 4(2)**, **Sch. 3**

**128 Avoidance of attachments, etc.**

- (1) Where a company registered in England and Wales is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up is void.
- (2) This section, so far as relates to any estate or effects of the company situated in England and Wales, applies in the case of a company registered in Scotland as it applies in the case of a company registered in England and Wales.

**Modifications etc. (not altering text)**

- C60** S. 128 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154, 155, 161(4)**; S.I. 1991/878, art. 2, **Sch.**  
**C61** S. 128 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, **reg. 4(1)**, **Sch. 2**  
**C62** S. 128 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3**, **Sch. para. 2**

*Commencement of winding up*

**129 Commencement of winding up by the court.**

- (1) If, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution; and unless the court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.
- (2) In any other case, the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for winding up.

**Modifications etc. (not altering text)**

- C63** S. 129 applied (7.2.1994) by 1993 c. 48, **s. 144(4)(b)(i)** (with s. 6(8)); S.I. 1994/86, **art. 2**

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### 130 Consequences of winding-up order.

- (1) On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company (or otherwise as may be prescribed) to the registrar of companies, who shall enter it in his records relating to the company.
- (2) When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the court and subject to such terms as the court may impose.
- (3) When an order has been made for winding up a company registered under section 680 of the Companies Act, no action or proceeding shall be commenced or proceeded with against the company or its property or any contributory of the company, in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.
- (4) An order for winding up a company operates in favour of all the creditors and of all contributories of the company as if made on the joint petition of a creditor and of a contributory.

#### **Modifications etc. (not altering text)**

- C64** S. 130 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), ss. 154, 155, 161(4), 182(4), [Sch. 22 para. 5\(2\)](#); S.I. 1991/878, art. 2, [Sch.](#).
- C65** S. 130 modified (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), s. 182(4), [Sch. 22 para. 12\(4\)](#); S.I. 1991/878, art. 2, [Sch.](#).
- C66** S. 130 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), ss. [103](#), 263(1)(2) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), [Sch. para. 2](#)
- C67** S. 130(1) amended (1.7.1999) by [1998 c. 46](#), s. 125, [Sch. 8 para. 23\(2\)\(3\)](#); S.I. 1998/3178, [arts. 2, 3](#)  
 S. 130(1) applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), [Sch. 2](#)

### *Investigation procedures*

### 131 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) The statement 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) are—
  - (a) those who are or have been officers of the company;

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- (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
  - (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 the next subsection) before the end of the period of 21 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) 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 is liable to a fine and, for continued contravention, to a daily default fine.
- (8) In the application of this section to Scotland references to the official receiver are to the liquidator or, in a case where a provisional liquidator is appointed, the provisional liquidator.

**Modifications etc. (not altering text)**

- C68** S. 131 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 7(3), [Sch. 3 Pt. II para. 7](#)  
s. 131 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8, [Sch. 4 Pt. II para. 10](#)  
S. 131 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), [Sch. 2](#)
- C69** S. 131 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 103](#), 263(1)(2) (with s. 247); [S.I. 2009/296](#), [arts. 2](#), 3, [Sch. para. 2](#)

**132 Investigation by official receiver.**

- (1) Where a winding-up order is made by the court in England and Wales, it is 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,

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and to make such report (if any) to the court as he thinks fit.

(2) The report is, in any proceedings, prima facie evidence of the facts stated in it.

### 133 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), 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) 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), 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), 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.

#### Modifications etc. (not altering text)

- C70** S.133 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 11**  
 S. 133 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(3), **Sch. 3 Pt. II para. 8**  
 s. 133 applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 8(3)(9)**, Sch. 4, Pt. II, para. 11  
 S. 133 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

### 134 Enforcement of s. 133.

- (1) If a person without reasonable excuse fails at any time to attend his public examination under section 133, he is guilty of a contempt of court and liable to be punished accordingly.



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- (2) In a case where a person without reasonable excuse fails at any time to attend his examination under section 133 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 that 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.
- (3) In such a case the court may authorise the person arrested under the 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.

**Modifications etc. (not altering text)**

**C71** S. 134 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)

*Appointment of liquidator*

**135 Appointment and powers of provisional liquidator.**

- (1) Subject to the provisions of this section, the court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally.
- (2) In England and Wales, the appointment of a provisional liquidator may be made at any time before the making of a winding-up order; and either the official receiver or any other fit person may be appointed.
- (3) In Scotland, such an appointment may be made at any time before the first appointment of liquidators.
- (4) The provisional liquidator shall carry out such functions as the court may confer on him.
- (5) When a liquidator is provisionally appointed by the court, his powers may be limited by the order appointing him.

**Modifications etc. (not altering text)**

**C72** S. 135 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)

**C73** S. 135 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**C74** S. 135 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296, arts. 2, 3, Sch. para. 3](#)

**136 Functions of official receiver in relation to office of liquidator.**

- (1) The following provisions of this section have effect, subject to section 140 below, on a winding-up order being made by the court in England and Wales.

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- (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 provisions of this Part.
- (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 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.
- (5) It is the duty of the official receiver—
  - (a) as soon as practicable in the period of 12 weeks beginning with the day on which the winding-up order was made, to decide whether to exercise his power under sub-section (4) to summon meetings, and
  - (b) if in pursuance of paragraph (a) 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) if he is at any time requested, in accordance with rules, to do so by one-quarter, in value, of the company's creditors;

and accordingly, where the duty imposed by paragraph (c) arises before the official receiver has performed a duty imposed by paragraph (a) or (b), he is not required to perform the latter duty.
- (6) A notice given under subsection (5)(b) to the company's creditors shall contain an explanation of the creditors' power under subsection (5)(c) to require the official receiver to summon meetings of the company's creditors and contributories.

**Modifications etc. (not altering text)**

C75 S. 136 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), [Sch. 4 Pt. II](#), para. 12

**137 Appointment by Secretary of State.**

- (1) In a winding up by the court in England and Wales the official receiver may, at any time when he is the liquidator of the company, apply to the Secretary of State for the appointment of a person as liquidator in his place.
- (2) If meetings are held in pursuance of a decision under section 136(5)(a), but no person is chosen to be liquidator as a result of those meetings, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.
- (3) On an application under subsection (1), or a reference made in pursuance of a decision under subsection (2), the Secretary of State shall either make an appointment or decline to make one.
- (4) Where a liquidator has been appointed by the Secretary of State under subsection (3), 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.

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- (5) In that notice or advertisement the liquidator shall—
- (a) state whether he proposes to summon a general meeting of the company's creditors under section 141 below for the purpose of determining (together with any meeting of contributories) whether a liquidation 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.

**Modifications etc. (not altering text)**

C76 S. 137 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 13

### 138 Appointment of liquidator in Scotland.

- (1) Where a winding-up order is made by the court in Scotland, a liquidator shall be appointed by the court at the time when the order is made.
- (2) The liquidator so appointed (here referred to as “the interim liquidator”) continues in office until another person becomes liquidator in his place under this section or the next.
- (3) The interim liquidator shall (subject to the next subsection) as soon as practicable in the period of 28 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.
- (4) 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 (3) 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.
- (5) 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.
- (6) 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.

**Modifications etc. (not altering text)**

C77 S. 138 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

### 139 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.

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- (2) The creditors and the contributories at their respective meetings may nominate a person to be liquidator.
- (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 may, within 7 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 a 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.

**Modifications etc. (not altering text)**

- C78** S. 139 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), [Sch. 4 Pt. II para. 14](#)  
 S. 139 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), [Sch. 2](#)

**140 Appointment 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 voluntary arrangement approved in relation to the company under Part I, 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 this section, the official receiver does not become the liquidator as otherwise provided by section 136(2), and he has no duty under section 136(5)(a) or (b) in respect of the summoning of creditors' or contributories' meetings.

**Modifications etc. (not altering text)**

- C79** S. 140 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), [Sch. 4 Pt. II para. 15](#)  
 S. 140 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), [Sch. 2](#)

*Liquidation committees*

**141 Liquidation committee (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, those meetings may establish a committee ("the liquidation committee") to exercise the functions conferred on it by or under this Act.

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- (2) The liquidator (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 so determined, of establishing it.

The liquidator (not being 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, and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the committee shall be established in accordance with the rules, unless the court otherwise orders.
- (4) The liquidation committee is not to be able or required to carry out its functions at any time when the official receiver is liquidator; but at any such time its functions are vested in the Secretary of State except to the extent that the rules otherwise provide.
- (5) Where there is for the time being no liquidation committee, and the liquidator is a person other than the official receiver, the functions of such a committee are vested in the Secretary of State except to the extent that the rules otherwise provide.

**Modifications etc. (not altering text)**

- C80** S. 141 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), [Sch. 4 Pt. II para. 16](#)  
S. 141 amended (1.12.2001) by [2000 c. 8, s. 371\(4\)\(b\)](#); [S.I. 2001/3538](#), art. 2(1)
- C81** S. 141 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 103, 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 2](#)

**142 Liquidation committee (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 or, under section 138(4), only a meeting of creditors has been summoned for that purpose, those meetings or (as the case may be) that meeting may establish a committee ("the liquidation committee") to exercise the functions conferred on it by or under this Act.
- (2) The liquidator 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 so determined, of establishing it.
- (3) The liquidator, if appointed by the court otherwise than under section 139(4)(a), is required to summon meetings under subsection (2) 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, and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the

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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 liquidation committee, the functions of such a committee are 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, a liquidation committee has such of the powers and duties of commissioners in a sequestration as may be conferred and imposed on such committees by the rules.

**Modifications etc. (not altering text)**

- C82** S. 142 amended (1.12.2001) by 2000 c. 8, s. 371(4)(b); S.I. 2001/3538, art. 2(1)  
 S. 142 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
- C83** S. 142 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 103, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 2
- C84** S. 142(1)–(4) restricted by S.I. 1986/1915, Rule 4.61.

*The liquidator's functions*

**143 General functions in winding up by the court.**

- (1) The functions of the liquidator of a company which is being wound up by the court are 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 is 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.

**Modifications etc. (not altering text)**

- C85** S. 143 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 17  
 S. 143 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
- C86** S. 143 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 103, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 2

**144 Custody of company's property.**

- (1) When a winding-up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator (as the case may be) shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.

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- (2) In a winding up by the court in Scotland, if and so long as there is no liquidator, all the property of the company is deemed to be in the custody of the court.

**Modifications etc. (not altering text)**

- C87** S. 144 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)  
**C88** S. 144 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**145 Vesting of company property in liquidator.**

- (1) When a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name; and thereupon the property to which the order relates vests accordingly.
- (2) The liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

**Modifications etc. (not altering text)**

- C89** S. 145 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)  
**C90** S. 145 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**146 Duty to summon final meeting.**

- (1) Subject to the next subsection, 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 174 in Chapter VII of this Part.
- (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 is the duty of the liquidator 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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**Modifications etc. (not altering text)**

- C91** S. 146 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), **Sch. 4 Pt. II para. 18**  
 S. 146 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**

*General powers of court*

**147 Power to stay or sist winding up.**

- (1) The court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in the winding up ought to be stayed or sisted, make an order staying or sisting the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.
- (2) The court may, before making an order, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.
- (3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall enter it in his records relating to the company.

**Modifications etc. (not altering text)**

- C92** S. 147 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), **Sch. 4 Pt. II para. 19**  
 S. 147 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**
- C93** S. 147 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103, 263(1)(2)** (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, **Sch. para. 2**
- C94** S. 147(3) amended (1.7.1999) by [1998 c. 46](#), s. 125, **Sch. 8**, para. 23(2)(3) (with s. 126(3)-(11)); [S.I. 1998/3178](#), **arts. 2, 3**

**148 Settlement of list of contributories and application of assets.**

- (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of the Companies Act or this Act, and shall cause the company's assets to be collected, and applied in discharge of its liabilities.
- (2) If it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.
- (3) In settling the list, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

**Modifications etc. (not altering text)**

- C95** S. 148 modified by [S.I. 1986/1918](#), **Rule 5**



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**C96** S. 148 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

## 149 Debts due from contributory to company.

- (1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him (or from the estate of the person who he represents) to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of the Companies Act or this Act.
- (2) The court in making such an order may—
  - (a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit, and
  - (b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.
- (3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full (together with interest at the official rate) any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

### Modifications etc. (not altering text)

**C97** S. 149 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

## 150 Power to make calls.

- (1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the company's debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.
- (2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

### Modifications etc. (not altering text)

**C98** S. 150 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

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### 151 Payment into bank of money due to company.

- (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into the Bank of England (or any branch of it) to the account of the liquidator instead of to the liquidator, and such an order may be enforced in the same manner as if it had directed payment to the liquidator.
- (2) All money and securities paid or delivered into the Bank of England (or branch) in the event of a winding up by the court are subject in all respects to the orders of the court.

### 152 Order on contributory to be conclusive evidence.

- (1) An order made by the court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, but subject to any right of appeal.
- (2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings except proceedings in Scotland against the heritable estate of a deceased contributory; and in that case the order is only prima facie evidence for the purpose of charging his heritable estate, unless his heirs or legatees of heritage were on the list of contributories at the time of the order being made.

#### Modifications etc. (not altering text)

**C99** S. 152 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

### 153 Power to exclude creditors not proving in time.

The court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

#### Modifications etc. (not altering text)

**C100** S. 153 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

### 154 Adjustment of rights of contributories.

The court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

#### Modifications etc. (not altering text)

**C101** S. 154 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

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## 155 Inspection of books by creditors, etc.

- (1) The court may, at any time after making a winding-up order, make such order for inspection of the company's books and papers by creditors and contributories as the court thinks just; and any books and papers in the company's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.
- (2) Nothing in this section excludes or restricts any statutory rights of a government department or person acting under the authority of a government department.

### Modifications etc. (not altering text)

- C102** S. 155 excluded by [Social Security Pensions Act 1975 \(c. 60, SIF 113:1\)](#), [s. 57D\(6\)](#) (as inserted by [Social Security Act 1990 \(c. 27, SIF 113:1\)](#), s. 14, [Sch. 4 Pt. I para. 1](#))  
S. 155 excluded (7.2.1994) by 1993 c. 48, [s. 122\(1\)](#) (with s. 6(8)); S.I. 1994/86, [art. 2](#)
- C103** S. 155 excluded (6.4.1997) by 1995 c. 26, [s. 26\(1\)](#); S.I. 1997/664, [art. 2\(3\)](#), [Sch. Pt. II](#) (with transitional adaptations, modifications and savings in [arts. 3-14](#))

## 156 Payment of expenses of winding up.

The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the court thinks just.

### Modifications etc. (not altering text)

- C104** S. 156 restricted (6.3.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), [reg. 46](#), [Sch. para. 2\(3\)](#)
- C105** S. 156 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 103](#), 263(1)(2) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), [Sch. para. 2](#)

## 157 Attendance at company meetings (Scotland).

In the winding up by the court of a company registered in Scotland, the court has power to require the attendance of any officer of the company at any meeting of creditors or of contributories, or of a liquidation committee, for the purpose of giving information as to the trade, dealings, affairs or property of the company.

### Modifications etc. (not altering text)

- C106** S. 157 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 103](#), 263(1)(2) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), [Sch. para. 2](#)

## 158 Power to arrest absconding contributory.

The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, may cause the contributory to be arrested and his books

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and papers and moveable personal property to be seized and him and them to be kept safely until such time as the court may order.

**Modifications etc. (not altering text)**

**C107** S. 158 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

**159 Powers of court to be cumulative.**

Powers conferred by this Act and the Companies Act on the court are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

**160 Delegation of powers to liquidator (England and Wales).**

(1) Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England and Wales by the Companies Act and this Act in respect of the following matters—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories,
- (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,
- (c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator,
- (d) the making of calls,
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the court, and subject to the court's control.

(2) But the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either that special leave or the sanction of the liquidation committee.

**Modifications etc. (not altering text)**

**C108** S. 160 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

*Enforcement of, and appeal from, orders*

**161 Orders for calls on contributories (Scotland).**

(1) In Scotland, where an order, interlocutor or decree has been made for winding up a company by the court, it is competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when that amount became due, to pronounce forthwith a decree against those contributories for payment

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of the sums so certified to be due, with interest from that date until payment (at 5 per cent. per annum) in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of 6 days, of a legal obligation to pay those calls and interest.

- (2) The decree may be extracted immediately, and no suspension of it is competent, except on caution or consignment, unless with special leave of the court.

**Modifications etc. (not altering text)**

**C109** S. 161 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3, Sch. para. 2**

**162 Appeals from orders in Scotland.**

- (1) Subject to the provision of this section and to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court in Scotland under this Act lies in the same manner and subject to the same conditions as an appeal from an order or decision of the court in cases within its ordinary jurisdiction.
- (2) In regard to orders of judgments pronounced by the judge acting as vacation judge [<sup>F10</sup>in pursuance of section 4 of the <sup>M10</sup>Administration of Justice (Scotland) Act 1933]—
- (a) none of the orders specified in Part I of Schedule 3 to this Act are subject to review, reduction, suspension or stay of execution, and
- (b) every other order or judgment (except as mentioned below) may be submitted to review by the Inner House by reclaiming motion enrolled within 14 days from the date of the order or judgment.
- (3) However, an order being one of those specified in Part II of that Schedule shall, from the date of the order and notwithstanding that it has been submitted to review as above, be carried out and receive effect until the Inner House have disposed of the matter.
- (4) In regard to orders or judgments pronounced in Scotland by a Lord Ordinary before whom proceedings in a winding up are being taken, any such order or judgment may be submitted to review by the Inner House by reclaiming motion enrolled within 14 days from its date; but should it not be so submitted to review during session, the provisions of this section in regard to orders or judgments pronounced by the judge acting as vacation judge apply.
- (5) Nothing in this section affects provisions of the Companies Act or this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntary or by the court.

**Textual Amendments**

**F10** Words repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2**

**Modifications etc. (not altering text)**

**C110** S. 162 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), **Sch. 2**

**C111** S. 162 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3, Sch. para. 2**

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### Marginal Citations

M10 1933 c. 41.

## CHAPTER VII

### LIQUIDATORS

#### *Preliminary*

### 163 Style and title of liquidators.

The liquidator of a company shall be described—

- (a) where a person other than the official receiver is liquidator, by the style of “the liquidator” of the particular company, or
- (b) where the official receiver is liquidator, by the style of “the official receiver and liquidator” of the particular company;

and in neither case shall he be described by an individual name.

#### Modifications etc. (not altering text)

C112 S. 163 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

### 164 Corrupt inducement affecting appointment.

A person who gives, or agrees or offers to give, to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company’s liquidator is liable to a fine.

#### Modifications etc. (not altering text)

C113 S. 164 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

#### *Liquidator’s powers and duties*

### 165 Voluntary winding up.

- (1) This section has effect where a company is being wound up voluntarily, but subject to section 166 below in the case of a creditor’s voluntary winding up.
- (2) The liquidator may—
  - (a) in the case of a members’ voluntary winding up, with the sanction of an extraordinary resolution of the company, and
  - (b) in the case of a creditor’s voluntary winding up, with the sanction of the court or the liquidation committee (or, if there is no such committee, a meeting of the company’s creditors),

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- exercise any of the powers specified in Part I of Schedule 4 to this Act (payment of debts, compromise of claims, etc.).
- (3) The liquidator may, without sanction exercise either of the powers specified in Part II of that Schedule (institution and defence of proceedings; carrying on the business of the company) and any of the general powers specified in Part III of that Schedule.
- (4) The liquidator may—
- (a) exercise the court’s power of settling a list of contributories (which list is prima facie evidence of the liability of the persons named in it to be contributories),
  - (b) exercise the court’s power of making calls,
  - (c) summon general meetings of the company for the purpose of obtaining its sanction by special or extraordinary resolution or for any other purpose he may think fit.
- (5) The liquidator shall pay the company’s debts and adjust the rights of the contributories among themselves.
- (6) Where the liquidator in exercise of the powers conferred on him by this Act disposes of any property of the company to a person who is connected with the company (within the meaning of section 249 in Part VII), he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

**Modifications etc. (not altering text)**

- C114** S. 165 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)  
**C115** S. 165 modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\), Sch. 3](#)

**166 Creditors’ voluntary winding up.**

- (1) This section applies where, in the case of a creditors’ voluntary winding up, a liquidator has been nominated by the company.
- (2) The powers conferred on the liquidator by section 165 shall not be exercised, except with the sanction of the court, during the period before the holding of the creditors’ meeting under section 98 in Chapter IV.
- (3) Subsection (2) does not apply in relation to the power of the liquidator—
- (a) to take into his custody or under his control all the property to which the company is or appears to be entitled;
  - (b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and
  - (c) to do all such other things as may be necessary for the protection of the company’s assets.
- (4) The liquidator shall attend the creditors’ meeting held under section 98 and shall report to the meeting on any exercise by him of his powers (whether or not under this section or under section 112 or 165).
- (5) If default is made—
- (a) by the company in complying with subsection (1) or (2) of section 98, or

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- (b) by the directors in complying with subsection (1) or (2) of section 99, the liquidator shall, within 7 days of the relevant day, apply to the court for directions as to the manner in which that default is to be remedied.
- (6) “The relevant day” means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.
- (7) If the liquidator without reasonable excuse fails to comply with this section, he is liable to a fine.

**Modifications etc. (not altering text)**

**C116** S. 166 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)

**C117** S. 166(5) modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\)](#), [Sch. 3](#)

**167 Winding up by the court.**

- (1) Where a company is being wound up by the court, the liquidator may—
- (a) with the sanction of the court or the liquidation committee, exercise any of the powers specified in Parts I and II of Schedule 4 to this Act (payment of debts; compromise of claims, etc., institution and defence of proceedings; carrying on of the business of the company), and
  - (b) with or without that sanction, exercise any of the general powers specified in Part III of that Schedule.
- (2) Where the liquidator (not being the official receiver), in exercise of the powers conferred on him by this Act—
- (a) disposes of any property of the company to a person who is connected with the company (within the meaning of section 249 in Part VII) or
  - (b) employs a solicitor to assist him in the carrying out of his functions,
- he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.
- (3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section is subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

**Modifications etc. (not altering text)**

**C118** S. 167 excluded (1.12.2001) by [2000 c. 8, s. 376\(12\)](#); [S.I. 2001/3538, art. 2\(1\)](#)

S. 167 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)

**C119** S. 167 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**168 Supplementary powers (England and Wales).**

- (1) This section applies in the case of a company which is being wound up by the court in England and Wales.



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- (2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by resolution (either at the meeting appointing the liquidator or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories (as the case may be).
- (3) The liquidator may apply to the court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up.
- (4) Subject to the provisions of this Act, the liquidator shall use his own discretion in the management of the assets and their distribution among the creditors.
- (5) If any person is aggrieved by an act or decision of the liquidator, that person may apply to the court; and the court may confirm, reverse or modify the act or decision complained of, and make such order in the case as it thinks just.

### 169 Supplementary powers (Scotland).

- (1) In the case of a winding up in Scotland, the court may provide by order that the liquidator may, where there is no liquidation committee, exercise any of the following powers, namely—
  - (a) to bring or defend any action or other legal proceeding in the name and on behalf of the company, or
  - (b) to carry on the business of the company so far as may be necessary for its beneficial winding up,without the sanction or intervention of the court.
- (2) In a winding up by the court in Scotland, the liquidator has (subject to the rules) the same powers as a trustee on a bankrupt estate.

#### Modifications etc. (not altering text)

**C120** S. 169 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)

**C121** S. 169 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

### 170 Enforcement of liquidator's duty to make returns, etc.

- (1) If a liquidator who has made any default—
  - (a) in filing, delivering or making any return, account or other document, or
  - (b) in giving any notice which he is by law required to file, deliver, make or give,fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the court has the following powers.
- (2) On an application made by any creditor or contributory of the company, or by the registrar of companies, the court may make an order directing the liquidator to make good the default within such time as may be specified in the order.
- (3) The court's order may provide that all costs of and incidental to the application shall be borne by the liquidator.

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- (4) Nothing in this section prejudices the operation of any enactment imposing penalties on a liquidator in respect of any such default as is mentioned above.

**Modifications etc. (not altering text)**

- C122** S. 170 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**  
**C123** S. 170 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by **Banking Act 2009 (c. 1)**, ss. **103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, **Sch. para. 2**  
**C124** S. 170(2) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8**, para. 23(1)-(3) (with s. 126(3)-(11)); S.I. 1998/3178, **arts. 2, 3**

*Removal; vacation of office*

**171 Removal, etc. (voluntary winding up).**

- (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 voluntarily.
- (2) Subject to the next subsection, the liquidator may be removed from office only by an order of the court or—
- (a) in the case of a members' voluntary winding up, by a general meeting of the company summoned specially for that purpose, or
  - (b) in the case of a creditors' voluntary winding up, by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules.
- (3) Where the liquidator was appointed by the court under section 108 in Chapter V, a meeting such as is mentioned in subsection (2) above shall be summoned for the purpose of replacing him only if he thinks fit or the court so directs or the meeting is requested, in accordance with the rules—
- (a) in the case of a members' voluntary winding up, by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting, or
  - (b) in the case of a creditors' voluntary winding up, by not less than one-half, in value, of the company's creditors.
- (4) A liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (5) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the registrar of companies.
- (6) Where—
- (a) in the case of a members' voluntary winding up, a final meeting of the company has been held under section 94 in Chapter III, or
  - (b) in the case of a creditors' voluntary winding up, final meetings of the company and of the creditors have been held under section 106 in Chapter IV,
- the liquidator whose report was considered at the meeting or meetings shall vacate office as soon as he has complied with subsection (3) of that section and has given notice to the registrar of companies that the meeting or meetings have been held and of the decisions (if any) of the meeting or meetings.

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**Modifications etc. (not altering text)**

- C125** S. 171 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**  
**C126** S. 171 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**  
**C127** S. 171(5)(6) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8**, para. 23(4)(5) (with s. 126(3)-(11)); S.I. 1998/3178, **arts. 2, 3**

**172 Removal, etc. (winding up by the court).**

- (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 as follows, the 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 liquidator otherwise than in succession under section 136(3) to a person who held office as a result of a nomination by a meeting of the company's creditors or contributories, or
  - (b) the liquidator was appointed by the court otherwise than under section 139(4)(a) or 140(1), 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 he 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 creditors.
- (4) If appointed by the Secretary of State, the liquidator 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 204 (early dissolution in Scotland) 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 146 (liquidator's report on completion of winding up), 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.

**Modifications etc. (not altering text)**

- C128** S. 172 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 21**  
S. 172 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**  
**C129** S. 172 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by **Banking Act 2009 (c. 1)**, **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, **Sch. para. 2**

*Status: Point in time view as at 05/04/1993. This version of this part contains provisions that are not valid for this point in time.*

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**C130** S. 172(8) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8**, para. 23(2)(3) (with s. 126(3)-(11)); S.I. 1998/3178, **arts. 2, 3**  
 S. 172(8) amended (1.12.2001) by S.I. 2001/1228, **arts. 1(2)(c)(3)**, 32(1); S.I. 2001/3538, **art. 2(1)**

### *Release of liquidator*

#### **173 Release (voluntary winding up).**

- (1) This section applies with respect to the release of the liquidator of a company which is being wound up voluntarily.
- (2) A person 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 or 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 registrar of companies 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 who has vacated office under section 171(4) above, such time as the Secretary of State may, on the application of 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 (6)(a) of section 171, the time at which he vacated office;
  - (e) in the case of a person who has vacated office under subsection (6)(b) of that section—
    - (i) if the final meeting of the creditors 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.
- (3) In the application of subsection (2) to the winding up of a company registered 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 are to be read as references to such a determination by the Accountant of Court.
- (4) Where a liquidator has his release under subsection (2), he is, with effect from the time specified in that subsection, 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.

But nothing in this section prevents the exercise, in relation to a person who has had his release under subsection (2), of the court’s powers under section 212 of this Act (summary remedy against delinquent directors, liquidators, etc.).

#### **Modifications etc. (not altering text)**

**C131** S. 173(2) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**  
 S. 173 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

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## **174 Release (winding up by the court).**

- (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 liquidator and a person becomes liquidator in his stead, the official receiver has 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 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.
- (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 has 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 has 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 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 creditors that has resolved against his release, or by the court or the Secretary of State, or who has vacated office under section 172(5) or (7), 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 section 172(8)—
    - (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 so resolved, the time at which that person vacated office.
- (5) A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the court may, on an application by him, determine.
- (6) Where the official receiver or a liquidator or provisional liquidator has his release under this section, he is, with effect from the time specified in the preceding provisions of this section, 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 prevents the exercise, in relation to a person who has had his release under this section, of the court's powers under section 212 (summary remedy against delinquent directors, liquidators, etc.).

- (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 has his release are to such a determination by the Accountant of Court.

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**Modifications etc. (not altering text)**

- C132** S. 174 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), **Sch. 4 Pt. II para. 22**  
 S. 174 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**

## CHAPTER VIII

### PROVISIONS OF GENERAL APPLICATION IN WINDING UP

#### *Preferential debts*

#### **175 Preferential debts (general provision).**

- (1) In a winding up the company's preferential debts (within the meaning given by section 386 in Part XII) shall be paid in priority to all other debts.
- (2) Preferential debts—
  - (a) rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and
  - (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

**Modifications etc. (not altering text)**

- C133** S. 175 excluded (6.3.2008) by [The Regulated Covered Bonds Regulations 2008](#) (S.I. 2008/346), reg. 46, **Sch. para. 2(4)**
- C134** S. 175 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), **Sch. 4 Pt. II para. 23**  
 S. 175 applied (20.4.2003) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2003](#) (S.I. 2003/1102), **reg. 27(2)** (with reg. 3)
- C135** S. 175 applied (with modifications) (11.12.1999) by [The Financial Market and Insolvency \(Settlement Finality\) Regulations 1999](#) (S.I. 1999/2979), reg. 14(5)(a)(i) (as substituted (1.10.2009) by [The Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009](#) (S.I. 2009/1972), **reg. 4(d)(ii)**)
- C136** S. 175 excluded (20.4.2003) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2003](#) (S.I. 2003/1102), **reg. 20** (with reg. 3)  
 S. 175 excluded (18.2.2004) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2004](#) (S.I. 2004/353), **reg. 20** (with reg. 3) (as modified (10.8.2005) by [S.I. 2005/1998](#), regs. 2(3), 40(1)–(5))
- C137** S. 175 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009](#) (c. 1), **ss. 103**, 263(1)(2) (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, Sch. para. 2
- C138** S. 175 excluded by [S.I. 2003/3226](#), **reg. 10(2A)** (as inserted (6.4.2011) by [The Financial Markets and Insolvency \(Settlement Finality and Financial Collateral Arrangements\) \(Amendment\) Regulations 2010](#) (S.I. 2010/2993), **reg. 4(8)(a)**)

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## 176 Preferential charge on goods distrained.

- (1) This section applies where a company is being wound up by the court in England and Wales, and is without prejudice to section 128 (avoidance of attachments, etc.).
- (2) Where any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of the company in the period of 3 months ending with the date of the winding-up order, those goods or effects, or the proceeds of their sale, shall be charged for the benefit of the company with the preferential debts of the company to the extent that the company's property is for the time being insufficient for meeting them.
- (3) Where by virtue of a charge under subsection (2) any person surrenders any goods or effects to a company or makes a payment to a company, that person ranks, in respect of the amount of the proceeds of sale of those goods or effects by the liquidator or (as the case may be) the amount of the payment, as a preferential creditor of the company, except as against so much of the company's property as is available for the payment of preferential creditors by virtue of the surrender or payment.

### Modifications etc. (not altering text)

**C139** S. 176 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

VALID FROM 15/09/2003

### <sup>F11</sup>Property subject to floating charge]

#### Textual Amendments

**F11** S. 176A and preceding cross-heading inserted (15.9.2003) by [2002 c. 40](#), **ss. 252, 279** (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to **arts. 3-8** (as amended by S.I. 2002/2332, art. 2))

VALID FROM 20/01/2007

### <sup>F12</sup>176ZA<sup>F12</sup> Payment of expenses of winding up (England and Wales)]

- (1) The expenses of winding up in England and Wales, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over any claims to property comprised in or subject to any floating charge created by the company and shall be paid out of any such property accordingly.
- (2) In subsection (1)—
  - (a) the reference to assets of the company available for payment of general creditors does not include any amount made available under section 176A(2)(a);

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- (b) the reference to claims to property comprised in or subject to a floating charge is to the claims of—
  - (i) the holders of debentures secured by, or holders of, the floating charge, and
  - (ii) any preferential creditors entitled to be paid out of that property in priority to them.
- (3) Provision may be made by rules restricting the application of subsection (1), in such circumstances as may be prescribed, to expenses authorised or approved—
  - (a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them, or
  - (b) by the court.
- (4) References in this section to the expenses of the winding up are to all expenses properly incurred in the winding up, including the remuneration of the liquidator.]

#### Textual Amendments

**F12** S. 176ZA inserted (20.1.2007 for specified purposes, otherwise 6.4.2008) by [Companies Act 2006](#) (c. 46), [ss. 1282\(1\)](#), [1300\(2\)](#); [S.I. 2006/3428](#), [art. 3\(3\)](#) (subject to [art. 5](#), [Sch. 1](#) and with [arts. 6, 8](#), [Sch. 5](#)); [S.I. 2007/3495](#), [arts. 2\(2\)](#), [3\(1\)\(v\)](#) (with [Sch. 4 para. 43](#))

#### Modifications etc. (not altering text)

- C140** S. 176ZA applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009](#) (c. 1), [ss. 103](#), [263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 2](#)
- C141** S. 176ZA applied by [S.I. 1999/2979](#) reg. 14(5)(a)(i) (as substituted (1.10.2009) by [The Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009](#) (S.I. 2009/1972), [reg. 4\(d\)\(ii\)](#))
- C142** S. 176ZA excluded by [S.I. 2003/3226](#), [reg. 10\(2B\)](#) (as inserted (6.4.2011) by [The Financial Markets and Insolvency \(Settlement Finality and Financial Collateral Arrangements\) \(Amendment\) Regulations 2010](#) (S.I. 2010/2993), [reg. 4\(8\)\(a\)](#))

#### <sup>F13</sup>176A Share of assets for unsecured creditors

- (1) This section applies where a floating charge relates to property of a company—
  - (a) which has gone into liquidation,
  - (b) which is in administration,
  - (c) of which there is a provisional liquidator, or
  - (d) of which there is a receiver.
- (2) The liquidator, administrator or receiver—
  - (a) shall make a prescribed part of the company's net property available for the satisfaction of unsecured debts, and
  - (b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.
- (3) Subsection (2) shall not apply to a company if—
  - (a) the company's net property is less than the prescribed minimum, and
  - (b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.



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- (4) Subsection (2) shall also not apply to a company if or in so far as it is disappplied by—
- (a) a voluntary arrangement in respect of the company, or
  - (b) a compromise or arrangement agreed under section 425 of the Companies Act (compromise with creditors and members).
- (5) Subsection (2) shall also not apply to a company if—
- (a) the liquidator, administrator or receiver applies to the court for an order under this subsection on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits, and
  - (b) the court orders that subsection (2) shall not apply.
- (6) In subsections (2) and (3) a company’s net property is the amount of its property which would, but for this section, be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.
- (7) An order under subsection (2) prescribing part of a company’s net property may, in particular, provide for its calculation—
- (a) as a percentage of the company’s net property, or
  - (b) as an aggregate of different percentages of different parts of the company’s net property.
- (8) An order under this section—
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment pursuant to a resolution of either House of Parliament.
- (9) In this section—
- “floating charge” means a charge which is a floating charge on its creation and which is created after the first order under subsection (2)(a) comes into force, and
  - “prescribed” means prescribed by order by the Secretary of State.
- (10) An order under this section may include transitional or incidental provision.]

#### Textual Amendments

**F13** S. 176A and preceding cross-heading inserted (15.9.2003) by 2002 c. 40, ss. 252, 279 (with s. 249(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2002/2332, art. 2))

#### Modifications etc. (not altering text)

**C143** S. 176A excluded (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, Sch. para. 2(4)

**C144** S. 176A excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), reg. 10(3)

**C145** S. 176A modified (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), reg. 21(7) (with reg. 3) (as modified (10.8.2005) by S.I. 2005/1998, regs. 2(3), 40(1)-(4))

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### *Special managers*

#### **177 Power to appoint special manager.**

- (1) Where a company has gone into liquidation or a provisional liquidator has been appointed, the court may, on an application under this section, appoint any person to be the special manager of the business or property of the company.
- (2) The application may be made by the liquidator or provisional liquidator in any case where it appears to him that the nature of the business or property of the company, or the interests of the company's creditors or contributories or members generally, require the appointment of another to manage the company's business or property.
- (3) The special manager has such powers as may be entrusted to him by the court.
- (4) The court's power to entrust powers to the special manager includes power to direct that any provision of this Act that has effect in relation to the provisional liquidator or liquidator of a company shall have the like effect in relation to the special manager for the purposes of the carrying out by him of any of the functions of the provisional liquidator or liquidator.
- (5) The special manager shall—
  - (a) give such security or, in Scotland, caution, as may be prescribed;
  - (b) prepare and keep such accounts as may be prescribed; and
  - (c) produce those accounts in accordance with the rules to the Secretary of State or to such other persons as may be prescribed.

#### **Modifications etc. (not altering text)**

**C146** S. 177 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)

**C147** S. 177 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**C148** S. 177(5) applied (1.2.1993) by [Friendly Societies Act 1992 \(c. 40\), s. 24\(4\)](#) (with ss. 7(5), 93(4)); [S.I. 1993/16, art. 2, Sch.3](#)

S. 177(5) applied (1.12.2001) by [2000 c. 8, s. 376\(7\)](#); [S.I. 2001/3538, art. 2\(1\)](#)

*Disclaimer (England and Wales only)*

#### **178 Power to disclaim onerous property.**

- (1) This and the next two sections apply to a company that is being wound up in England and Wales.
- (2) Subject as follows, the liquidator may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.
- (3) The following is onerous property for the purposes of this section—
  - (a) any unprofitable contract, and
  - (b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

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- (4) A disclaimer under this section—
- (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but
  - (b) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.
- (5) A notice of disclaimer shall not be given under this section in respect of any property if—
- (a) a person interested in the property has applied in writing to the liquidator or one of his predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not, and
  - (b) the period of 28 days beginning with the day on which that application was made, or such longer period as the court may allow, has expired without a notice of disclaimer having been given under this section in respect of that property.
- (6) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

**Modifications etc. (not altering text)**

**C149** S. 178 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\), ss. 154, 155, 164\(1\), 182\(4\), Sch. 22 para. 7\(1\)](#); [S.I. 1991/878, art. 2, Sch.](#)

S. 178 excluded (11.12.1999) by [S.I. 1999/2979, reg. 16\(1\)](#)

S. 178 excluded (26.12.2003) by [The Financial Collateral Arrangements \(No. 2\) Regulations 2003 \(S.I. 2003/3226\), reg. 10\(4\)](#)

**C150** S. 178 restricted (1.1.1996) by [1995 c. 30, s. 21\(2\)\(b\)](#) (with [ss. 1\(1\), 2\(2\), 26\(1\)](#)); [S.I. 1995/2963, art. 2](#)

**C151** S. 178 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**C152** S. 178 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296, arts. 2, 3, Sch. para. 3](#)

**179 Disclaimer of leaseholds.**

- (1) The disclaimer under section 178 of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either—
- (a) no application under section 181 below is made with respect to that property before the end of the period of 14 days beginning with the day on which the last notice served under this subsection was served; or
  - (b) where such an application has been made, the court directs that the disclaimer shall take effect.
- (2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 181, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

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**Modifications etc. (not altering text)**

- C153** S. 179 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, [Sch. para. 2](#)
- C154** S. 179 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, [Sch. para. 3](#)

**180 Land subject of rentcharge.**

- (1) The following applies where, in consequence of the disclaimer under section 178 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in the next subsection as “the proprietor”).
- (2) The proprietor and the successors in title of the proprietor are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

**Modifications etc. (not altering text)**

- C155** S. 180 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, [Sch. para. 2](#)
- C156** S. 180 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, [Sch. para. 3](#)

**181 Powers of court (general).**

- (1) This section and the next apply where the liquidator has disclaimed property under section 178.
- (2) An application under this section may be made to the court by—
  - (a) any person who claims an interest in the disclaimed property, or
  - (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.
- (3) Subject as follows, the court may on the application make an order, on such terms as it thinks fit, for the vesting of the disclaimed property in, or for its delivery to—
  - (a) a person entitled to it or a trustee for such a person, or
  - (b) a person subject to such a liability as is mentioned in subsection (2)(b) or a trustee for such a person.
- (4) The court shall not make an order under subsection (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (5) The effect of any order under this section shall be taken into account in assessing for the purpose of section 178(6) the extent of any loss or damage sustained by any person in consequence of the disclaimer.
- (6) An order under this section vesting property in any person need not be completed by conveyance, assignment or transfer.

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**Modifications etc. (not altering text)**

- C157** S. 181 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3, Sch. para. 2](#)
- C158** S. 181 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3, Sch. para. 2](#)

**182 Powers of court (leaseholds).**

- (1) The court shall not make an order under section 181 vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person—
- (a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up, or
  - (b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.

- (2) For the purposes of an order under section 181 relating to only part of any property comprised in a lease, the requirements of subsection (1) apply as if the lease comprised only the property to which the order relates.

- (3) Where subsection (1) applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under section 181 on the terms required by virtue of that subsection, the court may, by order under that section, vest the company's estate or interest in the property in any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the company) to perform the lessee's covenants in the lease.

The court may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.

- (4) Where subsection (1) applies and a person claiming under the company as underlessee or mortgagee declines to accept an order under section 181, that person is excluded from all interest in the property.

**Modifications etc. (not altering text)**

- C159** S. 182 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3, Sch. para. 2](#)
- C160** S. 182 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3, Sch. para. 3](#)

*Execution, attachment and the Scottish equivalents*

**183 Effect of execution or attachment (England and Wales).**

- (1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to it, and the company is subsequently wound up, he is not entitled to retain the benefit of the execution or attachment against the liquidator

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unless he has completed the execution or attachment before the commencement of the winding up.

(2) However—

- (a) if a creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which he had notice is substituted, for the purpose of subsection (1), for the date of commencement of the winding up;
- (b) a person who purchases in good faith under a sale by the sheriff any goods of a company on which execution has been levied in all cases acquires a good title to them against the liquidator; and
- (c) the rights conferred by subsection (1) on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.

(3) For purposes of this Act—

- (a) an execution against goods is completed by seizure and sale, or by making of a charging order under section 1 of the <sup>M11</sup>Charging Orders Act 1979;
- (b) an attachment of a debt is completed by receipt of the debt; and
- (c) an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order under section 1 of the Act above-mentioned.

(4) In this section “goods” includes all chattels personal; and “the sheriff” includes any officer charged with the execution of a writ or other process.

(5) This section does not apply in the case of a winding up in Scotland.

#### **Marginal Citations**

**M11** 1979 c. 53.

### **184 Duties of sheriff (England and Wales).**

- (1) The following applies where a company’s goods are taken in execution and, before their sale or the completion of the execution (by the receipt or recovery of the full amount of the levy), notice is served on the sheriff that a provisional liquidator has been appointed or that a winding-up order has been made, or that a resolution for voluntary winding up has been passed.
- (2) The sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator; but the costs of execution are a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part of them for the purpose of satisfying the charge.
- (3) If under an execution in respect of a judgement for a sum exceeding [<sup>F14</sup>£500] a company’s goods are sold or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution from the proceeds of sale or the money paid and retain the balance for 14 days.
- (4) If within that time notice is served on the sheriff of a petition for the winding up of the company having been presented, or of a meeting having been called at which there is to be proposed a resolution for voluntary winding up, and an order is made or a resolution

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passed (as the case may be), the sheriff shall pay the balance to the liquidator, who is entitled to retain it as against the execution creditor.

- (5) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.
- (6) In this section, “goods” includes all chattels personal; and “the sheriff” includes any officer charged with the execution of a writ or other process.
- (7) The money sum for the time being specified in subsection (3) is subject to increase or reduction by order under section 416 in Part XV.
- (8) This section does not apply in the case of a winding up in Scotland.

#### Textual Amendments

- F14** "£500" substituted by virtue of [S.I. 1986/1996, art. 2\(1\)](#), [Sch. Pt. I](#) (by art. 2(2) of that S.I. the new amount is not to affect any case where the goods are sold or payment to avoid sale is made, before the coming into force of the increase)

### 185 Effect of diligence (Scotland)

- (1) In the winding up of a company registered in Scotland, the following provisions of the <sup>M12</sup>Bankruptcy (Scotland) Act 1985—

subsections (1) to (6) of section 37 (effect of sequestration on diligence); and

- (b) subsections (3), (4), (7) and (8) of section 39 (realisation of estate),
- apply so far as consistent with this Act, in like manner as they apply in the sequestration of a debtor’s estate, with the substitutions specified below and with any other necessary modifications.

The substitutions to be made in those sections of the Act of 1985 are as follows—

- (a) for references to the debtor, substitute references to the company;
  - (b) for references to the sequestration, substitute references to the winding up;
  - (c) for references to the date of sequestration, substitute references to the commencement of the winding up of the company; and
  - (d) for references to the permanent trustee, substitute references to the liquidator.
- (3) In this section, “the commencement of the winding up of the company” means, where it is being wound up by the court, the day on which the winding-up order is made.
  - (4) This section, so far as relating to any estate or effects of the company situated in Scotland, applies in the case of a company registered in England and Wales as in the case of one registered in Scotland.

#### Modifications etc. (not altering text)

- C161** S. 185 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), [ss. 154, 155, 161\(4\)](#); [S.I. 1991/878, art. 2, Sch.](#) .
- S. 185 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)

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### Marginal Citations

**M12** 1985 c. 66.

## *Miscellaneous matters*

### **186 Rescission of contracts by the court.**

- (1) The court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just.
- (2) Any damages payable under the order to such a person may be proved by him as a debt in the winding up.

### **Modifications etc. (not altering text)**

- C162** S. 186 excluded (25.4.1991) by [Companies Act 1989 \(c.40\)](#), ss. 154, 155, 164(1), 182(4), **Sch. 22 para. 7(1)**; S.I. 1991/878, art. 2, **Sch. .**  
 S. 186 excluded (11.12.1999) by S.I. 1999/2979, **reg. 16(1)**
- C163** S. 186 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, **reg. 4(1)**, **Sch. 2**
- C164** S. 186 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, **Sch. para. 2**

### **187 Power to make over assets to employees.**

- (1) On the winding up of a company (whether by the court or voluntarily), the liquidator may, subject to the following provisions of this section, make any payment which the company has, before the commencement of the winding up, decided to make under section 719 of the Companies Act (power to provide for employees or former employees on cessation or transfer of business).
- (2) The power which a company may exercise by virtue only of that section may be exercised by the liquidator after the winding up has commenced if, after the company's liabilities have been fully satisfied and provision has been made for the expenses of the winding up, the exercise of that power has been sanctioned by such a resolution of the company as would be required of the company itself by section 719(3) before that commencement, if paragraph (b) of that subsection were omitted and any other requirement applicable to its exercise by the company had been met.
- (3) Any payment which may be made by a company under this section (that is, a payment after the commencement of its winding up) may be made out of the company's assets which are available to the members on the winding up.
- (4) On a winding up by the court, the exercise by the liquidator of his powers under this section is subject to the court's control, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of the power.
- (5) Subsections (1) and (2) above have effect notwithstanding anything in any rule of law or in section 107 of this Act (property of company after satisfaction of liabilities to be distributed among members).



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**Modifications etc. (not altering text)**

**C165** S. 187 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)  
S. 187 modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\)](#), [Sch. 3](#)

**C166** S. 187 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 103, 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296, arts. 2, 3](#), [Sch. para. 2](#)

**188 Notification that company is in liquidation.**

- (1) When a company is being wound up, whether by the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company, or a liquidator of the company, or a receiver or manager of the company's property, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.
- (2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, is liable to a fine.

**Modifications etc. (not altering text)**

**C167** S. 188 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)

**189 Interest on debts.**

- (1) In a winding up interest is payable in accordance with this section on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.
- (2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation.
- (3) All interest under this section ranks equally, whether or not the debts on which it is payable rank equally.
- (4) The rate of interest payable under this section in respect of any debt ("the official rate" for the purposes of any provision of this Act in which that expression is used) is whichever is the greater of—
  - (a) the rate specified in section 17 of the <sup>M13</sup>Judgments Act 1838 on the day on which the company went into liquidation, and
  - (b) the rate applicable to that debt apart from the winding up.
- (5) In the application of this section to Scotland—
  - (a) references to a debt proved in a winding up have effect as references to a claim accepted in a winding up, and
  - (b) the reference to section 17 of the Judgments Act 1838 has effect as a reference to the rules.

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**Modifications etc. (not altering text)**

- C168** S. 189 applied (with modifications) (1.12.1994) by [S.I. 1994/2421, art. 8\(3\)\(9\), Sch. 4 Pt. II para. 24](#)  
 S. 189 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)
- C169** S. 189 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**Marginal Citations**

- M13** 1838 c. 110.

**190 Documents exempt from stamp duty.**

- (1) In the case of a winding up by the court, or of a creditors' voluntary winding up, the following has effect as regards exemption from duties chargeable under the enactments relating to stamp duties.
- (2) If the company is registered in England and Wales, the following documents are exempt from stamp duty—
- (a) every assurance relating solely to freehold or leasehold property, or to any estate, right or interest in, any real or personal property, which forms part of the company's assets and which, after the execution of the assurance, either at law or in equity, is or remains part of those assets, and
  - (b) every writ, order, certificate, or other instrument or writing relating solely to the property of any company which is being wound up as mentioned in subsection (1), or to any proceeding under such a winding up.

“Assurance” here includes deed, conveyance, assignment and surrender.

- (3) If the company is registered in Scotland, the following documents are exempt from stamp duty—
- (a) every conveyance relating solely to property which forms part of the company's assets and which, after the execution of the conveyance, is or remains the company's property for the benefit of its creditors,
  - (b) any articles of roup of sale, submission and every other instrument and writing whatsoever relating solely to the company's property, and
  - (c) every deed or writing forming part of the proceedings in the winding up.

“Conveyance” here includes assignation, instrument, discharge, writing and deed.

**Modifications etc. (not altering text)**

- C170** S. 190 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**191 Company's books to be evidence.**

Where a company is being wound up, all books and papers of the company and of the liquidators are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in them.

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**Modifications etc. (not altering text)**

- C171** S. 191 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)  
**C172** S. 191 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**192 Information as to pending liquidations.**

- (1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.
- (2) If a liquidator fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

**Modifications etc. (not altering text)**

- C173** S. 192 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)  
**C174** S. 192 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)  
**C175** S. 192(1) amended (1.7.1999) by [1998 c. 46, s. 125, Sch. 8 para. 23\(4\)\(5\) \(with s. 126\(3\)-\(11\)\); S.I. 1998/3178, arts. 2, 3](#)

**193 Unclaimed dividends (Scotland).**

- (1) The following applies where a company registered in Scotland has been wound up, and is about to be dissolved.
- (2) The liquidator shall lodge in an appropriate bank or institution as defined in section 73(1) of the <sup>M14</sup>Bankruptcy (Scotland) Act 1985 (not being a bank or institution in or of which the liquidator is acting partner, manager, agent or cashier) in the name of the Accountant of Court the whole unclaimed dividends and unapplied or undistributable balances, and the deposit receipts shall be transmitted to the Accountant of Court.
- (3) The provisions of section 58 of the Bankruptcy (Scotland) Act 1985 (so far as consistent with this Act and the Companies Act apply with any necessary modifications to sums lodged in a bank or institution under this section as they apply to sums deposited under section 57 of the Act first mentioned.

**Modifications etc. (not altering text)**

- C176** S. 193 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)  
**C177** S. 193 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**Marginal Citations**

- M14** 1985 c. 66.

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## 194 Resolutions passed at adjourned meetings.

Where a resolution is passed at an adjourned meeting of a company's creditors or contributories, the resolution is treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

### Modifications etc. (not altering text)

**C178** S. 194 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)

S. 194 modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\), Sch. 3](#)

**C179** S. 194 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

## 195 Meetings to ascertain wishes of creditors or contributories.

(1) The court may—

- (a) as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence), and
- (b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the Companies Act or the articles.

### Modifications etc. (not altering text)

**C180** S. 195 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

## 196 Judicial notice of court documents.

In all proceedings under this Part, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court shall take judicial notice—

- (a) of the signature of any officer of the High Court or of a county court in England and Wales, or of the Court of Session or a sheriff court in Scotland, or of the High Court in Northern Ireland, and also
- (b) of the official seal or stamp of the several offices of the High Court in England and Wales or Northern Ireland, or of the Court of Session, appended to or impressed on any document made, issued or signed under the provisions of this Act or the Companies Act, or any official copy of such a document.

### Modifications etc. (not altering text)

**C181** S. 196 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)

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**C182** S. 196 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

## 197 Commission for receiving evidence.

- (1) When a company is wound up in England and Wales or in Scotland, the court may refer the whole or any part of the examination of witnesses—
  - (a) to a specified county court in England and Wales, or
  - (b) to the sheriff principal for a specified sheriffdom in Scotland, or
  - (c) to the High Court in Northern Ireland or a specified Northern Ireland County Court, (“specified” meaning specified in the order of the winding-up court).

- (2) Any person exercising jurisdiction as a judge of the court to which the reference is made (or, in Scotland, the sheriff principal to whom it is made) shall then, by virtue of this section, be a commissioner for the purpose of taking the evidence of those witnesses.

- (3) The judge or sheriff principal has in the matter referred the same power of summoning and examining witnesses, of requiring the production and delivery of documents, of punishing defaults by witnesses, and of allowing costs and expenses to witnesses, as the court which made the winding-up order.

These powers are in addition to any which the judge or sheriff principal might lawfully exercise apart from this section.

- (4) The examination so taken shall be returned or reported to the court which made the order in such manner as that court requests.
- (5) This section extends to Northern Ireland.

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### Modifications etc. (not altering text)

**C183** S. 197 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

## 198 Court order for examination of persons in Scotland.

- (1) The court may direct the examination in Scotland of any person for the time being in Scotland (whether a contributory of the company or not), in regard to the trade, dealings, affairs or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested by reason of his being a contributory.
- (2) The order or commission to take the examination shall be directed to the sheriff principal of the sheriffdom in which the person to be examined is residing or happens to be for the time; and the sheriff principal shall summon the person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.
- (3) The sheriff principal may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court,

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and shall transmit with the report the books and papers produced, if the originals are required and specified by the order or commission, or otherwise copies or extracts authenticated by the sheriff.

- (4) If a person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff principal shall proceed against him as a witness or haver duly cited; and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.
- (5) The sheriff principal is entitled to such fees, and the witness is entitled to such allowances, as sheriffs principal when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.
- (6) If any objection is stated to the sheriff principal by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff principal may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

**Modifications etc. (not altering text)**

**C184** S. 198 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

**199 Costs of application for leave to proceed (Scottish companies).**

Where a petition or application for leave to proceed with an action or proceeding against a company which is being wound up in Scotland is unopposed and is granted by the court, the costs of the petition or application shall, unless the court otherwise directs, be added to the amount of the petitioner's or applicant's claim against the company.

**Modifications etc. (not altering text)**

**C185** S. 199 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**

**C186** S. 199 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

**200 Affidavits etc. in United Kingdom and overseas.**

- (1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in the United Kingdom, or elsewhere in Her Majesty's dominions, before any court, judge or person lawfully authorised to take and receive affidavits, or before any of Her Majesty's consuls or vice-consuls in any place outside Her dominions.
- (2) All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

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**Modifications etc. (not altering text)**

- C187** S. 200 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)  
**C188** S. 200 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)  
**C189** S. 200(1) modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\), Sch. 3](#)

## CHAPTER IX

### DISSOLUTION OF COMPANIES AFTER WINDING UP

#### 201 Dissolution (voluntary winding up).

- (1) This section applies, in the case of a company wound up voluntarily, where the liquidator has sent to the registrar of companies his final account and return under section 94 (members' voluntary) or section 106 (creditors' voluntary).
- (2) The registrar on receiving the account and return shall forthwith register them; and on the expiration of 3 months from the registration of the return the company is deemed to be dissolved.
- (3) However, the court may, on the application of the liquidator or any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.
- (4) It is the duty of the person on whose application an order of the court under this section is made within 7 days after the making of the order to deliver to the registrar an office copy of the order for registration; and if that person fails to do so he is liable to a fine and, for continued contravention, to a daily default fine.

**Modifications etc. (not altering text)**

- C190** Ss. 201, 205 applied by [Building Societies Act 1986 \(c. 53\), ss. 54\(3\)\(a\)\(5\)\(a\), 90, 126\(3\), Sch. 15 para. 56](#)

#### 202 Early dissolution (England and Wales).

- (1) This section applies where an order for the winding up of a company has been made by the court in England and Wales.
- (2) The official receiver, if—
  - (a) he is the liquidator of the company, and
  - (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,may at any time apply to the registrar of companies for the early dissolution of the company.

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- (3) Before making that application, the official receiver shall give not less than 28 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.
- (4) With the giving of that notice the official receiver ceases (subject to any directions under the next section) to be required to perform any duties imposed on him in relation to the company, its creditors or contributories by virtue of any provision of this Act, apart from a duty to make an application under subsection (2) of this section.
- (5) On the receipt of the official receivers' application under subsection (2) the registrar shall forthwith register it and, at the end of the period of 3 months beginning with the day of the registration of the application, the company shall be dissolved.

However, 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 section 203 at any time before the end of that period.

**Modifications etc. (not altering text)**

**C191** Ss. 202, 203, 205 excluded (1.11.1994) by [S.I. 1994/2759](#), reg. 3, [Sch. 3 para. 91A\(2\)](#)

**203 Consequence of notice under s. 202.**

- (1) Where a notice has been given under section 202(3), 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.
- (2) The grounds on which that application may be made 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.
- (3) Directions under this section—
  - (a) 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 section 202(3), and
  - (b) may, in the case of an application under section 202(5), 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.
- (4) An appeal to the court lies from any decision of the Secretary of State on an application for directions under this section.
- (5) 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 7 days after the giving of the directions or the determination of the appeal, to deliver to the registrar of companies for registration such a copy of the directions or determination as is prescribed.
- (6) If a person without reasonable excuse fails to deliver a copy as required by subsection (5), he is liable to a fine and, for continued contravention, to a daily default fine.



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**Modifications etc. (not altering text)**

C192 Ss. 202, 203, 205 excluded (1.11.1994) by S.I. 1994/2759, reg. 3, Sch. 3 para. 91A(2)

**204 Early dissolution (Scotland).**

- (1) This section applies where a winding-up order has been made by the court in Scotland.
- (2) If after a meeting or meetings under section 138 (appointment of liquidator in Scotland) 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.
- (3) Where the liquidator makes that application, 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.
- (4) A copy of the order shall within 14 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 3 months beginning with the day of the registration of the order, the company shall be dissolved.
- (5) 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.
- (6) It is the duty of the person on whose application an order is made under subsection (5), within 7 days after the making of the order, to deliver to the registrar of companies such a copy of the order as is prescribed.
- (7) If the liquidator without reasonable excuse fails to comply with the requirements of subsection (4), he is liable to a fine and, for continued contravention, to a daily default fine.
- (8) If a person without reasonable excuse fails to deliver a copy as required by subsection (6), he is liable to a fine and, for continued contravention, to a daily default fine.

**205 Dissolution otherwise than under ss. 202-204.**

- (1) This section applies where the registrar of companies receives—
  - (a) a notice served for the purposes of section 172(8) (final meeting of creditors and vacation of office by liquidator), or
  - (b) a notice, from the official receiver that the winding up of a company by the court is complete.
- (2) The registrar shall, on receipt of the notice, forthwith register it; and, subject, as follows, at the end of the period of 3 months beginning with the day of the registration of the notice, the company shall be dissolved.
- (3) 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.

- (4) An appeal to the court lies from any decision of the Secretary of State on an application for a direction under subsection (3).
- (5) Subsection (3) does 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.
- (6) It is the duty of the person—
  - (a) on whose application a direction is given under subsection (3);
  - (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 (5),

within 7 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.

- (7) If a person without reasonable excuse fails to deliver a copy as required by subsection (6), he is liable to a fine and, for continued contravention, to a daily default fine.

**Modifications etc. (not altering text)**

**C193** Ss. 201, 205 applied by [Building Societies Act 1986 \(c. 53, SIF 16\)](#), ss. 54(3)(a)(5)(a), 90, 126(3), [Sch. 15 para. 56](#)

Ss. 202, 203, 205 excluded (1.11.1994) by [S.I. 1994/2759, reg. 3, Sch. 3 para. 91A\(2\)](#)

## CHAPTER X

### MALPRACTICE BEFORE AND DURING LIQUIDATION; PENALISATION OF COMPANIES AND COMPANY OFFICERS; INVESTIGATIONS AND PROSECUTIONS

#### *Offences of fraud, deception, etc.*

#### **206 Fraud, etc. in anticipation of winding up.**

- (1) When a company is ordered to be wound up by the court, or passes a resolution for voluntary winding up, any person, being a past or present officer of the company, is deemed to have committed an offence if, within the 12 months immediately preceding the commencement of the winding up, he has—
  - (a) concealed any part of the company's property to the value of [<sup>F15</sup>£500] or more, or concealed any debt due to or from the company, or
  - (b) fraudulently removed any part of the company's property to the value of [<sup>F15</sup>£500] or more, or
  - (c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the company's property or affairs, or

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- (d) made any false entry in any book or paper affecting or relating to the company's property or affairs, or
  - (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's property or affairs, or
  - (f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).
- (2) Such a person is deemed to have committed an offence if within the period above mentioned he has been privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of subsection (1); and he commits an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in paragraphs (a) to (f) of that subsection, or is privy to the doing by others of any of the things mentioned in paragraphs (c) to (e) of it.
- (3) For purposes of this section, "officer" includes a shadow director.
- (4) It is a defence—
- (a) for a person charged under paragraph (a) or (f) of subsection (1) (or under subsection (2) in respect of the things mentioned in either of those two paragraphs) to prove that he had no intent to defraud, and
  - (b) for a person charged under paragraph (c) or (d) of subsection (1) (or under subsection (2) in respect of the things mentioned in either of those two paragraphs) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.
- (5) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(f), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in such circumstances, is guilty of an offence.
- (6) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.
- (7) The money sums specified in paragraphs (a) and (b) of subsection (1) are subject to increase or reduction by order under section 416 in Part XV.

#### Textual Amendments

**F15** "£500" substituted by virtue of [S.I. 1986/1996, art. 2\(1\), Sch. Pt. I](#)

#### Modifications etc. (not altering text)

**C194** S. 206 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)

**C195** S. 206 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

## 207 Transactions in fraud of creditors.

- (1) When a company is ordered to be wound up by the court or passes a resolution for voluntary winding up, a person is deemed to have committed an offence if he, being at the time an officer of the company—

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- (a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the company's property, or
  - (b) has concealed or removed any part of the company's property since, or within 2 months before, the date of any unsatisfied judgment or order for the payment of money obtained against the company.
- (2) A person is not guilty of an offence under this section—
- (a) by reason of conduct constituting an offence under subsection (1)(a) which occurred more than 5 years before the commencement of the winding up, or
  - (b) if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.
- (3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

**Modifications etc. (not altering text)**

**C196** S. 207 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)

**C197** S. 207 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**C198** S. 207(1) modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\), Sch. 3](#)

**208 Misconduct in course of winding up.**

- (1) When a company is being wound up, whether by the court or voluntarily, any person, being a past or present officer of the company, commits an offence if he—
- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company's property, and how and to whom and for what consideration and when the company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the company's business), or
  - (b) does not deliver up to the liquidator (or as he directs) all such part of the company's property as is in his custody or under his control, and which he is required by law to deliver up, or
  - (c) does not deliver up to the liquidator (or as he directs) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up, or
  - (d) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the liquidator as soon as practicable, or
  - (e) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the company's property or affairs.
- (2) Such a person commits an offence if after the commencement of the winding up he attempts to account for any part of the company's property by fictitious losses or expenses; and he is deemed to have committed that offence if he has so attempted at any meeting of the company's creditors within the 12 months immediately preceding the commencement of the winding up.
- (3) For purposes of this section, "officer" includes a shadow director.
- (4) It is a defence—

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- (a) for a person charged under paragraph (a), (b) or (c) of subsection (1) to prove that he had no intent to defraud, and
  - (b) for a person charged under paragraph (e) of that subsection to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.
- (5) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

**Modifications etc. (not altering text)**

**C199** S. 208 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)

**C200** S. 208 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**209 Falsification of company's books.**

- (1) When a company is being wound up, an officer or contributory of the company commits an offence if he destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person.
- (2) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

**Modifications etc. (not altering text)**

**C201** S. 209 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)

**C202** S. 209 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\) \(with s. 247\); S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

**210 Material omissions from statement relating to company's affairs.**

- (1) When a company is being wound up, whether by the court or voluntarily, any person, being a past or present officer of the company, commits an offence if he makes any material omission in any statement relating to the company's affairs.
- (2) When a company has been ordered to be wound up by the court, or has passed a resolution for voluntary winding up, any such person is deemed to have committed that offence if, prior to the winding up, he has made any material omission in any such statement.
- (3) For purposes of this section, "officer" includes a shadow director.
- (4) It is a defence for a person charged under this section to prove that he had no intent to defraud.
- (5) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

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**Modifications etc. (not altering text)**

- C203** S. 210 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)
- C204** S. 210 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)
- C205** S. 210(2) modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\), Sch. 3](#)

**211 False representations to creditors.**

- (1) When a company is being wound up, whether by the court or voluntarily, any person, being a past or present officer of the company—
- (a) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company’s creditors or any of them to an agreement with reference to the company’s affairs or to the winding up, and
  - (b) is deemed to have committed that offence if, prior to the winding up, he has made any false representation, or committed any other fraud, for that purpose.
- (2) For purposes of this section, “officer” includes a shadow director.
- (3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

**Modifications etc. (not altering text)**

- C206** S. 211 applied (with modifications) (1.12.1994) by [S.I. 1994/2421, art. 8, Sch. 4 Pt. I para. 1, Pt. II para. 25](#)
- S. 211 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)
- C207** S. 211 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296, arts. 2, 3, Sch. para. 2](#)

*Penalisation of directors and officers*

**212 Summary remedy against delinquent directors, liquidators, etc.**

- (1) This section applies if in the course of the winding up of a company it appears that a person who—
- (a) is or has been an officer of the company,
  - (b) has acted as liquidator, administrator or administrative receiver of the company, or
  - (c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company,
- has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.
- (2) The reference in subsection (1) to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator or administrator of the company, any misfeasance or breach of any fiduciary

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or other duty in connection with the carrying out of his functions as liquidator or administrator of the company.

- (3) The court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the person falling within subsection (1) and compel him—
  - (a) to repay, restore or account for the money or property or any part of it, with interest at such rate as the court thinks just, or
  - (b) to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just.
- (4) The power to make an application under subsection (3) in relation to a person who has acted as liquidator or administrator of the company is not exercisable, except with the leave of the court, after that person has had his release.
- (5) The power of a contributory to make an application under subsection (3) is not exercisable except with the leave of the court, but is exercisable notwithstanding that he will not benefit from any order the court may make on the application.

#### Modifications etc. (not altering text)

- C208** S. 212 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), [art. 4\(2\)\(3\)](#)  
 S. 212 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), [reg. 4\(1\)](#), [Sch. 2](#)  
 S. 212 applied (20.4.2003) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2003](#) (S.I. 2003/1102), [reg. 31](#) (with [reg. 3](#))  
 S. 212 applied (18.2.2004) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2004](#) (S.I. 2004/353), [reg. 31](#) (with [reg. 3](#)) (as modified (10.8.2005) by [S.I. 2005/1998](#), [regs. 2\(3\)](#), [40\(1\)-\(4\)\(10\)](#))

### 213 Fraudulent trading.

- (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.
- (2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.

#### Modifications etc. (not altering text)

- C209** S. 213 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), [reg. 4\(1\)](#), [Sch. 2](#)  
**C210** S. 213 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009](#) (c. 1), [ss. 103](#), [263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 2](#)  
**C211** S. 213 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009](#) (c. 1), [ss. 145](#), [263\(1\)\(2\)](#) (with [s. 247](#)); [S.I. 2009/296](#), [arts. 2, 3](#), [Sch. para. 3](#)

### 214 Wrongful trading.

- (1) Subject to subsection (3) below, if in the course of the winding up of a company it appears that subsection (2) of this section applies in relation to a person who is or

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has been a director of the company, the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the court thinks proper.

- (2) This subsection applies in relation to a person if—
- (a) the company has gone into insolvent liquidation,
  - (b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, and
  - (c) that person was a director of the company at that time;
- but the court shall not make a declaration under this section in any case where the time mentioned in paragraph (b) above was before 28th April 1986.
- (3) The court shall not make a declaration under this section with respect to any person if it is satisfied that after the condition specified in subsection (2)(b) was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the company's creditors as (assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation) he ought to have taken.
- (4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—
- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and
  - (b) the general knowledge, skill and experience that that director has.
- (5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.
- (6) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.
- (7) In this section “director” includes a shadow director.
- (8) This section is without prejudice to section 213.

**Modifications etc. (not altering text)**

- C212** S. 214 modified (7.10.2008 at 9.30 a.m.) by The Heritable Bank plc [Transfer of Certain Rights and Liabilities Order 2008 \(S.I. 2008/2644\)](#), art. 26, **Sch. 2 para. 3(a)**
- C213** S. 214 modified (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc [Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), art. 13, **Sch. 1 para. 3(a)**
- C214** S. 214 modified (22.2.2008) by The Northern Rock plc [Transfer Order 2008 \(S.I. 2008/432\)](#), art. 17(1), **Sch. para. 3(a)**
- C215** S. 214 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), **Sch. 2**
- C216** S. 214 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, **Sch. para. 2**



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- C217** S. 214 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, [arts. 2, 3, Sch. para. 3](#)
- C218** S. 214 modified (30.3.2009 at 8.00 a.m.) by The Amendments to [Law \(Resolution of Dunfermline Building Society\) Order 2009 \(S.I. 2009/814\)](#), art. 7, [Sch. 1 para. 3\(a\)](#)
- C219** S. 214(2) modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\)](#), [Sch. 3](#)
- C220** S. 214(4) applied (6.4.2005) by [The Pensions Regulator \(Notifiable Events\) Regulations 2005 \(S.I. 2005/900\)](#), [reg. 2\(2\)\(c\)](#)

## 215 Proceedings under ss. 213, 214.

- (1) On the hearing of an application under section 213 or 214, the liquidator may himself give evidence or call witnesses.
- (2) Where under either section the court makes a declaration, it may give such further directions as it thinks proper for giving effect to the declaration; and in particular, the court may—
  - (a) provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf, and
  - (b) from time to time make such further order as may be necessary for enforcing any charge imposed under this subsection.
- (3) For the purposes of subsection (2), “assignee”—
  - (a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but
  - (b) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.
- (4) Where the court makes a declaration under either section in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.
- (5) Sections 213 and 214 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

### Modifications etc. (not altering text)

- C221** S. 215 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)
- C222** S. 215(1)(2)(4)(5) modified (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(2\)](#), [Sch. 3](#)

## 216 Restriction on re-use of company names.

- (1) This section applies to a person where a company (“the liquidating company”) has gone into insolvent liquidation on or after the appointed day and he was a director or

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shadow director of the company at any time in the period of 12 months ending with the day before it went into liquidation.

- (2) For the purposes of this section, a name is a prohibited name in relation to such a person if—
- (a) it is a name by which the liquidating company was known at any time in that period of 12 months, or
  - (b) it is a name which is so similar to a name falling within paragraph (a) as to suggest an association with that company.
- (3) Except with leave of the court or in such circumstances as may be prescribed, a person to whom this section applies shall not at any time in the period of 5 years beginning with the day on which the liquidating company went into liquidation—
- (a) be a director of any other company that is known by a prohibited name, or
  - (b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company, or
  - (c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.
- (4) If a person acts in contravention of this section, he is liable to imprisonment or a fine, or both.
- (5) In subsection (3) “the court” means any court having jurisdiction to wind up companies; and on an application for leave under that subsection, the Secretary of State or the official receiver may appear and call the attention of the court to any matters which seem to him to be relevant.
- (6) References in this section, in relation to any time, to a name by which a company is known are to the name of the company at that time or to any name under which the company carries on business at that time.
- (7) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.
- (8) In this section “company” includes a company which may be wound up under Part V of this Act.

**Modifications etc. (not altering text)**

**C223** S. 216 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2

**217 Personal liability for debts, following contravention of s. 216.**

- (1) A person is personally responsible for all the relevant debts of a company if at any time—
- (a) in contravention of section 216, he is involved in the management of the company, or
  - (b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given (without the leave of the court) by a

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person whom he knows at that time to be in contravention in relation to the company of section 216.

- (2) Where a person is personally responsible under this section for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable.
- (3) For the purposes of this section the relevant debts of a company are—
  - (a) in relation to a person who is personally responsible under paragraph (a) of subsection (1), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and
  - (b) in relation to a person who is personally responsible under paragraph (b) of that subsection, such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that paragraph.
- (4) For the purposes of this section, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.
- (5) For the purposes of this section a person who, as a person involved in the management of a company, has at any time acted on instructions given (without the leave of the court) by a person whom he knew at that time to be in contravention in relation to the company of section 216 is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.
- (6) In this section “company” includes a company which may be wound up under Part V.

**Modifications etc. (not altering text)**

**C224** S. 217 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), ss. **103**, 263(1)(2) (with s. 247); S.I. 2009/296, arts. **2**, 3, Sch. para. 2

*Investigation and prosecution of malpractice*

**218 Prosecution of delinquent officers and members of company.**

- (1) If it appears to the court in the course of a winding up by the court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may (either on the application of a person interested in the winding up or of its own motion) direct the liquidator to refer the matter to the prosecuting authority.
- (2) “The prosecuting authority” means—
  - (a) in the case of a winding up in England and Wales, the Director of Public Prosecutions, and
  - (b) in the case of a winding up in Scotland, the Lord Advocate.
- (3) If in the case of a winding up by the court in England and Wales it appears to the liquidator, not being the official receiver, that any past or present officer of the company, or any member of it, has been guilty of an offence in relation to the company

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for which he is criminally liable, the liquidator shall report the matter to the official receiver.

- (4) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty of an offence in relation to the company for which he is criminally liable, he shall—
- (a) forthwith report the matter to the prosecuting authority, and
  - (b) furnish to that authority such information and give to him such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as the authority requires.
- (5) Where a report is made to him under subsection (4), the prosecuting authority may, if he thinks fit, refer the matter to the Secretary of State for further enquiry; and the Secretary of State—
- [<sup>F16</sup>(a) shall thereupon investigate the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, and]
  - (b) for the purpose of his investigation may exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the Companies Act to investigate a company's affairs
- (6) If it appears to the court in the course of a voluntary winding up that—
- (a) any past or present officer of the company, or any member of it, has been guilty as above-mentioned, and
  - (b) no report with respect to the matter has been made by the liquidator to the prosecuting authority under subsection (4),

the court may (on the application of any person interested in the winding up or of its own motion) direct the liquidator to make such a report.

On a report being made accordingly, this section has effect as though the report had been made in pursuance of subsection (4).

#### Textual Amendments

**F16** S. 218(5)(a) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **ss. 78, 213(2)**

## 219 Obligations arising under s. 218.

- (1) For the purpose of an investigation by the Secretary of State under section 218(5), any obligation imposed on a person by any provision of the Companies Act to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in that subsection is to be regarded as an obligation similarly to assist the Secretary of State in his investigation.
- (2) An answer given by a person to a question put to him in exercise of the powers conferred by section 218(5) may be used in evidence against him.
- (3) Where criminal proceedings are instituted by the prosecuting authority or the Secretary of State following any report or reference under section 218, it is the duty of the liquidator and every officer and agent of the company past and present (other than the defendant or defender) to give to that authority or the Secretary of State (as the

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case may be) all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

- (4) If a person fails or neglects to give assistance in the manner required by subsection (3), the court may, on the application of the prosecuting authority or the Secretary of State (as the case may be) direct the person to comply with that subsection; and if the application is made with respect to a liquidator, the court may (unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so) direct that the costs shall be borne by the liquidator personally.

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