
STATUTORY INSTRUMENTS

2017 No. 400

The Deregulation Act 2015, the Small Business,
Enterprise and Employment Act 2015 and the Insolvency
(Amendment) Act (Northern Ireland) 2016 (Consequential
Amendments and Transitional Provisions) Regulations 2017

PART 2

Amendments of primary legislation

The Building Societies Act 1986

2.—(1) The Building Societies Act 1986 is amended as follows.

(2) In section 90E(1) (disqualification of directors)—

(a) for subsections (3) and (4) substitute—

“(3) For the purposes of the application of section 7A of the Disqualification Act(2) (office-holder’s report on conduct of directors) to a building society which is subject to a building society insolvency order—

(a) the “office-holder” is the building society liquidator,

(b) the “insolvency date” means the date on which the building society insolvency order is made, and

(c) subsections (9) to (11) are omitted.

(4) For the purposes of the application of that section to a building society which is subject to a building society special administration order—

(a) the “office-holder” is the building society special administrator,

(b) the “insolvency date” means the date on which the building society special administration order is made, and

(c) subsections (9) to (11) are omitted.”; and

(b) in subsection (5) for the words from “the reference” to the end substitute—

“in subsections (3) and (4)—

(a) the reference to section 7A of the Disqualification Act is a reference to Article 10A of that Order(3) (office-holder’s report on conduct of directors), and

(b) the reference to subsections (9) to (11) of that section is a reference to paragraphs (9) to (11) of that Article.”.

(1) Section 90E was inserted by [S.I. 2009/805](#).

(2) In section 90E “the Disqualification Act” means the Company Directors Disqualification Act 1986 (c. 46). Section 7A was inserted by the Small Business, Enterprise and Employment Act 2015, section 107(2).

(3) Article 10A of the Company Directors Disqualification (Northern Ireland) Order 2002 ([S.I. 2002/3150 \(N.I. 4\)](#)) was inserted by the Small Business, Enterprise and Employment Act 2015, section 112 and Schedule 8, paragraph 5.

- (3) In Schedule 15(4) (application of companies winding up legislation to building societies)—
- (a) in paragraph 3(1)(a) at the end insert “(except as otherwise specified in paragraphs 33B and 55G below)”;
 - (b) in the heading to Part 2 (modified application of Insolvency Act 1986 Parts 4 and 12) for “and XII” substitute “, 12 and 13”;
 - (c) in paragraph 6A(5) omit “and” after sub-paragraph (e) and after sub-paragraph (f) insert—
 - “(g) subsection (1)(e) of section 391O (direct sanctions orders);
 - (h) subsection (5) of section 391Q (direct sanctions order: conditions); and
 - (i) subsection (3)(e) of section 391R(6) (direct sanctions direction instead of order).”;
 - (d) after paragraph 33 insert—

“Insolvency practitioners: their qualification and regulation

33A. Section 390 of the Act(7) (persons not qualified to act as insolvency practitioners) has effect as if for subsection (2) there were substituted—

“(2) A person is not qualified to act as an insolvency practitioner in relation to a building society at any time unless at that time the person is fully authorised to act as an insolvency practitioner or partially authorised to act as an insolvency practitioner only in relation to companies.”.

33B.—(1) In the following provisions of the Act, in a reference to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to) companies, the reference to companies has effect without the modification in paragraph 3(1)(a) above—

- (a) sections 390A and 390B(1) and (3)(8) (authorisation of insolvency practitioners); and
- (b) sections 391O(1)(b) and 391R(3)(b) (court sanction of insolvency practitioners in public interest cases).

(2) In sections 391Q(2)(b) (direct sanctions order: conditions) and 391S(3)(e)(9) (power for Secretary of State to obtain information) of the Act the reference to a company has effect without the modification in paragraph 3(1)(a) above.”;

- (e) in the heading to Part 3 (modified application of Insolvency (Northern Ireland) Order 1989, Parts 5 and 11) for “and XI” substitute “, 11 and 12”;
- (f) in paragraph 34A(10) omit “and” after sub-paragraph (e) and after sub-paragraph (f) insert—
 - “(g) paragraph (1)(e) of Article 350O (direct sanctions orders);
 - (h) paragraph (5) of Article 350Q (direct sanctions order: conditions); and
 - (i) paragraph (3)(e) of Article 350R(11) (direct sanctions direction instead of order).”;

(4) Schedule 15 was amended by [S.I. 2016/679](#).

(5) Paragraph 6A was inserted by [S.I. 2014/3486](#).

(6) Sections 391O, 391Q and 391R were inserted by the Small Business, Enterprise and Employment Act 2015, section 141.

(7) Section 390 was amended by the Deregulation Act 2015, section 17(1) and (2).

(8) Sections 390A and 390B were inserted by the Deregulation Act 2015, section 17(1) and (3).

(9) Section 391S was inserted by the Small Business, Enterprise and Employment Act 2015, section 142.

(10) Paragraph 34A was inserted by [S.I. 2014/3486](#).

(11) Articles 350O, 350Q and 350R were inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), section 18.

(g) after paragraph 55E(12) insert—

“Insolvency practitioners: their qualification and regulation

55F. Article 349(13) (persons not qualified to act as insolvency practitioners) has effect as if for paragraph (2) there were substituted—

“(2) A person is not qualified to act as an insolvency practitioner in relation to a building society at any time unless at that time the person is fully authorised to act as an insolvency practitioner or partially authorised to act as an insolvency practitioner only in relation to companies.”.

55G.—(1) In the following provisions of the Order, in a reference to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to) companies, the reference to companies has effect without the modification in paragraph 3(1)(a) above—

(a) Articles 349A and 349B(1) and (3)(14) (authorisation of insolvency practitioners); and

(b) Articles 350O(1)(b) and 350R(3)(b) (court sanction of insolvency practitioners in public interest cases).

(2) In Articles 350Q(2)(b) (direct sanctions order: conditions) and 350S(3)(e)(15) (power for Department to obtain information) the reference to a company has effect without the modification in paragraph 3(1)(a) above.”.

(4) In Schedule 15A(16) (application of other companies insolvency legislation to building societies)—

(a) in paragraph 1(2)(a) for “, III,” substitute “and 3, section 176ZB(17) (in Part 4), and”;

(b) in paragraph 2(1)(a) at the end insert “(except as otherwise specified in paragraphs 27H and 54 below)”;

(c) in the heading to Part 2 (modified application of Parts 1 to 3 of Insolvency Act 1986)(18) after “III” insert “and 13”;

(d) after paragraph 27F insert—

“Insolvency practitioners: their qualification and regulation

27G. Section 390 of the Act (persons not qualified to act as insolvency practitioners) has effect as if for subsection (2) there were substituted—

“(2) A person is not qualified to act as an insolvency practitioner in relation to a building society at any time unless at that time the person is fully authorised to act as an insolvency practitioner or partially authorised to act as an insolvency practitioner only in relation to companies.”.

27H.—(1) In the following provisions of the Act, in a reference to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to)

(12) Paragraph 55E was substituted by [S.I. 1989/2405](#).

(13) Article 349 was amended by the Insolvency (Amendment) Act (Northern Ireland) 2016, section 14(1) and (2).

(14) Articles 349A and 349B were inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016, section 14(1) and (3).

(15) Article 350S was inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016, section 19.

(16) Schedule 15A was inserted by the Building Societies Act 1997 (c. 32), section 39(2) and Schedule 6; and was amended by [S.I. 2016/679](#). There are other amendments, but they are not relevant.

(17) Section 176ZB was inserted by the Small Business, Enterprise and Employment Act 2015, section 119.

(18) The heading to Part 2 was amended, and paragraphs 27 to 27F were substituted, by [S.I. 2016/679](#).

companies the reference to companies has effect without the modification in paragraph 2(1)(a) above—

- (a) sections 390A and 390B(1) and (3) (authorisation of insolvency practitioners); and
- (b) sections 391O(1)(b) and 391R(3)(b) (court sanction of insolvency practitioners in public interest cases).

(2) In sections 391Q(2)(b) (direct sanctions order: conditions) and 391S(3)(e) (power for Secretary of State to obtain information) of the Act the reference to a company has effect without the modification in paragraph 2(1)(a) above.

27I. In sections 391O, 391Q and 391R of the Act a reference to the creditors of a company includes a reference to every shareholding member of the building society to whom a sum due from the society in relation to the member’s shareholding is due in respect of a deposit.”;

- (e) in the heading to Part 3 (modified application of Parts 2, 3 and 4 of Insolvency (Northern Ireland) Order 1989) for “and IV” substitute “, 4 and 12”; and
- (f) after paragraph 52(19) insert—

“Insolvency practitioners: their qualification and regulation

53. Article 349 of the Order (persons not qualified to act as insolvency practitioners) has effect as if for paragraph (2) there were substituted—

“(2) A person is not qualified to act as an insolvency practitioner in relation to a building society at any time unless at that time the person is fully authorised to act as an insolvency practitioner or partially authorised to act as an insolvency practitioner only in relation to companies.”.

54.—(1) In the following provisions of the Order, in a reference to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to) companies the reference to companies has effect without the modification in paragraph 2(1)(a) above—

- (a) Articles 349A and 349B(1) and (3) (authorisation of insolvency practitioners); and
- (b) Articles 350O(1)(b) and 350R(3)(b) (court sanction of insolvency practitioners in public interest cases).

(2) In Articles 350Q(2)(b) (direct sanctions order: conditions) and 350S(3)(e) (power for Department to obtain information) of the Order the reference to a company has effect without the modification in paragraph 2(1)(a) above.

55. In Articles 350O, 350Q and 350R of the Order a reference to the creditors of a company includes a reference to every shareholding member of the building society to whom a sum due from the society in relation to the member’s shareholding is due in respect of a deposit.”.

The Friendly Societies Act 1992

3. In Schedule 10 to the Friendly Societies Act 1992⁽²⁰⁾ (application of companies winding up legislation to incorporated friendly societies), in Part 2 (modified application of Insolvency Act 1986 Parts 4 and 12)—

- (a) in the heading for “and XII” substitute “, 12 and 13”; and
- (b) after paragraph 36 insert—

“Insolvency practitioners: their qualification and regulation

36A. Section 390 of the Act (persons not qualified to act as insolvency practitioners) has effect as if for subsection (2) there were substituted—

“(2) A person is not qualified to act as an insolvency practitioner in relation to an incorporated friendly society at any time unless at that time the person is fully authorised to act as an insolvency practitioner or partially authorised to act as an insolvency practitioner only in relation to companies.”.

36B.—(1) In the following provisions of the Act, in a reference to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to) companies the reference to companies has effect without the modification in paragraph 3(1)(a) above—

- (a) sections 390A and 390B(1) and (3) (authorisation of insolvency practitioners); and
- (b) sections 391O(1)(b) and 391R(3)(b) (court sanction of insolvency practitioners in public interest cases).

(2) In sections 391Q(2)(b) (direct sanctions order: conditions) and 391S(3)(e) (power for Secretary of State to obtain information) of the Act the reference to a company has effect without the modification in paragraph 3(1)(a) above.”.

The Financial Services and Markets Act 2000

4. In section 376 of the Financial Services and Markets Act 2000⁽²¹⁾ (continuation of contracts of long-term insurance where insurer in liquidation), in subsection (12) for the words from “section 167 of” to the end substitute “Article 142 of, and Schedule 2 to, the 1989 Order.”.

The Banking Act 2009

5.—(1) The Banking Act 2009⁽²²⁾ is amended as follows.

(2) In section 94 (bank insolvency order), in subsection (2) at the end insert “in relation to the bank”.

(3) In section 103 (general powers and duties of bank liquidators and effect of bank insolvency), in subsection (4) at the beginning of paragraph (h) insert “except where otherwise specified in the Table,”.

(4) In section 103, in the Table of applied provisions of the Insolvency Act 1986⁽²³⁾—

- (a) in the entry for section 135 (provisional appointment), in the third column, in paragraph (d) after “practitioner” insert “in relation to the bank”;

⁽²⁰⁾ 1992 c. 40.

⁽²¹⁾ 2000 c. 8.

⁽²²⁾ 2009 c. 1.

⁽²³⁾ 1986 c. 45.

(b) in the entry for section 169 (supplementary powers (Scotland)), in the third column omit paragraph (a);

(c) after the entry for section 176ZA(24) insert—

“Section 176ZB	Application of proceeds of office-holder claims”	
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(d) for the entry for section 214 substitute—

“Section 214	Wrongful trading	(a) Treat the reference in subsection (2) (b) to entering insolvent administration as a reference to entering bank administration under Part 3 of this Act at a time when the bank’s assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration. (b) Ignore subsection (6A).”
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(e) after the entry for section 246 insert—

“Section 246ZD(25)	Power to assign certain causes of action”	
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(f) for the entries for sections 390 and 391(26) substitute—

“Sections 390 to 391T(27)	Authorisation and regulation of insolvency practitioners	(a) In section 390 treat references to acting as an insolvency practitioner as references to acting as a bank liquidator. (b) Read subsection (2) of that section (as so modified) as if after “authorised” there were inserted “to act as an insolvency practitioner”. (c) An order under section 391 has effect in relation to any provision applied for the purposes of bank insolvency. (d) In sections 390A, 390B(1) and (3), 391O(1)(b) and 391R(3)(b), in a reference to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to) companies the reference to companies
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(24) Section 176ZA was inserted by the Companies Act 2006 (c. 46), section 1282(1).

(25) Section 246ZD was inserted by the Small Business, Enterprise and Employment Act 2015, section 118.

(26) Section 390 was amended by the Deregulation Act 2015, section 17(1) and (2). Section 391 was substituted by section 17(1) and (4) of that Act and then by the Small Business, Enterprise and Employment Act 2015, section 137.

(27) Sections 391A to 391T were inserted by the Small Business, Enterprise and Employment Act 2015, sections 137 to 143.

		has effect without the modification in subsection (4)(h) of this section. (e) In sections 391Q(2)(b) and 391S(3) (e) the reference to a company has effect without the modification in subsection (4)(h) of this section.”
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(5) In section 110 (disqualification), in subsection (1) after “practitioner” insert “in relation to the bank”.

(6) In section 121 (disqualification of directors) for subsection (3) substitute—

“(3) For the purposes of the application of section 7A of the Disqualification Act(28) (office-holder’s report on conduct of directors) to a bank which is subject to a bank insolvency order—

- (a) the “office-holder” is the bank liquidator,
- (b) the “insolvency date” means the date on which the bank insolvency order is made, and
- (c) subsections (9) to (11) are omitted.”.

(7) In section 141 (bank administration order), in subsection (2) at the end insert “in relation to the bank”.

(8) In section 145 (general powers and duties of bank administrators and effect of bank administration), in subsection (4)—

- (a) at the beginning of paragraph (d) insert “except where otherwise specified in Table 2,”; and
- (b) in paragraph (f) after “Schedule B1” insert “and section 246ZB(29)”.

(9) In section 145, in Table 1 (applied provisions of the Insolvency Act 1986, Schedule B1(30))—

- (a) in the entry for paragraph 65 (distribution to creditors), in the third column for paragraph (b) substitute—
 - “(b) Where paragraph (a) applies, ignore sub-para (3).”; and
- (b) for the entry for paragraphs 112 to 116 (Scotland), substitute—

“Paras 112 to 114	Scotland: miscellaneous	
Para 115	Scotland: floating charges	(a) In Scotland, on the giving by the Bank of England of consent as provided for in Para 65 (as applied by this section), any floating charge granted by the bank attaches to the property which is subject to the charge, unless it has already so attached, but only if the distribution concerned is to be made to creditors of the residual bank who are neither secured creditors nor preferential creditors and otherwise than by virtue

(28) In section 121 “the Disqualification Act” means the Company Directors Disqualification Act 1986.

(29) Section 246ZB was inserted by the Small Business, Enterprise and Employment Act 2015, section 117.

(30) Schedule B1 was inserted by the Enterprise Act 2002, section 248(2) and Schedule 16; and was amended by the Small Business, Enterprise and Employment Act 2015, sections 128(1) and (2) and 130. There are other amendments not relevant to these Regulations.

		of section 176A(2)(a) (as applied by this section). (b) Where paragraph (a) applies, ignore sub-paras (1A) and (1B)(31).
Para 116	Scotland: payment to holder of floating charge subject to rights”	

- (10) In section 145, in Table 2 (other applied provisions of the Insolvency Act 1986)—
- (a) in the entry for section 135 (provisional appointment), in the third column, in paragraph (d) after “practitioner” insert “in relation to the bank”;
 - (b) after the entry for section 168(4) insert—

“Section 176ZB	Application of proceeds of office-holder claims”	
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- (c) omit the entries for sections 213 and 214 (fraudulent trading and wrongful trading);
- (d) after the entry for section 246 insert—

“Section 246ZA(32)	Fraudulent administration trading:	
Section 246ZB	Wrongful administration trading:	(a) Treat the reference in subsection (2) (b) to going into insolvent liquidation as a reference to entering bank insolvency under Part 2 of this Act at a time when the bank’s assets are insufficient for the payment of its debts and other liabilities and the expenses of the bank insolvency. (b) Ignore subsection (6)(b).
Section 246ZC	Proceedings under section 246ZA or 246ZB	
Section 246ZD	Power to assign certain causes of action”	

- (e) for the entries for sections 390 and 391 substitute—

“Sections 390 to 391T	Authorisation and regulation of insolvency practitioners	(a) In section 390 treat references to acting as an insolvency practitioner as references to acting as a bank administrator. (b) Read subsection (2) of that section (as so modified) as if after “authorised”
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(31) Sub-paragraphs (1A) and (1B) were inserted by the Small Business, Enterprise and Employment Act 2015, section 130(1) and (2).

(32) Sections 246ZB to 246ZD were inserted by the Small Business, Enterprise and Employment Act 2015, section 117 and 118.

		<p>there were inserted “to act as an insolvency practitioner”.</p> <p>(c) An order under section 391 has effect in relation to any provision applied for the purposes of bank administration.</p> <p>(d) In sections 390A, 390B(1) and (3), 391O(1)(b) and 391R(3)(b), in a reference to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to) companies the reference to companies has effect without the modification in subsection (4)(d) of this section.</p> <p>(e) In sections 391Q(2)(b) and 391S(3) (e) the reference to a company has effect without the modification in subsection (4)(d) of this section.”</p>
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(11) In section 155 (disqualification of directors) for subsection (3) substitute—

“(3) For the purposes of the application of section 7A of the Disqualification Act(33) (office-holder’s report on conduct of directors) to a bank which is subject to a bank administration order—

- (a) the “office-holder” is the bank administrator;
- (b) the “insolvency date” means the date on which the bank administration order is made; and
- (c) subsections (9) to (11) are omitted.”.

The Financial Services (Banking Reform) Act 2013

6. In Schedule 6 to the Financial Services (Banking Reform) Act 2013(34) (conduct of FMI administration)—

- (a) in paragraph 3 at the beginning of sub-paragraph (e) insert “except where otherwise specified in Table 2.”;
- (b) in Table 1 (applied provisions of Schedule B1 to the Insolvency Act 1986), in the entry for paragraph 98 (vacation from office: discharge from liability), in the third column after “(b)” insert “and (ba)”;
- (c) in Table 2 (other applied provisions of the Insolvency Act 1986)—
 - (i) before the entry for section 233 insert—

“Section 176ZB	Application of proceeds of office-holder claims”	
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(ii) after the entry for section 246 insert—

(33) In section 155 “the Disqualification Act” means the Company Directors Disqualification Act 1986.

(34) 2013 c. 33.

“Sections 246ZA to 246ZC	Administration: penalisation of directors etc	
Section 246ZD	Power to assign certain causes of action”	

(iii) for the entries for sections 390 and 391 substitute—

“Sections 390 to 391T	Authorisation and regulation of insolvency practitioners	<p>(a) In section 390 treat references to acting as an insolvency practitioner as references to acting as an FMI administrator.</p> <p>(b) For subsection (2) of that section there is to be taken to be substituted— “(2) A person is not qualified to act as an FMI administrator at any time unless at that time the person is fully authorised to act as an insolvency practitioner or partially authorised to act as an insolvency practitioner only in relation to companies.”.</p> <p>(c) An order under section 391 has effect in relation to any provision applied for the purposes of FMI administration.</p> <p>(d) In sections 390A, 390B(1) and (3), 391O(1)(b) and 391R(3)(b), in a reference to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to) companies the reference to companies has effect without the modification in paragraph 3(e) of this Schedule.</p> <p>(e) In sections 391Q(2)(b) and 391S(3)(e) the reference to a company has effect without the modification in paragraph 3(e) of this Schedule.”</p>
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