Insolvency Act 1986

1986 CHAPTER 45

An Act to consolidate the enactments relating to company insolvency and winding up (including the winding up of companies that are not insolvent, and of unregistered companies); enactments relating to the insolvency and bankruptcy of individuals; and other enactments bearing on those two subject matters, including the functions and qualification of insolvency practitioners, the public administration of insolvency, the penalisation and redress of malpractice and wrongdoing, and the avoidance of certain transactions at an undervalue [25th July 1986]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act amended by Social Security Pensions Act 1975 (c. 60), **s. 59D(3)** (as inserted by Social Security Act 1990 (c. 27), s. 12(1), **Sch. 3**)
Act amended (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 158(1), 174(1), 190(6); S.I. 1991/878, art. 2, **Sch.** (with art. 3(4))
Act amended (29.6.1992) by Social Security Pensions Act 1975 (c. 60), **s. 58B(5)** (as inserted (29.6.1992) by Social Security Act 1990 (c. 27), s. 14, **Sch. 4 Pt. I para. 2**; S.I. 1992/1532, **art. 2**)
Act amended (1.4.1994) by 1993 c. 43, ss. 59(3), 150(1)(c), **Sch. 6 Pt. III para. 20(1)-(3)**; S.I. 1994/571, **art. 5** (with transitional provision in art. 7)
Act (except ss. 8-10, 24-26) amended (1.2.2001) by 2000 c. 38, s. 30, **Sch. 1 Pt. II para. 13(1)(3)** (with ss. 105(2)(5), 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
Act amended (1.2.2001) by 2000 c. 38, s. 30, **Sch. 1 Pt. II para. 13(2)(3)** (with ss. 105(2)(5), 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
Act amended (30.12.2002) by 2002 c. 29, **s. 311(4)**; S.I. 2002/3015, art. 2(1), **Sch.**

C2 Act restricted (E.W.S.) by Drug Trafficking Offences Act 1986 (c. 32), **s. 15(3)(7)**
Act restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 4(2)**; S.I. 1991/878, art. 2, **Sch.**
Act restricted (3.2.1995) by 1994 c. 37, ss. 32(4), 69(2), **Sch. 2 para. 5** (with s. 66(2))

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Act restricted (31.3.1996) by 1995 c. 20, s. 110(1), **Sch. 4 para. 2(4)**; S.I. 1996/517, **art. 3(2)** (subject to arts. 4-6, Sch. 2)
Act restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 2(4)**
Act restricted (6.4.1996 for certain purposes and 6.4.1997 otherwise) by 1995 c. 26, **s. 75(8)(a)** (with s. 121(5)); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**; S.I. 1997/664, art. 2(3), **Sch. Pt. II** (with transitional adaptations, modifications and savings in arts. 3-14)
Act restricted (7.10.1996) by 1992 c. 5, **ss. 71(10A)**, 78(3A) (as inserted by 1995 c. 18, **s. 32**; S.I. 1996/2208, **art. 2**)
Act restricted (S.) (1.11.2001) by 2001 asp 10, s. 63, Sch. 7 paras. 9(4), **10(6)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** (subject to transitional provisions and savings in art. 3)
Act restricted (24.3.2003) by 2002 c. 29, ss. 417(4), 458(1)(3); S.I. 2003/333, **art. 2**, Sch. (subject to transitional provisions and savings in arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4))

C3 Act excluded (E.W.S.) by Drug Trafficking Offences Act 1986 (c. 32), **ss. 15(5)**(a)(7), 17(3)
Act excluded by Criminal Justice (Scotland) Act 1987 (c. 41), **ss. 30(6)**, 34(3)(4), 35(3), 36(3), 47(4)(a)
Act excluded (E.W.) by Dartford-Thurrock Crossing Act 1988 (c. 20), **ss. 15(4)**, 19
Act excluded by Criminal Justice Act 1988 (c. 33), ss. 84(3), 86(3), 123, **Sch. 8 para. 16**
Act excluded by Social Security Act 1989 (c. 24), s. 22, **Sch. 4 Pt. II para. 8(1)**
Act excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 159(2), 180(2); S.I. 1991/878, art. 2, **Sch.**
Act excluded (13.2.1992) by Severn Bridges Act 1992 (c. 3), **s. 20(4)**
Act excluded (1.7.1992) by Social Security Administration Act 1992 (c. 5), **ss. 89(1)**, 93(1), 192(4) (with s. 89(1))
Act excluded (31.10.1994) by 1994 c. 21, **s. 29(2)** (with s. 40(7)); S.I. 1994/2552, art. 2, **Sch. 1**
Act excluded (3.2.1995) by 1994 c. 37, ss. 32(2), 34(2), 69(2), **Sch. 2 para. 5** (with s. 66(2))
Act excluded (31.3.1996) by 1995 c. 20, s. 110(1), Sch. 4 paras. 2(3), 3(3), **4(3)**; S.I. 1996/517, **art. 3(2)** (subject to arts. 4-6, Sch. 2)
Act excluded (1.4.1996) by 1995 c. 43, ss. 44, 50(2), Sch. 2 paras. 2(3), 3(3), **4(3)**
Act excluded (1.10.1996) by 1996 c. 52, s. 7, **Sch. 1 Pt. II para. 15(2)**; S.I. 1996/2402, **art. 3** (subject to transitional provisions and savings in Sch.)
Act excluded (E.W.S.) (11.12.1999) by S.I. 1999/2979, **reg. 14(2)**
Act excluded (E.W.) (1.9.2001) by 2001 c. 17, s. 38, Sch. 6 paras. 9(3), **11(3)** (with s. 78); S.I. 2001/2161, **art. 2**
Act excluded (S.) (1.11.2001) by 2001 asp 10, s. 63, **Sch. 7 para. 12(3)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** (subject to transitional provisions and savings in art. 3)
Act excluded (S.) (17.12.2001) by 2001 asp 13, s. 20(b), Sch. 6 paras. 9(3), **10(5)**; S.S.I. 2001/456, **art. 2**
Act excluded (24.3.2003) by 2002 c. 29, ss. 418(4), 426(7), 430(7), 458(1)(3); S.I. 2003/333, **art. 2**, Sch. (subject to transitional provisions and savings in arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4))

C4 Act modified by Financial Services Act 1986 (c. 60), **s. 72(4)**
Act modified by S.I. 1986/2142, **arts. 1(2)**, 3(a), 15
Act modified by S.I. 1989/638, **regs. 8(1)**, 21
Act modified (7.2.1994) by 1993 c. 48, **ss. 144(7)(a)**, 147(3) (with s. 6(8)); S.I. 1994/86, **art. 2**
Act modified (31.10.1994) by 1994 c. 21, **s. 36(1)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
Act modified (S.) (1.11.2001) by 2001 asp 10, s. 63, **Sch. 7 para. 11**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** (subject to transitional provisions and savings in art. 3)
Act modified (E.W.S.) (5.10.2004) by Energy Act 2004 (c. 20), ss. 159, 198, **Sch. 20 paras. 41**, 42; S.I. 2004/2575, **art. 2(1)**, Sch. 1
Act modified (E.W.) (1.10.2005) by The Energy Administration Rules 2005 (S.I. 2005/2483), rules 3, **184**
Act modified (S.) (6.4.2006) by The Energy Administration (Scotland) Rules 2006 (S.I. 2006/772), rules 3, **68**

C5 Act applied (with modifications) by S.I. 1986/2142, arts. 1(2), 8(1)(b)(2), 13(3)(4)(6), 15, **Sch. 2**
Act applied (with modifications) (6.1.1997) by S.I. 1996/2827, **reg. 25(1)-(4)**
Act applied (with modifications) (1.12.2001) by S.I. 2001/1228, **regs. 1(2)**, 31(1) (with reg. 1(3)); S.I. 2001/3538, **art. 2(1)**
Act applied (1.12.2001) by 2000 c. 8, **s. 367(7)**; S.I. 2001/3538, **art. 2(1)**

C6 Act extended by Banking Act 1987 (c. 22), **s. 92(2)**
Act extended (E.W.) by Water Act 1989 (c. 15), s. 23, **Sch. 6 Pt. II para. 11(1)(2)(3)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)?(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
Act extended (E.W.) (1.12.1991) by Water Industry Act 1991 (c. 56), ss. 23(3), 223(2), Sch. 3 Pt. II paras.11(1)-(3), **12(2)** (with ss. 82(3), 186(1), 222(1), Sch. 14 para. 6).
Act (except s. 413, Sch. 7) extended (E.W.) (1.1.1992) by S.I. 1991/2684, arts. 2(1), 4, **Sch.1**.
Act extended (1.10.1996) by 1996 c. 52. s. 7, Sch. 1 Pt. II para. 14(1); S.I. 1996/2402, **art. 3** (subject to transitional provisions and savings in Sch.)
Act (except ss. 8-10, 24-26) extended (15.7.2003) by 1999 c. 29, s. 220(3), Sch. 14 Pt. III para. 20; S.I. 2003/1920, **art. 2**

C7 Act: power to modify conferred (2.4.2001) by 2000 c. 39, **s. 7(2)**; S.I. 2001/776, **art. 2(1)(a)** (subject to transitional provisions in art. 3)
Act: power to apply (with modifications) conferred (E.W.S.) (15.9.2003) by 2002 c. 40, ss. 254(1), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
Act: power to amend conferred (E.W.) (1.4.2004) by 2002 c. 40, ss. 264(2), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

C8 Act modified (1.8.2007) by The European Grouping of Territorial Cooperation Regulations 2007 (S.I. 2007/1949), **reg. 7**, Sch. Pt. 2

C9 Act applied (with modifications) (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 27(2)-(4)**, 94; S.I. 2008/755, **art. 15(1)(f)**

C10 Act applied in part (with modifications) (8.10.2008 at 12.15 p.m.) by The Kaupthing Singer & Friedlander Limited Transfer of Certain Rights and Liabilities Order 2008 (S.I. 2008/2674), **Pt. 5** (arts. 19-27)

C11 Act applied in part (with modifications) (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), **Pt. 4** (arts. 18-25)

C12 Act excluded (26.1.2009) by 1998 c. 17 s. 38A(6) (as inserted by Energy Act 2008 (c. 32), **ss. 74(1)**, 110; S.I. 2009/45, **art. 2(b)(i)**)

C13 Act excluded (6.4.2009) by Energy Act 2008 (c. 32), **ss. 56(5)**, 110; S.I. 2009/45, **art. 4(b)(i)**

C14 Act excluded (E.W.) (1.4.2010) by Housing and Regeneration Act 2008 (c. 17), **ss. 167(5)(b)**, 325; S.I. 2010/862, **art. 2** (with Sch.)

C15 Act: power to amend conferred (17.2.2009 for certain purposes, otherwise 21.02.2009) by Banking Act 2009 (c. 1), **s. 158(2)(b)** (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch.

C16 Act: power to amend conferred (17.2.2009 for certain purposes, otherwise 21.02.2009) by Banking Act 2009 (c. 1), **s. 159(2)(b)** (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch.

C17 Act applied in part by S.I. 1989/638, reg. 19 (as amended (1.10.2009) by The European Economic Interest Grouping (Amendment) Regulations 2009 (S.I. 2009/2399), **reg. 20** (with reg. 2))

C18 Act applied (1.11.2009) by The Water Industry (Special Administration) Rules 2009 (S.I. 2009/2477), **rule 102** (with rules 3(2), 4)

C19 Act applied (with modifications) (23.11.2009) by The Scottish and Northern Ireland Banknote Regulations 2009 (S.I. 2009/3056), reg. 29, **Sch. 1 para. 2**

C20 Act: power to modify conferred (E.W.) (1.10.2010 for specified purposes) by Flood and Water Management Act 2010 (c. 29), ss. 34, 49(3), **Sch. 5 para. 3** (with s. 49(1)(6)); S.I. 2010/2169, **art. 4**, Sch.

C21 Act applied (with modifications) (8.2.2011) by The Investment Bank Special Administration Regulations 2011 (S.I. 2011/245), regs. 8(7), 9, 15, 16-21, 24, 25, **Schs. 1-4** (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order

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2013 (S.I. 2013/472), Sch. 2 para. 198(i)(n) (with **Sch. 2 para. 213**); (7.4.2017) by 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 (S.I. 2017/400), **reg. 10**); (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, **Sch. para. 36(4)** (with regs. 7(4), 9(1)); and (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), **reg. 13**)

C22 Act modified (30.6.2011) by The Investment Bank Special Administration (England and Wales) Rules 2011 (S.I. 2011/1301), **rule 334** (with rule 5(2))

C23 Act modified (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 73, 93(2)(3), **Sch. 10 paras. 40**, 41; S.I. 2011/2329, **art. 3** (with arts. 4, 5)

C24 Act: power to modify conferred (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 73, 93(2)(3), **Sch. 10 para. 46**; S.I. 2011/2329, **art. 3** (with arts. 4, 5)

C25 Act applied in part (with modifications) (23.12.2011) by The Legal Services Act 2007 (Designation as a Licensing Authority) (No. 2) Order 2011 (S.I. 2011/2866), art. 8(1), **Sch. 2**

Commencement Information

I1 Act not in force at Royal Assent, see s. 443

The First Group of Parts

Company Insolvency; Companies Winding Up

Part I

Company Voluntary Arrangements

Modifications etc. (not altering text)

C26 Pt. I (ss. 1-7), Pt. II (ss. 8-27) modified by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2)**, 25

C27 Pts. 1-7 (ss. 1-251) applied (with modifications) by S.I. 1989/1276, **arts. 2**, 3
Pt. 1 (ss. 1-7) applied with modifications by S.I. 1986/2142, **arts. 1(2)**, 11, 13(3), 15
Pt. 1 (ss. 1-7) applied (with modifications) (1.12.1997) by 1986 c. 53, **Sch. 15A** (as inserted by 1997 c. 32, s. 39(2), **Sch. 6 para. 1(2)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. 1(i)**) (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **2(3)**)

C28 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))

C29 Pt. I: power to apply or incorporate conferred (6.4.2001) by 2000 c. 12, **s. 14**; S.I. 2000/3316, **art. 2**
Pt. I: power to apply (with modifications) conferred (15.9.2003) by 2002 c. 40, ss. 255(2)(a), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
Pt. I: power to apply (with modifications) conferred (20.11.2003 for specified purposes and 1.4.2004 otherwise) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), **ss. 24(2)**, 26, 199; S.I. 2004/759, **art. 2**
Pt. I: power to apply (with modifications) conferred (E.W.) (1.3.2007) by National Health Service Act 2006 (c. 41), **ss. 53(2)**, 55, 277

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C30 First Group of Parts (Pts. 1-7) applied (with modifications) (15.12.2006) by The Banks (Former Authorised Institutions) (Insolvency) Order 2006 (S.I. 2006/3107), art. 3, **Sch.** (as amended (1.4.2013) by S.I. 2013/472, art. 1(1), **Sch. 2 para. 117**; and (13.3.2018) by S.I. 2018/208, regs. 1(3), **11**)

C31 Pt. I applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **s. 113(6)-(9)** (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch.

C32 Pt. I applied (with modifications) (21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, **134**, 263(1) (with s. 247); S.I. 2009/296, **art. 3**, Sch. para. 2

The Proposal

1 Those who may propose an arrangement.

(1) The directors of a company **[**[F1](other than one which is in administration or being wound up)**]** may make a proposal under this Part to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs (from here on referred to, in either case, as a "voluntary arrangement").

(2) A proposal under this Part is one which provides for some person ("the nominee") to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation; and the nominee must be a person who is qualified to act as an insolvency practitioner **[**[F2]or authorised to act as nominee, in relation to the voluntary arrangement**]**.

(3) Such a proposal may also be made—

[[F3](a) where the company is in administration, by the administrator,**]**

(b) where the company is being wound up, by the liquidator.

[[F4](4) In this Part "company" means—

(a) a company within the meaning of section 735(1) of the Companies Act 1985,

(b) a company incorporated in an EEA State other than the United Kingdom; or

(c) a company not incorporated in an EEA State but having its centre of main interests in a member State other than Denmark.

(5) In subsection (4), in relation to a company, "centre of main interests" has the same meaning as in the EC Regulation and, in the absence of proof to the contrary, is presumed to be the place of its registered office (within the meaning of that Regulation).

(6) If a company incorporated outside the United Kingdom has a principal place of business in Northern Ireland, no proposal under this Part shall be made in relation to it unless it also has a principal place of business in England and Wales or Scotland (or both in England and Wales or Scotland).**]**

Textual Amendments

F1 Words in s. 1(1) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 10(a) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F2 Words in s. 1(2) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F3 S. 1(3)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 10(b) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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F4 S. 1(4)-(6) substituted (13.4.2005) for s. 1(4) by The Insolvency Act 1986 (Amendment) Regulations 2005 (S.I. 2005/879), **reg. 2(2)** (with reg. 3)

[F5 1A Moratorium.

(1) Where the directors of an eligible company intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the company.

(2) The provisions of Schedule A1 to this Act have effect with respect to—

(a) companies eligible for a moratorium under this section,

(b) the procedure for obtaining such a moratorium,

(c) the effects of such a moratorium, and

(d) the procedure applicable (in place of sections 2 to 6 and 7) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.**]**

Textual Amendments

F5 S. 1A inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

2 Procedure where nominee is not the liquidator or administrator.

(1) This section applies where the nominee under section 1 is not the liquidator or administrator of the company **[**F6and the directors do not propose to take steps to obtain a moratorium under section 1A for the company**]**.

(2) The nominee shall, within 28 days (or such longer period as the court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the court stating—

(a) **[**F7whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,

F7(aa)**]** whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal, and

(b) if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.

(3) For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee—

(a) a document setting out the terms of the proposed voluntary arrangement, and

(b) a statement of the company's affairs containing—

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and

(ii) such other information as may be prescribed.

[F8(4) The court may—

(a) on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this section or has died, or

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(b) on an application made by that person or the nominee, in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.**]**

Textual Amendments

F6 Words in s. 2(1) added (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 3**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F7 Words in s. 2(2) inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 3(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F8 S. 2(4) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 3(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

3 Summoning of meetings.

(1) Where the nominee under section 1 is not the liquidator or administrator, and it has been report to the court that such meetings as are mentioned in section 2(2) should be summoned, the person making the report shall (unless the court otherwise directs) summon those meetings for the time, date and place proposed in the report.

(2) Where the nominee is the liquidator or administrator, he shall summon meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit.

(3) The persons to be summoned to a creditors' meeting under this section are every creditor of the company of whose claim and address the person summoning the meeting is aware.

Consideration and implementation of proposal

4 Decisions of meetings.

(1) The meetings summoned under section 3 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner **[**[F9]or authorised to act as nominee, in relation to the voluntary arrangement**]**.

But they shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in section 1.

(3) A meeting so summoned shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(4) Subject as follows, a meeting so summoned shall not approve any proposal or modification under which—

(a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, or

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(b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

However, the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(5) Subject as above, each of the meetings shall be conducted in accordance with the rules.

(6) After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.

(7) References in this section to preferential debts and preferential creditors are to be read in accordance with section 386 in Part XII of this Act.

Textual Amendments

F9 Words in s. 4(2) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 4**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C33 S. 4 modified (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **reg. 33(1)(2)** (with reg. 3)
S. 4 modified (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 33(1)(2)** (with reg. 3) (as amended (3.3.2004) by S.I. 2004/546, reg. 2(5) and modified (10.8.2005) by S.I. 2005/1998, regs. 2(3), 40(1)-(4))

[F10 4A Approval of arrangement.

(1) This section applies to a decision, under section 4, with respect to the approval of a proposed voluntary arrangement.

(2) The decision has effect if, in accordance with the rules—

(a) it has been taken by both meetings summoned under section 3, or

(b) (subject to any order made under subsection (4)) it has been taken by the creditors' meeting summoned under that section.

(3) If the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company may apply to the court.

(4) An application under subsection (3) shall not be made after the end of the period of 28 days beginning with—

(a) the day on which the decision was taken by the creditors' meeting, or

(b) where the decision of the company meeting was taken on a later day, that day.

(5) Where a member of a regulated company, within the meaning given by paragraph 44 of Schedule A1, applies to the court under subsection (3), the Financial Services Authority is entitled to be heard on the application.

(6) On an application under subsection (3), the court may—

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(a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or

(b) make such other order as it thinks fit.**]**

Textual Amendments

F10 S. 4A inserted (1.1.2003) by 2000 c. 39, ss. 2, 16(1), **Sch. 2 Pt. I para. 5**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C34 S. 4A(2) modified (1.1.2003) by 1986 c. 53, **Sch. 15A para. 8A** (as inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. II para. 14(3)**); S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

5 Effect of approval.

[[F11](1) This section applies where a decision approving a voluntary arrangement has effect under section 4A.**]**

(2) The [F12]. . . voluntary arrangement—

(a) takes effect as if made by the company at the creditors' meeting, and

[[F13](b) binds every person who in accordance with the rules—

(i) was entitled to vote at that meeting (whether or not he was present or represented at it), or

(ii) would have been so entitled if he had had notice of it,

as if he were a party to the voluntary arrangement.

(2A) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of subsection (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement.**]**

(3) Subject as follows, if the company is being wound up or **[**[F14]is in administration**]**, the court may do one or both of the following, namely—

(a) by order stay or sist all proceedings in the winding up or **[**[F14]provide for the appointment of the administrator to cease to have effect**]**;

(b) give such directions with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the [F12]. . . voluntary arrangement.

(4) The court shall not make an order under subsection (3)(a)—

(a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court, or

(b) at any time when an application under the next section or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

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[[F15](5) Where the company is in energy administration, the court shall not make an order or give a direction under subsection (3) unless—

(a) the court has given the Secretary of State or the Gas and Electricity Markets Authority a reasonable opportunity of making representations to it about the proposed order or direction; and

(b) the order or direction is consistent with the objective of the energy administration.

(6) In subsection (5) "in energy administration" and "objective of the energy administration" are to be construed in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 20 to the Energy Act 2004.**]**

Textual Amendments

F11 S. 5(1) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 6(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F12 Words in s. 5(2)(3) repealed (1.1.2003) by 2000 c. 39, ss. 2, 15, Sch. 2 Pt. I para. 6(b), **Sch. 5**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F13 S. 5(2)(b)(2A) substituted (1.1.2003) for s. 5(2)(b) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 6(c)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F14 Words in s. 5(3) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 11(a)(b) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F15 S. 5(5)(6) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. 159(1), 198, **Sch. 20 para. 43**; S.I. 2004/2575, **art. 2(1)**, Sch. 1

Modifications etc. (not altering text)

C35 S. 5 restricted (S.) (1.11.2001) by 2001 asp 10, s. 63, **Sch. 7 para. 10(5)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** (subject to transitional provisions and savings in art. 3)

C36 S. 5 modified (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 73, 93(2)(3), **Sch. 10 para. 43**; S.I. 2011/2329, **art. 3** (with arts. 4, 5)

6 Challenge of decisions.

(1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—

(a) that a voluntary arrangement **[**[F16]which has effect under section 4A**]** unfairly prejudices the interests of a creditor, member or contributory of the company;

(b) that there has been some material irregularity at or in relation to either of the meetings.

(2) The persons who may apply under **[**[F17]subsection (1)**]** are—

(a) a person entitled, in accordance with the rules, to vote at either of the meetings;

[[F18](aa) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it**]**

(b) the nominee or any person who has replaced him under section 2(4) or 4(2); and

(c) if the company is being wound up or **[**[F19]is in administration**]**, the liquidator or administrator.

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[[F20](2A) Subject to this section, where a voluntary arrangement in relation to a company in energy administration is approved at the meetings summoned under section 3, an application to the court may be made—

(a) by the Secretary of State, or

(b) with the consent of the Secretary of State, by the Gas and Electricity Markets Authority,

on the ground that the voluntary arrangement is not consistent with the achievement of the objective of the energy administration.**]**

(3) An application under this section shall not be made**[**[F21](a)**]**after the end of the period of 28 days beginning with the first day on which each of the reports required by section 4(6) has been made to the court **[**[F22]or

(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within subsection (2)(aa) on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.**]**

(4) Where on such an application the court is satisfied as to either of the grounds mentioned in subsection (1) **[**[F23]or, in the case of an application under subsection (2A), as to the ground mentioned in that subsection**]**, it may do one or both of the following, namely—

(a) revoke or suspend **[**[F24]any decision approving the voluntary arrangement which has effect under section 4A**]** or, in a case falling within subsection (1)(b), any **[**[F25]decision taken by the meeting in question which has effect under that section**]**;

(b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in the case falling within subsection (1)(b), a further company or (as the case may be) creditors' meeting to reconsider the original proposal.

(5) Where at any time after giving a direction under subsection (4)(b) for the summoning of meetings to consider a revised proposal the court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any **[**[F26]decision approving the voluntary arrangement which has effect under section 4A**]**.

(6) In a case where the court, on an application under this section with respect to any meeting—

(a) gives a direction under subsection (4)(b), or

(b) revokes or suspends an approval under subsection (4)(a) or (5),

the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done **[**[F27]under the voluntary arrangement since it took effect**]**.

(7) Except in pursuance of the preceding provisions of this section, **[**[F28]a decision taken**]** at a meeting summoned under section 3 is not invalidated by any irregularity at or in relation to the meeting.

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[[F29](8) In this section "in energy administration" and "objective of the energy administration" are to be construed in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 20 to the Energy Act 2004.**]**

Textual Amendments

F16 Words in s. 6(1)(a) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(2)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F17 Words in s. 6(2) substituted (5.10.2004) by Energy Act 2004 (c. 20), ss. 159(1), 198, **Sch. 20 para. 44(2)**; S.I. 2004/2575, **art. 2(1)**, Sch. 1

F18 S. 6(2)(aa) inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F19 Words in s. 6(2)(c) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 12 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F20 S. 6(2A) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. 159(1), 198, **Sch. 20 para. 44(3)**; S.I. 2004/2575, **art. 2(1)**, Sch. 1

F21 In s. 6(3) "(a)" inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(4)(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F22 S. 6(3)(b) and words inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(4)(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F23 Words in s. 6(4) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. 159(1), 198, **Sch. 20 para. 44(4)**; S.I. 2004/2575, **art. 2(1)**, Sch. 1

F24 Words in s. 6(4)(a) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(5)(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F25 Words in s. 6(4)(a) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(5)(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F26 Words in s. 6(5) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(6)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F27 Words in s. 6(6) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(7)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F28 Words in s. 6(7) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 7(8)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F29 S. 6(8) inserted (5.10.2004) by Energy Act 2004 (c. 20), ss. 159(1), 198, **Sch. 20 para. 44(5)**; S.I. 2004/2575, **art. 2(1)**, Sch. 1

Modifications etc. (not altering text)

C37 S. 6 amended (1.12.2001) by 2000 c. 8, **s. 356(2)**; S.I. 2001/3538, **art. 2(1)**
S. 6 amended (1.1.2003) by 2000 c. 8, **s. 356(1)** (as substituted (1.1.2003) by 2000 c. 39, **s. 15(3)**); S.I. 2002/2711, **art 2** (subject to transitional provisions in arts. 3-5)

C38 S. 6 modified (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 73, 93(2)(3), **Sch. 10 para. 44**; S.I. 2011/2329, **art. 3** (with arts. 4, 5)

[[F30]6A False representations, etc.

(1) If, for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement, a person who is an officer of the company—

(a) makes any false representation, or

(b) fraudulently does, or omits to do, anything,

he commits an offence.

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(2) Subsection (1) applies even if the proposal is not approved.

(3) For purposes of this section "officer" includes a shadow director.

(4) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.**]**

Textual Amendments

F30 S. 6A inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 8**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

7 Implementation of proposal.

(1) This section applies where a voluntary arrangement **[**[F31]has effect under section 4A**]**.

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—

[[F32](a) on the nominee by virtue of the approval given at one or both of the meetings summoned under section 3**]**

(b) by virtue of section 2(4) or 4(2) on a person other than the nominee,

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on the application the court may—

(a) confirm, reverse or modify any act or decision of the supervisor,

(b) give him directions, or

(c) make such other order as it thinks fit.

(4) The supervisor—

(a) may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement, and

(b) is included among the persons who may apply to the court for the winding up of the company or for an administration order to be made in relation to it.

(5) The court may, whenever—

(a) it is expedient to appoint a person to carry out the functions of the supervisor, and

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,

make an order appointing a person who is qualified to act as an insolvency practitioner **[**[F33]or authorised to act as supervisor, in relation to the voluntary arrangement**]**, either in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

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Textual Amendments

F31 Words in s. 7(1) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 9(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F32 S. 7(2)(a) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 9(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F33 Words in s. 7(5) substituted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 9(c)**; S.I. 2002/2711, **art. 2**, (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C39 S. 7 amended (1.1.2003) by 2000 c. 8, **s. 356(1)** (as substituted (1.1.2003) by 2000 c. 39, **s. 15(3)**); S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

[F34 7A Prosecution of delinquent officers of company.

(1) This section applies where a moratorium under section 1A has been obtained for a company or the approval of a voluntary arrangement in relation to a company has taken effect under section 4A or paragraph 36 of Schedule A1.

(2) If it appears to the nominee or supervisor that any past or present officer of the company has been guilty of any offence in connection with the moratorium or, as the case may be, voluntary arrangement for which he is criminally liable, the nominee or supervisor shall forthwith—

(a) report the matter to the appropriate authority, and

(b) provide the appropriate authority with such information and give the authority 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 nominee or supervisor and relating to the matter in question) as the authority requires.

In this subsection, "the appropriate authority" means—

(i) in the case of a company registered in England and Wales, the Secretary of State, and

(ii) in the case of a company registered in Scotland, the Lord Advocate.

(3) Where a report is made to the Secretary of State under subsection (2), he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, 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.

(4) For the purpose of such an investigation 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 so appointed is to be regarded as an obligation similarly to assist the Secretary of State in his investigation.

(5) An answer given by a person to a question put to him in exercise of the powers conferred by subsection (3) may be used in evidence against him.

(6) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

(a) no evidence relating to the answer may be adduced, and

(b) no question relating to it may be asked,

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by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(7) Subsection (6) applies to any offence other than—

(a) an offence under section 2 or 5 of the [M1]Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or

(b) an offence under section 44(1) or (2) of the [M2]Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).

(8) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the nominee or supervisor, and every officer and agent of the company past and present (other than the defendant or defender), shall give the authority 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,

"prosecuting authority" means the Director of Public Prosecutions, the Lord Advocate or the Secretary of State.

(9) The court may, on the application of the prosecuting authority, direct any person referred to in subsection (8) to comply with that subsection if he has failed to do so.**]**

Textual Amendments

F34 Ss. 7A, 7B inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 10**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C40 S. 7A modified (1.1.2003) by 1986 c. 53, **Sch. 15A para 9A** (as inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. II para. 14(4)**); S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

C41 S. 7A(2) amended (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. II para. 13(1)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Marginal Citations

M1 1911 c. 6.

M2 1995 c. 39.

[F35]7B Arrangements coming to an end prematurely.

For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under section 4A or paragraph 36 of Schedule A1 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of section 5(2)(b)(i) or, as the case may be, paragraph 37(2)(b)(i) of Schedule A1.

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Textual Amendments

F35 Ss. 7A, 7B inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 10**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

[F36 PART II

ADMINISTRATION

Textual Amendments

F36 Pt. 2 (s. 8) substituted (15.9.2003) for Pt. 2 (ss. 8-27) by Enterprise Act 2002 (c. 40), ss. 248(1), 279 (with savings for special administration regimes in s. 249(1)-(3)(6) and further savings in S.I. 2003/2093, art. 3); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2)).
Pt. 2 as saved by 2002 c. 40, **s. 249** or S.I. 2003/2093, **art. 3** modified by Water Industry Act 1991 (c. 56), **Sch. 3** (as amended (26.5.2015) by Deregulation Act 2015 (c. 20), s. 115(3)(r), **Sch. 23 para. 28(4)(e)**); modified (1.4.1994) by Railways Act 1993 c. 43, ss. 59-62, 150(1)(c), **Sch. 6** and S.I. 1994/571, **art. 5** (with a transitional provision in art. 7); applied (with modifications) (1.12.1997) by Building Societies Act 1986 (c. 53), **Sch. 15A** (as inserted by 1997 c. 32, s. 39(2), **Sch. 6 para. 1(2)(a)** and S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**); modified (1.2.2001) by Transport Act 2000 (c. 38), ss. 27-30, **Sch. 1**; modified (15.7.2003) by Greater London Authority Act 1999 (c. 29), ss. 220-223, 425(2), **Sch. 14** (with Sch. 12 para. 9(1)) and S.I. 2003/1920, **art. 2**; excluded (26.12.2003) by S.I. 2003/3226, **reg. 8(3)(4)**; applied (with modifications) and modified in part (28.11.2005) by S.I. 2005/3050, regs. 4, 14, 20, Sch. 3 paras. 1(a), **2** (with Sch. 4); applied and amended in part (30.11.2007) by S.I. 2007/3141, rules 3, **13(4)**, 18(1); amended (6.4.2008) by S.I. 2008/948, art. 3(1), **Sch. 1 para. 101** (with arts. 6, 11 and 12); amended in part (1.10.2009) by S.I. 2009/1941, arts. 2(1), 8, **Sch. 1 para. 73(1)(2)(a)(b)(3)** (with Sch. 1 para. 84); amended (1.10.2009) by S.I. 2009/1972, **reg. 7(a)**; modified in part (26.5.2015) by Deregulation Act 2015 (c. 20), s. 115(3)(n), **Sch. 6 para. 25**; amended (31.12.2020) by S.I. 2019/146, reg. 1(3), **Sch. para. 45(2)** (with regs. 4, 5); 2020 c. 1, **Sch. 5 para. 1(1)**

Modifications etc. (not altering text)

C42 Pt. II as it has effect by virtue of Enterprise Act 2002 (c. 40), s. 249(1) or S.I. 2003/2093, art. 3(2) or (3) amended (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), **Sch. 1 para. 101** (with arts. 6, 11 and 12)

C43 Pts. I, II modified by Company Directors Disqualification Act 1986 (c. 46), **ss. 21(2)**, 25

C44 Pts. 1-4, 6, 7 applied (with modifications) (E.W.S.) (6.4.2001) by Limited Liability Partnerships Regulations 2001 (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))

C45 Pts. I-VII (ss. 1-251) applied (with modifications) by S.I. 1989/1276, **arts. 2**, 3 (as amended (3.7.2002) by S.I. 2002/1555, **art. 34**)
Pt. II applied (with modifications) by S.I. 1989/1276, **arts. 2**, 3 (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1**, 398)

C46 First Group of Parts (Pts. 1-7) applied (with modifications) (15.12.2006) by The Banks (Former Authorised Institutions) (Insolvency) Order 2006 (S.I. 2006/3107), **art. 3**, Sch.

C47 Pt. II restricted (E.W.) by Water Act 1989 (c. 15), **s. 24(b)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
Pt. II modified (1.4.1994) by Railways Act 1993 c. 43, **ss. 59-62**, 150(1)(c), Sch. 6; S.I. 1994/571, **art. 5** (with a transitional provision in art. 7)

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C48 Pt. II: power to apply or incorporate conferred (6.4.2001) by Limited Liability Partnerships Act 2000 (c. 12), **s. 14**; S.I. 2000/3316, **art. 2**
Pt. II: power to apply (with modifications) conferred (20.7.2001) by Financial Services and Markets Act 2000 (c. 8), **s. 360**; S.I. 2001/2632, art. 2(1), **Sch. Pt. I**
Pt. II: power to apply (with modifications) conferred (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 255(2)(b), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

C49 Pt. 2 applied (with modifications) (1.2.2011) by The Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010 (S.I. 2010/3023), **art. 2** Sch. (with art. 6)

8 Administration

Schedule B1 to this Act (which makes provision about the administration of companies) shall have effect.**]**

[F37]PART II

ADMINISTRATION ORDERS

Textual Amendments

F37 Pt. II (s. 8) substituted (15.9.2003) for Pt. II (ss. 8-27) by Enterprise Act 2002 (c. 40), ss. 248(1), 279 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C50 Pt. I (ss. 1-7), Pt. II (ss. 8-27) modified by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2)**, 25
Pt. II (ss. 8-27) modified (15.7.2003) by 1999 c. 29, ss. 223(5)(6), 224(5), 425(2) (with Sch. 12 para. 9(1)); S.I. 2003/1920, **art. 2(b)**

C51 Pts. I-VII (ss. 1-251) applied (with modifications) by S.I. 1989/1276, **arts. 2**, 3 (as amended (3.7.2002) by S.I. 2002/1555, **art. 34**)
Pt. II (ss. 8-27) applied (with modifications) by S.I. 1989/1276, **arts. 2**, 3 (as amended (1.12.2001) by S.I. 2001/3649, **arts. 1**, 398)
Pt. II (ss. 8-27) applied (with modifications) (1.12.1997) by 1986 c. 53, **Sch. 15A** (as inserted by 1997 c. 32, s. 39(2), **Sch. 6 para. 1(2)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**
Pt. II (ss. 8-27) applied (with modifications) (31.5.2002) by S.I. 2002/1242, art. 3, **Sch.**

C52 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**

C53 Pt. II (ss. 8-27) restricted (E.W.) by Water Act 1989 (c. 15, SIF 130), **s. 24(b)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
Pt. II (ss. 8-27) restricted (1.4.1994) by 1993 c. 43, **ss. 62(5)**, 150(1)(c); S.I. 1994/571, **art. 5** (with transitional provision in art. 7)

C54 Pt. II (ss. 8-27) power to apply or incorporate conferred (6.4.2001) by 2000 c. 12, **s. 14**; S.I. 2000/3316, **art. 2**
Pt. II (ss. 8-27) power to apply (with modifications) conferred (20.7.2001) by 2000 c. 8, **s. 360**; S.I. 2001/2632, art. 2(1), **Sch. Pt. I**

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Making etc. of administration order

Textual Amendments

F41 S. 11(3)(ba) inserted (2.4.2001) by 2000 c. 39, **s. 9(3)**; S.I. 2001/766, **art. 2(1)(b)** (subject to transitional provisions in art. 3)

Modifications etc. (not altering text)

C69 S. 11 applied (with modifications) by Water Act 1989 (c. 15, SIF 130), s. 23, **Sch. 6 Pt. I para. 1** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)?(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
Ss. 11-23, 27 applied (with modifications) (1.2.2001) by 2000 c. 38, s. 30, **Sch. 1 Pt. I para. 2**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in art. 3(1), Sch. 2 Pt. II)

C70 Ss. 11-15 modified (E.W) (1.12.1991) by Water Industry Act 1991 (c. 56), ss. 23(3), 223(2), Sch. 3 Pts. I, **II** paras. 1, 12(2) (with ss. 82(3), 186(1), 222(1), Sch. 14 para. 6)
Ss. 11-23 modified (1.4.1994) by 1993 c. 43, ss. 59(3), 150(1)(c), **Sch. 6 Pt. I para. 1**; S.I. 1994/571, **art. 5** (with transitional provision in art. 7)
Ss. 11-23 modified (1.4.1994) by 1993 c. 43, ss. 59(3), 150(1)(c), **Sch. 6 Pt. II para. 12(1)**; S.I. 1994/571, **art. 5** (with transitional provision in art. 7)
Ss. 11-23, 27 modified (1.2.2001) by 2000 c. 38, s. 215, **Sch. 16 para 2**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (with transitional provision and saving in art. 3(1), Sch. 2 Pt. II)
Ss. 11-23, 27 modified (15.7.2003) by 1999 c. 29, ss. 220(3), 425(2), Sch. 14 paras. 1-11, 12-19 (with Sch. 12 para. 9(1)); S.I. 2003/1920, **art. 2(b)**

C71 S. 11(2) excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 175(1), 182(4), **Sch. 22 para. 11(2)**; S.I. 1991/878, art. 2, **Sch.**
S. 11(2) excluded (15.8.1995) by S.I. 1995/2049, **reg. 21(2)(3)**
S. 11(2) excluded (11.12.1999) by S.I. 1999/2979, **reg. 19(1)**

C72 S. 11(2) excluded by The Financial Market and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 19(1ZA) (as inserted 1.10.2009 by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 7(a)**)

C73 S. 11(3) 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.**

C74 S. 11(3)(c) excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 175(1)(a), 182(4), **Sch. 22 para. 11(1)**; S.I. 1991/878, art. 2, **Sch.**
S. 11(3)(c) excluded (15.8.1995) by S.I. 1995/2049, **reg. 21(2)(3)**
S. 11(3)(c) excluded (11.12.1999) by S.I. 1999/2979, **reg. 19(1)(a)**

C75 s. 11(3)(c) excluded by The Financial Market and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 19(1ZA) (as inserted 1.10.2009 by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 7(a)**)

C76 S. 11(3)(d) 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.**

Administrators

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Ascertainment and investigation of company's affairs

Administrator's proposals

Miscellaneous

PART III

RECEIVERSHIP

Modifications etc. (not altering text)

C117 Pts. I-VII (ss. 1-251) applied (with modifications) by S.I. 1989/1276, **arts. 2**, 3
Pt. 3 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 3**

C118 Pt. III (ss. 28-72) extended by S.I. 1989/638, **regs. 19(1)**, 21

C119 First Group of Parts (Pts. 1-7) applied (with modifications) (15.12.2006) by The Banks (Former Authorised Institutions) (Insolvency) Order 2006 (S.I. 2006/3107), art. 3, **Sch.** (as amended (1.4.2013) by S.I. 2013/472, art. 1(1), **Sch. 2 para. 117**; and (13.3.2018) by S.I. 2018/208, regs. 1(3), **11**

C120 Pt. III: power to apply or incorporate conferred (6.4.2001) by 2000 c. 12, **s. 14**; S.I. 2000/3316, **art. 2**

C121 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))

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CHAPTER I

RECEIVERS AND MANAGERS (ENGLAND AND WALES)

Modifications etc. (not altering text)

C122 Pt. III Chapter 1 (ss. 28-49) applied (with modifications) (1.12.1997) by 1986 c. 53, **Sch. 15A** (as inserted by 1997 c. 32, s. 39(2), **Sch. 6 para. 1(2)(a)**; S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**)

Preliminary and general provisions

28 Extent of this Chapter.

This Chapter does not apply to receivers appointed under Chapter II of this Part (Scotland).

29 Definitions.

(1) It is hereby declared that, except where the context otherwise requires—

(a) any reference in the Companies Act or this Act to a receiver or manager of the property of a company, or to a receiver of it, includes a receiver or manager, or (as the case may be) a receiver of part only of that property and a receiver only of the income arising from the property or from part of it; and

(b) any reference in the Companies Act or this Act to the appointment of a receiver or manager under powers contained in an instrument includes an appointment made under powers which, by virtue of any enactment, are implied in and have effect as if contained in an instrument.

(2) In this Chapter "administrative receiver" means—

(a) a receiver or manager of the whole (or substantially the whole) of a company's property appointed by or on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; or

(b) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the company's property.

30 Disqualification of body corporate from acting as receiver.

A body corporate is not qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver is liable to a fine.

[F48 31 Disqualification of bankrupt

(1) A person commits an offence if he acts as receiver or manager of the property of a company on behalf of debenture holders while—

(a) he is an undischarged bankrupt, or

(b) a bankruptcy restrictions order is in force in respect of him.

(2) A person guilty of an offence under subsection (1) shall be liable to imprisonment, a fine or both.

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(3) This section does not apply to a receiver or manager acting under an appointment made by the court.**]**

Textual Amendments

F48 S. 31 substituted (1.4.2004) by 2002 c. 40, ss. 257(3), 278, Sch. 21 para. 1 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

32 Power for court to appoint official receiver.

Where application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the court, the official receiver may be appointed.

Receivers and managers appointed out of court

33 Time from which appointment is effective.

(1) The appointment of a person as a receiver or manager of a company's property under powers contained in an instrument—

(a) is of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf, and

(b) subject to this, is deemed to be made at the time at which the instrument of appointment is so received.

(2) This section applies to the appointment of two or more persons as joint receivers or managers of a company's property under powers contained in an instrument, subject to such modifications as may be prescribed by the rules.

34 Liability for invalid appointment.

Where the appointment of a person as the receiver or manager of a company's property under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

35 Application to court for directions.

(1) A receiver or manager of the property of a company appointed under powers contained in an instrument, or the persons by whom or on whose behalf a receiver or manager has been so appointed, may apply to the court for directions in relation to any particular matter arising in connection with the performance of the functions of the receiver or manager.

(2) On such an application, the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as it thinks just.

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Modifications etc. (not altering text)

C123 S. 35 amended (1.12.2001) by 2000 c. 8, **s. 363(2)**; S.I. 2001/3538, **art. 2(1)**

36 Court's power to fix remuneration.

(1) The court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to a person who, under powers contained in an instrument, has been appointed receiver or manager of the company's property.

(2) The court's power under subsection (1), where no previous order has been made with respect thereto under the subsection—

(a) extends to fixing the remuneration for any period before the making of the order or the application for it,

(b) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application, and

(c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.

But the power conferred by pararaph (c) shall not be exercised as respects any period before the making of the application for the order under this section, unless in the court's opinion there are special circumstances making it proper for the power to be exercised.

(3) The court may from time to time on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1).

37 Liability for contracts, etc.

(1) A receiver or manager appointed under powers contained in an instrument (other than an administrative receiver) is, to the same extent as if he had been appointed by order of the court—

(a) personally liable on any contract entered into by him in the performance of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the performance of those functions, and

(b) entitled in respect of that liability to indemnity out of the assets.

(2) For the purposes of subsection (1)(a), the receiver or manager is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done with 14 days after his appointment.

(3) Subsection (1) does not limit any right to indemnity which the receiver or manager would have apart from it, nor limit his liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.

(4) Where at any time the receiver or manager so appointed vacates office—

(a) his remuneration and any expenses properly incurred by him, and

(b) any indemnity to which he is entitled out of the assets of the company,

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shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any charge or other security held by the person by or on whose behalf he was appointed.

38 Receivership accounts to be delivered to registrar.

(1) Except in the case of an adminstrative receiver, every receiver or manager of a company's property who has been appointed under powers contained in an instrument shall deliver to the registrar of companies for registration the requisite accounts of his receipts and payments.

(2) The accounts shall be delivered within one month (or such longer period as the registrar may allow) after the expiration of 12 months from the date of his appointment and of every subsequent period of 6 months, and also within one month after he ceases to act as receiver or manager.

(3) The requisite accounts shall be an abstract in the prescribed form showing—
   (a) receipts and payments during the relevant period of 12 or 6 months, or
   (b) where the receiver or manager ceases to act, receipts and payments during the period from the end of the period of 12 or 6 months to which the last preceding abstract related (or, if no preceding abstract has been delivered under this section, from the date of his appointment) up to the date of his so ceasing, and the aggregate amount of receipts and payments during all preceding periods since his appointment.

(4) In this section "prescribed" means prescribed by regulations made by statutory instrument by the Secretary of State.

(5) A receiver or manager who makes default in complying with this section is liable to a fine and, for continued contravention, to a daily default fine.

Provisions applicable to every receivership

39 Notification that receiver or manager appointed.

(1) When a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the company's name appears, shall contain a statement that a receiver or manager has been appointed.

(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.

40 Payment of debts out of assets subject to floating charge.

(1) The following applies in the case of a company, where a receiver is appointed on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge.

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(2) If the company is not at the time in course of being wound up, its preferential debts (within the meaning given to that expression by section 386 in Part XII) shall be paid out of the assets coming to the hands of the receiver in priority to any claims for principal or interest in respect of the debentures.

(3) Payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

Modifications etc. (not altering text)

C124 S. 40 excluded (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(1)**

C125 S. 40 applied (11.12.1999) by The Financial Market and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 14(5)(a)(iii) (as substituted (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 4(d)(iii)**)

C126 S. 40 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)**)

41 Enforcement of duty to make returns.

(1) If a receiver or manager of a company's property—

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager 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, or

(b) having been appointed under powers contained in an instrument, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch them and pay over to the liquidator the amount properly payable to him,

the court may, on an application made for the purpose, make an order directing the receiver or manager (as the case may be) to make good the default within such time as may be specified in the order.

(2) In the case of the default mentioned in subsection (1)(a), application to the court may be made by any member or creditor of the company or by the registrar of companies; and in the case of the default mentioned in subsection (1)(b), the application shall be made by the liquidator.

In either case the court's order may provide that all costs of and incidental to the application shall be borne by the receiver or manager, as the case may be.

(3) Nothing in this section prejudices the operation of any enactment imposing penalties on receivers in respect of any such default as is mentioned in subsection (1).

Modifications etc. (not altering text)

C127 S. 41(1)(a) amended (1.12.2001) by 2000 c. 8, **s. 363(3)**; S.I. 2001/3538, **art. 2(1)**

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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Administrative receivers: general

42 General powers.

(1) The powers conferred on the administrative receiver of a company by the debentures by virtue of which he was appointed are deemed to include (except in so far as they are inconsistent with any of the provisions of those debentures) the powers specified in Schedule 1 to this Act.

(2) In the application of Schedule 1 to the administrative receiver of a company—
  (a) the words "he" and "him" refer to the administrative receiver, and
  (b) references to the property of the company are to the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

(3) A person dealing with the administrative receiver in good faith and for value is not concerned to inquire whether the receiver is acting within his powers.

43 Power to dispose of charged property, etc.

(1) Where, on an application by the administrative receiver, the court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security would be likely to promote a more advantageous realisation of the company's assets than would otherwise be effected, the court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.

(2) Subsection (1) does not apply in the case of any security held by the person by or on whose behalf the administrative receiver was appointed, or of any security to which a security so held has priority.

(3) It shall be a condition of an order under this section that—
  (a) the net proceeds of the disposal, and
  (b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency,

  shall be applied towards discharging the sums secured by the security.

(4) Where a condition imposed in pursuance of subsection (3) relates to two or more securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(5) An office copy of an order under this section shall, within 14 days of the making of the order, be sent by the administrative receiver to the registrar of companies.

(6) If the administrative receiver without reasonable excuse fails to comply with subsection (5), he is liable to a fine and, for continued contravention, to a daily default fine.

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(7) In this section "relevant property", in relation to the administrative receiver, means the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

Modifications etc. (not altering text)

C128 S. 43 excluded (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(1)**

C129 S. 43 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 175(3)(a); S.I. 1991/878, art. 2, **Sch.** .
S. 43 excluded (15.8.1995) by S.I. 1995/2049, **reg. 21(4)(a)**

44 Agency and liability for contracts.

(1) The administrative receiver of a company—

(a) is deemed to be the company's agent, unless and until the company goes into liquidation;

(b) is personally liable on any contract entered into by him in the carrying out of his functions (except in so far as the contract otherwise provides) and **[**[F49], to the extent of any qualifying liability,**]**on any contract of employment adopted by him in the carrying out of those functions; and

(c) is entitled in respect of that liability to an indemnity out of the assets of the company.

(2) For the purposes of subsection (1)(b) the administrative receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment.

[[F50](2A) For the purposes of subsection (1)(b), a liability under a contract of employment is a qualifying liability if—

(a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme,

(b) it is incurred while the administrative receiver is in office, and

(c) it is in respect of services rendered wholly or partly after the adoption of the contract.

(2B) Where a sum payable in respect of a liability which is a qualifying liability for the purposes of subsection (1)(b) is payable in respect of services rendered partly before and partly after the adoption of the contract, liability under subsection (1)(b) shall only extend to so much of the sum as is payable in respect of services rendered after the adoption of the contract.

(2C) For the purposes of subsections (2A) and (2B)—

(a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and

(b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

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(2D) In subsection (2C)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.**]**

(3) This section does not limit any right to indemnity which the administrative receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

Textual Amendments

F49 Words in s. 44(1)(b) inserted (24.3.1994 with effect in relation to contracts of employment adopted on or after 15.3.1994) by 1994 c. 7, **s. 2(2)(4)**

F50 S. 44(2A)-(2D) inserted (24.3.1994 with effect in relation to contracts of employment adopted on or after 15.3.1994) by 1994 c. 7, **s. 2(3)(4)**

45 Vacation of office.

(1) An administrative receiver of a company may at any time be removed from office by order of the court (but not otherwise) and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.

(2) An administrative receiver shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(3) Where at any time an administrative receiver vacates office—

(a) his remuneration and any expenses properly incurred by him, and

(b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.

(4) Where an administrative receiver vacates office otherwise than by death, he shall, within 14 days after his vacation of office, send a notice to that effect to the registrar of companies.

(5) If an administrative receiver without reasonable excuse fails to comply with subsection (4), he is liable to a fine **[**[F51]and, for continued contravention, to a daily default fine**]**.

Textual Amendments

F51 Words repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 107, 212, 213(2), 215(2), Sch. 16 para. 3(3), **Sch. 24**

Administrative receivers: ascertainment and investigation of company's affairs

46 Information to be given by administrative receiver.

(1) Where an administrative receiver is appointed, he shall—

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(a) forthwith send to the company and publish in the prescribed manner a notice of his appointment, and
(b) within 28 days after his appointment, unless the court otherwise directs, send such a notice to all the creditors of the company (so far as he is aware of their addresses).

(2) This section and the next do not apply in relation to the appointment of an administrative receiver to act—
(a) with an existing administrative receiver, or
(b) in place of an administrative receiver dying or ceasing to act,

except that, where they apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in this section and the next to the administrative receiver include (subject to the next subsection) his successor and any continuing administrative receiver.

(3) If the company is being wound up, this section and the next apply notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If the administrative receiver without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

47 Statement of affairs to be submitted.

(1) Where an administrative receiver is appointed, he shall forthwith require some or all of the persons mentioned below to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) A statement submitted under this section 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 its 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) The persons referred to in subsection (1) are—
(a) those who are or have been officers of the company;
(b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver;
(c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative 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.

In this subsection "employment" includes employment under a contract for services.

(4) Where any persons are required under this section to submit a statement of affairs to the administrative 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 administrative receiver.

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(5) The administrative receiver, if he thinks fit, may—

(a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or

(b) either when giving notice under subsection (4) or subsequently, extend the period so mentioned;

and where the administrative receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) 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.

48 Report by administrative receiver.

(1) Where an administrative receiver is appointed, he shall, within 3 months (or such longer period as the court may allow) after his appointment, send to the registrar of companies, to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—

(a) the events leading up to his appointment, so far as he is aware of them;

(b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;

(c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors; and

(d) the amount (if any) likely to be available for the payment of other creditors.

(2) The administrative receiver shall also, within 3 months (or such longer period as the court may allow) after his appointment, either—

(a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company; or

(b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,

and (in either case), unless the court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than 14 days' notice.

(3) The court shall not give a direction under subsection (2) unless—

(a) the report states the intention of the administrative receiver to apply for the direction, and

(b) a copy of the report is sent to the persons mentioned in paragraph (a) of that subsection, or a notice is published as mentioned in paragraph (b) of that subsection, not less than 14 days before the hearing of the application.

(4) Where the company has gone or goes into liquidation, the administrative receiver—

(a) shall, within 7 days after his compliance with subsection (1) or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator, and

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(b) where he does so within the time limited for compliance with subsection (2), is not required to comply with that subsection.

(5) A report under this section shall include a summary of the statement of affairs made out and submitted to the administrative receiver under section 47 and of his comments (if any) upon it.

(6) Nothing in this section is to be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his functions.

(7) Section 46(2) applies for the purposes of this section also.

(8) If the administrative receiver without reasonable excuse 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)
C130 S. 48(1) amended (1.12.2001) by 2000 c. 8, **s. 363(4)**; S.I. 2001/3538, **art. 2(1)**

49 Committee of creditors.

(1) Where a meeting of creditors is summoned under section 48, the meeting may, if it thinks fit, establish a committee ("the creditors' committee") to exercise the functions conferred on it by or under this Act.

(2) If such a committee is established, the committee may, on giving not less than 7 days' notice, require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

Modifications etc. (not altering text)
C131 S. 49 amended (1.12.2001) by 2000 c. 8, **s. 363(5)(b)**; S.I. 2001/3538, **art. 2(1)**

CHAPTER II

RECEIVERS (SCOTLAND)

50 Extent of this Chapter.

This Chapter extends to Scotland only.

Modifications etc. (not altering text)
C132 Ss. 50-52 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

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51 Power to appoint receiver.

(1) It is competent under the law of Scotland for the holder of a floating charge over all or any part of the property (including uncalled capital), which may from time to time be comprised in the property and undertaking of an incorporated company (whether a company within the meaning of the Companies Act or not) which the Court of Session has jurisdiction to wind up, to appoint a receiver of such part of the property of the company as is subject to the charge.

(2) It is competent under the law of Scotland for the court, on the application of the holder of such a floating charge, to appoint a receiver of such part of the property of the company as is subject to the charge.

[[F52](2A) Subsections (1) and (2) are subject to section 72A.**]**

(3) The following are disqualified from being appointed as receiver—
- (a) a body corporate;
- (b) an undischarged bankrupt; and
- (c) a firm according to the law of Scotland.

(4) A body corporate or a firm according to the law of Scotland which acts as a receiver is liable to a fine.

(5) An undischarged bankrupt who so acts is liable to imprisonment or a fine, or both.

(6) In this section, "receiver" includes joint receivers.

Textual Amendments

F52 S. 51(2A) inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 13 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C133 Ss. 50-52 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

52 Circumstances justifying appointment.

(1) A receiver may be appointed under section 51(1) by the holder of the floating charge on the occurrence of any event which, by the provisions of the instrument creating the charge, entitles the holder of the charge to make that appointment and, in so far as not otherwise provided for by the instrument, on the occurrence of any of the following events, namely—
- (a) the expiry of a period of 21 days after the making of a demand for payment of the whole or any part of the principal sum secured by the charge, without payment having been made;
- (b) the expiry of a period of 2 months during the whole of which interest due and payable under the charge has been in arrears;
- (c) the making of an order or the passing of a resolution to wind up the company;
- (d) the appointment of a receiver by virtue of any other floating charge created by the company.

(2) A receiver may be appointed by the court under section 51(2) on the occurrence of any event which, by the provisions of the instrument creating the floating charge, entitles

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the holder of the charge to make that appointment and, in so far as not otherwise provided for by the instrument, on the occurrence of any of the following events, namely—

(a) where the court, on the application of the holder of the charge, pronounces itself satisfied that the position of the holder of the charge is likely to be prejudiced if no such appointment is made;

(b) any of the events referred to in paragraphs (a) to (c) of subsection (1).

Modifications etc. (not altering text)

C134 Ss. 50-52 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

53 Mode of appointment by holder of charge.

(1) The appointment of a receiver by the holder of the floating charge under section 51(1) shall be by means of **[**[F53]an instrument subscribed in accordance with the Requirements of Writing (Scotland) Act 1995**]** ("the instrument of appointment"), a copy (certified in the prescribed manner to be a correct copy) whereof shall be delivered by or on behalf of the person making the appointment to the registrar of companies for registration within 7 days of its execution and shall be accompanied by a notice in the prescribed form.

(2) If any person without reasonable excuse makes default in complying with the requirements of subsection (1), he is liable to a fine **[**[F54]and, for continued contravention, to a daily default fine**]**.

[F55](3) . . . . . .

[[F56](4) If the receiver is to be appointed by the holders of a series of secured debentures, the instrument of appointment may be executed on behalf of the holders of the floating charge by any person authorised by resolution of the debenture-holders to execute the instrument.**]**

(5) On receipt of the certified copy of the instrument of appointment in accordance with subsection (1), the registrar shall, on payment of the prescribed fee, enter the particulars of the appointment in the register of charges.

(6) The appointment of a person as a receiver by an instrument of appointment in accordance with subsection (1)—

(a) is of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf, and

(b) subject to paragraph (a), is deemed to be made on the day on and at the time at which the instrument of appointment is so received, as evidenced by a written docquet by that person or on his behalf;

and this subsection applies to the appointment of joint receivers subject to such modifications as may be prescribed.

(7) On the appointment of a receiver under this section, the floating charge by virtue of which he was appointed attaches to the property then subject to the charge; and such attachment has effect as if the charge was a fixed security over the property to which it has attached.

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Textual Amendments

F53 Words in s. 53(1) substituted (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 58(a)** (with ss. 9(3)(5)(7), 13, 14(3), Sch. 2 para. 3(2))

F54 Words repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 107, 212, 213(2), 215(2), Sch. 16 para. 3(3), **Sch. 24**

F55 S. 53(3) repealed by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 76:2), s. 74, Sch. 8 Pt. II para. 35, **Sch. 9**

F56 S. 53(4) substituted (1.8.1995) by 1995 c. 7, ss. 14(1), 15(2), **Sch. 4 para. 58(b)** (with ss. 9(3)(5)(7), 13, 14(3), Sch. 2 para. 3(2))

Modifications etc. (not altering text)

C135 S. 53(1) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(2)(3)**; S.I. 1998/3178, **art. 2**

C136 S. 53(1)(2)(4)(6)(7) applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4, **Sch. 2**

C137 S. 53(6) modified by S.I. 1986/1917, **reg. 5**

54 Appointment by court.

(1) Application for the appointment of a receiver by the court under section 51(2) shall be by petition to the court, which shall be served on the company.

(2) On such an application, the court shall, if it thinks fit, issue an interlocutor making the appointment of the receiver.

(3) A copy (certified by the clerk of the court to be a correct copy) of the court's interlocutor making the appointment shall be delivered by or on behalf of the petitioner to the registrar of companies for registration, accompanied by a notice in the prescribed form, within 7 days of the date of the interlocutor or much longer period as the court may allow.

If any person without reasonable excuse makes default in complying with the requirements of this subsection, he is liable to a fine **[**[F57]and, for continued contravention, to a daily default fine**]**.

(4) On receipt of the certified copy interlocutor in accordance with subsection (3), the registrar shall, on payment of the prescribed fee, enter the particulars of the appointment in the register of charges.

(5) The receiver is to be regarded as having been appointed on the date of his being appointed by the court.

(6) On the appointment of a receiver under this section, the floating charge by virtue of which he was appointed attaches to the property then subject to the charge; and such attachment has effect as if the charge were a fixed security over the property to which it has attached.

(7) In making rules of court for the purposes of this section, the Court of Session shall have regard to the need for special provision for cases which appear to the court to require to be dealt with as a matter of urgency.

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Textual Amendments

F57 Words repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 107, 212, 213(2), 215(2), Sch. 16 para. 3(3), **Sch. 24**

Modifications etc. (not altering text)

C138 S. 54(1)(2)(3)(5)(6)(7) applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C139 S. 54(3) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(2)(3)**; S.I. 1998/3178, **art. 2**

55 Powers of receiver.

(1) Subject to the next subsection, a receiver has in relation to such part of the property of the company as is attached by the floating charge by virtue of which he was appointed, the powers, if any, given to him by the instrument creating that charge.

(2) In addition, the receiver has under this Chapter the powers as respects that property (in so far as these are not inconsistent with any provision contained in that instrument) which are specified in Schedule 2 to this Act.

(3) Subsections (1) and (2) apply—

(a) subject to the rights of any person who has effectually executed diligence on all or any part of the property of the company prior to the appointment of the receiver, and

(b) subject to the rights of any person who holds over all or any part of the property of the company a fixed security or floating charge having priority, over, or ranking pari passu with, the floating charge by virtue of which the receiver was appointed.

(4) A person dealing with a receiver in good faith and for value is not concerned to enquire whether the receiver is acting within his powers.

Modifications etc. (not altering text)

C140 Ss. 55-58 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

56 Precedence among receivers.

(1) Where there are two or more floating charges subsisting over all or any part of the property of the company, a receiver may be appointed under this Chapter by virtue of each such charge; but a receiver appointed by, or on the application of, the holder of a floating charge having priority of ranking over any other floating charge by virtue of which a receiver has been appointed has the powers given to a receiver by section 55 and Schedule 2 to the exclusion of any other receiver.

(2) Where two or more floating charges rank with one another equally, and two or more receivers have been appointed by virtue of such charges, the receivers so appointed are deemed to have been appointed as joint receivers.

(3) Receivers appointed, or deemed to have been appointed, as joint receivers shall act jointly unless the instrument of appointment or respective instruments of appointment otherwise provide.

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(4) Subject to subsection (5) below, the powers of a receiver appointed by, or on the application of, the holder of a floating charge are suspended by, and as from the date of, the appointment of a receiver by, or on the application of, the holder of a floating charge having priority of ranking over that charge to such extent as may be necessary to enable the receiver second mentioned to exercise his powers under section 55 and Schedule 2; and any powers so suspended take effect again when the floating charge having priority of ranking ceases to attach to the property then subject to the charge, whether such cessation is by virtue of section 62(6) or otherwise.

(5) The suspension of the powers of a receiver under subsection (4) does not have the effect of requiring him to release any part of the property (including any letters or documents) of the company from his control until he receives from the receiver superseding him a valid indemnity (subject to the limit of the value of such part of the property of the company as is subject to the charge by virtue of which he was appointed) in respect of any expenses, charges and liabilities he may have incurred in the performance of his functions as receiver.

(6) The suspension of the powers of a receiver under subsection (4) does not cause the floating charge by virtue of which he was appointed to cease to attach to the property to which it attached by virtue of section 53(7) or 54(6).

(7) Nothing in this section prevents the same receiver being appointed by virtue of two or more floating charges.

Modifications etc. (not altering text)
C141 Ss. 55-58 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

57 Agency and liability of receiver for contracts.

(1) A receiver is deemed to be the agent of the company in relation to such property of the company as is attached by the floating charge by virtue of which he was appointed.

[[F58](1A) Without prejudice to subsection (1), a receiver is deemed to be the agent of the company in relation to any contract of employment adopted by him in the carrying out of his functions.**]**

(2) A receiver (including a receiver whose powers are subsequently suspended under section 56) is personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and **[**[F59], to the extent of any qualifying liability,**]**on any contract of employment adopted by him in the carrying out of those functions.

[[F60](2A) For the purposes of subsection (2), a liability under a contract of employment is a qualifying liability if—

(a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme,

(b) it is incurred while the receiver is in office, and

(c) it is in respect of services rendered wholly or partly after the adoption of the contract.

(2B) Where a sum payable in respect of a liability which is a qualifying liability for the purposes of subsection (2) is payable in respect of services rendered partly before

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and partly after the adoption of the contract, liability under that subsection shall only extend to so much of the sum as is payable in respect of services rendered after the adoption of the contract.

(2C) For the purposes of subsections (2A) and (2B)—

(a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and

(b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(2D) In subsection (2C)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.**]**

(3) A receiver who is personally liable by virtue of subsection (2) is entitled to be indemnified out of the property in respect of which he was appointed.

(4) Any contract entered into by or on behalf of the company prior to the appointment of a receiver continues in force (subject to its terms) notwithstanding that appointment, but the receiver does not by virtue only of his appointment incur any personal liability on any such contract.

(5) For the purposes of subsection (2), a receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after his appointment.

(6) This section does not limit any right to indemnity which the receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

(7) Any contract entered into by a receiver in the performance of his functions continues in force (subject to its terms) although the powers of the receiver are subsequently suspended under section 56.

Textual Amendments

F58 S. 57(1A) inserted (24.3.1994 with effect in relation to contracts of employment adopted on or after 15.3.1994) by 1994 c. 7, **s. 3(2)(5)**

F59 Words in s. 57(2) inserted (24.3.1994 with effect in relation to contracts of employment adopted on or after 15.3.1994) by 1994 c. 7, **s. 3(3)(5)**

F60 S. 57(2A)-(2D) inserted (24.3.1994 with effect in relation to contracts of employment adopted on or after 15.3.1994) by 1994 c. 7, **s. 3(4)(5)**

Modifications etc. (not altering text)

C142 Ss. 55-58 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

58 Remuneration of receiver.

(1) The remuneration to be paid to a receiver is to be determined by agreement between the receiver and the holder of the floating charge by virtue of which he was appointed.

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(2) Where the remuneration to be paid to the receiver has not been determined under subsection (1), or where it has been so determined but is disputed by any of the persons mentioned in paragraphs (a) to (d) below, it may be fixed instead by the Auditor of the Court of Session on application made to him by—
  (a) the receiver;
  (b) the holder of any floating charge or fixed security over all or any part of the property of the company;
  (c) the company; or
  (d) the liquidator of the company.

(3) Where the receiver has been paid or has retained for his remuneration for any period before the remuneration has been fixed by the Auditor of the Court of Session under subsection (2) any amount in excess of the remuneration so fixed for that period, the receiver or his personal representatives shall account for the excess.

Modifications etc. (not altering text)
C143 Ss. 55-58 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

59 Priority of debts.

(1) Where a receiver is appointed and the company is not at the time of the appointment in course of being wound up, the debts which fall under subsection (2) of this section shall be paid out of any assets coming to the hands of the receiver in priority to any claim for principal or interest by the holder of the floating charge by virtue of which the receiver was appointed.

(2) Debts falling under this subsection are preferential debts (within the meaning given by section 386 in Part XII) which, by the end of a period of 6 months after advertisement by the receiver for claims in the Edinburgh Gazette and in a newspaper circulating in the district where the company carries on business either—
  (i) have been intimated to him, or
  (ii) have become known to him.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of ordinary creditors.

Modifications etc. (not altering text)
C144 S. 59 applied (11.12.1999) by The Financial Market and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 14(5)(a)(iii) (as substituted (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 4(d)(iii)**)
C145 S. 59 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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60 Distribution of moneys.

(1) Subject to the next section, and to the rights of any of the following categories of persons (which rights shall, except to the extent otherwise provided in any instrument, have the following order of priority), namely—

(a) the holder of any fixed security which is over property subject to the floating charge and which ranks prior to, or pari passu with, the floating charge;

(b) all persons who have effectually executed diligence on any part of the property of the company which is subject to the charge by virtue of which the receiver was appointed;

(c) creditors in respect of all liabilities, charges and expenses incurred by or on behalf of the receiver;

(d) the receiver in respect of his liabilities, expenses and remuneration, and any indemnity to which he is entitled out of the property of the company; and

(e) the preferential creditors entitled to payment under section 59,

the receiver shall pay moneys received by him to the holder of the floating charge by virtue of which the receiver was appointed in or towards satisfaction of the debt secured by the floating charge.

(2) Any balance of moneys remaining after the provisions of subsection (1) and section 61 below have been satisfied shall be paid in accordance with their respective rights and interests to the following persons, as the case may require—

(a) any other receiver;

(b) the holder of a fixed security which is over property subject to the floating charge;

(c) the company or its liquidator, as the case may be.

(3) Where any question arises as to the person entitled to a payment under this section, or where a receipt or a discharge of a security cannot be obtained in respect of any such payment, the receiver shall consign the amount of such payment in any joint stock bank of issue in Scotland in name of the Accountant of Court for behoof of the person or persons entitled thereto.

Modifications etc. (not altering text)

C146 S. 60(1)(e) applied (11.12.1999) by The Financial Market and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 14(5)(a)(iii) (as substituted (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 4(d)(iii)**)

C147 S. 60(1)(e) 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)**)

C148 S. 60(2)(3) applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

61 Disposal of interest in property.

(1) Where the receiver sells or disposes, or is desirous of selling or disposing, or any property or interest in property of the company which is subject to the floating charge by virtue of which the receiver was appointed and which is—

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(a) subject to any security or interest of, or burden or encumbrance in favour of, a creditor the ranking of which is prior to, or pari passu with, or postponed to the floating charge, or

(b) property or an interest in property affected or attached by effectual diligence executed by any person,

and the receiver is unable to obtain the consent of such creditor or, as the case may be, such person to such a sale or disposal, the receiver may apply to the court for authority to sell or dispose of the property or interest in property free of such security, interest, burden, encumbrance or diligence.

(2) Subject to the next subsection, on such an application the court may, if it thinks fit, authorise the sale or disposal of the property or interest in question free of such security, interest, burden, encumbrance or diligence, and such authorisation may be on such terms or conditions as the court thinks fit.

(3) In the case of an application where a fixed security over the property or interest in question which ranks prior to the floating charge has not been met or provided for in full, the court shall not authorise the sale or disposal of the property or interest in question unless it is satisfied that the sale or disposal would be like to provide a more advantageous realisation of the company's assets than would otherwise be effected.

(4) It shall be a condition of an authorisation to which subsection (3) applies that—

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or interest in the open market by a willing seller, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the fixed security.

(5) Where a condition imposed in pursuance of subsection (4) relates to two or more such fixed securities, that condition shall require the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those fixed securities in the order of their priorities.

(6) A copy of an authorisation under subsection (2) certified by the clerk of court shall, within 14 days of the granting of the authorisation, be sent by the receiver to the registrar of companies.

(7) If the receiver without reasonable excuse fails to comply with subsection (6), he is liable to a fine and, for continued contravention, to a daily default fine.

(8) Where any sale or disposal is effected in accordance with the authorisation of the court under subsection (2), the receiver shall grant to the purchaser or disponee an appropriate document of transfer or conveyance of the property or interest in question, and that document has the effect, or, where recording, intimation or registration of that document is a legal requirement for completion of title to the property or interest, then that recording, intimation or registration (as the case may be) has the effect, of—

(a) disencumbering the property or interest of the security, interest, burden or encumbrance affecting it, and

(b) freeing the property or interest from the diligence executed upon it.

(9) Nothing in this section prejudices the right of any creditor of the company to rank for his debt in the winding up of the company.

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Modifications etc. (not altering text)

C149 S. 61 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 175(3)(b); S.I. 1991/878, art. 2, **Sch.** .

C150 S. 61 excluded (15.8.1995) by S.I. 1995/2049, **reg. 21(4)(b)**

C151 S. 61 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C152 S. 61(6) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(2)(3)**; S.I. 1998/3178, **art. 2**

62 Cessation of appointment of receiver.

(1) A receiver may be removed from office by the court under subsection (3) below and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.

(2) A receiver shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(3) Subject to the next subsection, a receiver may, on application to the court by the holder of the floating charge by virtue of which he was appointed, be removed by the court on cause shown.

(4) Where at any time a receiver vacates office—

(a) his remuneration and any expenses properly incurred by him, and

(b) any indemnity to which he is entitled out of the property of the company,

shall be paid out of the property of the company which is subject to the floating charge and shall have priority as provided for in section 60(1).

(5) When a receiver ceases to act as such otherwise than by death he shall, and, when a receiver is removed by the court, the holder of the floating charge by virtue of which he was appointed shall, within 14 days of the cessation or removal (as the case may be) given the registrar of companies notice to that effect, and the registrar shall enter the notice in the register of charges.

If the receiver or the holder of the floating charge (as the case may require) makes default in complying with the requirements of this subsection, he is liable to a fine and, for continued contravention, to a daily default fine.

(6) If by the expiry of a period of one month following upon the removal of the receiver or his ceasing to act as such no other receiver has been appointed, the floating charge by virtue of which the receiver was appointed—

(a) thereupon ceases to attach to the property then subject to the charge, and

(b) again subsists as a floating charge;

and for the purposes of calculating the period of one month under this subsection no account shall be taken of any period during which **[**[F61]the company is in administration,**]** under Part II of this Act [F62]. . . .

Textual Amendments

F61 Words in s. 62(6) substituted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 4, **Sch. Pt. 1 para. 9(a)** (with art. 6)

F62 Words in s. 62(6) repealed (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 4, **Sch. Pt. 1 para. 9(b)** (with art. 6)

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Modifications etc. (not altering text)

C153 S. 62 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C154 S. 62(5) (so far as relating to the giving of notice) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(2)(3)**; S.I. 1998/3178, **art. 2**

63 Powers of court.

(1) The court on the application of—

(a) the holder of a floating charge by virtue of which a receiver was appointed, or

(b) a receiver appointed under section 51,

may give directions to the receiver in respect of any matter arising in connection with the performance by him of his functions.

(2) Where the appointment of a person as a receiver by the holder of a floating charge is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the court may order the holder of the floating charge to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

Modifications etc. (not altering text)

C155 S. 63 amended (1.12.2001) by 2000 c. 8, **s. 363(2)**; S.I. 2001/3538, **art. 2(1)**

C156 Ss. 63-66 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4, Sch. 2, **Sch. 3**

64 Notification that receiver appointed.

(1) Where a receiver has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.

(2) If default is made in complying with the requirements of 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, is liable to a fine.

Modifications etc. (not altering text)

C157 Ss. 63-66 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

65 Information to be given by receiver.

(1) Where a receiver is appointed, he shall—

(a) forthwith send to the company and publish notice of his appointment, and

(b) within 28 days after his appointment, unless the court otherwise directs, send such notice to all the creditors of the company (so far as he is aware of their addresses).

(2) This section and the next do not apply in relation to the appointment of a receiver to act—

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(a) with an existing receiver, or
(b) in place of a receiver who has died or ceased to act,

except that, where they apply to a receiver who dies or ceases to act before they have been fully complied with, the references in this section and the next to the receiver include (subject to subsection (3) of this section) his successor and any continuing receiver.

(3) If the company is being wound up, this section and the next apply notwithstanding that the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If a person without reasonable excuse 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)
C158 Ss. 63-66 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

66 Company's statement of affairs.

(1) Where a receiver of a company is appointed, the receiver shall forthwith 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) A statement submitted under this section 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 its 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) The persons referred to in subsection (1) are—
(a) those who are or have been officers of the company;
(b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the receiver;
(c) those who are in the company's employment or have been in its employment within that year, and are in the 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.

In this subsection "employment" includes employment under a contract for services.

(4) Where any persons are required under this section to submit a statement of affairs to the 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 receiver.

(5) The receiver, if he thinks fit, may—
(a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or

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(b) either when giving the notice mentioned in subsection (4) or subsequently extend the period so mentioned,

and where the receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) 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.

Modifications etc. (not altering text)
C159 Ss. 63-66 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

67 Report by receiver.

(1) Where a receiver is appointed under section 51, he shall within 3 months (or such longer period as the court may allow) after his appointment, send to the registrar of companies, to the holder of the floating charge by virtue of which he was appointed and to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—

(a) the events leading up to his appointment, so far as he is aware of them;

(b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;

(c) the amounts of principal and interest payable to the holder of the floating charge by virtue of which he was appointed and the amounts payable to preferential creditors; and

(d) the amount (if any) likely to be available for the payment of other creditors.

(2) The receiver shall also, within 3 months (or such longer period as the court may allow) after his appointment, either—

(a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company, or

(b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,

and (in either case), unless the court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than 14 days' notice.

(3) The court shall not give a direction under subsection (2) unless—

(a) the report states the intention of the receiver to apply for the direction, and

(b) a copy of the report is sent to the persons mentioned in paragraph (a) of that subsection, or a notice is published as mentioned in paragraph (b) of that subsection, not less than 14 days before the hearing of the application.

(4) Where the company has gone or goes into liquidation, the receiver—

(a) shall, within 7 days after his compliance with subsection (1) or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator, and

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(b) where he does so within the time limited for compliance with subsection (2), is not required to comply with that subsection.

(5) A report under this section shall include a summary of the statement of affairs made out and submitted under section 66 and of his comments (if any) on it.

(6) Nothing in this section shall be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the receiver of his functions.

(7) Section 65(2) applies for the purposes of this section also.

(8) If a person without reasonable excuse fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

(9) In this section "secured creditor", in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and "unsecured creditor" shall be construed accordingly.

Modifications etc. (not altering text)

C160 S. 67 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C161 S. 67(1) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(2)(3)**; S.I. 1998/3178, **art. 2**
S. 67(1) amended (1.12.2001) by 2000 c. 8, **s. 363(4)**; S.I. 2001/3538, **art. 2(1)**

68 Committee of creditors

(1) Where a meeting of creditors is summoned under section 67, the meeting may, if it thinks fit, establish a committee ("the creditors' committee") to exercise the functions conferred on it by or under this Act.

(2) If such a committee is established, the committee may on giving not less than 7 days' notice require the receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

Modifications etc. (not altering text)

C162 S. 68 amended (1.12.2001) by 2000 c. 8, **s. 363(5)(b)**; S.I. 2001/3538, **art. 2(1)**

C163 S. 68 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

69 Enforcement of receiver's duty to make returns, etc.

(1) If any receiver—

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver 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; or

(b) has, after being required at any time by the liquidator of the company so to do, failed to render proper accounts of his receipts and payments and to vouch the same and to pay over to the liquidator the amount properly payable to him,

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the court may, on an application made for the purpose, make an order directing the receiver to make good the default within such time as may be specified in the order.

(2) In the case of any such default as is mentioned in subsection (1)(a), an application for the purposes of this section may be made by any member or creditor of the company or by the registrar of companies; and, in the case of any such default as is mentioned in subsection (1)(b), the application shall be made by the liquidator; and, in either case, the order may provide that all expenses of and incidental to the application shall be borne by the receiver.

(3) Nothing in this section prejudices the operation of any enactments imposing penalties on receivers in respect of any such default as is mentioned in subsection (1).

Modifications etc. (not altering text)

C164 S. 69 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C165 S. 69(1)(a) amended (1.12.2001) by 2000 c. 8, **s. 363(3)**; S.I. 2001/3538, **art. 2(1)**

C166 S. 69(2) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(2)(3)**; S.I. 1998/3178, **art. 2**

70 Interpretation for Chapter II.

(1) In this Chapter, unless the contrary intention appears, the following expressions have the following meanings respectively assigned to them—

"company" means an incorporated company (whether or not a company within the meaning of the Companies Act) which the Court of Session has jurisdiction to wind up;

"fixed security", in relation to any property of a company, means any security, other than a floating charge or a charge having the nature of a floating charge, which on the winding up of the company in Scotland would be treated as an effective security over that property, and (without prejudice to that generality) includes a security over that property, being a heritable security within the meaning of the [M3]Conveyancing and Feudal Reform (Scotland) Act 1970;

"instrument of appointment" has the meaning given by section 53(1);

"prescribed" means prescribed by regulations made under this Chapter by the Secretary of State;

"receiver" means a receiver of such part of the property of the company as is subject to the floating charge by virtue of which he has been appointed under section 51;

"register of charges" means the register kept by the registrar of companies for the purposes of Chapter II of Part XII of the Companies Act;

"secured debenture" means a bond, debenture, debenture stock or other security which, either itself or by reference to any other instrument, creates a floating charge over all or any part of the property of the company, but does not include a security which creates no charge other than a fixed security; and

"series of secured debentures" means two or more secured debentures created as a series by the company in such a manner that the holders thereof are entitled pari passu to the benefit of the floating charge.

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(2) Where a floating charge, secured debenture or series of secured debentures has been created by the company, then, except where the context otherwise requires, any reference in this Chapter to the holder of the floating charge shall—

(a) where the floating charge, secured debenture or series of secured debentures provides for a receiver to be appointed by any person or body, be construed as a reference to that person or body;

(b) where, in the case of a series of secured debentures, no such provision has been made therein but—

(i) there are trustees acting for the debenture-holders under and in accordance with a trust deed, be construed as a reference to those trustees, and

(ii) where no such trustees are acting, be construed as a reference to—

(aa) a majority in nominal value of those present or represented by proxy and voting at a meeting of debenture-holders at which the holders of at least one-third in nominal value of the outstanding debentures of the series are present or so represented, or

(bb) where no such meeting is held, the holders of at least one-half in nominal value of the outstanding debentures of the series.

(3) Any reference in this Chapter to a floating charge, secured debenture, series of secured debentures or instrument creating a charge includes, except where the context otherwise requires, a reference to that floating charge, debenture, series of debentures or instrument as varied by any instrument.

(4) References in this Chapter to the instrument by which a floating charge was created are, in the case of a floating charge created by words in a bond or other written acknowledgement, references to the bond or, as the case may be, the other written acknowledgement.

Modifications etc. (not altering text)

C167 S. 70 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

Marginal Citations

M3 1970 c. 35

71 Prescription of forms, etc.; regulations.

(1) The notice referred to in section 62(5), and the notice referred to in section 65(1)(a) shall be in such form as may be prescribed.

(2) Any power conferred by this Chapter on the Secretary of State to make regulations is exercisable by statutory instrument; and a statutory instrument made in the exercise of the power so conferred to prescribe a fee is subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C168 S. 71 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

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CHAPTER III

RECEIVERS' POWERS IN GREAT BRITAIN AS A WHOLE

72 Cross-border operation of receivership provisions.

(1) A receiver appointed under the law of either part of Great Britain in respect of the whole or any part of any property or undertaking of a company and in consequence of the company having created a charge which, as created, was a floating charge may exercise his powers in the other part of Great Britain so far as their exercise is not inconsistent with the law applicable there.

(2) In subsection (1) "receiver" includes a manager and a person who is appointed both receiver and manager.

[F63CHAPTER IV

PROHIBITION OF APPOINTMENT OF ADMINISTRATIVE RECEIVER

Textual Amendments

F63 Pt. III Ch. IV (ss. 72A-72H) inserted (18.3.2003 for the purpose of giving effect to the insertion of s. 72H(2)-(5) and otherwise 15.9.2003) by 2002 c. 40, ss. 250(1), 279 (with s. 249(6)); S.I. 2003/765, **art. 2**, Sch.; S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

72A Floating charge holder not to appoint administrative receiver

(1) The holder of a qualifying floating charge in respect of a company's property may not appoint an administrative receiver of the company.

(2) In Scotland, the holder of a qualifying floating charge in respect of a company's property may not appoint or apply to the court for the appointment of a receiver who on appointment would be an administrative receiver of property of the company.

(3) In subsections (1) and (2)—

"holder of a qualifying floating charge in respect of a company's property" has the same meaning as in paragraph 14 of Schedule B1 to this Act, and

"administrative receiver" has the meaning given by section 251.

(4) This section applies—

(a) to a floating charge created on or after a date appointed by the Secretary of State by order made by statutory instrument, and

(b) in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name).

(5) An order under subsection (4)(a) may—

(a) make provision which applies generally or only for a specified purpose;

(b) make different provision for different purposes;

(c) make transitional provision.

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(6) This section is subject to the exceptions specified in **[**[F64]sections 72B to 72GA**]** .

Subordinate Legislation Made

P1 S. 72A(4)(a) power exercised: 15.9.2003 appointed for specified purposes by The Insolvency Act 1986, Section 72A (Appointed Date) Order 2003 (S.I. 2003/2095), **art. 2**

Textual Amendments

F64 Words in s. 72A(6) substituted (15.9.2003) by The Insolvency Act 1986 (Amendment) (Administrative Receivership and Urban Regeneration etc.) Order 2003 (S.I. 2003/1832), arts. 1, **2(a)**; S.I. 2003/2093, art. 2(1), Sch. 1

72B First exception: capital market

(1) Section 72A does not prevent the appointment of an administrative receiver in pursuance of an agreement which is or forms part of a capital market arrangement if—

(a) a party incurs or, when the agreement was entered into was expected to incur, a debt of at least £50 million under the arrangement, and

(b) the arrangement involves the issue of a capital market investment.

(2) In subsection (1)—

"capital market arrangement" means an arrangement of a kind described in paragraph 1 of Schedule 2A, and

"capital market investment" means an investment of a kind described in paragraph 2 or 3 of that Schedule.

72C Second exception: public-private partnership

(1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is a public-private partnership project, and

(b) includes step-in rights.

(2) In this section "public-private partnership project" means a project—

(a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or

(b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.

(3) In this section—

"step-in rights" has the meaning given by paragraph 6 of Schedule 2A, and

"project company" has the meaning given by paragraph 7 of that Schedule.

72D Third exception: utilities

(1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is a utility project, and

(b) includes step-in rights.

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(2) In this section—

(a) "utility project" means a project designed wholly or mainly for the purpose of a regulated business,

(b) "regulated business" means a business of a kind listed in paragraph 10 of Schedule 2A,

(c) "step-in rights" has the meaning given by paragraph 6 of that Schedule, and

(d) "project company" has the meaning given by paragraph 7 of that Schedule.

[Exception in respect of urban regeneration projects

F65 **72DA**

(1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is designed wholly or mainly to develop land which at the commencement of the project is wholly or partly in a designated disadvantaged area outside Northern Ireland, and

(b) includes step-in rights.

(2) In subsection (1) "develop" means to carry out—

(a) building operations,

(b) any operation for the removal of substances or waste from land and the levelling of the surface of the land, or

(c) engineering operations in connection with the activities mentioned in paragraph (a) or (b).

(3) In this section—

"building" includes any structure or erection, and any part of a building as so defined, but does not include plant and machinery comprised in a building,

"building operations" includes—

(a) demolition of buildings,

(b) filling in of trenches,

(c) rebuilding,

(d) structural alterations of, or additions to, buildings and

(e) other operations normally undertaken by a person carrying on business as a builder,

"designated disadvantaged area" means an area designated as a disadvantaged area under section 92 of the Finance Act 2001,

"engineering operations" includes the formation and laying out of means of access to highways,

"project company" has the meaning given by paragraph 7 of Schedule 2A,

"step-in rights" has the meaning given by paragraph 6 of that Schedule,

"substance" means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour, and

"waste" includes any waste materials, spoil, refuse or other matter deposited on land.**]**

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Textual Amendments

F65 S. 72DA inserted (15.9.2003) by The Insolvency Act 1986 (Amendment) (Administrative Receivership and Urban Regeneration etc.) Order 2003 (S.I. 2003/1832), arts. 1, **2(b)**; S.I. 2003/2093, art. 2(1), Sch. 1

72E Fourth exception: project finance

(1) Section 72A does not prevent the appointment of an administrative receiver of a project company of a project which—

(a) is a financed project, and

(b) includes step-in rights.

(2) In this section—

(a) a project is "financed" if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least £50 million for the purposes of carrying out the project,

(b) "project company" has the meaning given by paragraph 7 of Schedule 2A, and

(c) "step-in rights" has the meaning given by paragraph 6 of that Schedule.

72F Fifth exception: financial market

Section 72A does not prevent the appointment of an administrative receiver of a company by virtue of—

(a) a market charge within the meaning of section 173 of the Companies Act 1989 (c. 40),

(b) a system-charge within the meaning of the Financial Markets and Insolvency Regulations 1996 (S.I. 1996/1469),

(c) a collateral security charge within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979).

72G Sixth exception: registered social landlord

Section 72A does not prevent the appointment of an administrative receiver of a company which is registered as a social landlord under Part I of the Housing Act 1996 (c. 52) or under Part 3 of the Housing (Scotland) Act 2001 (asp 10).

[F66 72GA Exception in relation to protected railway companies etc.

Section 72A does not prevent the appointment of an administrative receiver of—

(a) a company holding an appointment under Chapter I of Part II of the Water Industry Act 1991,

(b) a protected railway company within the meaning of section 59 of the Railways Act 1993(including that section as it has effect by virtue of section 19 of the Channel Tunnel Rail Link Act 1996, or

(c) a licence company within the meaning of section 26 of the Transport Act 2000.**]**

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Textual Amendments

F66 S. 72GA inserted (15.9.2003) by The Insolvency Act 1986 (Amendment) (Administrative Receivership and Urban Regeneration etc.) Order 2003 (S.I. 2003/1832), arts. 1, **2(c)**; S.I. 2003/2093, art. 2(1), Sch. 1

[F67]72H Sections 72A to 72G: supplementary

(1) Schedule 2A (which supplements sections 72B to 72G) shall have effect.

(2) The Secretary of State may by order—

(a) insert into this Act provision creating an additional exception to section 72A(1) or (2);

(b) provide for a provision of this Act which creates an exception to section 72A(1) or (2) to cease to have effect;

(c) amend section 72A in consequence of provision made under paragraph (a) or (b);

(d) amend any of sections 72B to 72G;

(e) amend Schedule 2A.

(3) An order under subsection (2) must be made by statutory instrument.

(4) An order under subsection (2) may make—

(a) provision which applies generally or only for a specified purpose;

(b) different provision for different purposes;

(c) consequential or supplementary provision;

(d) transitional provision.

(5) An order under subsection (2)—

(a) in the case of an order under subsection (2)(e), shall be subject to annulment in pursuance of a resolution of either House of Parliament,

(b) in the case of an order under subsection (2)(d) varying the sum specified in section 72B(1)(a) or 72E(2)(a) (whether or not the order also makes consequential or transitional provision), shall be subject to annulment in pursuance of a resolution of either House of Parliament, and

(c) in the case of any other order under subsection (2)(a) to (d), may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.**]**

Textual Amendments

F67 Pt. III Ch. IV (ss. 72A-72H) inserted (18.3.2003 for the purpose of giving effect to the insertion of s. 72H(2)-(5) and otherwise 15.9.2003) by 2002 c. 40, ss. 250(1), 279 (with s. 249(6)); S.I. 2003/765, **art. 2**, Sch.; S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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PART IV

WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

Modifications etc. (not altering text)

C169 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))

C170 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)**)

C171 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**)

C172 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))

C173 Pt. IV: power to apply or incorporate conferred (6.4.2001) by 2000 c. 12, **s. 14(1)**; S.I. 2000/3316, **art. 2**
Pt. IV: power to apply (with modifications) conferred (20.11.2003) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), **ss. 25(6)**, 26
Pt. 4: power to apply (with modifications) conferred (E.W.) (1.3.2007) by National Health Service Act 2006 (c. 41), **ss. 54(8)**, 55, 277

C174 First Group of Parts (Pts. 1-7) applied (with modifications) (15.12.2006) by The Banks (Former Authorised Institutions) (Insolvency) Order 2006 (S.I. 2006/3107), art. 3, **Sch.** (as amended (1.4.2013) by S.I. 2013/472, art. 1(1), **Sch. 2 para. 117**; and (13.3.2018) by S.I. 2018/208, regs. 1(3), **11**

C175 Pt. IV amended (1.12.2001) by 2000 c. 8, **s. 371(2)(b)**; S.I. 2001/3538, **art. 2(1)**

C176 Pt. IV (except s. 185) modified (S.) (prosp.) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss. 45(5)**, 227(3) (subject to s. 45(1) and with ss. 45(6), 223)

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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;

(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.

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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,

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.

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(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 [M4]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 [M5]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

M4 1980 c. 22

M5 1967 c. 81.

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

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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.

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.

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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 [M6]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

M6 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 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) [F68] . . . . . .

(2) In this Act the expression "a resolution for voluntary winding up" means a resolution passed under **[**[F69]either of the paragraphs**]** of subsection (1).

[[F70](2A) Before a company passes a resolution for voluntary winding up it must give written notice of the resolution to the holder of any qualifying floating charge to which section 72A applies.

(2B) Where notice is given under subsection (2A) a resolution for voluntary winding up may be passed only—

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(a) after the end of the period of five business days beginning with the day on which the notice was given, or

(b) if the person to whom the notice was given has consented in writing to the passing of the resolution.**]**

[[F71](3) Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to a resolution under paragraph (a) of subsection (1) as well as a special resolution under paragraph (b).**]**

[[F72](4) This section has effect subject to section 43 of the Commonhold and Leasehold Reform Act 2002.**]**

Textual Amendments

F68 S. 84(1)(c) repealed (1.10.2007 with application as noted in Sch. 4 para. 39(5) of the amending S.I.) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1)(3), **Sch. 4 para. 39(2)**, **Sch. 5** (with art. 12)

F69 Words in s. 84(2) substituted (1.10.2007 with application as noted in Sch. 4 para. 39(5) of the amending S.I.) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 39(3)** (with art. 12)

F70 S. 84(2A)(2B) inserted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 4, **Sch. Pt. 1 para. 10** (with art. 6)

F71 S. 84(3) substituted (1.10.2007 with application as noted in Sch. 4 para. 39(5) of the amending S.I.) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 39(4)** (with art. 12)

F72 S. 84(4) added (E.W.) (27.9.2004) by 2002 c. 15, ss. 68, 181(1), Sch. 5 para. 6; S.I. 2004/1832, **art. 2**

Modifications etc. (not altering text)

C177 S. 84 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3 (as amended (1.10.2009) by S.S.I. 2009/310, reg. 4, **Sch. 2 para. 1(a)**)

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.

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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.

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)

C178 S. 88 excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 10(2)**

C179 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

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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.

Modifications etc. (not altering text)

C180 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)

C181 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.

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(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)

C182 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**

VALID FROM 06/04/2010

[F73 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

F73 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)

C183 Ss. 91-93 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4, **Sch. 2**
C184 S. 93(1) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

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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.

(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)

C185 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)

C186 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**

C187 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 adertvised 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;

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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.

(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)

C188 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.

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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.

Modifications etc. (not altering text)
C189 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 creditorsto 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.

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(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 formas 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;

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)

C190 S. 100 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C191 S. 100(1)(3) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

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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.

(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)

C192 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**

C193 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)

C194 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.

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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)
C195 S. 104 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

VALID FROM 06/04/2010

[F74 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
F74 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.

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Modifications etc. (not altering text)

C196 S. 105 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C197 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 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)

C198 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)**

C199 S. 106 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C200 S. 106 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

C201 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

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the articles otherwise provide) be distributed among the members according to their rights and interests in the company.

Modifications etc. (not altering text)

C202 S. 107 restricted (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(2)**

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)

C203 S. 109 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C204 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. E +W

(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

[[F75](a)**]** to another company ("the transferee company"), whether or not the latter is a company within the meaning of the Companies Act **[**[F75], or

(b) to a limited liability partnership (the "transferee limited liability partnership").**]**

(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 **[**[F76]sale—

(a) in the case of the transferee company, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or

(b) in the case of the transferee limited liability partnership, membership in the transferee limited liability partnership for distribution among the members of the transferor company.**]**

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(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 **[**[F77]company may—

(a) in the case of the transferee company, 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, or

(b) in the case of the transferee limited liability partnership, in lieu of receiving cash or membership (or in addition thereto), participate in some other way in the profits of, or receive any other benefit from, the transferee limited liability partnership.**]**

(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.

Extent Information

E1 This version of this provision extends to England and Wales only; a separate version has been created for Scotland only

Textual Amendments

F75 Words in s. 110(1) inserted (6.4.2001) by S.I. 2001/1090, reg. 9, **Sch. 5 para. 15(2)**

F76 Word in s. 110(2) substituted (6.4.2001) by S.I. 2001/1090, reg. 9, **Sch. 5 para. 15(3)**

F77 Words in s. 110(4) substituted (6.4.2001) by S.I. 2001/1090, reg. 9, **Sch. 5 para. 15(4)**

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

(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

[[F634](a)**]** to another company ("the transferee company"), whether or not the latter is a company within the meaning of the Companies Act **[**[F634], or

(b) to a limited liability partnership (the "transferee limited liability partnership").**]**

(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 **[**[F635]sale–

(a) in the case of the transferee company, shares, policies or other like interests in the company for distribution among the members of the transferor company, or

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(b) in the case of the transferee limited liability partnership, membership in the limited liability partnership 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 **[**[F636]may-

(a) in the case of the transferee company, 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 company, or

(b) in the case of the transferee limited liability partnership, in lieu of receiving cash, or membership (or in addition thereto) participate in some other way in the profits of, or receive any other benefit from, the limited liability partnership.**]**

(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.

Extent Information

E2 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only

Textual Amendments

F634 Words in s. 110(1) inserted (6.4.2001) by S.S.I. 2001/128, reg. 5, **Sch. 4 para. 1(2)**

F635 Words in s. 110(2) substituted (6.4.2001) by S.S.I. 2001/128, reg. 5, **Sch. 4 para. 1(3)**

F636 Words in s. 110(4) substituted (6.4.2001) by S.S.I. 2001/128, reg. 5, **Sch. 4 para. 1(4)**

Modifications etc. (not altering text)

C969 S. 110 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**
S. 110 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

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

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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 [M7]Companies Clauses Consolidation Act 1845 or, in the case of a winding up in Scotland, the [M8]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)

C205 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

M7 1845 c. 16.
M8 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.

Modifications etc. (not altering text)

C206 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**

C207 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

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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)
C208 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)
C209 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)
C210 S. 115 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

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.

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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 **[**[F78]may, with the concurrence of the Lord Chief Justice, 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.

[[F79](7) This section is subject to Article 3 of the EC Regulation (jurisdiction under EC Regulation).**]**

[[F80](8) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.**]**

Textual Amendments

F78 Words in s. 117(4) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 186(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

F79 S. 117(7) inserted (31.5.2002) by S.I. 2002/1240, **reg. 6**

F80 S. 117(8) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 186(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

Modifications etc. (not altering text)

C211 S. 117 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(3), **Sch. 3 Pt. II para. 6**

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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 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)

C212 S. 117 modified (1.12.1994) by S.I. 1994/2421, art. 9(a), **Sch. 5 para. 1**

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 **[**[F81]in pursuance of section 4 of the Admnistration 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.

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(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.

[[F82](6) This section is subject to Article 3 of the EC Regulation (jurisdiction under EC Regulation).**]**

Textual Amendments

F81 Words repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), **Sch. 2**

F82 S. 120(6) inserted (31.5.2002) by S.I. 2002/1240, **reg. 7**

Modifications etc. (not altering text)

C213 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) **[**[F83]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,

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[F84(fa) at the time at which a moratorium for the company under section 1A comes to an end, no voluntary arrangement approved under Part I has effect in relation to the company]

(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.

Textual Amendments

F83 Words in s. 122(1)(e) inserted (15.7.1992) by S.I. 1992/1699, reg. 2, **Sch. para. 8**

F84 S. 122(1)(fa) inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 6**; S.I. 2002/2711, **art. 2** (with transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C214 S. 122 applied (with modifications) by S.I. 1994/2421, art. 8, **Sch. 4 Pt. II para. 6(a)**

C215 S. 122(1) modified (10.8.2005) by The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 (S.I. 2005/1998), regs. 2(3), **25(3)**

C216 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)
S. 122(1)(b) excluded (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), regs. 85, 88, **Sch. 4 para. 9(b)** (with Sch. 4 para. 11)

C217 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

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(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)

C218 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.)

C219 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

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 **[**[F85], or by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation or a temporary administrator (within the meaning of Article 38 of the EC Regulation)**]**[F86]or by **[**[F87]the designated officer for 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.

[[F88](3A) A winding-up petition on the ground set out in section 122(1)(fa) may only be presented by one or more creditors**]**

(4) A winding-up petition may be presented by the Secretary of State—

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(a) if the ground of the petition is that in section 122(1)(b) or (c), or

[F89(b) in a case falling within section 124A [F90or 124B] below.]

[F91(4AA) A winding up petition may be presented by the Financial Services Authority in a case falling within section 124C(1) or (2).]

[F92(4A) A winding-up petition may be presented by the Regulator of Community Interest Companies in a case falling within section 50 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.]

(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

F85 Words in s. 124(1) inserted (31.5.2002) by S.I. 2002/1240, **reg. 8**

F86 Words inserted (E.W.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 62(2)(b), 123, **Sch. 8 para. 16**

F87 Words in s. 124(1) substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 294**; S.I. 2005/910, **art. 3(y)**

F88 S. 124(3A) inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 7**; S.I. 2002/2711, **art. 2** (with transitional provisions in arts. 3-5)

F89 S. 124(4)(*b*) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 60(2)**, 213(2)

F90 Words in s. 124(4)(b) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 73(4)(a)**

F91 S. 124(4AA) inserted (18.8.2006) by The European Cooperative Society Regulations 2006 (S.I. 2006/2078), **reg. 33(2)**

F92 S. 124(4A) inserted (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 50(3)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3

Modifications etc. (not altering text)

C220 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**

C221 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**)

C222 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**

[F93124APetition 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 [F94(except section 448A)] of the M9 Companies Act 1985 (company investigations, &c.),

[F95(b) any report made by inspectors under—

(i) section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000, or

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(ii) where the company is an open-ended investment company (within the meaning of that Act), regulations made as a result of section 262(2)(k) of that Act;

(bb) any information or documents obtained under section 165, 171, 172, 173 or 175 of that Act,**]**

(c) any information obtained under section 2 of the [M10] Criminal Justice Act 1987 or **[**[F96]section 28 of the Criminal Law (Consolidation) (Scotland) Act 1995**]** (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

F93 S. 124A inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 60(3)**, 213(2)

F94 Words in s. 124A(1)(a) inserted (by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 25(1), 65, **Sch. 2 para. 27**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

F95 S. 124A(b)(bb) substituted for s. 124A(b) (1.12.2001) by S.I. 2001/3649, **arts. 1**, 305

F96 Words in s. 124A(1) substituted (1.4.1996) by virtue of 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 56(2)** and 1978 c. 30, **s. 17(2)(a)**

Marginal Citations

M9 1985 c. 6**(27).**

M10 1987 c.38**(39:1).**

[[F97]**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.**]**

Textual Amendments

F97 S. 124B inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 73(3)**

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[F98 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

F98 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—

(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.

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Modifications etc. (not altering text)

C223 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)

C224 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**

C225 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.

[[F99](1)**]** 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.

[[F99](2) This section has no effect in respect of anything done by an administrator of a company while a winding-up petition is suspended under paragraph 40 of Schedule B1.**]**

Textual Amendments

F99 S. 127 renumbered as s. 127(1) and s. 127(2) added (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 15 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C226 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.**

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C227 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)**
S. 127 excluded (11.12.1999) by S.I. 1999/2979, **reg. 19(3)**
S. 127 excluded (26.12.2003) by The Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226), **reg. 10(1)**
C228 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**
C229 S. 127 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

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)
C230 S. 128 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 161(4); S.I. 1991/878, art. 2, **Sch.** .
C231 S. 128 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**
C232 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.

[[F100](1A) Where the court makes a winding-up order by virtue of paragraph 13(1)(e) of Schedule B1, the winding up is deemed to commence on the making of the order.**]**

(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.

Textual Amendments
F100 S. 129(1A) inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 16 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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Modifications etc. (not altering text)

C233 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**

C234 S. 129(1A) modified (5.10.2004) by Energy Act 2004 (c. 20), ss. 159(1), 198, **Sch. 20 para. 45**; S.I. 2004/2575, **art. 2(1)**, Sch. 1

C235 S. 129(1A) modified (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 73, 93(2)(3), **Sch. 10 para. 45**; S.I. 2011/2329, **art. 3** (with arts. 4, 5)

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)

C236 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.**.

C237 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.** .

C238 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

C239 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;

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(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;
(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)

C240 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**

C241 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

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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,

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)

C242 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**

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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.

(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)

C243 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)

C244 S. 135 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C245 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

C246 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

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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.

(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)

C247 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.

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(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.

(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)
C248 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)
C249 S. 138 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

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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.

(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)

C250 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.

[[F101](1) Where a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect, the court may appoint as liquidator of the company the person whose appointment as administrator has ceased to have effect.**]**

(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.

Textual Amendments

F101 S. 140(1) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 17 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C251 S. 140 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 15** (as amended (1.7.2005) by S.I. 2005/1516, **art. 9(3)**)
S. 140 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

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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.

(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)

C252 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)**

C253 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.

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(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 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)

C254 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**

C255 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

C256 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)

C257 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**

C258 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

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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.

(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)

C259 S. 144 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C260 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)

C261 S. 145 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C262 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.

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(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.

Modifications etc. (not altering text)

C263 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)

C264 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**

C265 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

C266 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.

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Modifications etc. (not altering text)

C267 S. 148 modified by S.I. 1986/1918, **Rule 5**

C268 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)

C269 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)

C270 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)

C271 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)

C272 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)

C273 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.

[[F102](3) For the purposes of subsection (2) above, references to a government department shall be construed as including references to any part of the Scottish Administration.**]**

Textual Amendments

F102 S. 155(3) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 85**; S.I. 1998/3178, **art. 3**

Modifications etc. (not altering text)

C274 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**

C275 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)

C276 S. 155 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

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)

C277 S. 156 restricted (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(3)**

C278 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)

C279 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

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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 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)

C280 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 **[**[F103]the Companies Acts**]** 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.

Textual Amendments

F103 Words in s. 159 substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 40** (with art. 12)

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.

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Modifications etc. (not altering text)

C281 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 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 consignation, unless with special leave of the court.

Modifications etc. (not altering text)

C282 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 **[**[F104]in pursuance of section 4 of the [M11]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

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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

F104 Words repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), **Sch. 2**

Modifications etc. (not altering text)

C283 S. 162 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C284 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

Marginal Citations

M11 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)

C285 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)

C286 S. 164 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

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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 **[**[F105]special 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),

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 **[**[F106]special 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.

Textual Amendments

F105 Words in s. 165(2)(a) substituted (1.10.2007 with application as noted in Sch. 4 para. 41(2) of the amending S.I.) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 41(1)(a)** (with art. 12)

F106 Words in s. 165(4)(c) substituted (1.10.2007 with application as noted in Sch. 4 para. 41(2) of the amending S.I.) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 41(1)(b)** (with art. 12)

Modifications etc. (not altering text)

C287 S. 165 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C288 S. 165 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

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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
- (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)

C289 S. 166 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C290 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—

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(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)

C291 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**

C292 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.

(2) The liquidator may summon general metings 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.

[[F107](5A) Where at any time after a winding-up petition has been presented to the court against any person (including an insolvent partnership or other body which may be wound up under Part V of the Act as an unregistered company), whether by virtue of the provisions of the [M12]Insolvent Partnerships Order 1994 or not, the attention of the court is drawn to the fact that the person in question is a member of an insolvent partnership, the court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(5B) Any order or directions under subsection (5A) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.**]**

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[[F108](5C) Where the court makes an order for the winding up of an insolvent partnership under—

(a) section 72(1)(a) of the Financial Services Act 1986;

(b) section 92(1)(a) of the Banking Act 1987; or

(c) section 367(3)(a) of the Financial Services and Markets Act 2000,

the court may make an order as to the future conduct of the winding up proceedings, and any such order may apply any provisions of the Insolvent Partnerships Order 1994 with any necessary modifications.]

Textual Amendments

F107 S. 168(5A)(5B)(5C) inserted (1.12.1994) by S.I. 1994/2421, **art. 14(1)**

F108 S. 168(5C) substituted (3.7.2002) by S.I. 2002/1555, **art. 15(2)**

Modifications etc. (not altering text)

C293 S. 168 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** (as amended (13.3.2018) by S.I. 2018/208, regs. 1(3), **5(3)**)

C294 S. 168(1)-(3)(5) applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 20**

C295 S. 168(2) modified (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **reg. 29(2)** (with reg. 3)

C296 S. 168(4) 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

Marginal Citations

M12 S.I. 1994/2421.

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)

C297 S. 169 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C298 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

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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.

(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)

C299 S. 170 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C300 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

C301 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 puropose, 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.

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(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.

Modifications etc. (not altering text)

C302 S. 171 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C303 S. 171 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

C304 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.

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(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)

C305 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**

C306 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

C307 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.

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(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)

C308 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**

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 efect 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

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(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.

Modifications etc. (not altering text)

C309 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)

C310 S. 175 excluded (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(4)**

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C311 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)

C312 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)**)

C313 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))

C314 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

C315 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)**)

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)

C316 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

[F109 Property subject to floating charge]

Textual Amendments

F109 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))

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[F110 176ZA F110 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);

(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

F110 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)

C317 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

C318 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)**)

C319 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)**)

[F111 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—

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(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.

(4) Subsection (2) shall also not apply to a company if or in so far as it is disapplied 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

F111 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)

C320 S. 176A excluded (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(4)**

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C321 S. 176A excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 10(3)**

C322 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))

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)

C323 S. 177 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C324 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

C325 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.

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(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.

(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)

C326 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)**

C327 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**

C328 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

C329 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—

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(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.

Modifications etc. (not altering text)

C330 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

C331 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 to 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)

C332 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

C333 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

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(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.

Modifications etc. (not altering text)

C334 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

C335 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.

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Modifications etc. (not altering text)

C336 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

C337 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 beneift of the execution or attachment against the liquidator 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 **[**[F112]enforcement officer or other officer charged with the execution of the writ**]** 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 [M13]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 **[**[F113]"enforcement officer" means an individual who is authorised to act as an enforcement officer under the Courts Act2003**]**.

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

Textual Amendments

F112 Words in s. 183(2)(b) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 295(2)**; S.I. 2004/401, **art. 2** (with art. 3)

F113 Words in s. 183(4) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 295(3)**; S.I. 2004/401, **art. 2** (with art. 3)

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Modifications etc. (not altering text)

C338 S. 183 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 1979 c. 53.

184 Duties of [F114officers charged with execution of writs and other processes] (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 **[**F115enforcement officer, or other officer, charged with execution of the writ or other process,**]** 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 **[**F116enforcement officer or other officer**]** 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 **[**F117£500**]** a company's goods are sold or money is paid in order to avoid sale, the **[**F118enforcement officer or other officer**]** 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 **[**F118enforcement officer or other officer**]** 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 passed (as the case may be), the **[**F118enforcement officer or other officer**]** 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 **[**F119"enforcement officer" means an individual who is authorised to act as an enforcement officer under the Courts Act 2003.**]**

(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

F114 Words in s. 184 heading substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 296(5)**; S.I. 2004/401, **art. 2** (with art. 3)

F115 Words in s. 184(1) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 296(2)**; S.I. 2004/401, **art. 2** (with art. 3)

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F116 Words in s. 184(2) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 296(3)**; S.I. 2004/401, **art. 2** (with art. 3)

F117 "£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)

F118 Words in s. 184(3)(4) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 296(3)**; S.I. 2004/401, **art. 2** (with art. 3)

F119 Words in s. 184(6) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 296(4)**; S.I. 2004/401, **art. 2** (with art. 3)

Modifications etc. (not altering text)

C339 S. 184 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

185 Effect of diligence (Scotland)

(1) In the winding up of a company registered in Scotland, the following provisions of the [M14]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)

C340 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**

Marginal Citations

M14 1985 c. 66.

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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)

C341 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)**

C342 S. 186 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C343 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 **[**[F120]section 247 of the Companies Act 2006**]**(power to provide for employees or former employees on cessation or transfer of business).

[[F121](2) The liquidator may, after the winding up has commenced, make any such provision as is mentioned in section 247(1) if—

(a) the company's liabilities have been fully satisfied and provision has been made for the expenses of the winding up,

(b) the exercise of the power has been sanctioned by a resolution of the company, and

(c) any requirements of the company's memorandum or articles as to the exercise of the power conferred by section 247(1) are complied with.**]**

(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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Textual Amendments

F120 Words in s. 187(1) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 42(2)** (with art. 12)

F121 S. 187(2) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 42(3)** (with art. 12)

Modifications etc. (not altering text)

C344 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**

C345 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.

[[F122](1) When a company is being wound up, whether by the court or voluntarily—

(a) every invoice, order for goods, business letter or order form (whether in hard copy, electronic or any other form) 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, and

(b) all the company's websites,

must 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.

Textual Amendments

F122 S. 188(1) substituted (1.1.2007) by The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), **reg. 7(1)**

Modifications etc. (not altering text)

C346 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.

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(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 17of the [M15]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.

Modifications etc. (not altering text)

C347 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**

C348 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

M15 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 of 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.

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Modifications etc. (not altering text)

C349 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.

Modifications etc. (not altering text)

C350 S. 191 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C351 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)

C352 S. 192 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C353 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

C354 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 [M16]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

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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)

C355 S. 193 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C356 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

M16 1985 c. 66.

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)

C357 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**

C358 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)

C359 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

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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)

C360 S. 196 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C361 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.

Modifications etc. (not altering text)

C362 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

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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, 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)

C363 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)

C364 S. 199 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

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C365 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.

Modifications etc. (not altering text)

C366 S. 200 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C367 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

C368 S. 200(1) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

CHAPER 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 **[**[F123]a 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.

Textual Amendments

F123 Words in s. 201(4) substituted (1.1.2007) by The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), **reg. 3(1)(d)**

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Modifications etc. (not altering text)

C369 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.

(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)

C370 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.

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(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.

Modifications etc. (not altering text)

C371 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.

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(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 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)

C372 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)**

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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 **[**[F124]£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 **[**[F124]£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

(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.

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(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

F124 "£500" substituted by virtue of S.I. 1986/1996, art. 2(1), **Sch. Pt. I**

Modifications etc. (not altering text)

C373 S. 206 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C374 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—

(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)

C375 S. 207 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C376 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

C377 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

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(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—

(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)

C378 S. 208 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C379 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, multilates, 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)

C380 S. 209 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C381 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

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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.

Modifications etc. (not altering text)

C382 S. 210 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C383 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

C384 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)

C385 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**

C386 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

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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 [F125]. . . 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 [F126]. . . of the company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator [F126]. . . 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 [F127]. . . of the company is not exerciseable, except with the leave of the court, after **[**[F128]he**]** 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.

Textual Amendments

F125 Word in s. 212(1)(b) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 18(a), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F126 Words in s. 212(2) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 18(b), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F127 Words in s. 212(4) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 18(c)(i), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F128 Word in s. 212(4) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 18(c)(ii) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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Modifications etc. (not altering text)

C387 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))

C388 S. 212 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

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)

C389 S. 213 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C390 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

C391 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 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

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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)

C392 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)**

C393 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)**

C394 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)**

C395 S. 214 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C396 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

C397 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

C398 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)**

C399 S. 214(2) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

C400 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

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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 **[**[F129]or the formation of a civil partnership**]**) 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.

Textual Amendments

F129 Words in s. 215(3)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 112**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

Modifications etc. (not altering text)

C401 S. 215 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C402 S. 215 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

C403 S. 215 applied (with modifications) (S.) (25.2.2009) by The Bank Administration (Scotland) Rules 2009 (S.I. 2009/350), **rule 38**

C404 S. 215 modified (S.) (29.3.2009 at 4.00pm) by The Building Society Special Administration (Scotland) Rules 2009 (S.I. 2009/806), **rule 37**

C405 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 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

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(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 at 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)

C406 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 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—

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(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)

C407 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

[[F130](a) in the case of a winding up in England and Wales, to the Secretary of State, and

(b) in the case of a winding up in Scotland, to the Lord Advocate**]**

[F131](2) . . . . . .

(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 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 **[**[F132]forthwith report the matter—

(a) in the case of a winding up in England and Wales, to the Secretary of State, and

(b) in the case of a winding up in Scotland, to the Lord Advocate,

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and shall furnish to the Secretary of State or (as the case may be) the Lord Advocate**]**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 **[**[F133]the Secretary of State or (as the case may be) the Lord Advocate**]** requires.

[[F134](5) Where a report is made to the Secretary of State under subsection (4) he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, 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 [F135]. . . 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

F130 S. 218(1)(a)(b) substituted for words in s. 218(1) (2.4.2001) by 2000 c. 39, **s. 10(2)**; S.I. 2001/766, **art. 2(1)(b)** (subject to art. 3)

F131 S. 218(2) repealed (2.4.2001) by 2000 c. 39, ss. 10(3), 15, **Sch. 5**; S.I. 2001/766, **art. 2(1)(b)(c)** (subject to art. 3)

F132 Words in s. 218(4)(a)(b) substituted (2.4.2001) by 2000 c. 39, **s. 10(4)(a)**; S.I. 2001/766, **art. 2(b)** (subject to art. 3)

F133 Words in s. 218(4) substituted (2.4.2001) by 2000 c. 39, **s. 10(4)(b)**; S.I. 2001/766, **art. 2(b)** (subject to art. 3)

F134 S. 218(5) substituted (2.4.2001) by 2000 c. 39, **s. 10(5)**; S.I. 2001/766, **art. 2(b)** (subject to art. 3)

F135 Words in s. 218(6)(b) repealed (2.4.2001) by 2000 c. 39, ss. 10(6), 15, **Sch. 5**; S.I. 2001/766, **art. 2(1)(b)(c)** (subject to art. 3)

Modifications etc. (not altering text)

C408 S. 218 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

C409 S. 218(1)(4)(6) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

C410 S. 218(1)(2)(4)(6) applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

219 Obligations arising under s. 218.

(1) For the purpose of an investigation by the Secretary of State **[**[F136]in consequence of a report made to him under section 218(4)**]**, 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 **[**[F136]section 218(5)**]** is to be regarded as an obligation similarly to assist the Secretary of State in his investigation.

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(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.

[[F137](2A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

(a) no evidence relating to the answer may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(2B) Subsection (2A) applies to any offence other than—

(a) an offence under section 2 or 5 of the [M17]Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or

(b) an offence under section 44(1) or (2) of the [M18]Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).**]**

(3) Where criminal proceedings are instituted by **[**[F138]the Director of Public Prosecutions, the Lord Advocate**]** 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 **[**[F138]the Director of Public Prosecutions, the Lord Advocate**]** or the Secretary of State (as the 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 **[**[F139]Director of Public Prosecutions, the Lord Advocate**]** 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.

Textual Amendments

F136 Words in s. 219(1) substituted (2.4.2001) by 2000 c. 39, **s. 10(7)(a)**; S.I. 2001/766, **art. 2(1)(b)** (subject to art. 3)

F137 S. 219(2A)(2B) inserted (2.4.2001) by 2000 c. 39, **s. 11**; S.I. 2001/766, **art. 2(1)(b)**; (subject to art. 3)

F138 Words in s. 219(3) substituted (2.4.2001) by 2000 c. 39, **s. 10(7)(b)**; S.I. 2001/766, **art. 2(1)(b)** (subject to art. 3)

F139 Words in s. 219(4) substituted (2.4.2001) by 2000 c. 39, **s. 10(7)(c)**; S.I. 2001/766, **art. 2(1)(b)** (subject to art. 3)

Modifications etc. (not altering text)

C411 S. 219 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

M17 1911 c. 6.

M18 1995 c. 39.

PART V

WINDING UP OF UNREGISTERED COMPANIES

Modifications etc. (not altering text)

C412 Pt. V (ss. 220-229) modified by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2)**, 25
Pt. V modified by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 30(6)**, 35(4), 47(4)(a)
Pt. V modified by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 86(5), 123, **Sch. 8 para. 16**
Pt. V modified by S.I. 1989/638, **regs. 8(1)**, 21
Pt. V modified by S.I. 1989/1806, art. 2, **Sch. 1**, section 47(1)
Pt. V modified (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 s. 4, Sch. 3 paras. 3, **16**))
Pt. V modified (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 3(4)**
Pt. V 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))

C413 Pt. V (ss. 220-229) excluded by S.I. 1986/2142, **arts. 1(2)**, 13(1), 15

C414 Pts. I-VII (ss. 1-251) applied (with modifications) by S.I. 1989/1276, **arts. 2**, 3
Pt. V (ss. 220-229) applied (7.2.1994) by 1993 c. 48, **s. 119(8)** (with s. 6(8)); S.I. 1994/86, **art. 2**
Pt. V applied (with modifications) (1.11.1994) by S.I. 1994/2759, reg. 3, Sch. 3 paras. 91, 91A, **91B**
Pt. V applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(1)(2), **Sch. 3 Pt. I**
Pt. V (except ss. 223, 224) applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(1)(2), **Sch. 4 Pt. I** (as amended (1.7.2005) by S.I. 2005/1516, **art. 9**)

C415 Pt. V (ss. 220-229) extended (13.1.1993 for purposes of regulation of business of incorporated friendly societies and 28.4.1993 otherwise) by Friendly Societies Act 1992 (c. 40), **s. 52(1)(9)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**; S.I. 1993/1186, art. 2(2), **Sch. 2**

C416 First Group of Parts (Pts. 1-7) applied (with modifications) (15.12.2006) by The Banks (Former Authorised Institutions) (Insolvency) Order 2006 (S.I. 2006/3107), **art. 3**, Sch.

C417 Pt. V (ss. 220-229) amended (1.12.2001) by 2000 c. 8, **s. 371(2)(b)**; S.I. 2001/3538 art. 2(1)

C418 Pt. 5 extended by S.I. 2001/1228, **reg. 33C(3)** (as inserted (21.12.2011) by The Open-Ended Investment Companies (Amendment) Regulations 2011 (S.I. 2011/3049), **reg. 3(5)** (with regs. 4, 10(1))

220 Meaning of "unregistered company".

(1) For the purposes of this Part, the expression "unregistered company" includes [F140]. . ., any association and any company, with the following exceptions—

[F141](a) . . . . . .

(b) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts or under the legislation (past or present) relating to companies in Great Britain.

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(2) On such day as the Treasury appoints by order under section 4(3) of the [M19]Trustee Savings Banks Act 1985, the words in subsection (1) from "any trustee" to "banks" cease to have effect and are hereby repealed.

Textual Amendments

F140 5.7.1988 appointed under s. 4(3) of the 1985 Act by S.I. 1988/1168 art. 2 for the purposes of s. 220(2) and accordingly the words in subsection (1) from "any trustee" to "banks" are repealed by the operation of s. 220(2)

F141 S. 220(1)(a) repealed (1.1.1993) by Transport and Works Act 1992 (c. 42), ss. 65(1)(f), 68(1), **Sch. 4 Pt.I**; S.I. 1992/2784, arts. 2(a)(b), 3(2)(3), Schs.1, **2** Pt. 1

Modifications etc. (not altering text)

C419 S. 220 extended by Banking Act 1987 (c. 22, SIF 10), **s. 92(2)**

C420 S. 220(1) applied with modifications by S.I. 1986/2142, **arts. 1(2)**, 8(1), 12, 15

C421 S. 220(1) applied with modifications by S.I. 1986/2142, arts. 1(2), 7, 15, **Sch. 1 para. 1**
S. 220 applied (with modifications) (1.12.1994) by S.I. 1994/2124, arts. 8, 10(1)(b), Sch. 4 Pt. I paras. 1(1), **2**
ss. 220-222 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(1)(2)(9), **Sch. 4 Pt. I**
ss. 220-223 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(1)(2), 9, **Sch. 3 Pt. I**

C422 5.7.1988 appointed under s. 4(3) of the 1985 Act by S.I. 1988/1168 art. 2 for the purposes of s. 220(2) and accordingly the words in subsection (1) from "any trustee" to "banks" are repealed

Marginal Citations

M19 1985 c. 58.

221 Winding up of unregistered companies.

(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act; and all the provisions of this Act and the Companies Act about winding up apply to an unregistered company with the exceptions and additions mentioned in the following subsections.

(2) If an unregistered company has a principal place of business situated in Northern Ireland, it shall not be wound up under this Part unless it has a principal place of business situated in England and Wales or Scotland, or in both England and Wales and Scotland.

(3) For the purpose of determining a court's winding-up jurisdiction, an unregistered company is deemed—

(a) to be registered in England and Wales or Scotland, according as its principal place of business is situated in England and Wales or Scotland, or

(b) if it has a principal place of business situated in both countries, to be registered in both countries;

and the principal place of business situated in that part of Great Britain in which proceedings are being instituted is, for all purposes of the winding up, deemed to be the registered office of the company.

(4) No unregistered company shall be wound up under this Act voluntarily **[**[F142], except in accordance with the EC Regulation**]**.

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(5) The circumstances in which an unregistered company may be wound up are as follows—

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b) if the company is unable to pay its debts;

(c) if the court is of opinion that it is just and equitable that the company should be wound up.

(6) A petition for winding up a trustee savings bank may be presented by the Trustee Savings Banks Central Board or by a commissioner appointed under section 35 of the [M20]Trustee Savings Banks Act 1981 as well as by any person authorised under Part IV of this Act to present a petition for the winding up of a company.

On such day as the Treasury appoints by order under section 4(3) of the [M21]Trustee Savings Banks Act 1985, this subsection ceases to have effect and is hereby repealed.

(7) In Scotland, an unregistered 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.

Textual Amendments

F142 Words in s. 221(4) inserted (31.5.2002) by S.I. 2002/1240, **reg. 9**

Modifications etc. (not altering text)

C423 S. 221 applied (with modifications) by S.I. 1986/2142, **arts. 1(2)**, 8(1), 12, 15
S. 221 applied (with modifications) by S.I. 1986/2142, arts. 1(2), 7, 15, **Sch. 1 para. 2**
S. 221 applied (with modifications) (1.11.1994) by S.I. 1994/2759, reg. 3, **Sch. 3 para. 91A(4)**
S. 221 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 9(a), **Sch. 5**
S. 221 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 10(1)(a), **Sch. 6 para. 4**
Ss. 220-223 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 7(1)(2), 9, **Sch. 3 Pt. I**

C424 S. 221 restricted (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **reg. 4(1)(a)** (with reg. 3)

C425 S. 221(1) applied (10.8.2005) by The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 (S.I. 2005/1998), regs. 2(3), **29(2)**

C426 S. 221(5)(b) extended (1.4.1992) by S.I. 1992/613, **reg. 49(2)**

Marginal Citations

M20 1981 c. 65.

M21 1985. c. 58.

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222 Inability to pay debts: unpaid creditor for £750 or more.

(1) An unregistered company is deemed (for the purposes of section 221) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £750 then due and—

(a) the creditor has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a written demand in the prescribed form requiring the company to pay the sum due, and

(b) the company has for 3 weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the creditor's satisfaction.

(2) The money sum for the time being specified in subsection (1) is subject to increase or reduction by regulations under section 417 in Part XV; but no increase in the sum so specified affects any case in which the winding-up petition was presented before the coming into force of the increase.

Modifications etc. (not altering text)

C427 S. 222 applied with modifications by S.I. 1986/2421, arts. 1(2), 7, 15, **Sch. 1 para. 3**
ss. 220-223 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 7(1)(2), 9, **Sch. 3**, Pt. I

223 Inability to pay debts: debt remaining unsatisfed after action brought.

An unregistered company is deemed (for the purposes of section 221) unable to pay its debts if an action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and—

(a) notice in writing of the institution of the action or proceeding has been served on the company by leaving it at the company's principal place of business (or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving it in such manner as the court may approve or direct), and

(b) the company has not within 3 weeks after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed or sisted, or indemnified the defendant or defender to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him because of it.

Modifications etc. (not altering text)

C428 Ss. 220-223 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(1)(2), art. 9, **Sch. 3**, Pt. I
s. 223 excluded (1.11.1994) by S.I. 1994/2759, reg. 3, **Sch. 3 para. 91A(5)**

224 Inability to pay debts: other cases.

(1) An unregistered company is deemed (for purposes of section 221) unable to pay its debts—

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(a) if in England and Wales execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member of it as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;

(b) 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;

(c) if in Northern Ireland a certificate of unenforceability has been granted in respect of any judgment, decree or order obtained as mentioned in paragraph (a);

(d) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.

(2) An unregistered 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.

Modifications etc. (not altering text)

C429 S. 224 applied (with modifications) by S.I. 1994/2759, reg. 3, **Sch. 3 para. 91A(6)**

225 Oversea company may be wound up though dissolved.

[[F143](1)**]** Where a company incorporated outside Great Britain which has been carrying on business in Great Britain ceases to carry on business in Great Britain, it may be wound up as an unregistered company under this Act, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

[[F143](2) This section is subject to the EC Regulation.**]**

Textual Amendments

F143 S. 225 renumbered as s. 225(1) and s. 225(2) inserted (31.5.2002) by S.I. 2002/1240, **reg. 10**

Modifications etc. (not altering text)

C430 S. 225 applied (1.12.1994) by S.I. 1994/2421, **art. 10(1)(b)**
Ss. 225-229 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(1)(2)(9), **Sch. 4 Pt. I**

226 Contributories in winding up of unregistered company.

(1) In the event of an unregistered company being wound up, every person is deemed a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of members among themselves, or to pay or contribute to the payment of the expenses of winding up the company.

(2) Every contributory is liable to contribute to the company's assets all sums due from him in respect of any such liability as is mentioned above.

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(3) In the case of an unregistered company engaged in or formed for working mines within the stannaries, a past member is not liable to contribute to the assets if he has ceased to be a member for 2 years or more either before the mine ceased to be worked or before the date of the winding-up order.

(4) In the event of the death, bankruptcy or insolvency of any contributory, the 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.

Modifications etc. (not altering text)

C431 Ss. 225-229 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(1)(2)(9), **Sch. 4 Pt. I**

227 Power of court to stay, sist or restrain proceedings.

The provisions of this Part with respect to staying, sisting or restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order extend, in the case of an unregistered company, where the application to stay, sist or restrain is presented by a creditor, to actions and proceedings against any contributory of the company.

Modifications etc. (not altering text)

C432 Ss. 227-229 applied (1.12.1994) by S.I. 1994/2421, **art. 10(1)(b)**
ss. 225-229 applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 8(1)(2)**)(9), Sch. 4 Pt. I

C433 S. 227 excluded by S.I. 2001/1228, **reg. 33C(2)** (as inserted (21.12.2011) by The Open-Ended Investment Companies (Amendment) Regulations 2011 (S.I. 2011/3049), **reg. 3(5)** (with regs. 4, 10(1))

228 Actions stayed on winding-up order.

Where an order has been made for winding up an unregistered company, no action or proceding shall be proceeded with or commenced against 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.

Modifications etc. (not altering text)

C434 Ss. 227-229 applied (1.12.1994) by S.I. 1994/2421, **art. 10(1)(b)**
ss. 225-229 applied (with modifications) (1.12.1995) by S.I. 1994/2421, art. 8(1)(2)(9), **Sch. 4 Pt. I**

C435 S. 228 excluded by S.I. 2001/1228, **reg. 33C(2)** (as inserted (21.12.2011) by The Open-Ended Investment Companies (Amendment) Regulations 2011 (S.I. 2011/3049), **reg. 3(5)** (with regs. 4, 10(1))

229 Provisions of this Part to be cumulative.

(1) The provisions of this Part with respect to unregistered companies are in addition to and not in restriction of any provisions in Part IV with respect to winding up companies

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by the court; and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under the Companies Act.

(2) However, an unregistered company is not, except in the event of its being wound up, deemed to be a company under the Companies Act, and then only to the extent provided by this Part of this Act.

Modifications etc. (not altering text)

C436 Ss. 227-229 applied (1.12.1994) by S.I. 1994/2421, **art. 10(1)(b)**
ss. 225-229 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(1)(2)(9), **Sch. 4 Pt. I**

PART VI

MISCELLANEOUS PROVISIONS APPLYING TO COMPANIES WHICH ARE INSOLVENT OR IN LIQUIDATION

Modifications etc. (not altering text)

C437 Pts. 1–7 (ss. 1–251) applied (with modifications) by S.I. 1989/1276, arts. 2, **3**
Pt. 6 (ss. 230-246) modified (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 Pt. I para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3** (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), **regs. 1(3)**, 3; and (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 12 para. 4** (with ss. 2(2), 5(2), 14(4)))

C438 Pt. 6 (ss. 230–246) extended with modifications by Building Societies Act 1986 (c. 53, SIF 16), 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)**; and (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 12 para. 2** (with ss. 2(2), 5(2), 14(4)))

C439 Pt. 6 (ss. 230–246) modified by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2)**, 25
Pt. 6 (ss. 230-246) applied (1.12.1994) by S.I. 1994/2421, **art. 6(3)(b)**
Pt. 6 (ss. 230-246) applied (1.12.1994) by S.I. 1994/2421, **art. 10(2)(3)(6)**, Sch. 4 Pt. II
Pt. 6 (ss. 230-246) applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 8(4)(5)(8)(9)**
Pt. 6 (ss. 230-246) applied (with modifications) (1.12.1997) by 1986 c. 53, **Sch. 15A para. 1(1)(2)(a)** (as inserted by 1997 c. 32, s. 39(2), **Sch. 6**); S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**; and as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **2(3)**; and (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), Sch. 12 para. 3 (with ss. 2(2), 5(2), 14(4)))
Pt. 6 (ss. 230-246) amended (1.12.2001) by S.I. 2001/3538, **art. 2(1)**

C440 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))

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Office-holders

230 Holders of office to be qualified insolvency practitioners.

(1) [F144] . . . . . .

(2) Where an administrative receiver of a company is appointed, he must be a person who is so qualified.

(3) Where a company goes into liquidation, the liquidator must be a person who is so qualified.

(4) Where a provisional liquidator is appointed, he must be a person who is so qualified.

(5) Subsections (3) and (4) are without prejudice to any enactment under which the official receiver is to be, or may be, liquidator or provisional liquidator.

Textual Amendments

F144 S. 230(1) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 19, Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C441 S. 230 applied (with modifications) (1.12.1994) by S.I. 1994/2421, reg. 8(3)(9), **Sch. 4 Pt. II para. 26**

231 Appointment to office of two or more persons.

(1) This section applies if an appointment or nomination of any person to the office of [F145] . . . administrative receiver, liquidator or provisional liquidator—

(a) relates to more than one person, or

(b) has the effect that the office is to be held by more than one person.

(2) The appointment or nomination shall declare whether any act required or authorised under any enactment to be done by the [F145] . . . administrative receiver, liquidator or provisional liquidator is to be done by all or any one or more of the persons for the time being holding the office in question.

Textual Amendments

F145 Words in s. 231(1)(2) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 20, Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C442 S. 231 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 26**
S. 231 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C443 S. 231 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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232 Validity of office-holder's acts.

The acts of an individual as [F146]. . . administrative receiver, liquidator or provisional liquidator of a company are valid notwithstanding any defect in his appointment, nomination or qualifications.

Textual Amendments

F146 Word in s. 232 repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 21, Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C444 S. 232 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C445 S. 232 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

Management by administrators, liquidators, etc.

233 Supplies of gas, water, electricity, etc.

(1) This section applies in the case of a company where—

[[F147](a) the company enters administration,**]**

(b) an administrative receiver is appointed, or

[[F148](ba) a moratorium under section 1A is in force, or**]**

(c) a voluntary arrangement **[**[F149]approved under Part I**]**, has taken effect, or

(d) the company goes into liquidation, or

(e) a provisional liquidator is appointed;

and "the office-holder" means the administrator, the administrative receiver, **[**[F150]the nominee,**]** the supervisor of the voluntary arrangement, the liquidator or the provisional liquidator, as the case may be.

(2) If a request is made by or with the concurrence of the office-holder for the giving, after the effective date, of any of the supplies mentioned in the next subsection, the supplier—

(a) may make it a condition of the giving of the supply that the office-holder personally guarantees the payment of any charges in respect of the supply, but

(b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the effective date are paid.

(3) The supplies referred to in subsection (2) are—

[[F151](a) a supply of gas by a gas supplier within the meaning of Part I of the Gas Act 1986;**]**

[[F152](b) a supply of electricity by an electricity supplier within the meaning of Part I of the Electricity Act 1989;**]**

(c) a supply of water by **[**[F153]a water undertaker**]** or, in Scotland, **[**[F154]Scottish Water**]**,

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[[F155](d) a supply of communications services by a provider of a public electronic communications service.**]**

(4) "The effective date" for the purposes of this section is whichever is applicable of the following dates—

[[F156](a) the date on which the company entered administration**]**

(b) the date on which the administative receiver was appointed (or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed),

[[F157](ba) the date on which the moratorium came into force**]**

(c) the date on which the voluntary arrangement **[**[F158]took effect**]**,

(d) the date on which the company went into liquidation,

(e) the date on which the provisional liquidator was appointed.

(5) The following applies to expressions used in subsection (3)—

(a) [F159] . . . . . .

(b) [F160] . . . . . .

(c) [F161] . . . . . .

[[F162](d) "communications services" do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003).**]**

Textual Amendments

F147 S. 233(1)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 22(a) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F148 S. 233(1)(ba) inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 8(2)(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F149 Words in s. 233(1)(c) inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 8(2)(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F150 Words in s. 233(1) inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 8(2)(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F151 S. 233(3)(a) substituted (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 14(1)**; S.I. 1996/218, **art. 2**

F152 S. 233(3)(b) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 para. 47(2)(a)**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to arts. 3-20)

F153 Words substituted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 78(1)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

F154 Words in s. 233(3)(c) substituted (14.7.2004) by The Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/1822), art. 2, **Sch. Pt. 1 para. 14(a)**

F155 S. 233(3)(d) substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by Communications Act 2003 (c. 21), ss. 406, 408, 411, **Sch. 17 para. 82(a)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1) (with art. 3(2) (as amended (8.12.2003) by 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)

F156 S. 233(4)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 22(b) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F157 S. 233(4)(ba) inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 8(3)(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F158 Words in s. 233(4)(c) substituted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 8(3)(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F159 S. 233(5)(a) repealed (1.3.1996) by 1995 c. 45, ss. 16(1), 17(5), Sch. 4 para. 14(2), **Sch. 6**; S.I. 1996/218, **art. 2**

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F160 S. 233(5)(b) repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 6 para. 47(2)(b), **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to arts. 3-20)

F161 S. 233(5)(c) repealed (14.7.2004) by The Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/1822), art. 2, **Sch. Pt. 1 para. 14(b)**

F162 S. 233(5)(d) substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by Communications Act 2003 (c. 21), ss. 406, 408, 411, **Sch. 17 para. 82(b)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1) (with art. 3(2) (as amended (8.12.2003) by 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)

Modifications etc. (not altering text)

C446 S. 233 applied (1.12.1994) by S.I. 1994/2421, **art. 4(3)(a)**
S. 233 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C447 S. 233 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

C448 S. 233 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

C449 S. 233(1)(4) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3 (which reference to s. 233 in Sch. 3 of the modifying S.S.I. was omitted (1.10.2009) by virtue of S.S.I. 2009/310, reg. 4, **Sch. 2 para. 1(b)**)

C450 S. 233(1)(4) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

234 Getting in the company's property.

(1) This section applies in the case of a company where—

[[F163](a) the company enters administration,**]**

(b) an administrative receiver is appointed, or

(c) the company goes into liquidation, or

(d) a provisional liquidator is appointed;

and "the office-holder" means the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.

(2) Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the court may require that person forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder.

(3) Where the office-holder—

(a) seizes or disposes of any property which is not property of the company, and

(b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the next subsection has effect.

(4) In that case the office-holder—

(a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office-holder's own negligence, and

(b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

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Textual Amendments

F163 S. 234(1)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 23 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C451 S. 234 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(3), **Sch. 3 Pt. II para. 9**
S. 234 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 27**

C452 S. 234 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2 (as amended (1.10.2009) by S.S.I. 2009/310, reg. 3, **Sch. 1 para. 1(a)**)

C453 S. 234 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

C454 S. 234 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

235 Duty to co-operate with office-holder.

(1) This section applies as does section 234; and it also applies, in the case of a company in respect of which a winding-up order has been made by the court in England and Wales, as if references to the office-holder included the official receiver, whether or not he is the liquidator.

(2) Each of the persons mentioned in the next subsection shall—

(a) give to the office-holder such information concerning the company and its promotion, formation, business, dealings, affairs or property as the office-holder may at any time after the effective date reasonably require, and

(b) attend on the office-holder at such times as the latter may reasonably require.

(3) The persons referred to above are—

(a) those who are or have at any time been officers of the company,

(b) those who have taken part in the formation of the company at any time within one year before the effective date,

(c) those who are in the employment of the company, or have been in its employment (including employment under a contract for services) within that year, and are in the office-holder's opinion capable of giving information which he requires,

(d) those who are, or have within that year been, officers of, or in the employment (including employment under a contract for services) of, another company which is, or within that year was, an officer of the company in question, and

(e) in the case of a company being wound up by the court, any person who has acted as administrator, administrative receiver or liquidator of the company.

(4) For the purposes of subsections (2) and (3), "the effective date" is whichever is applicable of the following dates—

[[F164](a) the date on which the company entered administration,**]**

(b) the date on which the administrative receiver was appointed or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed,

(c) the date on which the provisional liquidator was appointed, and

(d) the date on which the company went into liquidation.

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(5) If a person without reasonable excuse fails to comply with any obligation imposed by this section, he is liable to a fine and, for continued contravention, to a daily default fine.

Textual Amendments

F164 S. 235(4)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 24 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C455 S. 235 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2 (as amended (1.10.2009) by S.S.I. 2009/310, reg. 3, **Sch. 1 para. 1(b)**)

C456 S. 235 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

C457 S. 235 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

236 Inquiry into company's dealings, etc.

(1) This section applies as does section 234; and it also applies in the case of a company in respect of which a winding-up order has been made by the court in England and Wales as if references to the office-holder included the official receiver, whether or not he is the liquidator.

(2) The court may, on the application of the office-holder, summon to appear before it—
- (a) any officer of the company,
- (b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or
- (c) any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company.

(3) The court may require any such person as is mentioned in subsection (2)(a) to (c) to submit an affidavit to the court containing an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (c) of the subsection.

(4) The following applies in a case where—
- (a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or
- (b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.

(5) The court may, for the purpose of bringing that person and anything in his possession before the court, 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.

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(6) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

Modifications etc. (not altering text)

C458 S. 236 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2 (as amended (1.10.2009) by S.S.I. 2009/310, reg. 3, **Sch. 1 para. 1(c)**)

C459 S. 236 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

C460 S. 236 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

237 Court's enforcement powers under s. 236.

(1) If it appears to the court, on consideration of any evidence obtained under section 236 or this section, that any person has in his possession any property of the company, the court may, on the application of the office-holder, order that person to deliver the whole or any part of the property to the office-holder at such time, in such manner and on such terms as the court thinks fit.

(2) If it appears to the court, on consideration of any evidence so obtained, that any person is indebted to the company, the court may, on the application of the office-holder, order that person to pay to the office holder,at such time and in such manner as the court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the court thinks fit.

the court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under section 236 or this section shall be examined in any part of the United Kingdom where he may for the time being be, or in a place outside the United Kingdom.

(4) Any person who appears or is brought before the court under section 236 or this section may be examined on oath, either orally or (except in Scotland) by interrogatories, concerning the company or the matters mentioned in section 236(2)(c).

Modifications etc. (not altering text)

C461 S. 237 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2 (as amended (1.10.2009) by S.S.I. 2009/310, reg. 3, **Sch. 1 para. 1(c)**)

C462 S. 237 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

C463 S. 237 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

Adjustment of prior transactions (administration and liquidation)

238 Transactions at an undervalue (England and Wales).

(1) This section applies in the case of a company where—

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[[F165](a) the company enters administration,**]**

(b) the company goes into liquidation;

and "the office-holder" means the administrator or the liquidator, as the case may be.

(2) Where the company has at a relevant time (defined in section 240) entered into a transaction with any person at an undervalue, the office-holder may apply to the court for an order under this section.

(3) Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.

(4) For the purposes of this section and section 241, a company enters into a transaction with a person at an undervalue if—

(a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or

(b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.

(5) The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied—

(a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and

(b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

Textual Amendments

F165 S. 238(1)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 25 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C464 S. 238 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 165(1)(a); S.I. 1991/878, art. 2, **Sch.** .

C465 S. 238 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 8(1)(a)**; S.I. 1991/878, art. 2, **Sch.** .
S. 238 restricted (31.3.1996) by 1995 c. 20, s. 110(1), **Sch. 4 para. 3(5)(a)**; S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, Sch. 2) (which amending Act was itself repealed (1.4.1996) by 1995 c. 40, ss. 6(1), 7(2), Sch. 5 (with Sch. 3 paras. 3, **16**))
S. 238 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 3(5)**
S. 238 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(1)(a)**
S. 238 restricted (24.3.2003) by 2002 c. 29, ss. 427(1)-(5), 458(1)(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 as amended by S.I. 2003/531)

C466 S. 238 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

C467 S. 238 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

C468 S. 238 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

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239 Preferences (England and Wales).

(1) This section applies as does section 238.

(2) Where the company has at a relevant time (defined in the next section) given a preference to any person, the office-holder may apply to the court for an order under this section.

(3) Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not given that preference.

(4) For the purposes of this section and section 241, a company gives a preference to a person if—

(a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, and

(b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.

(5) The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b).

(6) A company which has given a preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (5).

(7) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

Modifications etc. (not altering text)

C469 S. 239 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 165(1)(b); S.I. 1991/878, art. 2, **Sch.** .

C470 S. 239 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 8(1)(b)**; S.I. 1991/878, art. 2, **Sch.** .
S. 239 restricted (31.3.1996) by 1995 c. 20, s. 110(1), **Sch. 4 para. 3(5)(a)**; S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, Sch. 2) (which amending Act was itself repealed (1.4.1996) by 1995 c. 40, ss. 6(1), 7(2), Sch. 5 (with Sch. 3 paras. 3, **16**))
S. 239 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 3(5)**
S. 239 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(1)(b)**
S. 239 restricted (24.3.2003) by 2002 c. 29, ss. 427(1)-(5), 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))

C471 S. 239 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

C472 S. 239 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

C473 S. 239 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

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240 "Relevant time" under ss. 238, 239.

(1) Subject to the next subsection, the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given—

(a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company (otherwise than by reason only of being its employee), at a time in the period of 2 years ending with the onset of insolvency (which expression is defined below),

(b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of 6 months ending with the onset of insolvency,[F166] . . .

[[F167](c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, and

(d) in either case, at a time between the filing with the court of a copy of notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 and the making of an appointment under that paragraph.**]**

(2) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (1)(a) or (b), that time is not a relevant time for the purposes of section 238 or 239 unless the company—

(a) is at that time unable to pay its debts within the meaning of section 123 in Chapter VI of Part IV, or

(b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction or preference;

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.

(3) For the purposes of subsection (1), the onset of insolvency is—

[[F168](a) in a case where section 238 or 239 applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,

(b) in a case where section 238 or 239 applies by reason of an administrator of a company being appointed under paragraph 14 or 22 of Schedule B1 following filing with the court of a copy of a notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,

(c) in a case where section 238 or 239 applies by reason of an administrator of a company being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect,

(d) in a case where section 238 or 239 applies by reason of a company going into liquidation either following conversion of administration into winding up by virtue of Article 37 of the EC Regulation or at the time when the appointment of an administrator ceases to have effect, the date on which the company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed), and

(e) in a case where section 238 or 239 applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding up.**]**

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Textual Amendments

F166 Word in s. 240(1)(b) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 26(3), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F167 S. 240(1)(c)(d) substituted (15.9.2003) for s. 240(1)(c) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 26(2) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F168 S. 240(3)(a)-(e) substituted (15.9.2003) for s. 240(3)(a)(aa)(b) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 26(4) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C474 S. 240 applied (with modifications) (4.4.2006) by The Cross Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, Sch. 1 Art. 23 paras. 2, **3**

C475 S. 240 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

C476 S. 240 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

241 Orders under ss. 238, 239.

(1) Without prejudice to the generality of sections 238(3) and 239(3), an order under either of those sections with respect to a transaction or preference entered into or given by a company may (subject to the next subsection)—

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company,

(b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred,

(c) release or discharge (in whole or in part) any security given by the company,

(d) require any person to pay, in respect of benefits received by him from the company, such sums to the office-holder as the court may direct,

(e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be under such new or revived obligations to that person as the court thinks appropriate,

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference, and

(g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under section 238 or 239 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the company in question

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entered into the transaction or (as the case may be) the person to whom the preference was given; but such an order—

(a) shall not prejudice any interest in property which was acquired from a person other than the company and was acquired **[**[F169]in good faith and for value**]**, or prejudice any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction or preference **[**[F169]in good faith and for value**]**to pay a sum to the office-holder, except where that person was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the company.

[[F170](2A) Where a person has acquired an interest in property from a person other than the company in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

(a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or

(b) he was connected with, or was an associate of, either the company in question or the person with whom that company entered into the transaction or to whom that company gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of paragraph (a) or (as the case may be) paragraph (b) of subsection (2) that the interest was acquired or the benefit was received otherwise than in good faith.**]**

[[F171](3) For the purposes of subsection (2A)(a), the relevant surrounding circumstances are (as the case may require)—

(a) the fact that the company in question entered into the transaction at an undervalue; or

(b) the circumstances which amounted to the giving of the preference by the company in question;

and subsections (3A) to (3C) have effect to determine whether, for those purposes, a person has notice of the relevant proceedings.

[Where section 238 or 239 applies by reason of a company's entering administration, [F172](3A) a person has notice of the relevant proceedings if he has notice that—

(a) an administration application has been made,

(b) an administration order has been made,

(c) a copy of a notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 has been filed, or

(d) notice of the appointment of an administrator has been filed under paragraph 18 or 29 of that Schedule.**]**

[Where section 238 or 239 applies by reason of a company's going into liquidation [F173](3B) at the time when the appointment of an administrator of the company ceases to have effect, a person has notice of the relevant proceedings if he has notice that—

(a) an administration application has been made,

(b) an administration order has been made,

(c) a copy of a notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 has been filed,

(d) notice of the appointment of an administrator has been filed under paragraph 18 or 29 of that Schedule, or

(e) the company has gone into liquidation.**]**

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(3C) In a case where section 238 or 239 applies by reason of the company in question going into liquidation at any other time, a person has notice of the relevant proceedings if he has notice—

(a) where the company goes into liquidation on the making of a winding-up order, of the fact that the petition on which the winding-up order is made has been presented or of the fact that the company has gone into liquidation;

(b) in any other case, of the fact that the company has gone into liquidation.**]**

(4) The provisions of sections 238 to 241 apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the company had no power to enter into or give.

Textual Amendments

F169 Words in s. 241(2)(a)(b) substituted (26.7.1994) by 1994 c. 12, **ss. 1(1)**, 5, 6(2) (with ss. 5, 6(3))

F170 S. 241(2A) inserted (26.7.1994) by 1994 c. 12, **ss. 1(2)**, 5, 6(2) (with ss. 5, 6(3))

F171 S. 241(3)(3A)(3B)(3C) substituted (26.7.1994) for s. 241(3) by 1994 c. 12, **ss. 1(3)**, 5, 6(2) (with ss. 5, 6(3))

F172 S. 241(3A) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 27(2) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F173 S. 241(3B) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 27(3) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C477 S. 241 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

C478 S. 241 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

C479 S. 241 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

242 Gratuitous alienations (Scotland).

(1) Where this subsection applies and—

(a) the winding up of a company has commenced, an alienation by the company is challengeable by—

(i) any creditor who is a creditor by virtue of a debt incurred on or before the date of such commencement, or

(ii) the liquidator;

(b) **[**[F174]a company enters administration**]**, an alienation by the company is challengeable by the administrator.

(2) Subsection (1) applies where—

(a) by the alienation, whether before or after 1st April 1986 (the coming into force of section75 of the [M22]Bankruptcy (Scotland) Act 1985), any part of the company's property is transferred or any claim or right of the company is discharged or renounced, and

(b) the alienation takes place on a relevant day.

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(3) For the purposes of subsection (2)(b), the day on which an alienation takes place is the day on which it becomes completely effectual; and in that subsection "relevant day" means, if the alienation has the effect of favouring—

(a) a person who is an associate (within the meaning of the Bankruptcy (Scotland) Act 1985) of the company, a day not earlier than 5 years before the date on which—

(i) the winding up of the company commences, or

(ii) as the case may be, **[**[F175]the company enters administration**]**; or

(b) any other person, a day not earlier than 2 years before that date.

(4) On a challenge being brought under subsection (1), the court shall grant decree of reduction or for such restoration of property to the company's assets or other redress as may be appropriate; but the court shall not grant such a decree if the person seeking to uphold the alienation establishes—

(a) that immediately, or at any other time, after the alienation the company's assets were greater than its liabilities, or

(b) that the alienation was made for adequate consideration, or

(c) that the alienation—

(i) was a birthday, Christmas or other conventional gift, or

(ii) was a gift made, for a charitable purpose, to a person who is not an associate of the company,

which, having regard to all the circumstances, it was reasonable for the company to make:

Provided that this subsection is without prejudice to any right or interest acquired in good faith and for value from or through the transferee in the alienation.

(5) In subsection (4) above, "charitable purpose" means any charitable, benevolent or philanthropic purpose, whether or not it is charitable within the meaning of any rule of law.

(6) For the purposes of the foregoing provisions of this section, an alienation in implementation of a prior obligation is deemed to be one for which there was no consideration or no adequate consideration to the extent that the prior obligation was undertaken for no consideration or no adequate consideration.

(7) A liquidator and an administrator have the same right as a creditor has under any rule of law to challenge an alienation of a company made for no consideration or no adequate consideration.

(8) This section applies to Scotland only.

Textual Amendments

F174 Words in s. 242(1)(b) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 28(2) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F175 Words in s. 242(3)(a)(ii) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 28(3) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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Modifications etc. (not altering text)

C480 S. 242 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 165(2)(a); S.I. 1991/878, art. 2, **Sch.**

C481 S. 242 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 8(2)(a)**; S.I. 1991/878, art. 2, **Sch.**
S. 242 restricted (31.3.1996) by 1995 c. 20, s. 110, **Sch. 4**, para. 3(5)(a); S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, Sch. 2) (which amending Act was itself repealed (1.4.1996) by 1995 c. 40, ss. 6(1), 7(2), Sch. 5 (with Sch. 3 paras. 3, **6**))
S. 242 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 3(5)**
S. 242 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(2)(a)**
S. 242 restricted (24.3.2003) by 2002 c. 29, ss. 427(1)-(5), 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))

C482 S. 242 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**
S. 242 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

C483 S. 242 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

C484 S. 242 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

Marginal Citations

M22 1985 c. 66.

243 Unfair preferences (Scotland).

(1) Subject to subsection (2) below, subsection (4) below applies to a transaction entered into by a company, whether before or after 1st April 1986, which has the effect of creating a preference in favour of a creditor to the prejudice of the general body of creditors, being a preference created not earlier than 6 months before the commencement of the winding up of the company or **[**[F176]the company enters administration**]**.

(2) Subsection (4) below does not apply to any of the following transactions—
- (a) a transaction in the ordinary course of trade or business;
- (b) a payment in cash for a debt which when it was paid had become payable, unless the transaction was collusive with the purpose of prejudicing the general body of creditors;
- (c) a transaction whereby the parties to it undertake reciprocal obligations (whether the performance by the parties of their respective obligations occurs at the same time or at different times) unless the transaction was collusive as aforesaid;
- (d) the granting of a mandate by a company authorising an arrestee to pay over the arrested funds or part thereof to the arrester where—
  - (i) there has been a decree for payment or a warrant for summary diligence, and
  - (ii) the decree or warrant has been preceded by an arrestment on the dependence of the action or followed by an arrestment in execution.

(3) For the purposes of subsection (1) above, the day on which a preference was created is the day on which the preference became completely effectual.

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(4) A transaction to which this subsection applies is challengeable by—

(a) in the case of a winding up—

(i) any creditor who is a creditor by virtue of a debt incurred on or before the date of commencement of the winding up, or

(ii) the liquidator; and

(b) **[**[F177]where the company has entered administration**]**, the administrator.

(5) On a challenge being brought under subsection (4) above, the court, if satisfied that the transaction challenged is a transaction to which this section applies, shall grant decree of reduction or for such restoration of property to the company's assets or other redress as may be appropriate;

Provided that this subsection is without prejudice to any right or interest acquired in good faith and for value from or through the creditor in whose favour the preference was created.

(6) A liquidator and an administrator have the same right as a creditor has under any rule of law to challenge a preference created by a debtor.

(7) This section applies to Scotland only.

Textual Amendments

F176 Words in s. 243(1) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 29(2) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F177 Words in s. 243(4)(b) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 29(3) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C485 S. 243 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 165(2)(a); S.I. 1991/878, art. 2, **Sch.**

C486 S. 243 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 8(2)(a)**; S.I. 1991/878, art. 2, **Sch.**
S. 243 restricted (31.3.1996) by 1995 c. 20, s. 110, **Sch. 4 para. 3(5)(a)**; S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, Sch. 2) (which amending Act was itself repealed (1.4.1996) by 1995 c. 40, s. 6(1), 7(2), Sch. 5 (with Sch. 3 paras. 3, **16**))
S. 243 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 3(5)**
S. 243 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(2)(a)**
S. 243 restricted (24.3.2003) by 2002 c. 29, ss. 427(1)-(5), 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))

C487 S. 243 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**
S. 243 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

C488 S. 243 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

C489 S. 243 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

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244 Extortionate credit transactions.

(1) This section applies as does section 238, and where the company is, or has been, a party to a transaction for, or involving, the provision of credit to the company.

(2) The court may, on the application of the office-holder, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending with **[**[F178]the day on which the company entered administration or went into liquidation**]**.

(3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

(a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or

(b) it otherwise grossly contravened ordinary principles of fair dealing;

and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.

(4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit, that is to say—

(a) provision setting aside the whole or part of any obligation created by the transaction,

(b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held,

(c) provision requiring any person who is or was a party to the transaction to pay to the office-holder any sums paid to that person, by virtue of the transaction, by the company,

(d) provision requiring any person to surrender to the office-holder any property held by him as security for the purposes of the transaction,

(e) provision directing accounts to be taken between any persons.

(5) The powers conferred by this section are exercisable in relation to any transaction concurrently with any powers exercisable in relation to that transaction as a transaction at an undervalue or under section 242 (gratuitious alienations in Scotland).

Textual Amendments

F178 Words in s. 244(2) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 30 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C490 S. 244 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2 (as amended (1.10.2009) by S.S.I. 2009/310, reg. 3, **Sch. 1 para. 1(d)**)

C491 S. 244 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

C492 S. 244 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

C493 S. 244 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

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245 Avoidance of certain floating charges.

(1) This section applies as does section 238, but applies to Scotland as well as to England and Wales.

(2) Subject as follows, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—

(a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge,

(b) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company, and

(c) the amount of such interest (if any) as is payable on the amount falling within paragraph (a) or (b) in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.

(3) Subject to the next subsection, the time at which a floating charge is created by a company is a relevant time for the purposes of this section if the charge is created—

(a) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of 2 years ending with the onset of insolvency,

(b) in the case of a charge which is created in favour of any other person, at a time in the period of 12 months ending with the onset of insolvency,[F179] . . .

[[F180](c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, or

(d) in either case, at a time between the filing with the court of a copy of notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 and the making of an appointment under that paragraph.]

(4) Where a company creates a floating charge at a time mentioned in subsection (3)(b) and the person in favour of whom the charge is created is not connected with the company, that time is not a relevant time for the purposes of this section unless the company—

(a) is at that time unable to pay its debts within the meaning of section 123 in Chapter VI of Part IV, or

(b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction under which the charge is created.

(5) For the purposes of subsection (3), the onset of insolvency is—

[[F181](a) in a case where this section applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,

(b) in a case where this section applies by reason of an administrator of a company being appointed under paragraph 14 or 22 of Schedule B1 following filing with the court of a copy of notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,

(c) in a case where this section applies by reason of an administrator of a company being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect, and

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Changes to legislation: *Insolvency Act 1986 is up to date with all changes known to be in force on or before 18 July 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)*

(d) in a case where this section applies by reason of a company going into liquidation, the date of the commencement of the winding up.**]**

(6) For the purposes of subsection (2)(a) the value of any goods or services supplied by way of consideration for a floating charge is the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.

Textual Amendments

F179 Word in s. 245(3)(b) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 31(2), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F180 S. 245(3)(c)(d) substituted (15.9.2003) for s. 245(3)(c) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 31(3) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F181 S. 245(5)(a)-(d) substituted (15.9.2003) for s. 245(5)(a)(b) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 31(4) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C494 S. 245 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**
S. 245 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

C495 S. 245 excluded (26.12.2003) by The Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226), **reg. 10(5)**

C496 S. 245 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

C497 S. 245 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

C498 S. 245 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)**)

246 Unenforceability of liens on books, etc.

(1) This section applies in the case of a company where—

[[F182](a) the company enters administration,**]**

(b) the company goes into liquidation, or

(c) a provisional liquidator is appointed;

and "the office-holder" means the administrator, the liquidator or the provisional liquidator, as the case may be.

(2) Subject as follows, a lien or other right to retain possession of any of the books, papers or other records of the company is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the office-holder.

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(3) This does not apply to a lien on documents which give a title to property and are held as such.

Textual Amendments

F182 S. 246(1)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 32 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C499 S. 246 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

C500 S. 246 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

PART VII

INTERPRETATION FOR FIRST GROUP OF PARTS

Modifications etc. (not altering text)

C501 Pts. 1–7 (ss. 1–251) applied (with modifications) by S.I. 1989/1276, arts. 2, **3**
Pt. 7 (ss. 247-251) 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** (as amended (13.3.2018) by S.I. 2018/208, regs. 1(3), **3**)
Pt. 7 (ss. 247-251) applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 8(4)(5)(c)(8)(9)**
Pt. 7 (ss. 247-251) applied (with modifications) (1.12.1997) by 1986 c. 53, **Sch. 15A**, para. 1 (as inserted by 1997 c. 32, s. 39(2), **Sch. 6**; S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**; and as amended (13.3.2018) by S.I. 2018/208, regs. 1(3), **2(3)**)
Pt. 7 (ss. 247-251) power to apply or incorporate conferred (6.4.2001) by 2000 c. 12, **s. 14**; S.I. 2000/3316, **art. 2**

C502 Pt. 7 (ss. 247–251) extended with modifications by Building Societies Act 1986 (c. 53, SIF 16), 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(3)**)

C503 Pt. VII (ss. 247–251) modified by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2)**, 25
Pt. VII (ss. 247-251) modified (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 Pt. I para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**

C504 Pt. 7 (except s. 250) applied (1.12.1994) by S.I. 1994/2421, arts. 4(3)(b), **6(2)(3)(c)**
Pt. 7 (ss. 247-249, 251) applied (1.12.1994) by S.I. 1994/2421, **art. 6(3)(c)**
Pt. 7 (ss. 247-251) applied (1.12.1994) by S.I. 1994/2421, arts. 8, 10(2)(3)(c), **Sch. 4 Pt. II**

C505 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))

C506 First Group of Parts (Pts. 1-7) applied (with modifications) (15.12.2006) by The Banks (Former Authorised Institutions) (Insolvency) Order 2006 (S.I. 2006/3107), art. 3, **Sch.** (as amended (1.4.2013) by S.I. 2013/472, art. 1(1), **Sch. 2 para. 117**; and (13.3.2018) by S.I. 2018/208, regs. 1(3), **11**

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247 "Insolvency" and "go into liquidation".

(1) In this Group of Parts, except in so far as the context otherwise requires, "insolvency", in relation to a company, includes the approval of a voluntary arrangement under Part I, **[**[F183]or the appointment of an administrator or administrative receiver**]**.

(2) For the purposes of any provision in this Group of Parts, a company goes into liquidation if it passes a resolution for voluntary winding up or an order for its winding up is made by the court at a time when it has not already gone into liquidation by passing such a resolution.

[[F184](3) The reference to a resolution for voluntary winding up in subsection (2) includes a reference to a resolution which is deemed to occur by virtue of—

(a) paragraph 83(6)(b) of Schedule B1, or

(b) an order made following conversion of administration or a voluntary arrangement into winding up by virtue of Article 37 of the EC Regulation.**]**

Textual Amendments

F183 Words in s. 247(1) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 33(2) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F184 S. 247(3) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 33(3) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C507 S. 247 applied by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 22(3)**, 25

248 "Secured creditor", etc.

In this Group of Parts, except in so far as the context otherwiserequires—

(a) "secured creditor", in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and "unsecured creditor" is to be read accordingly; and

(b) "security" means—

(i) in relation to England and Wales, any mortgage, charge, lien or other security, and

(ii) in relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and any right of retention (other than a right of compensation or set off).

249 "Connected" with a company.

For the purposes of any provision in this Group of Parts, a person is connected with a company if—

(a) he is a director or shadow director of the company or an associate of such a director or shadow director, or

(b) he is an associate of the company,

and "associate" has the meaning given by section 435 in Part XVIII of this Act.

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Modifications etc. (not altering text)

C508 S. 249 applied by Social Security Pensions Act 1975 (c. 60, SIF 113:1), **s. 57C(4)** (as inserted by Social Security Act 1990 (c. 27, SIF 113:1), s. 14, **Sch. 4 Pt. I para. 1**)
S. 249 applied by Social Security Pensions Act 1975 (c. 60, SIF 113:1), **s. 57A(4)** (as inserted by Social Security Act 1990 (c. 27, SIF 113:1), s. 14, **Sch. 4 Pt. I para. 3**)
S. 249 applied (7.2.1994) by 1993 c. 48, **ss. 112(4)**, 119(4) (with s. 6(8)); S.I. 1994/86, **art. 2**
S. 249 applied (6.4.1997) by 1995 c. 26, **s. 123(1)** (with s. 121(5)); S.I. 1997/664, art. 2(3), **Sch. Pt. II** (with transitional adaptations, modifications and savings in arts. 3-14)
S. 249 applied (with modifications) (6.4.1997) by S.I. 1996/3127, **reg. 3(1)**
S. 249 applied (1.10.2000) by S.I. 2000/1403, **art. 1(5)**
S. 249 applied (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 38(10)**, **51(3)(a)**, **53(6)(a)**, 322(1) (with s. 313); S.I. 2005/275, **art. 2(7)**, Sch. Pt. 7 (subject to art. 2(12))

C509 S. 249: power to apply (with modifications) conferred (6.4.2005) Pensions Act 2004 (c. 35), **ss. 57**, 322(1) (with s. 313); S.I. 2005/275, **art. 2(7)**, Sch. Pt. 7 (subject to art. 2(12))

C510 S. 249 modified (30.12.2005) by The Occupational Pension Schemes (Investment) Regulations 2005 (S.I. 2005/3378), **reg. 10(1)**

C511 S. 249 modified (22.2.2008) by The Northern Rock plc Transfer Order 2008 (S.I. 2008/432), art. 17(1), **Sch. para. 3(b)**

C512 S. 249 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(b)**

C513 S. 249 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(b)**

C514 S. 249 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. para. 3(b)**

250 "Member" of a company.

For the purposes of any provision in this Group of Parts, a person who is not a member of a company but to whom shares in the company have been transferred, or transmitted by operation of law, is to be regarded as a member of the company, and references to a member or members are to be read accordingly.

251 Expressions used generally.

In this Group of Parts, except in so far as the context otherwise requires—

"administative receiver" means—

(a) an administrative receiver as defined by section 29(2) in Chapter I of Part III, or

(b) a receiver appointed under section 51 in Chapter II of that Part in a case where the whole (or substantially the whole) of the company's property is attached by the floating charge;

"business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain;

"chattel leasing agreement" means an agreement for the bailment or, in Scotland, the hiring of goods which is capable of subsisting for more than 3 months;

"contributory" has the meaning given by section 79;

"director" includes any person occupying the position of director, by whatever name called;

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"floating charge" means a charge which, as created, was a floating charge an includes a floating charge within section 462 of the Companies Act (Scottish floating charges);

"office copy", in relation to Scotland, means a copy certified by the clerk of court;

"the official rate", in relation to interest, means the rate payable under section 189(4);

"prescribed" means prescribed by the rules;

"receiver", in the expression "receiver or manager", does not include a receiver appointed under section 51 in Chapter II of Part III;

"retention of title agreement" means an agreement for the sale of goods to a company, being an agreement—

(a) which does not constitute a charge on the goods, but

(b) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company as respects the goods or any property representing the goods;

"the rules" means rules under section 411 in Part XV; and

"shadow director", in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act (but so that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity);

[[F185]Any expression (other than one defined above in this section)—

(a) for whose interpretation provision is made by Part 26 of the Companies Act, or

(b) that is defined for the purposes of the Companies Acts,

has the same meaning in this Group of Parts.**]**

Textual Amendments

F185 Words in s. 251 substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 43** (with art. 12)

Modifications etc. (not altering text)

C515 S. 251 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4, Sch. 2, **Sch. 3**

THE SECOND GROUP OF PARTS

INSOLVENCY OF INDIVIDUALS; BANKRUPTCY

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 24/02/2009

[F186 PART 7A

DEBT RELIEF ORDERS

Textual Amendments

F186 Pt. 7A inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 108(1), 148(5), **Sch. 17**; S.I. 2009/382, **art. 2**

Preliminary

251A Debt relief orders

(1) An individual who is unable to pay his debts may apply for an order under this Part ("a debt relief order") to be made in respect of his qualifying debts.

(2) In this Part "qualifying debt" means (subject to subsection (3)) a debt which—
- (a) is for a liquidated sum payable either immediately or at some certain future time; and
- (b) is not an excluded debt.

(3) A debt is not a qualifying debt to the extent that it is secured.

(4) In this Part "excluded debt" means a debt of any description prescribed for the purposes of this subsection.

Applications for a debt relief order

251B Making of application

(1) An application for a debt relief order must be made to the official receiver through an approved intermediary.

(2) The application must include—
- (a) a list of the debts to which the debtor is subject at the date of the application, specifying the amount of each debt (including any interest, penalty or other sum that has become payable in relation to that debt on or before that date) and the creditor to whom it is owed;
- (b) details of any security held in respect of any of those debts; and
- (c) such other information about the debtor's affairs (including his creditors, debts and liabilities and his income and assets) as may be prescribed.

(3) The rules may make further provision as to—
- (a) the form of an application for a debt relief order;
- (b) the manner in which an application is to be made; and
- (c) information and documents to be supplied in support of an application.

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(4) For the purposes of this Part an application is not to be regarded as having been made until—
  (a) the application has been submitted to the official receiver; and
  (b) any fee required in connection with the application by an order under section 415 has been paid to such person as the order may specify.

251C Duty of official receiver to consider and determine application

(1) This section applies where an application for a debt relief order is made.

(2) The official receiver may stay consideration of the application until he has received answers to any queries raised with the debtor in relation to anything connected with the application.

(3) The official receiver must determine the application by—
  (a) deciding whether to refuse the application;
  (b) if he does not refuse it, by making a debt relief order in relation to the specified debts he is satisfied were qualifying debts of the debtor at the application date;

but he may only refuse the application if he is authorised or required to do so by any of the following provisions of this section.

(4) The official receiver may refuse the application if he considers that—
  (a) the application does not meet all the requirements imposed by or under section 251B;
  (b) any queries raised with the debtor have not been answered to the satisfaction of the official receiver within such time as he may specify when they are raised;
  (c) the debtor has made any false representation or omission in making the application or on supplying any information or documents in support of it.

(5) The official receiver must refuse the application if he is not satisfied that—
  (a) the debtor is an individual who is unable to pay his debts;
  (b) at least one of the specified debts was a qualifying debt of the debtor at the application date;
  (c) each of the conditions set out in Part 1 of Schedule 4ZA is met.

(6) The official receiver may refuse the application if he is not satisfied that each condition specified in Part 2 of Schedule 4ZA is met.

(7) If the official receiver refuses an application he must give reasons for his refusal to the debtor in the prescribed manner.

(8) In this section "specified debt" means a debt specified in the application.

251D Presumptions applicable to the determination of an application

(1) The following presumptions are to apply to the determination of an application for a debt relief order.

(2) The official receiver must presume that the debtor is an individual who is unable to pay his debts at the determination date if—

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(a) that appears to the official receiver to be the case at the application date from the information supplied in the application and he has no reason to believe that the information supplied is incomplete or inaccurate; and

(b) he has no reason to believe that, by virtue of a change in the debtor's financial circumstances since the application date, the debtor may be able to pay his debts.

(3) The official receiver must presume that a specified debt (of the amount specified in the application and owed to the creditor so specified) is a qualifying debt at the application date if—

(a) that appears to him to be the case from the information supplied in the application; and

(b) he has no reason to believe that the information supplied is incomplete or inaccurate.

(4) The official receiver must presume that the condition specified in paragraph 1 of Schedule 4ZA is met if—

(a) that appears to him to be the case from the information supplied in the application;

(b) any prescribed verification checks relating to the condition have been made; and

(c) he has no reason to believe that the information supplied is incomplete or inaccurate.

(5) The official receiver must presume that any other condition specified in Part 1 or 2 of Schedule 4ZA is met if—

(a) that appears to him to have been the case as at the application date from the information supplied in the application and he has no reason to believe that the information supplied is incomplete or inaccurate;

(b) any prescribed verification checks relating to the condition have been made; and

(c) he has no reason to believe that, by virtue of a change in circumstances since the application date, the condition may no longer be met.

(6) References in this section to information supplied in the application include information supplied to the official receiver in support of the application.

(7) In this section "specified debt" means a debt specified in the application.

Making and effect of debt relief order

251E Making of debt relief orders

(1) This section applies where the official receiver makes a debt relief order on determining an application under section 251C.

(2) The order must be made in the prescribed form.

(3) The order must include a list of the debts which the official receiver is satisfied were qualifying debts of the debtor at the application date, specifying the amount of the debt at that time and the creditor to whom it was then owed.

(4) The official receiver must—

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(a) give a copy of the order to the debtor; and
(b) make an entry for the order in the register containing the prescribed information about the order or the debtor.

(5) The rules may make provision as to other steps to be taken by the official receiver or the debtor on the making of the order.

(6) Those steps may include in particular notifying each creditor to whom a qualifying debt specified in the order is owed of—
(a) the making of the order and its effect,
(b) the grounds on which a creditor may object under section 251K, and
(c) any other prescribed information.

(7) In this Part the date on which an entry relating to the making of a debt relief order is first made in the register is referred to as "the effective date".

251F Effect of debt relief order on other debt management arrangements

(1) This section applies if—
(a) a debt relief order is made, and
(b) immediately before the order is made, other debt management arrangements are in force in respect of the debtor.

(2) The other debt management arrangements cease to be in force when the debt relief order is made.

(3) In this section "other debt management arrangements" means—
(a) an administration order under Part 6 of the County Courts Act 1984;
(b) an enforcement restriction order under Part 6A of that Act;
(c) a debt repayment plan arranged in accordance with a debt management scheme that is approved under Chapter 4 of Part 5 of the Tribunals, Courts and Enforcement Act 2007.

251G Moratorium from qualifying debts

(1) A moratorium commences on the effective date for a debt relief order in relation to each qualifying debt specified in the order ("a specified qualifying debt").

(2) During the moratorium, the creditor to whom a specified qualifying debt is owed—
(a) has no remedy in respect of the debt, and
(b) may not—
(i) commence a creditor's petition in respect of the debt, or
(ii) otherwise commence any action or other legal proceedings against the debtor for the debt,
except with the permission of the court and on such terms as the court may impose.

(3) If on the effective date a creditor to whom a specified qualifying debt is owed has any such petition, action or other proceeding as mentioned in subsection (2)(b) pending in any court, the court may—
(a) stay the proceedings on the petition, action or other proceedings (as the case may be), or

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(b) allow them to continue on such terms as the court thinks fit.

(4) In subsection (2)(a) and (b) references to the debt include a reference to any interest, penalty or other sum that becomes payable in relation to that debt after the application date.

(5) Nothing in this section affects the right of a secured creditor of the debtor to enforce his security.

251H The moratorium period

(1) The moratorium relating to the qualifying debts specified in a debt relief order continues for the period of one year beginning with the effective date for the order, unless—
(a) the moratorium terminates early; or
(b) the moratorium period is extended by the official receiver under this section or by the court under section 251M.

(2) The official receiver may only extend the moratorium period for the purpose of—
(a) carrying out or completing an investigation under section 251K;
(b) taking any action he considers necessary (whether as a result of an investigation or otherwise) in relation to the order; or
(c) in a case where he has decided to revoke the order, providing the debtor with the opportunity to make arrangements for making payments towards his debts.

(3) The official receiver may not extend the moratorium period for the purpose mentioned in subsection (2)(a) without the permission of the court.

(4) The official receiver may not extend the moratorium period beyond the end of the period of three months beginning after the end of the initial period of one year mentioned in subsection (1).

(5) The moratorium period may be extended more than once, but any extension (whether by the official receiver or by the court) must be made before the moratorium would otherwise end.

(6) References in this Part to a moratorium terminating early are to its terminating before the end of what would otherwise be the moratorium period, whether on the revocation of the order or by virtue of any other enactment.

251I Discharge from qualifying debts

(1) Subject as follows, at the end of the moratorium applicable to a debt relief order the debtor is discharged from all the qualifying debts specified in the order (including all interest, penalties and other sums which may have become payable in relation to those debts since the application date).

(2) Subsection (1) does not apply if the moratorium terminates early.

(3) Subsection (1) does not apply in relation to any qualifying debt which the debtor incurred in respect of any fraud or fraudulent breach of trust to which the debtor was a party.

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(4) The discharge of the debtor under subsection (1) does not release any other person from—
  (a) any liability (whether as partner or co-trustee of the debtor or otherwise) from which the debtor is released by the discharge; or
  (b) any liability as surety for the debtor or as a person in the nature of such a surety.

(5) If the order is revoked by the court under section 251M after the end of the moratorium period, the qualifying debts specified in the order shall (so far as practicable) be treated as though subsection (1) had never applied to them.

Duties of debtor

251J Providing assistance to official receiver etc

(1) The duties in this section apply to a debtor at any time after the making of an application by him for a debt relief order.

(2) The debtor must—
  (a) give to the official receiver such information as to his affairs,
  (b) attend on the official receiver at such times, and
  (c) do all such other things,

  as the official receiver may reasonably require for the purpose of carrying out his functions in relation to the application or, as the case may be, the debt relief order made as a result of the application.

(3) The debtor must notify the official receiver as soon as reasonably practicable if he becomes aware of—
  (a) any error in, or omission from, the information supplied to the official receiver in, or in support of, the application;
  (b) any change in his circumstances between the application date and the determination date that would affect (or would have affected) the determination of the application.

(4) The duties under subsections (2) and (3) apply after (as well as before) the determination of the application, for as long as the official receiver is able to exercise functions of the kind mentioned in subsection (2).

(5) If a debt relief order is made as a result of the application, the debtor must notify the official receiver as soon as reasonably practicable if—
  (a) there is an increase in his income during the moratorium period applicable to the order;
  (b) he acquires any property or any property is devolved upon him during that period;
  (c) he becomes aware of any error in or omission from any information supplied by him to the official receiver after the determination date.

(6) A notification under subsection (3) or (5) must give the prescribed particulars (if any) of the matter being notified.

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Objections, investigations and revocation

251K Objections and investigations

(1) Any person specified in a debt relief order as a creditor to whom a specified qualifying debt is owed may object to—
- (a) the making of the order;
- (b) the inclusion of the debt in the list of the debtor's qualifying debts; or
- (c) the details of the debt specified in the order.

(2) An objection under subsection (1) must be—
- (a) made during the moratorium period relating to the order and within the prescribed period for objections;
- (b) made to the official receiver in the prescribed manner;
- (c) based on a prescribed ground;
- (d) supported by any information and documents as may be prescribed;

and the prescribed period mentioned in paragraph (a) must not be less than 28 days after the creditor in question has been notified of the making of the order.

(3) The official receiver must consider every objection made to him under this section.

(4) The official receiver may—
- (a) as part of his consideration of an objection, or
- (b) on his own initiative,

carry out an investigation of any matter that appears to the official receiver to be relevant to the making of any decision mentioned in subsection (5) in relation to a debt relief order or the debtor.

(5) The decisions to which an investigation may be directed are—
- (a) whether the order should be revoked or amended under section 251L;
- (b) whether an application should be made to the court under section 251M; or
- (c) whether any other steps should be taken in relation to the debtor.

(6) The power to carry out an investigation under this section is exercisable after (as well as during) the moratorium relating to the order.

(7) The official receiver may require any person to give him such information and assistance as he may reasonably require in connection with an investigation under this section.

(8) Subject to anything prescribed in the rules as to the procedure to be followed in carrying out an investigation under this section, an investigation may be carried out by the official receiver in such manner as he thinks fit.

251L Power of official receiver to revoke or amend a debt relief order

(1) The official receiver may revoke or amend a debt relief order during the applicable moratorium period in the circumstances provided for by this section.

(2) The official receiver may revoke the order on the ground that—
- (a) any information supplied to him by the debtor—
  - (i) in, or in support of, the application, or

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(ii) after the determination date,

was incomplete, incorrect or otherwise misleading;

(b) the debtor has failed to comply with a duty under section 251J;

(c) a bankruptcy order has been made in relation to the debtor; or

(d) the debtor has made a proposal under Part 8 (or has notified the official receiver of his intention to do so).

(3) The official receiver may revoke the order on the ground that he should not have been satisfied—

(a) that the debts specified in the order were qualifying debts of the debtor as at the application date;

(b) that the conditions specified in Part 1 of Schedule 4ZA were met;

(c) that the conditions specified in Part 2 of that Schedule were met or that any failure to meet such a condition did not prevent his making the order.

(4) The official receiver may revoke the order on the ground that either or both of the conditions in paragraphs 7 and 8 of Schedule 4ZA (monthly surplus income and property) are not met at any time after the order was made.

For this purpose those paragraphs are to be read as if references to the determination date were references to the time in question.

(5) Where the official receiver decides to revoke the order, he may revoke it either—

(a) with immediate effect, or

(b) with effect from such date (not more than three months after the date of the decision) as he may specify.

(6) In considering when the revocation should take effect the official receiver must consider (in the light of the grounds on which the decision to revoke was made and all the other circumstances of the case) whether the debtor ought to be given the opportunity to make arrangements for making payments towards his debts.

(7) If the order has been revoked with effect from a specified date the official receiver may, if he thinks it appropriate to do so at any time before that date, revoke the order with immediate effect.

(8) The official receiver may amend a debt relief order for the purpose of correcting an error in or omission from anything specified in the order.

(9) But subsection (8) does not permit the official receiver to add any debts that were not specified in the application for the debt relief order to the list of qualifying debts.

(10) The rules may make further provision as to the procedure to be followed by the official receiver in the exercise of his powers under this section.

Role of the court

251M Powers of court in relation to debt relief orders

(1) Any person may make an application to the court if he is dissatisfied by any act, omission or decision of the official receiver in connection with a debt relief order or an application for such an order.

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(2) The official receiver may make an application to the court for directions or an order in relation to any matter arising in connection with a debt relief order or an application for such an order.

(3) The matters referred to in subsection (2) include, among other things, matters relating to the debtor's compliance with any duty arising under section 251J.

(4) An application under this section may, subject to anything in the rules, be made at any time.

(5) The court may extend the moratorium period applicable to a debt relief order for the purposes of determining an application under this section.

(6) On an application under this section the court may dismiss the application or do one or more of the following—
- (a) quash the whole or part of any act or decision of the official receiver;
- (b) give the official receiver directions (including a direction that he reconsider any matter in relation to which his act or decision has been quashed under paragraph (a));
- (c) make an order for the enforcement of any obligation on the debtor arising by virtue of a duty under section 251J;
- (d) extend the moratorium period applicable to the debt relief order;
- (e) make an order revoking or amending the debt relief order;
- (f) make an order under section 251N; or
- (g) make such other order as the court thinks fit.

(7) An order under subsection (6)(e) for the revocation of a debt relief order—
- (a) may be made during the moratorium period applicable to the debt relief order or at any time after that period has ended;
- (b) may be made on the court's own motion if the court has made a bankruptcy order in relation to the debtor during that period;
- (c) may provide for the revocation of the order to take effect on such terms and at such a time as the court may specify.

(8) An order under subsection (6)(e) for the amendment of a debt relief order may not add any debts that were not specified in the application for the debt relief order to the list of qualifying debts.

251N Inquiry into debtor's dealings and property

(1) An order under this section may be made by the court on the application of the official receiver.

(2) An order under this section is an order summoning any of the following persons to appear before the court—
- (a) the debtor;
- (b) the debtor's spouse or former spouse or the debtor's civil partner or former civil partner;
- (c) any person appearing to the court to be able to give information or assistance concerning the debtor or his dealings, affairs and property.

(3) The court may require a person falling within subsection (2)(c)—

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(a) to provide a written account of his dealings with the debtor; or
(b) to produce any documents in his possession or under his control relating to the debtor or to the debtor's dealings, affairs or property.

(4) Subsection (5) applies where a person fails without reasonable excuse to appear before the court when he is summoned to do so by an order under this section.

(5) 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 records or other documents in that person's possession.

(6) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other time as the court may order.

Offences

251O False representations and omissions

(1) A person who makes an application for a debt relief order is guilty of an offence if he knowingly or recklessly makes any false representation or omission in making the application or providing any information or documents to the official receiver in support of the application.

(2) A person who makes an application for a debt relief order is guilty of an offence if—
(a) he intentionally fails to comply with a duty under section 251J(3) in connection with the application; or
(b) he knowingly or recklessly makes any false representation or omission in providing any information to the official receiver in connection with such a duty or otherwise in connection with the application.

(3) It is immaterial for the purposes of an offence under subsection (1) or (2) whether or not a debt relief order is made as a result of the application.

(4) A person in respect of whom a debt relief order is made is guilty of an offence if—
(a) he intentionally fails to comply with a duty under section 251J(5) in connection with the order; or
(b) he knowingly or recklessly makes any false representation or omission in providing information to the official receiver in connection with such a duty or otherwise in connection with the performance by the official receiver of functions in relation to the order.

(5) It is immaterial for the purposes of an offence under subsection (4)—
(a) whether the offence is committed during or after the moratorium period; and
(b) whether or not the order is revoked after the conduct constituting the offence takes place.

251P Concealment or falsification of documents

(1) A person in respect of whom a debt relief order is made is guilty of an offence if, during the moratorium period in relation to that order—

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(a) he does not provide, at the request of the official receiver, all his books, papers and other records of which he has possession or control and which relate to his affairs;

(b) he prevents the production to the official receiver of any books, papers or other records relating to his affairs;

(c) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating his affairs;

(d) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his affairs; or

(e) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his affairs.

(2) A person in respect of whom a debt relief order is made is guilty of an offence if—

(a) he did anything falling within paragraphs (c) to (e) of subsection (1) during the period of 12 months ending with the application date; or

(b) he did anything falling within paragraphs (b) to (e) of subsection (1) after that date but before the effective date.

(3) A person is not guilty of an offence under this section if he proves that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(4) In its application to a trading record subsection (2)(a) has effect as if the reference to 12 months were a reference to two years.

(5) In subsection (4) "trading record" means a book, document or record which shows or explains the transactions or financial position of a person's business, including—

(a) a periodic record of cash paid and received,

(b) a statement of periodic stock-taking, and

(c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.

(6) It is immaterial for the purposes of an offence under this section whether or not the debt relief order in question is revoked after the conduct constituting the offence takes place (but no offence is committed under this section by virtue of conduct occurring after the order is revoked).

251Q Fraudulent disposal of property

(1) A person in respect of whom a debt relief order is made is guilty of an offence if he made or caused to be made any gift or transfer of his property during the period between—

(a) the start of the period of two years ending with the application date; and

(b) the end of the moratorium period.

(2) The reference in subsection (1) to making a transfer of any property includes causing or conniving at the levying of any execution against that property.

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(3) A person is not guilty of an offence under this section if he proves that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(4) For the purposes of subsection (3) a person is to be taken to have proved that he had no such intent if—
  (a) sufficient evidence is adduced to raise an issue as to whether he had such intent; and
  (b) the contrary is not proved beyond reasonable doubt.

(5) It is immaterial for the purposes of this section whether or not the debt relief order in question is revoked after the conduct constituting an offence takes place (but no offence is committed by virtue of conduct occurring after the order is revoked).

251R Fraudulent dealing with property obtained on credit

(1) A person in respect of whom a debt relief order is made is guilty of an offence if during the relevant period he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for it.

(2) Any other person is guilty of an offence if during the relevant period he acquired or received property from a person in respect of whom a debt relief order was made (the "debtor") knowing or believing—
  (a) that the debtor owed money in respect of the property, and
  (b) that the debtor did not intend, or was unlikely to be able, to pay the money he so owed.

(3) In subsections (1) and (2) "relevant period" means the period between—
  (a) the start of the period of two years ending with the application date; and
  (b) the determination date.

(4) A person is not guilty of an offence under subsection (1) or (2) if the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the debtor at the time of the disposal, acquisition or receipt.

(5) In determining for the purposes of subsection (4) whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the debtor, regard may be had, in particular, to the price paid for the property.

(6) A person is not guilty of an offence under subsection (1) if he proves that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(7) In this section references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

(8) It is immaterial for the purposes of this section whether or not the debt relief order in question is revoked after the conduct constituting an offence takes place (but no offence is committed by virtue of conduct occurring after the order is revoked).

251S Obtaining credit or engaging in business

(1) A person in respect of whom a debt relief order is made is guilty of an offence if, during the relevant period—

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(a) he obtains credit (either alone or jointly with any other person) without giving the person from whom he obtains the credit the relevant information about his status; or

(b) he engages directly or indirectly in any business under a name other than that in which the order was made without disclosing to all persons with whom he enters into any business transaction the name in which the order was made.

(2) For the purposes of subsection (1)(a) the relevant information about a person's status is the information that—

(a) a moratorium is in force in relation to the debt relief order,

(b) a debt relief restrictions order is in force in respect of him, or

(c) both a moratorium and a debt relief restrictions order is in force,

as the case may be.

(3) In subsection (1) "relevant period" means—

(a) the moratorium period relating to the debt relief order, or

(b) the period for which a debt relief restrictions order is in force in respect of the person in respect of whom the debt relief order is made,

as the case may be.

(4) Subsection (1)(a) does not apply if the amount of the credit is less than the prescribed amount (if any).

(5) The reference in subsection (1)(a) to a person obtaining credit includes the following cases—

(a) where goods are bailed to him under a hire-purchase agreement, or agreed to be sold to him under a conditional sale agreement;

(b) where he is paid in advance (in money or otherwise) for the supply of goods or services.

251T Offences: supplementary

(1) Proceedings for an offence under this Part may only be instituted by the Secretary of State or by or with the consent of the Director of Public Prosecutions.

(2) It is not a defence in proceedings for an offence under this Part that anything relied on, in whole or in part, as constituting the offence was done outside England and Wales.

(3) A person guilty of an offence under this Part is liable to imprisonment or a fine, or both (but see section 430).

Supplementary

251U Approved intermediaries

(1) In this Part "approved intermediary" means an individual for the time being approved by a competent authority to act as an intermediary between a person wishing to make an application for a debt relief order and the official receiver.

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(2) In this section "competent authority" means a person or body for the time being designated by the Secretary of State for the purposes of granting approvals under this section.

(3) Designation as a competent authority may be limited so as to permit the authority only to approve persons of a particular description.

(4) The Secretary of State may by regulations make provision as to—
- (a) the procedure for designating persons or bodies as competent authorities;
- (b) descriptions of individuals who are ineligible to be approved under this section;
- (c) the procedure for granting approvals under this section;
- (d) the withdrawal of designations or approvals under this section;

and provision made under paragraph (a) or (c) may include provision requiring the payment of fees.

(5) The rules may make provision about the activities to be carried out by an approved intermediary in connection with an application for a debt relief order, which may in particular include—
- (a) assisting the debtor in making the application;
- (b) checking that the application has been properly completed;
- (c) sending the application to the official receiver.

(6) The rules may also make provision about other activities to be carried out by approved intermediaries.

(7) An approved intermediary may not charge a debtor any fee in connection with an application for a debt relief order.

(8) An approved intermediary is not liable to any person in damages for anything done or omitted to be done when acting (or purporting to act) as an approved intermediary in connection with a particular application by a debtor for a debt relief order.

(9) Subsection (8) does not apply if the act or omission was in bad faith.

(10) Regulations under subsection (4) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

251V Debt relief restrictions orders and undertakings

Schedule 4ZB (which makes provision about debt relief restrictions orders and debt relief restrictions undertakings) has effect.

251W Register of debt relief orders etc

The Secretary of State must maintain a register of matters relating to—
- (a) debt relief orders;
- (b) debt relief restrictions orders; and
- (c) debt relief restrictions undertakings.

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251X Interpretation

(1) In this Part—

"the application date", in relation to a debt relief order or an application for a debt relief order, means the date on which the application for the order is made to the official receiver;

"approved intermediary" has the meaning given in section 251U(1);

"debt relief order" means an order made by the official receiver under this Part;

"debtor" means—

(a) in relation to an application for a debt relief order, the applicant; and

(b) in relation to a debt relief order, the person in relation to whom the order is made;

"debt relief restrictions order" and "debt relief restrictions undertaking" means an order made, or an undertaking accepted, under Schedule 4ZB;

"the determination date", in relation to a debt relief order or an application for a debt relief order, means the date on which the application for the order is determined by the official receiver;

"the effective date" has the meaning given in section 251E(7);

"excluded debt" is to be construed in accordance with section 251A;

"moratorium" and "moratorium period" are to be construed in accordance with sections 251G and 251H;

"qualifying debt", in relation to a debtor, has the meaning given in section 251A(2);

"the register" means the register maintained under section 251W;

"specified qualifying debt" has the meaning given in section 251G(1).

(2) In this Part references to a creditor specified in a debt relief order as the person to whom a qualifying debt is owed by the debtor include a reference to any person to whom the right to claim the whole or any part of the debt has passed, by assignment or operation of law, after the date of the application for the order.**]**

PART VIII

INDIVIDUAL VOLUNTARY ARRANGEMENTS

Modifications etc. (not altering text)

C516 Pt. VIII (ss. 252-263) applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 5**

C517 Pt. VIII (ss. 252-263) restricted (6.4.1996 for the purpose only of authorising the making of regulations) by 1995 c. 26, **ss. 91(3)**, 180(1) (with s. 121(5)); S.I. 1996/778, **art. 2(5)(a)**. Sch. Pt. V

C518 Pt. VIII (ss. 252–263) applied with modifications by S.I. 1986/2142, **arts. 1(2)**, 11, 13(3), 15

C519 Second Group of Parts (Pts. 8-11) modified (31.12.1996) by 1991 c. 57, **Sch. 10** (as substituted by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **art. 3**)
Second Group of Parts (Pts. 8-11) modified (11.11.1999 for specified purposes and 6.4.2002 otherwise) by 1999 c. 30, **s. 12(1)**; S.I. 2002/153, **art. 2(b)**

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Moratorium for insolvent debtor

252 Interim order of court.

(1) In the circumstances specified below, the court may in the case of a debtor (being an individual) make an interim order under this section.

(2) An interim order has the effect that, during the period for which it is in force—

(a) no bankruptcy petition relating to the debtor may be presented or proceeded with,

[[F187](aa) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the court**]** and

(b) no other proceedings, and no execution or other legal process, may be commenced or continued **[**[F188]and no distress may be levied**]** against the debtor or his property except with leave of the court.

Textual Amendments

F187 S. 252(2)(aa) inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 2(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F188 Words in s. 252(2)(b) inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 2(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

253 Application for interim order.

(1) Application to the court for an interim order may be made where the debtor intends to make a proposal **[**[F189]under this Part, that is, a proposal**]**to his creditors for a composition in satisfaction of his debts or a scheme of arrangement of his affairs (from here on referred to, in either case, as a "voluntary arrangement").

(2) The proposal must provide for some person ("the nominee") to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation **[**[F190]and the nominee must be a person who is qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement**]**.

(3) Subject as follows, the application may be made—

(a) if the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate, or the official receiver, and

(b) in any other case, by the debtor.

(4) An application shall not be made under subsection (3)(a) unless the debtor has given notice of **[**[F191]the proposal**]** to the official receiver and, if there is one, the trustee of his estate.

(5) An application shall not be made while a bankruptcy petition presented by the debtor is pending, if the court has, under section 273 below, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

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Textual Amendments

F189 Words in s. 253(1) inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 3(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F190 Words in s. 253(2) inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 3(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F191 Words in s. 253(4) substituted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 3(c)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C520 S. 253 amended (1.12.2001) by 2000 c. 8, **s. 357(1)**; S.I. 2001/3538, **art. 2(1)**

254 Effect of application.

(1) At any time when an application under section 253 for an interim order is pending

[[F192](a) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the court, and

(b)**]** , the court may **[**[F193]forbid the levying of any distress on the debtor's property or its subsequent sale, or both, and**]** stay any action, execution or other legal process against the property or person of the debtor.

(2) Any court in which proceedings are pending against an individual may, on proof that an application under that section has been made in respect of that individual, either stay the proceedings or allow them to continue on such terms as it thinks fit.

Textual Amendments

F192 S. 254(1)(a) inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 4(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F193 Words in S. 254(1)(b) inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 4(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

255 Cases in which interim order can be made.

(1) The court shall not make an interim order on an application under section 253 unless it is satisfied—

(a) that the debtor intends to make **[**[F194]a proposal under this Part**]**;

(b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy;

(c) that no previous application has been made by the debtor for an interim order in the period of 12 months ending with that day; and

(d) that the nominee under the debtor's proposal [F195]. . . is willing to act in relation to the proposal.

(2) The court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.

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(3) Where the debtor is an undischarged bankrupt, the interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.

(4) Subject as follows, the provision contained in an interim order by virtue of subsection (3) may include provision staying proceedings in the bankruptcy or modifying any provision in this Group of Parts, and any provision of the rules in their application to the debtor's bankruptcy.

(5) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of provisions in this Group of Parts, or of the rules, unless the court is satisfied that that provision is unlikely to result in any significant diminution in, or in the value of, the debtor's estate for the purposes of the bankruptcy.

(6) Subject to the following provisions of this Part, an interim order made on an application under section 253 ceases to have effect at the end of the period of 14 days beginning with the day after the making of the order.

Textual Amendments

F194 Words in s. 255(1)(a) substituted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 5(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F195 Words in s. 255(1)(d) repealed (1.1.2003) by 2000 c. 39, ss. 3, 15, Sch. 3 paras. 5(b), **Sch. 5**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

256 Nominee's report on debtor's proposal.

(1) Where an interim order has been made on an application under section 253, the nominee shall, before the order ceases to have effect, submit a report to the court stating—

(a) **[**[F196]whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,

(aa)**]**whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtors' proposal, and

(b) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(2) For the purpose of enabling the nominee to prepare his report the debtor shall submit to the nominee—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(ii) such other information as may be prescribed.

[[F197](3) The court may—

(a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died, or

(b) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

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direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3A) The court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this section, direct that the interim order shall continue, or (if it has ceased to have effect) be renewed, for such further period as the court may specify in the direction.**]**

(4) The court may, on the application of the nominee, extend the period for which the interim order has effect so as to enable the nominee to have more time to prepare his report.

(5) If the court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the court shall direct that the period for which the interim order has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Part.

(6) The court may discharge the interim order if it is satisfied, on the application of the nominee—

(a) that the debtor has failed to comply with his obligations under subsection (2), or

(b) that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

Textual Amendments

F196 Words in s. 256(1) inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 6(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F197 S. 256(3)(3A) substituted for s. 256(3) (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 6(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C521 Ss. 256–263 applied with modifications by S.I. 1986/1999, art. 3, **Sch. I Pt. III**

[F198 Procedure where no interim order made]

Textual Amendments

F198 Cross-heading preceding s. 256A, s. 256A and cross-heading before s. 257 inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 7**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

[F199 256A Debtor's proposal and nominee's report.

(1) This section applies where a debtor (being an individual)—

(a) intends to make a proposal under this Part (but an interim order has not been made in relation to the proposal and no application for such an order is pending), and

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(b) if he is an undischarged bankrupt, has given notice of the proposal to the official receiver and, if there is one, the trustee of his estate,

unless a bankruptcy petition presented by the debtor is pending and the court has, under section 273, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

(2) For the purpose of enabling the nominee to prepare a report to the court, the debtor shall submit to the nominee—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing—

(i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and

(ii) such other information as may be prescribed.

(3) If the nominee is of the opinion that the debtor is an undischarged bankrupt, or is able to petition for his own bankruptcy, the nominee shall, within 14 days (or such longer period as the court may allow) after receiving the document and statement mentioned in subsection (2), submit a report to the court stating—

(a) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,

(b) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and

(c) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(4) The court may—

(a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this section or has died, or

(b) on an application made by the debtor or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee shall be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(5) The court may, on an application made by the nominee, extend the period within which the nominee is to submit his report.**]**

Textual Amendments

F199 Cross-heading preceding s. 256A, s. 256A and cross-heading before s. 257 inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 7**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

[F200 Creditors' meeting]

Textual Amendments

F200 Cross-heading preceding s. 256A, s. 256A and cross-heading before s. 257 inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 7**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

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257 Summoning of creditors' meeting.

(1) Where it has been reported to the court under section 256 **[**[F201]or 256A**]**that a meeting of the debtor's creditors should be summoned, the nominee (or his replacement under section **[**[F202]256(3) or 256A(4)**]**) shall, unless the court otherwise directs, summon that meeting for the time, date and place proposed in his report.

(2) The persons to be summoned to the meeting are every creditor of the debtor of whose claim and address the person summoning the meeting is aware.

(3) For this purpose the creditors of a debtor who is an undischarged bankrupt include—

(a) every person who is a creditor of the bankrupt in respect of a bankruptcy debt, and

(b) every person who would be such a creditor if the bankruptcy had commenced on the date on which notice of the meeting is given.

Textual Amendments

F201 Words in s. 257(1) inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 8(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F202 Words in s. 257(1) substituted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 8(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C522 Ss. 256–263 applied with modifications by S.I. 1986/1999, art. 3, **Sch. I Pt. III**

C523 S. 257 amended (1.12.2001) by 2000 c. 8, **s. 357(1)**; S.I. 2001/3538, **art. 2(1)**

Consideration and implementation of debtor's proposal

258 Decisions of creditor's meeting.

(1) A creditors' meeting summoned under section 257 shall decide whether to approve the proposed voluntary arrangement.

(2) The meeting may approve the proposed voluntary arrangement with modifications, but shall not do so unless the debtor consents to each modification.

(3) The modifications subject to which the proposed voluntary arrangement may be approved may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner **[**[F203]or authorised to act as nominee, in relation to the voluntary arrangement**]**.

But they shall not include any modification by virtue of which the proposal ceases to be a proposal **[**[F203]under this Part**]**.

(4) The meeting shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security, except with the concurrence of the creditor concerned.

(5) Subject as follows, the meeting shall not approve any proposal or modification under which—

(a) any preferential debt of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts, or

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(b) a preferential creditor of the debtor is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

However, the meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(6) Subject as above, the meeting shall be conducted in accordance with the rules.

(7) In this section "preferential debt" has the meaning given by section 386 in Part XII; and "preferential creditor" is to be construed accordingly.

Textual Amendments

F203 Words in s. 258(3) substituted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 9**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C524 Ss. 256-263 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. I Pt. III**

C525 S. 258 modified (10.8.2005) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 33(5)** (as modified (10.8.2005) by S.I. 2005/1998, **regs. 2(3)**, {40(1)-(4)(11)})

259 Report of decisions to court.

(1) After the conclusion in accordance with the rules of the meeting summoned under section 257, the chairman of the meeting shall report the result of it to the court and, immediately after so reporting, shall give notice of the result of the meeting to such persons as may be prescribed.

(2) If the report is that the meeting has declined (with or without modifications) to approve the debtor's proposal, the court may discharge any interim order which is in force in relation to the debtor.

Modifications etc. (not altering text)

C526 Ss. 256–263 applied with modifications by S.I. 1986/1999, art. 3, **Sch. I Pt. III**

260 Effect of approval.

(1) This section has effect where the meeting summoned under section 257 approves the proposed voluntary arrangement (with or without modifications).

(2) The approved arrangement—

(a) takes effect as if made by the debtor at the meeting, and

[F204(b) binds every person who in accordance with the rules—

(i) was entitled to vote at the meeting (whether or not he was present or represented at it), or

(ii) would have been so entitled if he had had notice of it,

as if he were a party to the arrangement.

(2A) If—

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(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of subsection (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the debtor shall at that time become liable to pay to that person the amount payable under the arrangement.**]**

(3) The [M23]Deeds of Arrangement Act 1914 does not apply to the approved voluntary arrangement.

(4) Any interim order in force in relation to the debtor immediately before the end of the period of 28 days beginning with the day on which the report with respect to the creditors' meeting was made to the court under section 259 ceases to have effect at the end of that period.

This subsection applies except to such extent as the court may direct for the purposes of any application under section 262 below.

(5) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under subsection (4), that petition is deemed, unless the court otherwise orders, to have been dismissed.

Textual Amendments

F204 S. 260(2)(b)(2A) substituted for 260(2)(b) (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 10**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C527 Ss. 256–263 applied with modifications by S.I. 1986/1999, art. 3, **Sch. I Pt. III**

Marginal Citations

M23 1914 c. 47.

[[F205]261 Additional effect on undischarged bankrupt

(1) This section applies where—

(a) the creditors' meeting summoned under section 257 approves the proposed voluntary arrangement (with or without modifications), and

(b) the debtor is an undischarged bankrupt.

(2) Where this section applies the court shall annul the bankruptcy order on an application made—

(a) by the bankrupt, or

(b) where the bankrupt has not made an application within the prescribed period, by the official receiver.

(3) An application under subsection (2) may not be made—

(a) during the period specified in section 262(3)(a) during which the decision of the creditors' meeting can be challenged by application under section 262,

(b) while an application under that section is pending, or

(c) while an appeal in respect of an application under that section is pending or may be brought.

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(4) Where this section applies the court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.**]**

Textual Amendments

F205 S. 261 substituted (1.4.2004) by 2002 c. 40, ss. 264(1), 279, Sch. 22 para. 1 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

262 Challenge of meeting's decision.

(1) Subject to this section, an application to the court may be made, by any of the persons specified below, on one or both of the following grounds, namely—

(a) that a voluntary arrangement approved by a creditors' meeting summoned under section 257 unfairly prejudices the interests of a creditor of the debtor;

(b) that there has been some material irregularity at or in relation to such a meeting.

(2) The persons who may apply under this section are—

(a) the debtor;

[[F206](b) a person who—

(i) was entitled, in accordance with the rules, to vote at the creditors' meeting, or

(ii) would have been so entitled if he had had notice of it**]**

(c) the nominee (or his replacement under section **[**[F207]256(3), 256A(4)**]** or 258(3)); and

(d) if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.

(3) An application under this section shall not be made**[**[F208](a)**]**after the end of the period of 28 days beginning with the day on which the report of the creditors' meeting was made to the court under section 259 **[**[F208]or

(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within subsection (2)(b)(ii) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it has come to an end prematurely.**]**

(4) Where on an application under this section the court is satisfied as to either of the grounds mentioned in subsection (1), it may do one or both of the following, namely—

(a) revoke or suspend any approval given by the meeting;

(b) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal he may make or, in a case falling within subsection (1)(b), to reconsider his original proposal.

(5) Where at any time after giving a direction under subsection (4)(b) for the summoning of a meeting to consider a revised proposal the court is satisfied that the debtor does not intend to submit such a proposal, the court shall revoke the direction and revoke or suspend any approval given at the previous meeting.

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(6) Where the court gives a direction under subsection (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.

(7) In any case where the court, on an application made under this section with respect to a creditors' meeting, gives a direction under subsection (4)(b) or revokes or suspends an approval under subsection (4)(a) or (5), the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

(a) things done since the meeting under any voluntary arrangement approved by the meeting, and

(b) such things done since the meeting as could not have been done if any interim order had been in force in relation to the debtor when they were done.

(8) Except in pursuance of the preceding provisions of this section, an approval given at a creditors' meeting summoned under section 257 is not invalidated by any irregularity at or in relation to the meeting.

Textual Amendments

F206 S. 262(2)(b) substituted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 11(1)(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F207 Words in s. 262(2)(c) substituted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 11(1)(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F208 Words in s. 262(3) inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 11(2)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C528 Ss. 256–263 applied with modifications by S.I. 1986/1999, art. 3, **Sch. I Pt. III**

C529 S. 262 amended (1.12.2001) by 2000 c. 8, **s. 357(5)(a)**; S.I. 2001/3538, **art. 2(1)**

[F209 262A False representations etc.

(1) If for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement, the debtor—

(a) makes any false representation, or

(b) fraudulently does, or omits to do, anything,

he commits an offence.

(2) Subsection (1) applies even if the proposal is not approved.

(3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.]

Textual Amendments

F209 S. 262A inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 12**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

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[F210]262B Prosecution of delinquent debtors.

(1) This section applies where a voluntary arrangement approved by a creditors' meeting summoned under section 257 has taken effect.

(2) If it appears to the nominee or supervisor that the debtor has been guilty of any offence in connection with the arrangement for which he is criminally liable, he shall forthwith—

(a) report the matter to the Secretary of State, and

(b) provide the Secretary of State with such information and give the Secretary of State such access to and facilities for inspecting and taking copies of documents (being information or documents in his possession or under his control and relating to the matter in question) as the Secretary of State requires.

(3) Where a prosecuting authority institutes criminal proceedings following any report under subsection (2), the nominee or, as the case may be, supervisor shall give the authority all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose, "prosecuting authority" means the Director of Public Prosecutions or the Secretary of State.

(4) The court may, on the application of the prosecuting authority, direct a nominee or supervisor to comply with subsection (3) if he has failed to do so.

Textual Amendments

F210 S. 262B inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 12**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

[F211]262C Arrangements coming to an end prematurely.

For the purposes of this Part, a voluntary arrangement approved by a creditors' meeting summoned under section 257 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of section 260(2)(b)(i).

Textual Amendments

F211 S. 262C inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 12**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

263 Implementation and supervision of approved voluntary arrangement.

(1) This section applies where a voluntary arrangement approved by a creditors' meeting summoned under section 257 has taken effect.

(2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred by virtue of the approval on the nominee (or his replacement under section **[**[F212]256(3), 256A(4)**]** or 258(3)) shall be known as the supervisor of the voluntary arrangement.

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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(3) If the debtor, any of his creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court; and on such an application the court may—

(a) confirm, reverse or modify any act or decision of the supervisor,

(b) give him directions, or

(c) make such other order as it thinks fit.

(4) The supervisor may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement.

(5) The court may, whenever—

(a) it is expedient to appoint a person to carry out the functions of the supervisor, and

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,

make an order appointing a person who is qualified to act as an insolvency practitioner **[**[F213]or authorised to act as supervisor, in relation to the voluntary arrangement**]**, either in substitution for the existing supervisor or to fill a vacancy.

This is without prejudice to section 41(2) of the [M24]Trustee Act 1925 (power of court to appoint trustees of deeds of arrangement).

(6) The power conferred by subsection (5) is exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

Textual Amendments

F212 Words in s. 263(2) substituted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 13(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F213 Words in s. 263(5) substituted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 13(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C530 Ss. 256–263 applied with modifications by S.I. 1986/1999, art. 3, **Sch. I Pt. III**
S. 263 amended (1.12.2001) by 2000 c. 8, **s. 357(5)(b)**; S.I. 2001/3538, **art. 2(1)**

Marginal Citations

M24 1925 c. 19.

[[F214]*Fast-track voluntary arrangement*

Textual Amendments

F214 Ss. 263A-263G and cross-heading inserted (1.4.2004) by 2002 c. 40, ss. 264(1), 279, Sch. 22 para. 2 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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263A Availability

Section 263B applies where an individual debtor intends to make a proposal to his creditors for a voluntary arrangement and—

(a) the debtor is an undischarged bankrupt,

(b) the official receiver is specified in the proposal as the nominee in relation to the voluntary arrangement, and

(c) no interim order is applied for under section 253.

Textual Amendments

F214 Ss. 263A-263G and cross-heading inserted (1.4.2004) by 2002 c. 40, ss. 264(1), 279, Sch. 22 para. 2 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

263B Decision

(1) The debtor may submit to the official receiver—

(a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and

(b) a statement of his affairs containing such particulars as may be prescribed of his creditors, debts, other liabilities and assets and such other information as may be prescribed.

(2) If the official receiver thinks that the voluntary arrangement proposed has a reasonable prospect of being approved and implemented, he may make arrangements for inviting creditors to decide whether to approve it.

(3) For the purposes of subsection (2) a person is a "creditor" only if—

(a) he is a creditor of the debtor in respect of a bankruptcy debt, and

(b) the official receiver is aware of his claim and his address.

(4) Arrangements made under subsection (2)—

(a) must include the provision to each creditor of a copy of the proposed voluntary arrangement,

(b) must include the provision to each creditor of information about the criteria by reference to which the official receiver will determine whether the creditors approve or reject the proposed voluntary arrangement, and

(c) may not include an opportunity for modifications to the proposed voluntary arrangement to be suggested or made.

(5) Where a debtor submits documents to the official receiver under subsection (1) no application under section 253 for an interim order may be made in respect of the debtor until the official receiver has—

(a) made arrangements as described in subsection (2), or

(b) informed the debtor that he does not intend to make arrangements (whether because he does not think the voluntary arrangement has a reasonable prospect of being approved and implemented or because he declines to act).

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Textual Amendments

F214 Ss. 263A-263G and cross-heading inserted (1.4.2004) by 2002 c. 40, ss. 264(1), 279, Sch. 22 para. 2 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

[F214 263C Result

As soon as is reasonably practicable after the implementation of arrangements under section 263B(2) the official receiver shall report to the court whether the proposed voluntary arrangement has been approved or rejected.]

Textual Amendments

F214 Ss. 263A-263G and cross-heading inserted (1.4.2004) by 2002 c. 40, ss. 264(1), 279, Sch. 22 para. 2 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

[F214 263D Approval of voluntary arrangement

(1) This section applies where the official receiver reports to the court under section 263C that a proposed voluntary arrangement has been approved.

(2) The voluntary arrangement—
- (a) takes effect,
- (b) binds the debtor, and
- (c) binds every person who was entitled to participate in the arrangements made under section 263B(2).

(3) The court shall annul the bankruptcy order in respect of the debtor on an application made by the official receiver.

(4) An application under subsection (3) may not be made—
- (a) during the period specified in section 263F(3) during which the voluntary arrangement can be challenged by application under section 263F(2),
- (b) while an application under that section is pending, or
- (c) while an appeal in respect of an application under that section is pending or may be brought.

(5) The court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

(6) The Deeds of Arrangement Act 1914 (c. 47) does not apply to the voluntary arrangement.

(7) A reference in this Act or another enactment to a voluntary arrangement approved under this Part includes a reference to a voluntary arrangement which has effect by virtue of this section.]

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Textual Amendments

F214 Ss. 263A-263G and cross-heading inserted (1.4.2004) by 2002 c. 40, ss. 264(1), 279, Sch. 22 para. 2 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

263E Implementation

Section 263 shall apply to a voluntary arrangement which has effect by virtue of section 263D(2) as it applies to a voluntary arrangement approved by a creditors' meeting.

Textual Amendments

F214 Ss. 263A-263G and cross-heading inserted (1.4.2004) by 2002 c. 40, ss. 264(1), 279, Sch. 22 para. 2 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

[F214 263F Revocation

(1) The court may make an order revoking a voluntary arrangement which has effect by virtue of section 263D(2) on the ground—
  (a) that it unfairly prejudices the interests of a creditor of the debtor, or
  (b) that a material irregularity occurred in relation to the arrangements made under section 263B(2).

(2) An order under subsection (1) may be made only on the application of—
  (a) the debtor,
  (b) a person who was entitled to participate in the arrangements made under section 263B(2),
  (c) the trustee of the bankrupt's estate, or
  (d) the official receiver.

(3) An application under subsection (2) may not be made after the end of the period of 28 days beginning with the date on which the official receiver makes his report to the court under section 263C.

(4) But a creditor who was not made aware of the arrangements under section 263B(2) at the time when they were made may make an application under subsection (2) during the period of 28 days beginning with the date on which he becomes aware of the voluntary arrangement.]

Textual Amendments

F214 Ss. 263A-263G and cross-heading inserted (1.4.2004) by 2002 c. 40, ss. 264(1), 279, Sch. 22 para. 2 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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263G Offences

(1) Section 262A shall have effect in relation to obtaining approval to a proposal for a voluntary arrangement under section 263D.

(2) Section 262B shall have effect in relation to a voluntary arrangement which has effect by virtue of section 263D(2) (for which purposes the words "by a creditors' meeting summoned under section 257" shall be disregarded).**]**

Textual Amendments

F214 Ss. 263A-263G and cross-heading inserted (1.4.2004) by 2002 c. 40, ss. 264(1), 279, Sch. 22 para. 2 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

PART IX

BANKRUPTCY

Modifications etc. (not altering text)

C531 Pt. IX (ss. 264-371) excluded by Drug Trafficking Offences Act 1986 (c. 32, SIF 39:1), **s. 15(1)(7)**
Pt. IX excluded by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 84, 123, **Sch. 8 para. 16**

C532 Pt. IX (ss. 264-371) amended by Criminal Justice (Scotland) Act 1987 (c.41, SIF 39:1), **ss. 30(6)**, 34(1), 47(4)(a)

C533 Pt. IX (except ss. 269, 270, 287, 297) applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(7)-(9), Sch. 4 Pt. II, **Sch. 7** (as amended (1.7.2005) by S.I. 2005/1516, **art. 10**)
Pt. IX (except ss. 273, 274, 287, 297) applied (1.12.1994) by S.I. 1994/2421, **art. 10(4)(5)(a)**

C534 Pt. IX (ss. 264-371) modified (3.2.1995) by 1994 c. 37, ss. 32(1), 69(2), **Sch. 2 para. 5** (with s. 66(2))
Pt. IX modified (31.3.1996) by 1995 c. 20, s. 110(1), **Sch. 4 para. 2(1)**; S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, Sch. 2)
Pt. IX modified (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 2(1)**
Pt. IX modified (1.9.2001 subject to art. 3 of the commencing S.I.) by 2001 c. 17, s. 1(3), **Sch. 6 para. 9(1)** (with s. 78); S.I. 2001/2161, **arts. 2**, 3 (as amended by S.I. 2001/2304, **art. 2**)
Pt. IX modified (24.3.2003) by 2002 c. 29, ss. 417, 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))

C535 Pt. IX (ss. 264-371) restricted (6.4.1996 for the purpose only of authorising the making of regulations) by 1995 c. 26, **ss. 91(3)**, 180(1) (with s. 121(5)); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

C536 Second Group of Parts (Pts. 8-11) modified (31.12.1996) by 1991 c. 57, **Sch. 10** (as substituted by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **art. 3**)
Second Group of Parts (Pts. 8-11) modified (11.11.1999 for specified purposes and 6.4.2002 otherwise) by 1999 c. 30, **s. 12(1)**; S.I. 2002/153, **art. 2(b)**

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CHAPTER I

BANKRUPTCY PETITIONS; BANKRUPTCY ORDERS

Preliminary

264 Who may present a bankruptcy petition.

(1) A petition for a bankruptcy order to be made against an individual may be presented to the court in accordance with the following provisions of this Part—

(a) by one of the individual's creditors or jointly by more than one of them,

(b) by the individual himself,

[[F215](ba) by a temporary administrator (within the meaning of Article 38 of the EC Regulation),

(bb) by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation,**]**

(c) by the supervisor of, or any person (other than the individual) who is for the time being bound by, a voluntary arrangement proposed by the individual and approved under Part VIII, or

(d) where a criminal bankruptcy order has been made against the individual, by the Official Petitioner or by any person specified in the order in pursuance of section 39(3)(b) of the [M25]Powers of Criminal Courts Act 1973.

(2) Subject to those provisions, the court may make a bankruptcy order on any such petition.

Textual Amendments

F215 S. 264(1)(ba)(bb) inserted (31.5.2002) by S.I. 2002/1240, **reg. 13**

Modifications etc. (not altering text)

C537 S. 264 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 10(1)(a)(6), Sch. 4 Pts. I, **II** paras. 1, 8, Sch. 6 para. 2 (as amended (1.7.2005) by S.I. 2005/1516, **art. 5(b)**)

C538 S. 264 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 2** (as amended (1.12.2001) by S.I. 2001/3649, **art. 469**)

C539 S. 264 amended (20.7.2001 for certain purposes and otherwise 1.12.2001) by 2000 c. 8, **s. 372(1)**; S.I. 2001/2632, art. 2, **Sch. Pt. I**; S.I. 2001/3538, **art. 2(1)**

Marginal Citations

M25 1973 c. 62.

265 Conditions to be satisfied in respect of debtor.

(1) A bankruptcy petition shall not be presented to the court under section 264(1)(a) or (b) unless the debtor—

(a) is domiciled in England and Wales,

(b) is personally present in England and Wales on the day on which the petition is presented, or

(c) at any time in the period of 3 years ending with that day—

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(i) has been ordinarily resident, or has had a place of residence, in England and Wales, or

(ii) has carried on business in England and Wales.

(2) The reference in subsection (1)(c) to an individual carrying on business includes—

(a) the carrying on of business by a firm or partnership of which the individual is a member, and

(b) the carrying on of business by an agent or manager for the individual or for such a firm or partnership.

[[F216](3) This section is subject to Article 3 of the EC Regulation.**]**

Textual Amendments

F216 S. 265(3) inserted (31.5.2002) by S.I. 2002/1240, **reg. 14**

Modifications etc. (not altering text)

C540 S. 265 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(1)(a), Sch. 4 Pt. II para. 5, **Sch. 6**

C541 S. 265 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 3**

266 Other preliminary conditions.

(1) Where a bankruptcy petition relating to an individual is presented by a person who is entitled to present a petition under two or more paragraphs of section 264(1), the petition is to be treated for the purposes of this Part as a petition under such one of those paragraphs as may be specified in the petition.

(2) A bankruptcy petition shall not be withdrawn without the leave of the court.

(3) The court has a general power, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, to dismiss a bankruptcy petition or to stay proceedings on such a petition; and, where it stays proceedings on a petition, it may do so on such terms and conditions as it thinks fit.

[[F217](4) Without prejudice to subsection (3), where a petition under section 264(1)(a), (b) or (c) in respect of an individual is pending at a time when a criminal bankruptcy order is made against him, or is presented after such an order has been so made, the court may on the application of the Official Petitioner dismiss the petition if it appears to it appropriate to do so.**]**

Textual Amendments

F217 S. 266(4) repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**

Modifications etc. (not altering text)

C542 S. 266 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (31.5.2002) by S.I. 2002/1309, **art. 3(2)(4)**)

C543 S. 266 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 4**

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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Creditor's petition

267 Grounds of creditor's petition.

(1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.

(2) Subject to the next three sections, a creditor's petition may be presented to the court in respect of a debt or debts only if, at the time the petition is presented—

(a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,

(b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,

(c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and

(d) there is no outstanding application to set aside a statutory demand served (under section 268 below) in respect of the debt or any of the debts.

[[F218](3) A debt is not to be regarded for the purposes of subsection (2) as a debt for a liquidated sum by reason only that the amount of the debt is specified in a criminal bankruptcy order.**]**

(4) "The bankruptcy level" is £750 but the Secretary of State may by order in a statutory instrument substitute any amount specified in the order for that amount or (as the case may be) for the amount which by virtue of such an order is for the time being the amount of the bankruptcy level.

(5) An order shall not be made under subsection (4) unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

Textual Amendments

F218 S. 267(3) repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**

Modifications etc. (not altering text)

C544 S. 267 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 267 extended (1.4.1992) by S.I. 1992/613, **reg. 49(1)**
S. 267: power to modify conferred (6.3.1992) by Local Government Finance Act 1992 (c. 14), s. 14(3), **Sch. 4 para. 9(1)** (with s. 118(1)(2)(4))

C545 S. 267 modified by S.I. 1989/1058, **reg. 18(1)**

C546 S. 267 modified by S.I. 1989/438, **reg. 43(1)**

C547 S. 267 power to amend conferred by Local Government Finance Act 1988 (c. 41, SIF 81:1), s. 22, **Sch. 4 para. 9(1)**

C548 S. 267 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 6(b)**

C549 S. 267 modified (6.4.2010) by The Community Infrastructure Levy Regulations 2010 (S.I. 2010/948), **reg. 105(1)**

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268 Definition of "inability to pay", etc.; the statutory demand.

(1) For the purposes of section 267(2)(c), the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—

(a) the petitioning creditor to whom the debt is owed has served on the debtor a demand (known as "the statutory demand") in the prescribed form requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the demand has been neither complied with nor set aside in accordance with the rules, or

(b) execution or other process issued in respect of the debt on a judgment or order of any court in favour of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed, has been returned unsatisfied in whole or in part.

(2) For the purposes of section 267(2)(c) the debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and—

(a) the petitioning creditor to whom it is owed has served on the debtor a demand (also known as "the statutory demand") in the prescribed form requiring him to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due,

(b) at least 3 weeks have elapsed since the demand was served, and

(c) the demand has been neither complied with nor set aside in accordance with the rules.

Modifications etc. (not altering text)

C550 S. 268 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 7(b)**

269 Creditor with security.

(1) A debt which is the debt, or one of the debts, in respect of which a creditor's petition is presented need not be unsecured if either—

(a) the petition contains a statement by the person having the right to enforce the security that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of all the bankrupt's creditors, or

(b) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of the estimated value at the date of the petition of the security for the secured part of the debt.

(2) In a case falling within subsection (1)(b) the secured and unsecured parts of the debt are to be treated for the purposes of sections 267 to 270 as separate debts.

Modifications etc. (not altering text)

C551 S. 269 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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270 Expedited petition.

In the case of a creditor's petition presented wholly or partly in respect of a debt which is the subject of a statutory demand under section 268, the petition may be presented before the end of the 3-week period there mentioned if there is a serious possibility that the debtor's property or the value of any of his property will be significantly diminished during that period and the petition contains a statement to that effect.

271 Proceedings on creditor's petition.

(1) The court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either—

(a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for, or

(b) a debt which the debtor has no reasonable prospect of being able to pay when it falls due.

(2) In a case in which the petition contains such a statement as is required by section 270, the court shall not make a bankruptcy order until at least 3 weeks have elapsed since the service of any statutory demand under section 268.

(3) The court may dismiss the petition if it is satisfied that the debtor is able to pay all his debts or is satisfied—

(a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented,

(b) that the acceptance of that offer would have required the dismissal of the petition, and

(c) that the offer has been unreasonably refused;

and, in determining for the purposes of this subsection whether the debtor is able to pay all his debts, the court shall take into account his contingent and prospective liabilities.

(4) In determining for the purposes of this section what constitutes a reasonable prospect that a debtor will be able to pay a debt when it falls due, it is to be assumed that the prospect given by the facts and other matters known to the creditor at the time he entered into the transaction resulting in the debt was a reasonable prospect.

(5) Nothing in sections 267 to 271 prejudices the power of the court, in accordance with the rules, to authorise a creditor's petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of those sections had been done only by or in relation to the remaining creditors or debts.

Modifications etc. (not altering text)

C552 S. 271 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C553 S. 271 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(1)(a), Sch. 4 Pt. II para. 9, **Sch. 6 para. 3**

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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Debtor's petition

272 Grounds of debtor's petition.

(1) A debtor's petition may be presented to the court only on the grounds that the debtor is unable to pay his debts.

(2) The petition shall be accompanied by a statement of the debtor's affairs containing—
- (a) such particulars of the debtor's creditors and of his debts and other liabilities and of his assets as may be prescribed, and
- (b) such other information as may be prescribed.

Modifications etc. (not altering text)

C554 S. 272 applied (with modifications) by S.I. 1986/2142 (made under the power in S. 420 of the Act to apply provisions of the Act in relation to insolvent partnerships), art. 13(5) (with arts. 1 and 15) which provides (E.W.) that for s. 272 of the Act there is substituted the following: "272. A joint debtors' petition in Form 8 in Schedule 3 to the Insolvent Partnerships Order 1986 may be presented to the court by individual members only on the grounds that the partnership is unable to pay its debts."

C555 S. 272 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 10(1)(a)(6), **Sch. 6 para. 2** (as amended (1.7.2005) by S.I. 2005/1516, **art. 5(b)**)

C556 S. 272 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 5**

C557 S. 272(1) applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

273 Appointment of insolvency practitioner by the court.

(1) Subject to the next section, on the hearing of a debtor's petition the court shall not make a bankruptcy order if it appears to the court—
- (a) that if a bankruptcy order were made the aggregate amount of the bankruptcy debts, so far as unsecured, would be less than the small bankruptcies level,
- (b) that if a bankruptcy order were made, the value of the bankrupt's estate would be equal to or more than the minimum amount,
- (c) that within the period of 5 years ending with the presentation of the petition the debtor has neither been adjudged bankrupt nor made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs, and
- (d) that it would be appropriate to appoint a person to prepare a report under section 274.

"The minimum amount" and "the small bankruptcies level" means such amounts as may for the time being be prescribed for the purposes of this section.

(2) Where on the hearing of the petition, it appears to the court as mentioned in subsection (1), the court shall appoint a person who is qualified to act as an insolvency practitioner in relation to the debtor—
- (a) to prepare a report under the next section, and
- (b) subject to section 258(3) in Part VIII, to act in relation to any voluntary arrangement to which the report relates either as trustee or otherwise for the purpose of supervising its implementation.

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Modifications etc. (not altering text)

C558 S. 273 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

274 Action on report of insolvency practitioner.

(1) A person appointed under section 273 shall inquire into the debtor's affairs and, within such period as the court may direct, shall submit a report to the court stating whether the debtor is willing, for the purposes of Part VIII, to make a proposal for a voluntary arrangement.

(2) A report which states that the debtor is willing as above mentioned shall also state—

(a) whether, in the opinion of the person making the report, a meeting of the debtor's creditors should be summoned to consider the proposal, and

(b) if in that person's opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(3) On considering a report under this section the court may—

(a) without any application, make an interim order under section 252, if it thinks that it is appropriate to do so for the purposes of facilitating the consideration and implementation of the debtor's proposal, or

(b) if it thinks it would be inappropriate to make such an order, make a bankruptcy order.

(4) An interim order made by virtue of this section ceases to have effect at the end of such period as the court may specify for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the applicable provisions of Part VIII.

(5) Where it has been reported to the court under this section that a meeting of the debtor's creditors should be summoned, the person making the report shall, unless the court otherwise directs, summon that meeting for the time, date and place proposed in his report.

The meeting is then deemed to have been summoned under section 257 in Part VIII, and subsections (2) and (3) of that section, and sections 258 to 263 apply accordingly.

VALID FROM 24/02/2009

[F219 274A Debtor who meets conditions for a debt relief order

(1) This section applies where, on the hearing of a debtor's petition—

(a) it appears to the court that a debt relief order would be made in relation to the debtor if, instead of presenting the petition, he had made an application under Part 7A; and

(b) the court does not appoint an insolvency practitioner under section 273.

(2) If the court thinks it would be in the debtor's interests to apply for a debt relief order instead of proceeding on the petition, the court may refer the debtor to an approved intermediary (within the meaning of Part 7A) for the purposes of making an application for a debt relief order.

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(3) Where a reference is made under subsection (2) the court shall stay proceedings on the petition on such terms and conditions as it thinks fit; but if following the reference a debt relief order is made in relation to the debtor the court shall dismiss the petition.**]**

Textual Amendments

F219 S. 274A inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by Tribunals, Courts and Enforcement Act 2007 (c.15), ss. 108(3), 148(5), **Sch. 20 para. 3**; S.I. 2009/382, **art. 2**

275 Summary administration.

F220 . . . . . .

Textual Amendments

F220 S. 275 repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 2, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Other cases for special consideration

276 Default in connection with voluntary arrangement.

(1) The court shall not make a bankruptcy order on a petition under section 264(1)(c) (supervisor of, or person bound by, voluntary arrangement proposed and approved) unless it is satisfied—

(a) that the debtor has failed to comply with his obligations under the voluntary arrangement, or

(b) that information which was false or misleading in any material particular or which contained material omissions—

(i) was contained in any statement of affairs or other document supplied by the debtor under Part VIII to any person, or

(ii) was otherwise made available by the debtor to his creditors at or in connection with a meeting summoned under that Part, or

(c) that the debtor has failed to do all such things as may for the purposes of the voluntary arrangement have been reasonably required of him by the supervisor of the arrangement.

(2) Where a bankruptcy order is made on a petition under section 264(1)(c), any expenses properly incurred as expenses of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.

Modifications etc. (not altering text)

C559 S.276(2) applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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277 Petition based on criminal bankruptcy order.

(1) Subject to section 266(3), the court shall make a bankruptcy order on a petition under section 264(1)(d) on production of a copy of the criminal bankruptcy order on which the petition is based.

This does not apply if it appears to the court that the criminal bankruptcy order has been rescinded on appeal.

(2) Subject to the provisions of this Part, the fact that an appeal is pending against any conviction by virtue of which a criminal bankruptcy order was made does not affect any proceedings on a petition under section 264(1)(d) based on that order.

(3) For the purposes of this section, an appeal against a conviction is pending—

(a) in any case, until the expiration of the period of 28 days beginning with the date of conviction;

(b) if notice of appeal to the Court of Appeal is given during that period and during that period the appellant notifies the official receiver of it, until the determination of the appeal and thereafter for so long as an appeal to the House of Lords is pending within the meaning of section 40(5) of the [M26]Powers of Criminal Courts Act 1973.

Modifications etc. (not altering text)
C560 S. 277 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Marginal Citations
M26 1973 c. 62.

Commencement and duration of bankruptcy; discharge

278 Commencement and continuance.

The bankruptcy of an individual against whom a bankruptcy order has been made—

(a) commences with the day on which the order is made, and

(b) continues until the individual is discharged under the following provisions of this Chapter.

Modifications etc. (not altering text)
C561 S. 278 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 278 applied (7.2.1994) by 1993 c. 48, **s. 144(4)(a)(ii)** (with s. 6(8)); S.I. 1994/86, **art. 2**

[[F221]279 Duration

(1) A bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the date on which the bankruptcy commences.

(2) If before the end of that period the official receiver files with the court a notice stating that investigation of the conduct and affairs of the bankrupt under section 289 is unnecessary or concluded, the bankrupt is discharged when the notice is filed.

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(3) On the application of the official receiver or the trustee of a bankrupt's estate, the court may order that the period specified in subsection (1) shall cease to run until—
  (a) the end of a specified period, or
  (b) the fulfilment of a specified condition.

(4) The court may make an order under subsection (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.

(5) In subsection (3)(b) "condition" includes a condition requiring that the court be satisfied of something.

(6) In the case of an individual who is adjudged bankrupt on a petition under section 264(1)(d)—
  (a) subsections (1) to (5) shall not apply, and
  (b) the bankrupt is discharged from bankruptcy by an order of the court under section 280.

(7) This section is without prejudice to any power of the court to annul a bankruptcy order.**]**

Textual Amendments

F221 S. 279 substituted (1.4.2004) by 2002 c. 40, ss. 256, 279 (with s. 249(6), Sch. 19); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C562 S. 279 excluded (1.4.2004) by 2002 c. 40, ss. 256(2), 279, Sch. 19 para. 3 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

C563 S. 279(3)-(5) applied (1.4.2004) by 2002 c. 40, ss. 256(2), 279, Sch. 19 paras. 4(3), 5(5) (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

280 Discharge by order of the court.

(1) An application for an order of the court discharging an individual from bankruptcy in a case falling within **[**[F222]section 279(6)**]** may be made by the bankrupt at any time after the end of the period of 5 years beginning with the **[**[F223]date on which the bankruptcy commences**]**.

(2) On an application under this section the court may—
  (a) refuse to discharge the bankrupt from bankruptcy,
  (b) make an order discharging him absolutely, or
  (c) make an order discharging him subject to such conditions with respect to any income which may subsequently become due to him, or with respect to property devolving upon him, or acquired by him, after his discharge, as may be specified in the order.

(3) The court may provide for an order falling within subsection (2)(b) or (c) to have immediate effect or to have its effect suspended for such period, or until the fulfilment of such conditions (including a condition requiring the court to be satisfied as to any matter), as may be specified in the order.

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Textual Amendments

F222 Words in s. 280(1) substituted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 3(a) (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F223 Words in s. 280(1) substituted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 3(b) (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C564 S. 280 applied (1.4.2004) by 2002 c. 40, ss. 256(2), 279, Sch. 19 para. 6 (with s. 249(6), Sch. 19 para. 8); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

281 Effect of discharge.

(1) Subject as follows, where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts, but has no effect—

(a) on the functions (so far as they remain to be carried out) of the trustee of his estate, or

(b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part;

and, in particular, discharge does not affect the right of any creditor of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released.

(2) Discharge does not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is relased.

(3) Discharge does not release the bankrupt from any bankruptcy debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was a party.

(4) Discharge does not release the bankrupt from any liability in respect of a fine imposed for an offence or from any liability under a recognisance except, in the case of a penalty imposed for an offence under an enactment relating to the public revenue or of a recognisance, with the consent of the Treasury.

[[F224](4A) In subsection (4) the reference to a fine includes a reference to a confiscation order under Part 2, 3 or 4 of the Proceeds of Crime Act 2002.**]**

(5) Discharge does not, except to such extent and on such conditions as the court may direct, release the bankrupt from any bankruptcy debt which—

(a) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, **[**[F225]or to pay damages by virtue of Part I of the Consumer Protection Act 1987, being in either case**]** damages in respect of personal injuries to any person, or

(b) arises under any order made in family proceedings **[**[F226]or under a **[**[F227]maintenance calculation**]** made under the Child Support Act 1991**]**. . ..

(6) Discharge does not release the bankrupt from such other bankruptcy debts,not being debts provable in his bankruptcy, as are prescribed.

(7) Discharge does not release any person other than the bankrupt from any liability (whether as partner or co-trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in the nature of such a surety.

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(8) In this section—

[[F228]"family proceedings" means—

(a) family proceedings within the meaning of the [M27] Magistrates' Courts Act 1980 and any proceedings which would be such proceedings but for section 65(1)(ii) of that Act (proceedings for variation of order for periodical payments); and

(b) family proceedings within the meaning of Part V of the [M28] Matrimonial and Family Proceedings Act 1984.**]**

"fine" means the same as in the Magistrates' Courts Act 1980; and

"personal injuries" includes death and any disease or other impairment of a person's physical or mental condition.

Textual Amendments

F224 S. 281(4A) inserted (24.3.2003) by 2002 c. 29, ss. 456, 458(1)(3), Sch. 11 para. 16(2); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4)); S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

F225 Words substituted by Consumer Protection Act 1987 (c. 43, SIF 109:1), ss. 41(2), 47(1)(2), 48, **Sch. 4 para. 12**

F226 Words in s. 281(5)(b) inserted (5.4.1993) by Child Support Act 1991 (c. 48), s. 58(13), **Sch. 5 para. 7**; S.I. 1992/2644, **art. 2**

F227 Words in s. 281(5)(b) substituted (3.3.2003 for specified purposes, otherwise prosp.) by 2000 c. 19, ss. 26, 86(1)(2), Sch. 3 para. 6 (with s. 83(6)); S.I. 2003/192, **art. 3**, Sch.

F228 Definition of "family proceedings" substituted (14.10.1991) for the definitions of "domestic proceedings" and "family proceedings" by Children Act 1989 (c. 41, SIF 20), ss. 92, 108(6), Sch. 11 Pt. II para. 11(2), **Sch. 14 para. 1(1)**; S.I. 1991/828, **art. 3(2)**

Modifications etc. (not altering text)

C565 S. 281(4) extended by Drug Trafficking Offences Act 1986 (c. 32, SIF 39:1), **s. 39(5)**
S. 281(4) extended (3.2.1995) by 1994 c. 37, **ss. 65(3)**, 69(2) (with s. 66(2))
S. 281(4) extended (31.3.1996) by 1995 c. 20, **s. 113(6)**; S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, Sch. 2)
S. 281(4) extended (S.) (1.4.1996) by 1995 c. 43, **ss. 47(4)**, 50(2)

C566 S. 281(4) amended by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), SS. 123, 170, Sch. 8 para. 6, Sch. 15 para. 110

C567 S. 281(4) amended by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), SS. 45(4), 47(4)(a).

Marginal Citations

M27 1980 c.43**(82).**

M28 1984 c.42**(49:3).**

[[F229]**281A Post-discharge restrictions**

Schedule 4A to this Act (bankruptcy restrictions order and bankruptcy restrictions undertaking) shall have effect.**]**

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Textual Amendments

F229 S. 281A inserted (1.4.2004) by 2002 c. 40, ss. 257(1), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (with arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

282 Court's power to annul bankruptcy order.

(1) The court may annul a bankruptcy order if it at any time appears to the court—

(a) that, on any grounds existing at the time the order was made, the order ought not to have been made, or

(b) that, to the extent required by the rules, the bankruptcy debts and the expenses of the bankruptcy have all, since the making of the order, been either paid or secured for to the satisfaction of the court.

(2) The court may annul a bankruptcy order made against an individual on a petition under paragraph (a), (b) or (c) of section 264(1) if it at any time appears to the court, on an application by the Official Petitioner—

(a) that the petition was pending at a time when a criminal bankruptcy order was made against the individual or was presented after such an order was so made, and

(b) no appeal is pending (within the meaning of section 277) against the individual's conviction of any offence by virtue of which the criminal bankruptcy order was made;

and the court shall annul a bankruptcy order made on a petition under section 264(1)(d) if it at any time appears to the court that the criminal bankruptcy order on which the petition was based has been rescinded in consequence of an appeal.

(3) The court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.

(4) Where the court annuls a bankruptcy order (whether under this section or under section 261 **[**[F230]or 263D**]** in Part VIII)—

(a) any sale or other disposition of property, payment made or other thing duly done, under any provision in this Group of Parts, by or under the authority of the official receiver or a trustee of the bankrupt's estate or by the court is valid, but

(b) if any of the bankrupt's estate is then vested, under any such provision, in such a trustee, it shall vest in such person as the court may appoint or, in default of any such appointment, revert to the bankrupt on such terms (if any) as the court may direct;

and the court may include in its order such supplemental provisions as may be authorised by the rules.

(5) [F231]. . . . . .

Textual Amendments

F230 Words in s. 282(4) inserted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 4(a) (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (with arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F231 S. 282(5) repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 4(b), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (with arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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Modifications etc. (not altering text)
C568 S. 282(1) applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
C569 S. 282(4) applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

CHAPTER II

PROTECTION OF BANKRUPT'S ESTATE AND INVESTIGATION OF HIS AFFAIRS

283 Definition of bankrupt's estate.

(1) Subject as follows, a bankrupt's estate for the purposes of any of this Group of Parts comprises—

(a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy, and

(b) any property which by virtue of any of the following provisions of this Part is comprised in that estate or is treated as falling with the preceding paragraph.

(2) Subsection (1) does not apply to—

(a) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment, business or vocation;

(b) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family.

This subsection is subject to section 308 in Chapter IV (certain excluded property reclaimable by trustee).

(3) Subsection (1) does not apply to—

(a) property held by the bankrupt on trust for any other person, or

(b) the right of nomination to a vacant ecclesiastical benefice.

[[F232](3A) Subject to section 308A in Chapter IV, subsection (1) does not apply to—

(a) a tenancy which is an assured tenancy or an assured agricultural occupancy, within the meaning of Part I of the Housing Act 1988, and the terms of which inhibit an assignment as mentioned in section 127(5) of the [M29] Rent Act 1977, or

(b) a protected tenancy, within the meaning of the Rent Act 1977, in respect of which, by virtue of any provision of Part IX of that Act, no premium can lawfully be required as a condition of assignment, or

(c) a tenancy of a dwelling-house by virtue of which the bankrupt is, within the meaning of the [M30] Rent (Agriculture) Act 1976, a protected occupier of the dwelling-house, and the terms of which inhibit an assignment as mentioned in section 127(5) of the Rent Act 1977, or

(d) a secure tenancy, within the meaning of Part IV of the [M31] Housing Act 1985, which is not capable of being assigned, except in the cases mentioned in section 91(3) of that Act.**]**

(4) References in any of this Group of Parts to property, in relation to a bankrupt, include references to any power exercisable by him over or in respect of property except in

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so far as the power is exercisable over or in respect of property not for the time being comprised in the bankrupt's estate and—

(a) is so exercisable at a time after either the official receiver has had his release in respect of that estate under section 299(2) in chapter III or a meeting summoned by the trustee of that estate under section 331 in Chapter IV has been held, or

(b) cannot be so exercised for the benefit of the bankrupt;

and a power exercisable over or in respect of property is deemed for the purposes of any of this Group of Parts to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person (whether or not it becomes so exercisable at that time).

(5) For the purposes of any such provision in this Group of Parts, property comprised in a bankrupt's estate is so comprised subject to the rights of any person other than the bankrupt (whether as a secured creditor of the bankrupt or otherwise) in relation thereto, but disregarding—

(a) any rights in relation to which a statement such as is required by section 269(1)(a) was made in the petition on which the bankrupt was adjudged bankrupt, and

(b) any rights which have been otherwise given up in accordance with the rules.

(6) This section has effect subject to the provisions of any enactment not contained in this Act under which any property is to be excluded from a bankrupt's estate.

Textual Amendments

F232 S. 283(3A) inserted (E.W.) by Housing Act 1988 (c. 50, SIF 75:1), **s. 117(1)**

Modifications etc. (not altering text)

C570 S. 283 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C571 S. 283 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 28**

C572 S. 283 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 7**

Marginal Citations

M29 1977 c.42**(75:3).**

M30 1976 c.80**(75:3)**

M31 1985 c.68**(61).**

[F233 283A Bankrupt's home ceasing to form part of estate

(1) This section applies where property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(a) the bankrupt,

(b) the bankrupt's spouse **[**F234 or civil partner**]**, or

(c) a former spouse **[**F235 or former civil partner**]** of the bankrupt.

(2) At the end of the period of three years beginning with the date of the bankruptcy the interest mentioned in subsection (1) shall—

(a) cease to be comprised in the bankrupt's estate, and

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(b) vest in the bankrupt (without conveyance, assignment or transfer).

(3) Subsection (2) shall not apply if during the period mentioned in that subsection—
- (a) the trustee realises the interest mentioned in subsection (1),
- (b) the trustee applies for an order for sale in respect of the dwelling-house,
- (c) the trustee applies for an order for possession of the dwelling-house,
- (d) the trustee applies for an order under section 313 in Chapter IV in respect of that interest, or
- (e) the trustee and the bankrupt agree that the bankrupt shall incur a specified liability to his estate (with or without the addition of interest from the date of the agreement) in consideration of which the interest mentioned in subsection (1) shall cease to form part of the estate.

(4) Where an application of a kind described in subsection (3)(b) to (d) is made during the period mentioned in subsection (2) and is dismissed, unless the court orders otherwise the interest to which the application relates shall on the dismissal of the application—
- (a) cease to be comprised in the bankrupt's estate, and
- (b) vest in the bankrupt (without conveyance, assignment or transfer).

(5) If the bankrupt does not inform the trustee or the official receiver of his interest in a property before the end of the period of three months beginning with the date of the bankruptcy, the period of three years mentioned in subsection (2)—
- (a) shall not begin with the date of the bankruptcy, but
- (b) shall begin with the date on which the trustee or official receiver becomes aware of the bankrupt's interest.

(6) The court may substitute for the period of three years mentioned in subsection (2) a longer period—
- (a) in prescribed circumstances, and
- (b) in such other circumstances as the court thinks appropriate.

(7) The rules may make provision for this section to have effect with the substitution of a shorter period for the period of three years mentioned in subsection (2) in specified circumstances (which may be described by reference to action to be taken by a trustee in bankruptcy).

(8) The rules may also, in particular, make provision—
- (a) requiring or enabling the trustee of a bankrupt's estate to give notice that this section applies or does not apply;
- (b) about the effect of a notice under paragraph (a);
- (c) requiring the trustee of a bankrupt's estate to make an application to the Chief Land Registrar.

(9) Rules under subsection (8)(b) may, in particular—
- (a) disapply this section;
- (b) enable a court to disapply this section;
- (c) make provision in consequence of a disapplication of this section;
- (d) enable a court to make provision in consequence of a disapplication of this section;
- (e) make provision (which may include provision conferring jurisdiction on a court or tribunal) about compensation.**]**

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Textual Amendments

F233 S. 283A inserted (1.4.2004) by 2002 c. 40, ss. 261(1), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F234 Words in s. 283A(1)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 113(a)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

F235 Words in s. 283A(1)(c) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 113(b)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

Modifications etc. (not altering text)

C573 S. 283A modified (1.7.2005) by S.I. 1994/2421, Sch. 4 Pt. II para. 28A (as inserted (1.7.2005) by S.I. 2005/1516, **art. 9(4)**)
S. 283A modified (1.7.2005) by S.I. 1994/2421, Sch. 7 para. 7A (as inserted (1.7.2005) by S.I. 2005/1516, **art. 10(4)**)

C574 S. 283A(4)-(9) applied (with modifications) by 2002 c. 40, ss. 261(10), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

284 Restrictions on dispositions of property.

(1) Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.

(2) Subsection (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid shall hold the sum paid for the bankrupt as part of his estate.

(3) This section applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting, under Chapter IV of this Part, of the bankrupt's estate in a trustee.

(4) The preceding provisions of this section do not give a remedy against any person—
  (a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the petition had been presented, or
  (b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this subsection, no remedy.

(5) Where after the commencement of his bankruptcy the bankrupt has incurred a debt to a banker or other person by reason of the making of a payment which is void under this section, that debt is deemed for the purposes of any of this Group of Parts to have been incurred before the commencement of the bankruptcy unless—
  (a) that banker or person had notice of the bankruptcy before the debt was incurred, or
  (b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.

(6) A disposition of property is void under this section notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate; but nothing in this section affects any disposition made by a person of property held by him on trust for any other person.

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Modifications etc. (not altering text)

C575 S. 284 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C576 S. 284 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.** (with art. 3(4)).
S. 284 excluded (15.8.1995) by S.I. 1995/2049, **reg. 21(5)-(8)**

C577 S. 284 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.** .

C578 S. 284 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 29**

C579 S. 284 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 8**

C580 S. 284 excluded (11.12.1999) by S.I. 1999/2979, regs. 16(3), 19(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)**)

285 Restriction on proceedings and remedies.

(1) At any time when proceedings on a bankruptcy petition are pending or an individual has been adjudged bankrupt the court may stay any action, execution or other legal process against the property or person of the debtor or, as the case may be, of the bankrupt.

(2) Any court in which proceedings are pending against any individual may, on proof that a bankruptcy petition has been presented in respect of that individual or that he is an undischarged bankrupt, either stay the proceedings or allow them to continue on such terms as it thinks fit.

(3) After the making of a bankruptcy order no person who is a creditor of the bankrupt in respect of a debt provable in the bankruptcy shall—

(a) have any remedy against the property or person of the bankrupt in respect of that debt, or

(b) before the discharge of the bankrupt, commence any action or other legal proceedings against the bankrupt except with the leave of the court and on such terms as the court may impose.

This is subject to sections 346 (enforcement procedures) and 347 (limited right to distress).

(4) Subject as follows, subsection (3) does not affect the right of a secured creditor of the bankrupt to enforce his security.

(5) Where any goods of an undischarged bankrupt are held by any person by way of pledge, pawn or other security, the official receiver may, after giving notice in writing of his intention to do so, inspect the goods.

Where such a notice has been given to any person, that person is not entitled, without leave of the court, to realise his security unless he has given the trustee of the bankrupt's estate a reasonable opportunity of inspecting the goods and of exercising the bankrupt's right of redemption.

(6) References in this section to the property or goods of the bankrupt are to any of his property or goods, whether or not comprised in his estate.

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Modifications etc. (not altering text)

C581 S. 285 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C582 S. 285 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.** .

C583 S. 285(3) 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.** .

286 Power to appoint interim receiver.

(1) The court may, if it is shown to be necessary for the protection of the debtor's property, at any time after the presentation of a bankruptcy petition and before making a bankruptcy order, appoint the official receiver to be interim receiver of the debtor's property.

(2) Where the court has, on a debtor's petition, appointed an insolvency practitioner under section 273 and it is shown to the court as mentioned in subsection (1) of this section, the court may, without making a bankruptcy order, appoint that practitioner, instead of the official receiver, to be interim receiver of the debtor's property.

(3) The court may by an order appointing any person to be an interim receiver direct that his powers shall be limited or restricted in any respect; but, save as so directed, an interim receiver has, in relation to the debtor's property, all the rights, powers, duties and immunities of a receiver and manager under the next section.

(4) An order of the court appointing any person to be an interim receiver shall require that person to take immediate possession of the debtor's property or, as the case may be, the part of it to which his powers as interim receiver are limited.

(5) Where an interim receiver has been appointed, the debtor shall give him such inventory of his property and such other information, and shall attend on the interim receiver at such times, as the latter may for the purpose of carrying out his functions under this section reasonably require.

(6) Where an interim receiver is appointed, section 285(3) applies for the period between the appointment and the making of a bankruptcy order on the petition, or the dismissal of the petition, as if the appointment were the making of such an order.

(7) A person ceases to be interim receiver of a debtor's property if the bankruptcy petition relating to the debtor is dismissed, if a bankruptcy order is made on the petition or if the court by order otherwise terminates the appointment.

(8) References in this section to the debtor's property are to all his property, whether or not it would be comprised in his estate if he were adjudged bankrupt.

Modifications etc. (not altering text)

C584 S. 286(1)(3)-(8) applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

287 Receivership pending appointment of trustee.

(1) Between the making of a bankruptcy order and the time at which the bankrupt's estate vests in a trustee under Chapter IV of this Part, the official receiver is the receiver and

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(subject to section 370 (special manager)) the manager of the bankrupt's estate and is under a duty to act as such.

(2) The function of the official receiver while acting as receiver or manager of the bankrupt's estate under this section is to protect the estate; and for this purpose—
  (a) he has the same powers as if he were a receiver or manager appointed by the High Court, and
  (b) he is entitled to sell or otherwise dispose of any perishable goods comprised in the estate and any other goods so comprised the value of which is likely to diminish if they are not disposed of.

(3) The official receiver while acting as receiver or manager of the estate under this section—
  (a) shall take all such steps as he thinks fit for protecting any property which may be claimed for the estate by the trustee of that estate,
  (b) is not, except in pursuance of directions given by the Secretary of State, required to do anything that involves his incurring expenditure,
  (c) may, if he thinks fit (and shall, if so directed by the court) at any time summon a general meeting of the bankrupt's creditors.

(4) Where—
  (a) the official receiver acting as receiver or manager of the estate under this section seizes or disposes of any property which is not comprised in the estate, and
  (b) at the time of the seizure or disposal the official receiver believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the official receiver is not to be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by his negligence; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

(5) This section does not apply where by virtue of section 297 (appointment of trustee; special cases) the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.

Modifications etc. (not altering text)
C585 S.287 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

288 Statement of affairs.

(1) Where a bankruptcy order has been made otherwise than on a debtor's petition, the bankrupt shall submit a statement of his affairs to the official receiver before the end of the period of 21 days beginning with the commencement of the bankruptcy.

(2) The statement of affairs shall contain—
  (a) such particulars of the bankrupt's creditors and of his debts and other liabilities and of his assets as may be prescribed, and
  (b) such other information as may be prescribed.

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(3) The official receiver may, if he thinks fit—

(a) release the bankrupt from his duty under subsection (1), or

(b) extend the period specified in that subsection;

and where the official receiver has refused to exercise a power conferred by this section, the court, if it thinks fit, may exercise it.

(4) A bankrupt who—

(a) without reasonable excuse fails to comply with the obligation imposed by his section, or

(b) without reasonable excuse submits a statement of affairs that does not comply with the prescribed requirements,

is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Modifications etc. (not altering text)

C586 S. 288 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. 1(a)**

C587 S. 288, applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C588 S. 288 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 10**

C589 S. 288(1)(2) modified by S.I. 1986/1999, art. 5, **Sch. 2**

[F236 289 Investigatory duties of official receiver

(1) The official receiver shall—

(a) investigate the conduct and affairs of each bankrupt (including his conduct and affairs before the making of the bankruptcy order), and

(b) make such report (if any) to the court as the official receiver thinks fit.

(2) Subsection (1) shall not apply to a case in which the official receiver thinks an investigation under that subsection unnecessary.

(3) Where a bankrupt makes an application for discharge under section 280—

(a) the official receiver shall make a report to the court about such matters as may be prescribed, and

(b) the court shall consider the report before determining the application.

(4) A report by the official receiver under this section shall in any proceedings be prima facie evidence of the facts stated in it.]

Textual Amendments

F236 S. 289 substituted (1.4.2004) by 2002 c. 40, ss. 258, 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C590 S.289 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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290 Public examination of bankrupt.

(1) Where a bankruptcy order has been made, the official receiver may at any time before the discharge of the bankrupt apply to the court for the public examination of the bankrupt.

(2) Unless the court otherwise orders, the official receiver shall make an application under subsection (1) if notice requiring him to do so is given to him, in accordance with the rules, by one of the bankrupt's creditors with the concurrence of not less than one-half, in value, of those creditors (including the creditor giving notice).

(3) On an application under subsection (1), the court shall direct that a public examination of the bankrupt shall be held on a day appointed by the court; and the bankrupt shall attend on that day and be publicly examined as to his affairs, dealings and property.

(4) The following may take part in the public examination of the bankrupt and may question him concerning his affairs, dealings and property and the causes of his failure, namely—

(a) the official receiver and, in the case of an individual adjudged bankrupt on a petition under section 264(1)(d), the Official Petitioner,

(b) the trustee of the bankrupt's estate, if his appointment has taken effect,

(c) any person who has been appointed as special manager of the bankrupt's estate or business,

(d) any creditor of the bankrupt who has tendered a proof in the bankruptcy.

(5) If a bankrupt without reasonable excuse fails at any time to attend his public examination under this section he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Modifications etc. (not altering text)
C591 S. 290 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 9**

291 Duties of bankrupt in relation to official receiver.

(1) Where a bankruptcy order has been made, the bankrupt is under a duty—

(a) to deliver possession of his estate to the official receiver, and

(b) to deliver up to the official receiver all books, papers and other records of which he has possession or control and which relate to his estate and affairs (including any which would be privileged from disclosure in any proceedings).

(2) In the case of any part of the bankrupt's estate which consists of things possession of which cannot be delivered to the official receiver, and in the case of any property that may be claimed for the bankrupt's estate by the trustee, it is the bankrupt's duty to do all such things as may reasonably be required by the official receiver for the protection of those things or that property.

(3) Subsections (1) and (2) do not apply where by virtue of section 297 below the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.

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[[F237](4) The bankrupt shall give the official receiver such inventory of his estate and such other information, and shall attend on the official receiver at such times, as the official receiver may reasonably require—

(a) for a purpose of this Chapter, or

(b) in connection with the making of a bankruptcy restrictions order.**]**

(5) Subsection (4) applies to a bankrupt after his discharge.

(6) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this section, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Textual Amendments

F237 S. 291(4) substituted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 5 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C592 S. 291 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

CHAPTER III

TRUSTEES IN BANKRUPTCY

Tenure of office as trustee

292 Power to make appointments.

(1) The power to appoint a person as trustee of a bankrupt's estate (whether the first such trustee or a trustee appointed to fill any vacancy) is exercisable—

(a) [F238]. . . by a general meeting of the bankrupt's creditors;

(b) under section 295(2), 296(2) or 300(6) below in this Chapter, by the Secretary of State; or

(c) under section 297, by the court.

(2) No person may be appointed as trustee of a bankrupt's estate unless he is, at the time of the appointment, qualified to act as an insolvency practitioner in relation to the bankrupt.

(3) Any power to appoint a person as trustee of a bankrupt's estate includes power to appoint two or more persons as joint trustees; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

(4) The appointment of any person as trustee takes effect only if that person accepts the appointment in accordance with the rules. Subject to this, the appointment of any person as trustee takes effect at the time specified in his certificate of appointment.

(5) This section is without prejudice to the provisions of this Chapter under which the official receiver is, in certain circumstances, to be trustee of the estate.

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Textual Amendments

F238 Words in s. 292(1)(a) repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 6, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C593 S.292 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C594 S. 292 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 26**

C595 S. 292 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 10**

293 Summoning of meeting to appoint first trustee.

(1) Where a bankruptcy order has been made [F239]. . . it is the duty of the official receiver, as soon as practicable in the period of 12 weeks beginning with the day on which the order was made, to decide whether to summon a general meeting of the bankrupt's creditors for the purpose of appointing a trustee of the bankrupt's estate.

This section does not apply where the bankruptcy order was made on a petition under section 264(1)(d) (criminal bankruptcy); and it is subject to the provision made in sections 294(3) and 297(6) below.

(2) Subject to the next section, if the official receiver decides not to summon such a meeting, he shall, before the end of the period of 12 weeks above mentioned, given notice of his decision to the court and to every creditor of the bankrupt who is known to the official receiver or is identified in the bankrupt's statement of affairs.

(3) As from the giving to the court of a notice under subsection (2), the official receiver is the trustee of the bankrupt's estate.

Textual Amendments

F239 Words in s. 293(1) repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 7, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C596 S. 293 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C597 S. 293 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 12**

C598 S. 293 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 11**

294 Power of creditors to requisition meeting.

(1) Where in the case of any bankruptcy—

(a) the official receiver has not yet summoned, or has decided not to summon, a general meeting of the bankrupt's creditors for the purpose of appointing the trustee, [F240]. . .

(b) [F240]. . . . . .

any creditor of the bankrupt may request the official receiver to summon such a meeting for that purpose.

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(2) If such a request appears to the official receiver to be made with the concurrence of not less than one-quarter, in value, of the bankrupt's creditors (including the creditor making the request), it is the duty of the official receiver to summon the requested meeting.

(3) Accordingly, where the duty imposed by subsection (2) has arisen, the official receiver is required neither to reach a decision for the purposes of section 293(1) nor (if he has reached one) to serve any notice under section 293(2).

Textual Amendments

F240 S. 294(1)(b) and preceding word repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 8, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C599 S. 294 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C600 S. 294 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 12**

C601 S. 294 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 11**

295 Failure of meeting to appoint trustee.

(1) If a meeting summoned under section 293 or 294 is held but no appointment of a person as trustee is made, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.

(2) On a reference made in pursuance of that decision, the Secretary of State shall either make an appointment or decline to make one.

(3) If—

(a) the official receiver decides not to refer the need for an appointment to the Secretary of State, or

(b) on such a reference the Secretary of State declines to make an appointment,

the official receiver shall give notice of his decision or, as the case may be, of the Secretary of State's decision to the court.

(4) As from the giving of notice under subsection (3) in a case in which no notice has been given under section 293(2), the official receiver shall be trustee of the bankrupt's estate.

Modifications etc. (not altering text)

C602 S. 295 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C603 S. 295 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 13**

C604 S. 295 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 12**

296 Appointment of trustee by Secretary of State.

(1) At any time when the official receiver is the trustee of a bankrupt's estate by virtue of any provision of this Chapter (other than section 297(1) below) he may apply to

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the Secretary of State for the appointment of a person as trustee instead of the official receiver.

(2) On an application under subsection (1) the Secretary of State shall either make an appointment or decline to make one.

(3) Such an application may be made notwithstanding that the Secretary of State has declined to make an appointment either on a previous application under subsection (1) or on a reference under section 295 or under section 300(4) below.

(4) Where the trustee of a bankrupt's estate has been appointed by the Secretary of State (whether under this section or otherwise), the trustee shall give notice to the bankrupt's creditors of his appointment or, if the court so allows, shall advertise his appointment in accordance with the court's directions.

(5) In that notice or advertisement the trustee shall—

(a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditor's committee under section 301, and

(b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

Modifications etc. (not altering text)

C605 S. 296 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C606 S. 296 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 12**

C607 S. 296 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 13**

297 Special cases.

(1) Where a bankruptcy order is made on a petition under section 264(1)(d) (criminal bankruptcy), the official receiver shall be trustee of the bankrupt's estate.

(2) [F241] . . . . . .

(3) [F241] . . . . . .

(4) Where a bankruptcy order is made in a case in which an insolvency practitioner's report has been submitted to the court under section 274[F242]. . . , the court, if it thinks fit, may on making the order appoint the person who made the report as trustee.

(5) Where a bankruptcy order is made (whether or not on a petition under section 264(1)(c)) at a time when there is a supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII, the court, if it thinks fit, may on making the order appoint the supervisor of the arrangement as trustee.

(6) Where an appointment is made under subsection (4) or (5) of this section, the official receiver is not under the duty imposed by section 293(1) (to decide whether or not to summon a meeting of creditors).

(7) Where the trustee of a bankrupt's estate has been appointed by the court, the trustee shall give notice to the bankrupt's creditors of his appointment or, if the court so allows, shall advertise his appointment in accordance with the directions of the court.

(8) In that notice or advertisement he shall—

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(a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditor's committee under section 301 below, and

(b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

Textual Amendments

F241 S. 297(2)(3) repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 9(a), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F242 Words in s. 297(4) repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 9(b), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C608 S. 297 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 14**

C609 S. 297(1)-(3)(5)-(8) applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

298 Removal of trustee; vacation of office.

(1) Subject as follows, the trustee of a bankrupt's estate may be removed from office only by an order of the court or by a general meeting of the bankrupt's creditors summoned specially for that purpose in accordance with the rules.

(2) Where the official receiver is trustee by virtue of section 297(1), he shall not be removed from office under this section.

(3) [F243] . . . . . .

(4) Where the official receiver is trustee by virtue of section 293(3) or 295(4) or a trustee is appointed by the Secretary of State or (otherwise than under section 297(5)) by the court, a general meeting of the bankrupt's creditors shall be summoned for the purpose of replacing the trustee only if—

(a) the trustee thinks fit, or

(b) the court so directs, or

(c) the meeting is requested by one of the bankrupt's creditors with the concurrence of not less than one-quarter, in value, of the creditors (including the creditor making the request).

(5) If the trustee was appointed by the Secretary of State, he may be removed by a direction of the Secretary of State.

(6) The trustee (not being the official receiver) shall vacate office if he ceases to be a person who is for the time being qualified to act as an insolvency practitioner in relation to the bankrupt.

(7) The trustee may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.

(8) The trustee shall vacate office on giving notice to the court that a final meeting has been held under section 331 in Chapter IV and of the decision (if any) of that meeting.

(9) The trustee shall vacate office if the bankruptcy order is annulled.

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Textual Amendments

F243 S. 298(3) repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 10, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C610 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 298 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 10(6), **Sch. 4 Pt. II para. 21**

C611 S. 298 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 15**

299 Release of trustee.

(1) Where the official receiver has ceased to be the trustee of a bankrupt's estate and a person is appointed in his stead, the official receiver shall have his release with effect from the following time, that is to say—

(a) where that person is appointed by a general meeting of the bankrupt's creditors or by the Secretary of State, the time at which the official receiver gives notice to the court that he has been replaced, and

(b) where that person is appointed by the court, such time as the court may determine.

(2) If the official receiver while he is the trustee gives notice to the Secretary of State that the administration of the bankrupt's estate in accordance with Chapter IV of this Part is for practical purposes complete, he shall have his release with effect from such time as the Secretary of State may determine.

(3) A person other than the official receiver who has ceased to be the trustee 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 bankrupt's 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 the bankrupt's creditors that has resolved against his release, or by the court, or by the Secretary of State, or who has vacated office under section 298(6), 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 298(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 the person vacated office.

(4) Where a bankruptcy order is annulled, the trustee at the time of the annulment has his release with effect from such time as the court may determine.

(5) Where the offical receiver or the trustee has his release under this section, he shall, with effect from the time specified in the preceeding provisions of this section,

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be discharged from all liability both in respect of acts or omissions of his in the administration of the estate and otherwise in relation to his conduct as trustee.

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 304.

Modifications etc. (not altering text)

C612 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C613 S. 299 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 22**

C614 S. 299 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 16**

300 Vacancy in office as trustee.

(1) This section applies where the appointment of any person as trustee of a bankrupt's estate fails to take effect or, such an appointment having taken effect, there is otherwise a vacancy in the office of trustee.

(2) The official receiver shall be trustee until the vacancy is filled.

(3) The official receiver may summon a general meeting of the bankrupt's creditors for the purpose of filling the vacancy and shall summon such a meeting if required to do so in pursuance of section 314(7) (creditor's requisition).

(4) If at the end of the period of 28 days beginning with the day on which the vacancy first came to the offical receiver's attention he has not summoned, and is not proposing to summon, a general meeting of creditors for the purpose of filling the vacancy, he shall refer the need for an appointment to the Secretary of State.

(5) [F244] . . . . . .

(6) On a reference to the Secretary of State under subsection (4) [F245]. . . the Secretary of State shall either make an appointment or decline to make one.

(7) If on a reference under subsection (4) [F245]. . . no appointment is made, the official receiver shall continue to be trustee of the bankrupt's estate, but without prejudice to his power to make a further reference.

(8) References in this section to a vacancy include a case where it is necessary, in relation to any property which is or may be comprised in a bankrupt's estate, to revive the trusteeship of that estate after the holding of a final meeting summoned under section 331 or the giving by the official receiver of notice under section 299(2).

Textual Amendments

F244 S. 300(5) repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 11(a), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F245 Words in s. 300(6)(7) repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 11(b), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C615 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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C616 S. 300 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 12**
C617 S. 300 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 17**

Control of trustee

301 Creditors' committee.

(1) Subject as follows, a general meeting of a bankrupt's creditors (whether summoned under the preceding provisions of this Chapter or otherwise) may, in accordance with the rules, establish a committee (known as "the creditors' committee") to exercise the functions conferred on it by or under this Act.

(2) A general meeting of the bankrupt's creditors shall not establish such a committee, or confer any functions on such a committee, at any time when the official receiver is the trustee of the bankrupt's estate, except in connection with an appointment made by that meeting of a person to be trustee instead of the official receiver.

Modifications etc. (not altering text)
C618 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
C619 S. 301 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 16**
C620 S. 301 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 18**
S. 301 amended (1.12.2001) by 2000 c. 8, **s. 374(4)(b)**; S.I. 2001/3538, **art. 2(1)**

302 Exercise by Secretary of State of functions of creditors' committee.

(1) The creditors' committee is not to be able or required to carry out its functions at any time when the official receiver is trustee of the bankrupt's estate; but at any such time the functions of the committee under this Act shall be vested in the Secretary of State, except to the extent that the rules otherwise provide.

(2) Where in the case of any bankruptcy there is for the time being no creditors' committee and the trustee of the bankrupt's estate is a person other than the official receiver, the functions of such a committee shall be vested in the Secretary of State, except to the extent that the rules otherwise provide.

Modifications etc. (not altering text)
C621 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
C622 S. 302 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 16**

303 General control of trustee by the court.

(1) If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt's estate, he may apply to the court; and on such an application the court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks fit.

(2) The trustee of a bankrupt's estate may apply to the court for directions in relation to any particular matter arising under the bankruptcy.

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[[F246](2A) Where at any time after a bankruptcy petition has been presented to the court against any person, whether under the provisions of the Insolvent Partnerships Order 1994 or not, the attention of the court is drawn to the fact that the person in question is a member of an insolvent partnership, the court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(2B) Where a bankruptcy petition has been presented against more than one individual in the circumstances mentioned in subsection (2A) above, the court may give such directions for consolidating the proceedings, or any of them, as it thinks just.

(2C) Any order or directions under subsection (2A) or (2B) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.**]**

Textual Amendments

F246 S. 303(2A)-(2C) inserted (1.12.1994) by S.I. 1994/2421, **art. 14(2)**

Modifications etc. (not altering text)

C623 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C624 S. 303 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 20**

304 Liability of trustee.

(1) Where on an application under this section the court is satisfied—

(a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate, or

(b) that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his functions,

the court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other property (together with interest at such rate as the court thinks just) or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just.

This is without prejudice to any liability arising apart from this section.

(2) An application under this section may be made by the official receiver, the Secretary of State, a creditor of the bankrupt or (whether or not there is, or is likely to be, a surplus for the purposes of section 330(5) (final distribution)) the bankrupt himself.

But the leave of the court is required for the making of an application if it is to be made by the bankrupt or if it is to be made after the trustee has had his release under section 299.

(3) Where—

(a) the trustee seizes or disposes of any property which is not comprised in the bankrupts estate, and

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(b) at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the trustee is not liable to any person (whether under this section or otherwise) in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the trustee; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

Modifications etc. (not altering text)

C625 Ss. 298-307 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 304 applied (10.8.2005) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 31** (as amended (10.8.2005) by S.I. 2005/1998, **regs. 2(3)**, {40(1)-(4)(10)(a)})

CHAPTER IV

ADMINISTRATION BY TRUSTEE

Preliminary

305 General functions of trustee.

(1) This Chapter applies in relation to any bankruptcy where either—
(a) the appointment of a person as trustee of a bankrupt's estate takes effect, or
(b) the official receiver becomes trustee of a bankrupt's estate.

(2) The function of the trustee is to get in, realise and distribute the bankrupt's estate in accordance with the following provisions of this Chapter; and in the carrying out of that function and in the management of the bankrupt's estate the trustee is entitled, subject to those provisions, to use his own discretion.

(3) It is the duty of the trustee, if he is not the official receiver—
(a) to furnish the official receiver with such information,
(b) to produce to the offical 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 purpose of enabling him to carry out his functions in relation to the bankruptcy.

(4) The official name of the trustee shall be "the trustee of the estate of ....., a bankrupt" (inserting the name of the bankrupt); but he may be referred to as "the trustee in bankruptcy" of the particular bankrupt.

Modifications etc. (not altering text)

C626 S. 305 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. 1(b)**

C627 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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C628 S. 305 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 17**
C629 S. 305 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 19**

Acquisition, control and realisation of bankrupt's estate

306 Vesting of bankrupt's estate in trustee.

(1) The bankrupt's estate shall vest in the trustee immediately on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

(2) Where any property which is, or is to be, comprised in the bankrupt's estate vests in the trustee (whether under this section or under any other provision of this Part), it shall so vest without any conveyance, assignment or transfer.

Modifications etc. (not altering text)
C630 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

[F247 306A Property subject to restraint order

(1) This section applies where—
- (a) property is excluded from the bankrupt's estate by virtue of section 417(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),
- (b) an order under section 50, 52, 128, 198 or 200 of that Act has not been made in respect of the property, and
- (c) the restraint order is discharged.

(2) On the discharge of the restraint order the property vests in the trustee as part of the bankrupt's estate.

(3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).**]**

Textual Amendments
F247 Ss. 306A-306C inserted (24.3.2003) by 2002 c. 29, ss. 456, 458(1)(3), Sch. 11 para. 16(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4)); S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

VALID FROM 01/06/2015

[F248 306AA Property released from detention

(1) This section applies where—
- (a) property is excluded from the bankrupt's estate by virtue of section 417(2)(b) of the Proceeds of Crime Act 2002 (property detained under certain provisions),

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(b) no order is in force in respect of the property under section 41, 50, 120, 128, 190 or 198 of that Act, and

(c) the property is released.

(2) The property vests in the trustee as part of the bankrupt's estate.**]**

Textual Amendments

F248 S. 306AA inserted (prosp.) by Policing and Crime Act 2009 (c. 26), ss. 112, 116(1), **Sch. 7 para. 55**

[F249]306B Property in respect of which receivership or administration order made

(1) This section applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 417(2)(b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),

(b) a confiscation order is made under section 6, 92 or 156 of that Act,

(c) the amount payable under the confiscation order is fully paid, and

(d) any of the property remains in the hands of the receiver or administrator (as the case may be).

(2) The property vests in the trustee as part of the bankrupt's estate.

Textual Amendments

F249 Ss. 306A-306C inserted (24.3.2003) by 2002 c. 29, ss. 456, 458(1)(3), Sch. 11 para. 16(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4)); S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

VALID FROM 01/06/2015

[[F250]306BA Property in respect of which realisation order made

(1) This section applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 417(2)(d) of the Proceeds of Crime Act 2002 (property in respect of which an order has been made authorising realisation of the property by an appropriate officer),

(b) a confiscation order is made under section 6, 92 or 156 of that Act,

(c) the amount payable under the confiscation order is fully paid, and

(d) any of the property remains in the hands of the appropriate officer.

(2) The property vests in the trustee as part of the bankrupt's estate.**]**

Textual Amendments

F250 S. 306BA inserted (prosp.) by Policing and Crime Act 2009 (c. 26), ss. 112, 116(1), **Sch. 7 para. 57**

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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[F251]306C Property subject to certain orders where confiscation order discharged or quashed

(1) This section applies where—

(a) property is excluded from the bankrupt's estate by virtue of section 417(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which a restraint order or an order for the appointment of a receiver or administrator under that Act is in force),

(b) a confiscation order is made under section 6, 92 or 156 of that Act, and

(c) the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.

(2) Any such property in the hands of a receiver appointed under Part 2 or 4 of that Act or an administrator appointed under Part 3 of that Act vests in the trustee as part of the bankrupt's estate.

(3) But subsection (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).

Textual Amendments

F251 Ss. 306A-306C inserted (24.3.2003) by 2002 c. 29, ss. 456, 458(1)(3), Sch. 11 para. 16(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4)); S.S.I. 2003/210, **art. 2**, Sch. (subject to arts. 3-7)

307 After-acquired property.

(1) Subject to this section and section 309, the trustee may by notice in writing claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt since the commencement of the bankruptcy.

(2) A notice under this section shall not be served in respect of—

(a) any property falling within subsection (2) or (3) of section 283 in Chapter II,

[[F252](aa) any property vesting in the bankrupt by virtue of section 283A in Chapter II,**]**

(b) any property which by virtue of any other enactment is excluded from the bankrupt's estate, or

(c) without prejudice to section 280(2)(c) (order of court on application for discharge), any property which is acquired by, or devolves upon, the bankrupt after his discharge.

(3) Subject to the next subsection, upon the service on the bankrupt of a notice under this section the property to which the notice relates shall vest in the trustee as part of the bankrupt's estate; and the trustee's title to that property has relation back to the time at which the property was acquired by, or devolved upon, the bankrupt.

(4) Where, whether before or after service of a notice under this section—

(a) a person acquires property in good faith, for value and without notice of the bankruptcy, or

(b) a banker enters into a transaction in good faith and without such notice,

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the trustee is not in respect of that property or transaction entitled by virtue of this section to any remedy against that person or banker, or any person whose title to any property derives from that person or banker.

(5) References in this section to property do not include any property which, as part of the bankrupt's income, may be the subject of an income payments order under section 310.

Textual Amendments

F252 S. 307(2)(aa) inserted (1.4.2004) by 2002 c. 40, ss. 261(4), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C631 Ss. 298-307 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C632 S. 307 amended by Education (Student Loans) Act 1990 (c. 6, SIF 41:1, 2), s. 1(5), **Sch. 2 para. 5(1)**

C633 S. 307 restricted (12.8.1998) by S.I. 1998/2003, **reg. 13(1)**
S. 307 restricted (25.2.2002) by S.I. 2002/195, **reg. 40(1)**
S. 307 restricted (1.3.2005) by The Education (Student Support) Regulations 2005 (S.I. 2005/52), **reg. 28(1)** (with reg. 3(6)-(9))

308 Vesting in trustee of certain items of excess value.

(1) Subject to **[**[F253]section 309**]**, where—

(a) property is excluded by virtue of section 283(2) (tools of trade, household effects, etc.) from the bankrupt's estate, and

(b) it appears to the trustee that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it,

the trustee may by notice in writing claim that property or, as the case may be, that part of it, for the bankrupt's estate.

(2) Upon the service on the bankrupt of a notice under this section, the property to which the notice relates vests in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that property has relation back to the commencement of the bankruptcy.

(3) The trustee shall apply funds comprised in the estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any property vested in the trustee under this section; and the duty imposed by this subsection has priority over the obligation of the trustee to distribute the estate.

(4) For the purposes of this section property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

Textual Amendments

F253 Words substituted by Housing Act 1988 (c. 50, SIF 61, 75:1), s. 140, **Sch. 17 Pt. I para. 73**

Modifications etc. (not altering text)

C634 S. 308 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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[F254 308A Vesting in trustee of certain tenancies.

Upon the service on the bankrupt by the trustee of a notice in writing under this section, any tenancy—

(a) which is excluded by virtue of section 283(3A) from the bankrupt's estate, and

(b) to which the notice relates,

vests in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that tenancy has relation back to the commencement of the bankruptcy.]

Textual Amendments

F254 S. 308A inserted by Housing Act 1988 (c. 50, SIF 75:1), **s. 117(2)**

309 Time-limit for notice under s. 307 or 308.

(1) Except with the leave of the court, a notice shall not be served—

(a) under section 307, after the end of the period of 42 days beginning with the day on which it first came to the knowledge of the trustee that property in question had been acquired by, or had devolved upon, the bankrupt;

(b) under section 308 [F255 or section 308A], after the end of the period of 42 days beginning with the day on which the property [F256 or tenancy] in question first came to the knowledge of the trustee.

(2) For the purposes of this section—

(a) any thing which comes to the knowledge of the trustee is deemed in relation to any successor of his as trustee to have come to the knowledge of the sucessor at the same time; and

(b) any thing which comes (otherwise than under paragraph (a)) to the knowledge of a person before he is the trustee is deemed to come to his knowledge on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

Textual Amendments

F255 Words inserted by Housing Act 1988 (c. 50, SIF 75:1), **s. 117(3)(a)**

F256 Words inserted by Housing Act 1988 (c. 50, SIF 75:1), **s. 117(3)(b)**

Modifications etc. (not altering text)

C635 S. 309 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

310 Income payments orders.

(1) The court may [F257]. . . make an order ("an income payments order") claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.

[F258 (1A) An income payments order may be made only on an application instituted—

(a) by the trustee, and

(b) before the discharge of the bankrupt.]

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(2) The court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt **[**[F259]when taken together with any payments to which subsection (8) applies**]** below what appears to the court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.

(3) An income payments order shall, in respect of any payment of income to which it is to apply, either—

(a) require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order, or

(b) require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.

(4) Where the court makes an income payments order it may, if it thinks fit, discharge or vary any attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(5) Sums received by the trustee under an income payments order form part of the bankrupt's estate.

[[F260](6) An income payments order must specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of three years beginning with the date on which the order is made.

(6A) An income payments order may (subject to subsection (6)(b)) be varied on the application of the trustee or the bankrupt (whether before or after discharge).**]**

(7) For the purposes of this section the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment **[**[F261]and **[**[F262] (despite anything in section 11 or 12 of the Welfare Reform and Pensions Act 1999)**]** any payment under a pension scheme but excluding any payment to which subsection (8) applies..

(8) This subsection applies to—

(a) payments by way of guaranteed minimum pension; and

(b) payments giving effect to the bankrupt's protected rights as a member of a pension scheme.

(9) In this section, "guaranteed minimum pension" and "protected rights" have the same meaning as in the Pension Schemes Act 1993.**]**

Textual Amendments

F257 Words in s. 310(1) repealed (1.4.2004) by 2002 c. 40, ss. 259(2), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F258 S. 310(1A) inserted (1.4.2004) by 2002 c. 40, ss. 259(3), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F259 Words in s. 310(2) inserted (6.4.1997) by 1995 c. 26, s. 122, **Sch. 3 para. 15(a)** (with s. 121(5)); S.I. 1997/664, art. 2(3), **Sch. Pt. II** (with transitional adaptations, modifications and savings in arts. 3-14)

F260 S. 310(6)(6A) substituted (1.4.2004) for s. 310(6) by 2002 c. 40, ss. 259(4), 279, (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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F261 S. 310(8)(9) and words preceding them added (6.4.1997) by 1995 c. 26, s. 122, **Sch. 3 para. 15(b)** (with s. 121(5)); S.I. 1997/664, art. 2(3), **Sch. Pt. II** (with transitional adaptations, modifications and savings in arts. 3-14)

F262 Words in s. 310(7) inserted (11.11.1999 for the purpose only of any exercise of power to make regulations, otherwise 29.5.2000) by 1999 c. 30, ss. 18, 89(5), **Sch. 2 para. 2**; S.I. 2000/1382, **art. 2(e)**

Modifications etc. (not altering text)

C636 S. 310 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C637 S. 310 amended by Education (Student Loans) Act 1990 (c. 6, SIF 41:1, 2), s. 1(5), **Sch. 2 para. 5(1)**

C638 S. 310 restricted (12.8.1998) by S.I. 1998/2003, **reg. 13(1)**
S. 310 restricted (25.2.2002) by S.I. 2002/195, **reg. 40(1)**
S. 310 restricted (1.3.2005) by The Education (Student Support) Regulations 2005 (S.I. 2005/52), **reg. 28(1)** (with reg. 3(6)-(9))

[F263 310A Income payments agreement

(1) In this section "income payments agreement" means a written agreement between a bankrupt and his trustee or between a bankrupt and the official receiver which provides—

(a) that the bankrupt is to pay to the trustee or the official receiver an amount equal to a specified part or proportion of the bankrupt's income for a specified period, or

(b) that a third person is to pay to the trustee or the official receiver a specified proportion of money due to the bankrupt by way of income for a specified period.

(2) A provision of an income payments agreement of a kind specified in subsection (1)(a) or (b) may be enforced as if it were a provision of an income payments order.

(3) While an income payments agreement is in force the court may, on the application of the bankrupt, his trustee or the official receiver, discharge or vary an attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(4) The following provisions of section 310 shall apply to an income payments agreement as they apply to an income payments order—

(a) subsection (5) (receipts to form part of estate), and

(b) subsections (7) to (9) (meaning of income).

(5) An income payments agreement must specify the period during which it is to have effect; and that period—

(a) may end after the discharge of the bankrupt, but

(b) may not end after the period of three years beginning with the date on which the agreement is made.

(6) An income payments agreement may (subject to subsection (5)(b)) be varied—

(a) by written agreement between the parties, or

(b) by the court on an application made by the bankrupt, the trustee or the official receiver.

(7) The court—

(a) may not vary an income payments agreement so as to include provision of a kind which could not be included in an income payments order, and

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(b) shall grant an application to vary an income payments agreement if and to the extent that the court thinks variation necessary to avoid the effect mentioned in section 310(2).**]**

Textual Amendments

F263 S. 310A inserted (1.4.2004) by 2002 c. 40, ss. 260, 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

311 Acquisition by trustee of control.

(1) The trustee shall take possession of all books, papers and other records which relate to the bankrupt's estate or affairs and which belong to him or are in his possession or under his control (including any which would be privileged from disclosure in any proceedings).

(2) In relation to, and for the purpose of acquiring or retaining possession of, the bankrupt's estate, the trustee is in the same position as if her were a receiver of property appointed by the High Court; and the court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the bankrupt's estate consists of stock or shares in a company, shares in a ship or any other property transferable in the books of a company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the estate consists of things in action, they are deemed to have been assigned to the trustee; but notice of the deemed assignment need not be given except in so far as it is necessary, in a case where the deemed assignment is from the bankrupt himself for protecting the priority of the trustee.

(5) Where any goods comprised in the estate are held by any person by way of pledge, pawn or other security and no notice has been served in respect of those goods by the official receiver under subsection (5) of section 285 (restriction on realising security), the trustee may serve such a notice in respect of the goods; and whether or not a notice has been served under this subsection or that subsection, the trustee may, if he thinks fit, exercise the bankrupt's right of redemption in respect of any such goods.

(6) A notice served by the trustee under subsection (5) has the same effect as a notice served by the official receiver under section 285(5).

Modifications etc. (not altering text)

C639 S. 311 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

312 Obligation to surrender control to trustee.

(1) The bankrupt shall deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession.

This is without prejudice to the general duties of the bankrupt under section 333 in this Chapter.

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(2) If any of the following is in possession of any property, books, papers or other records of which the trustee is required to take possession, namely—

(a) the official receiver,

(b) a person who has ceased to be trustee of the bankrupt's estate, or

(c) a person who has been the supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII,

the official receiver or, as the case may be, that person shall deliver up possession of the property, books, papers or records to the trustee.

(3) Any banker or agent of the bankrupt or any other person who holds any property to the account of, or for, the bankrupt shall pay or deliver to the trustee all property in his possession or under his control which forms part of the bankrupt's estate and which he is not by law entitled to retain as against the bankrupt or trustee.

(4) If any person without reasonable excuse fails to comply with any obligation imposed by this section, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Modifications etc. (not altering text)

C640 S. 312 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C641 S. 312 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 20**

313 Charge on bankrupt's home.

(1) Where any property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse **[**[F264]or by his civil partner or former civil partner**]** is comprised in the bankrupt's estate and the trustee is, for any reason, unable for the time being to realise that property, the trustee may apply to the court for an order imposing a charge on the property for the benefit of the bankrupt's estate.

(2) If on an application under this section the court imposes a charge on any property, the benefit of that charge shall be comprised in the bankrupt's estate and is enforceable **[**[F265], up to the charged value from time to time,**]** for the payment of any amount which is payable otherwise than to the bankrupt out of the estate and of interest on that amount at the prescribed rate.

[[F266](2A) In subsection (2) the charged value means—

(a) the amount specified in the charging order as the value of the bankrupt's interest in the property at the date of the order, plus

(b) interest on that amount from the date of the charging order at the prescribed rate.

(2B) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the rules.**]**

(3) An order under this section made in respect of property vested in the trustee shall provide, in accordance with the rules, for the property to cease to be comprised in the bankrupt's estate and, subject to the charge (and any prior charge), to vest in the bankrupt.

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(4) Subsections (1) and (2) and (4) to (6) of section 3 of the Charging Orders Act 1979 (supplemental provisions with respect to charging orders) have effect in relation to orders under this section as in relation to charging orders under that Act.

[[F267](5) But an order under section 3(5) of that Act may not vary a charged value.**]**

Textual Amendments

F264 Words in s. 313(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 114**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

F265 Words in s. 313(2) substituted (1.4.2004) by 2002 c. 40, ss. 261(2)(a), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F266 S. 313(2A)(2B) inserted (1.4.2004) by 2002 c. 40, ss. 261(2)(b), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F267 S. 313(5) inserted (1.4.2004) by 2002 c. 40, ss. 261(2)(c), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C642 S. 313 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

[[F268]**313A Low value home: application for sale, possession or charge**

(1) This section applies where—

(a) property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of—

(i) the bankrupt,

(ii) the bankrupt's spouse **[**[F269]or civil partner**]**, or

(iii) a former spouse **[**[F270]or former civil partner**]** of the bankrupt, and

(b) the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under section 313 in respect of the property.

(2) The court shall dismiss the application if the value of the interest is below the amount prescribed for the purposes of this subsection.

(3) In determining the value of an interest for the purposes of this section the court shall disregard any matter which it is required to disregard by the order which prescribes the amount for the purposes of subsection (2).**]**

Textual Amendments

F268 S. 313A inserted (1.4.2004) by 2002 c. 40, ss. 261(3), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F269 Words in s. 313A(1)(a)(ii) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 115(a)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

F270 Words in s. 313A(1)(a)(iii) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 115(b)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

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Modifications etc. (not altering text)

C643 S. 313A modified (1.7.2005) by S.I. 1994/2421, Sch. 4 Pt. II para. 29A (as inserted (1.7.2005) by S.I. 2005/1516, **art. 9(5)**)
S. 313A modified (1.7.2005) by S.I. 1994/2421, Sch. 7 para. 20A (as inserted (1.7.2005) by S.I. 2005/1516, **art. 10(5)**)

314 Powers of trustee.

(1) The trustee may—

(a) with the permission of the creditor's committee or the court, exercise any of the powers specified in Part I of Schedule 5 to this Act, and

(b) without that permission, exercise any of the general powers specified in Part II of that Schedule.

(2) With the permission of the creditors' committee or the court, the trustee may appoint the bankrupt—

(a) to superintend the management of his estate or any part of it,

(b) to carry on his business (if any) for the benefit of his creditors, or

(c) in any other respect to assist in administering the estate in such manner and on such terms as the trustee may direct.

(3) A permission given for the purposes of subsection (1)(a) or (2) shall not be a general permission but shall relate to a particular exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required in either case has been given.

(4) Where the trustee has done anything without the permission required by subsection (1)(a) or (2), the court or the creditor's committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

But the committee shall not do so unless it is satisfied that the trustee has acted in a case or urgency and has sought its ratification without undue delay.

(5) Part III of Schedule 5 to this Act has effect with respect to the things which the trustee is able to do for the purposes of, or in connection with, the exercise of any of his powers under any of his Group of Parts.

(6) Where the trustee (not being the official receiver) in exercise of the powers conferred on him by any provision in this Group of Parts—

(a) disposes of any property comprised in the bankrupt's estate to an associate of the bankrupt, or

(b) employs a solicitor,

he shall, if there is for the time being a creditor's committee, give notice to the committee of that exercise of his powers.

(7) Without prejudice to the generality of subsection (5) and Part III of Schedule 5, the trustee may, if he thinks fit, at any time summon a general meeting of the bankrupt's creditors.

Subject to the preceding provisions in this Group of Parts, he shall summon such a meeting if he is requested to do so by a creditor of the bankrupt and the request is made

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with the concurrence of not less than one-tenth, in value, of the bankrupt's creditors (including the creditor making the request).

(8) Nothing in this Act is to be construed as restricting the capacity of the trustee to exercise any of his powers outside England and Wales.

Modifications etc. (not altering text)

C644 S. 314 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C645 S. 314(7) applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 20**

Disclaimer of onerous property

315 Disclaimer (general power).

(1) Subject as follows, the trustee 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.

(2) The following is onerous property for the purposes of this section, that is to say—

(a) any unprofitable contract, and

(b) any other property comprised in the bankrupt's estate 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.

(3) 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 bankrupt and his estate in or in respect of the property disclaimed, and

(b) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship,

but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this section in respect of any property that has been claimed for the estate under section 307 (after-acquired property) or 308 (personal property of bankrupt exceeding reasonable replacement value) **[**[F271]or 308A**]**, except with the leave of the court.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed to be a creditor of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

Textual Amendments

F271 Words inserted by Housing Act 1988 (c. 50, SIF 75:1), **s. 117(4)**

Modifications etc. (not altering text)

C646 S.315, applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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C647 S. 315 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.** .

C648 S. 315 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**

S. 315 excluded (11.12.1999) by S.I. 1999/2979, **reg. 16(1)**

316 Notice requiring trustee's decision.

(1) Notice of disclaimer shall not be given under section 315 in respect of any property if—

(a) a person interested in the property has applied in writing to the trustee or one of his predecessors as trustee requiring the trustee 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 has expired without a notice of disclaimer having been given under section 315 in respect of that property.

(2) The trustee is deemed to have adopted any contract which by virtue of this section he is not entitled to disclaim.

Modifications etc. (not altering text)

C649 S. 316 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

317 Disclaimer of leaseholds.

(1) The disclaimer of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person claiming under the bankrupt as underlessee or mortgagee and either—

(a) no application under section 320 below is made with respect to the 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 is to 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 320, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

Modifications etc. (not altering text)

C650 S.317 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C651 S. 317 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. 1(c)**

318 Disclaimer of dwelling house.

Without prejudice to section 317, the disclaimer of any property in a dwelling house does not take effect unless a copy of the disclaimer has been served (so far as the

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trustee is aware of their addresses) on every person in occupation of or claiming a right to occupy the dwelling house and either—

(a) no application under section 320 is made with respect to the property before the end of the period of 14 days beginning with the day on which the last notice served under this section was served, or

(b) where such an application has been made, the court directs that the disclaimer is to take effect.

Modifications etc. (not altering text)

C652 S.318 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

319 Disclaimer of land subject to rentcharge.

(1) The following applies where, in consequence of the disclaimer under section 315 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)

C653 s. 319 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

320 Court order vesting disclaimed property.

(1) This section and the next apply where the trustee has disclaimed property under section 315.

(2) An application may be made to the court under this section by—

(a) any person who claims an interest in the disclaimed property,

(b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer, or

(c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(3) Subject as follows in this section and the next, the court may, on an application under this section, 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,

(b) a person subject to such a liability as is mentioned in subsection (2)(b) or a trustee for such a person, or

(c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

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(4) The court shall not make an order by virtue of 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 purposes of section 315(5) 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 any conveyance, assignment or transfer.

Modifications etc. (not altering text)
C654 S. 320 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

321 Order under s. 320 in respect of leaseholds.

(1) The court shall not make an order under section 320 vesting property of a leasehold nature in any person, except on terms making that person—
   (a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease on the day the bankruptcy petition was presented, 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 on that day.

(2) For the purposes of an order under section 320 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 is willing to accept an order under section 320 on the terms required by that subsection, the court may (by order under section 320) vest the estate or interest in the bankrupt in the property in any person who is liable (whether personally or in a representative capacity and whether alone or jointly with the bankrupt) to perform the lessee's covenants in the lease.

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

(4) Where subsection (1) applies and a person declines to accept any order under section 320, that person shall be excluded from all interest in the property.

Modifications etc. (not altering text)
C655 S. 321 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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Distribution of bankrupt's estate

322 Proof of debts.

(1) Subject to this section and the next, the proof of any bankruptcy debt by a secured or unsecured creditor of the bankrupt and the admission or rejection of any proof shall take place in accordance with the rules.

(2) Where a bankruptcy debt bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the commencement of the bankruptcy.

(3) The trustee shall estimate the value of any bankruptcy debt which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value.

(4) Where the value of a bankruptcy debt is estimated by the trustee under subsection (3) or, by virtue of section 303 in Chapter III, by the court, the amount provable in the bankruptcy in respect of the debt is the amount of the estimate.

Modifications etc. (not altering text)
C656 S.322 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

323 Mutual credit and set-off.

(1) This section applies where before the commencement of the bankruptcy there have been mutual credits, mutual debts or other mutual dealings between the bankruptcy and any creditor of the bankrupt proving or claiming to prove for a bankruptcy debt.

(2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(3) Sums due from the bankrupt to another party shall not be included in the account taken under subsection (2) if that other party had notice at the time they became due that a bankruptcy petition relating to the bankrupt was pending.

(4) Only the balance (if any) of the account taken under subsection (2) is provable as a bankruptcy debt or, as the case may be, to be paid to the trustee as part of the bankrupt's estate.

Modifications etc. (not altering text)
C657 S.323 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
C658 S. 323 modified (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 163(2)(b), 182(4),Sch. 22 para. 6(2)(b); S.I. 1991/878, art. 2, **Sch.**.

324 Distribution by means of dividend.

(1) Whenever the trustee has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy,

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declare and distribute dividends among the creditors in respect of the bankruptcy debts which they have respectively proved.

(2) The trustee shall give notice of his intention to declare and distribute a dividend.

(3) Where the trustee has declared a dividend, he shall give notice of the dividend and of how it is proposed to distribute it; and a notice given under this subsection shall contain the prescribed particulars of the bankrupt's estate.

(4) In the calculation and distribution of a dividend the trustee shall make provision—
- (a) for any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs,
- (b) for any bankruptcy debts which are the subject of claims which have not yet been determined, and
- (c) for disputed proofs and claims.

Modifications etc. (not altering text)
C659 S. 324 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

325 Claims by unsatisfied creditors.

(1) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—
- (a) when he has proved that debt he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive; and
- (b) any dividend or dividends payable under paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.

(2) No action lies against the trustee for a dividend,but if the trustee refuses to pay a dividend the court may, if it thinks fit, order him to pay it and also to pay, out of his own money—
- (a) interest on the dividend, at the rate for the time being specified in section 17 of the [M32]JudgmentsAct 1838, from the time it was withheld, and
- (b) the costs of the proceedings in which the order to pay is made.

Modifications etc. (not altering text)
C660 s. 325 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Marginal Citations
M32 1838 c. 110.

326 Distribution of property in specie.

(1) Without prejudice to sections 315 to 319 (disclaimer), the trustee may, with the permission of the creditors' committee, divide in its existing form amongst the bankrupt's creditors, according to its estimated value, any property which from its

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peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) A permission given for the purposes of subsection (1) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required by subsection (1) has been given.

(3) Where the trustee has done anything without the permission required by subsection (1), the court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

But the committee shall not do so unless it is satisfied that the trustee acted in a case of urgency and has sought its ratification without undue delay.

Modifications etc. (not altering text)
C661 S. 326 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

[[F272]327 Distribution in criminal bankruptcy.

Where the bankruptcy order was made on a petition under section 264(1)(d) (criminal bankruptcy), no distribution shall be made under sections 324 to 326 so long as an appeal is pending (within the meaning of section 277) against the bankrupt's conviction of any offence by virtue of which the criminal bankruptcy order on which the petition was based was made.**]**

Textual Amendments
F272 S. 327 repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**

Modifications etc. (not altering text)
C662 S.327 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

328 Priority of debts.

(1) In the distribution of the bankrupt's estate, his preferential debts (within the meaning given by section 386 in Part XII) shall be paid in priority to other debts.

(2) Preferential debts rank equally between themselves after the expenses of the bankruptcy and shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.

(3) Debts which are neither preferential debts nor debts to which the next section applies also rank equally between themselves and, after the preferential debts, shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.

(4) Any surplus remaining after the payment of the debts that are preferential or rank equally under subsection (3) shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the

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commencement of the bankruptcy; and interest on preferential debts ranks equally with interest on debts other than preferential debts.

(5) The rate of interest payable under subsection (4) in respect of any debt is whichever is the greater of the following—

(a) the rate specified in section 17 of the [M33]Judgments Act 1838 at the commencement of the bankruptcy, and

(b) the rate applicable to that debt apart from the bankruptcy.

(6) This section and the next are without prejudice to any provision of this Act or any other Act under which the payment of any debt or the making of any other payment is, in the event of bankruptcy, to have a particular priority or to be postponed.

Modifications etc. (not altering text)

C663 S. 328 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C664 S. 328 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 21**

C665 S. 328 excluded (10.8.2005) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), reg. 20 (as amended (10.8.2005) by S.I. 2005/1998, regs. 2(3), **40(1)-(5)**)

C666 S. 328(1)-(3)(6) modified (1.12.1994) by S.I. 1994/2421, art. 8, **Sch. 4 Pt. II para. 23**

C667 S. 328(1)(2) applied (11.12.1999) by S.I. 1999/2979, **reg. 14(5)**

C668 S. 328(4)(5) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 24**

Marginal Citations

M33 1838 c. 110.

329 Debts to spouse.

(1) This section applies to bankruptcy debts owed in respect of credit provided by a person who (whether or not the bankrupt's spouse **[**[F273]or civil partner**]** at the time the credit was provided) was the bankrupt's spouse **[**[F273]or civil partner**]** at the commencement of the bankruptcy.

(2) Such debts—

(a) rank in priority after the debts and interest required to be paid in pursuance of section 328(3) and (4), and

(b) are payable with interest at the rate specified in section 328(5) in respect of the period during which they have been outstanding since the commencement of the bankruptcy;

and the interest payable under paragraph (b) has the same priority as the debts on which it is payable.

Textual Amendments

F273 Words in s. 329(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 116**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

Modifications etc. (not altering text)

C669 S. 329 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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330 Final distribution.

(1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the trustee's opinion, be realised without needlessly protracting the trusteeship, he shall give notice in the prescribed manner either—

(a) of his intention to declare a final dividend, or

(b) that no dividend, or further dividend, will be declared.

(2) The notice under subsection (1) shall contain the prescribed particulars and shall require claims against the bankrupt's estate to be established by a date ("the final date") specified in the notice.

(3) The court may, on the application of any person, postpone the final date.

(4) After the final date, the trustee shall—

(a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate, and

(b) if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.

(5) If a surplus remains after payment in full and with interest of all the bankrupt's creditors and the payment of the expenses of the bankruptcy, the bankrupt is entitled to the surplus.

[[F274](6) Subsection (5) is subject to Article 35 of the EC Regulation (surplus in secondary proceedings to be transferred to main proceedings).**]**

Textual Amendments

F274 S. 330(6) inserted (31.5.2002) by S.I. 2002/1240, **reg. 15**

Modifications etc. (not altering text)

C670 S. 330 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II** (as amended (31.5.2002) by S.I. 2002/1309, **art. 3(3)(4)**)

C671 S. 330(4)(*b*) modified by S.I. 1986/1999, art. 5, **Sch. 2**

331 Final meeting.

(1) Subject as follows in this section and the next, this section applies where—

(a) it appears to the trustee that the administration of the bankrupt's estate in accordance with this Chapter is for practical purposes complete, and

(b) the trustee is not the official receiver.

(2) The trustee shall summon a final general meeting of the bankrupt's creditors which—

(a) shall receive the trustee's report of his administration of the bankrupt's estate, and

(b) shall determine whether the trustee should have his release under section 299 in Chapter III.

(3) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under section 330(1); but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date

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on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.

(4) In the administration of the estate it is the trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the meeting required by this section.

Modifications etc. (not altering text)

C672 S. 331 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 331 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 10(6), **Sch. 4 Pt. II para. 18**

C673 S. 331 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), **Sch. 7 para. 22**

332 Saving for bankrupt's home.

(1) This section applies where—

(a) there is comprised in the bankrupt's estate property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse **[**[F275]or by his civil partner or former civil partner**]**, and

(b) the trustee has been unable for any reason to realise that property.

(2) The trustee shall not summon a meeting under section 331 unless either—

(a) the court has made an order under section 313 imposing a charge on that property for the benefit of the bankrupt's estate, or

(b) the court has declined, on an application under that section, to make such an order, or

(c) the Secretary of State has issued a certificate to the trustee stating that it would be inappropriate or inexpedient for such an application to be made in the case in question.

Textual Amendments

F275 Words in s. 332(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 117**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

Modifications etc. (not altering text)

C674 S. 332 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Supplemental

333 Duties of bankrupt in relation to trustee.

(1) The bankrupt shall—

(a) give to the trustee such information as to his affairs,

(b) attend on the trustee at such times, and

(c) do all such other things,

as the trustee may for the purposes of carrying out his functions under any of this Group of Parts reasonably require.

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(2) Where at any time after the commencement of the bankruptcy any property is acquired by, or devolves upon, the bankrupt or there is an increase of the bankrupt's income, the bankrupt shall, within the prescribed period, give the trustee notice of the property or, as the case may be, of the increase.

(3) Subsection (1) applies to a bankrupt after his discharge.

(4) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this section, he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Modifications etc. (not altering text)
C675 S. 333 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

334 Stay of distribution in case of second bankruptcy.

(1) This section and the next apply where a bankruptcy order is made against an undischarged bankrupt; and in both sections—
  (a) "the later bankruptcy" means the bankruptcy arising from that order,
  (b) "the earlier bankruptcy" means the bankruptcy (or, as the case may be, most recent bankruptcy) from which the bankrupt has not been discharged at the commencement of the later bankruptcy, and
  (c) "the existing trustee" means the trustee (if any) of the bankrupt's estate for the purposes of the earlier bankruptcy.

(2) Where the existing trustee has been given the prescribed notice of the presentation of the petition of the later bankruptcy, any distribution or other disposition by him of anything to which the next subsection applies, if made after the giving of the notice, is void except to the extent that it was made with the consent of the court or is or was subsequently ratified by the court.

This is without prejudice to section 284 (restrictions on dispositions of property following bankruptcy order).

(3) This subsection applies to—
  (a) any property which is vested in the existing trustee under section 307(3) (after-acquired property);
  (b) any money paid to the existing trustee in pursuance of an income payments order under section 310; and
  (c) any property or money, which is, or in the hands of the existing trustee represents, the proceeds of sale or application of property or money falling within paragraph (a) or (b) of this subsection.

Modifications etc. (not altering text)
C676 S. 334 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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335 Adjustment between earlier and later bankruptcy estates.

(1) With effect from the commencement of the later bankruptcy anthing to which section 334(3) applies which, immediately before the commencement of that bankruptcy, is comprised in the bankrupt's estate for the purposes of the earlier bankruptcy is to be treated as comprised in the bankrupt's estate for the purposes of the later bankruptcy and, until there is a trustee of that estate, is to be dealt with by the existing trustee in accordance with the rules.

(2) Any sums which in pursuance of an income payments order under section 310 are payable after the commencement of the later bankruptcy to the existing trustee shall form part of the bankrupt's estate for the purposes of the later bankruptcy; and the court may give such consequential directions for the modification of the order as it thinks fit.

(3) Anything comprised in a bankrupt's estate by virtue of subsection (1) or (2) is so comprised subject to a first charge in favour of the existing trustee for any bankruptcy expenses incurred by him in relation thereto.

(4) Except as provided above and in section 334, property which is, or by virtue of section 308 (personal property of bankrupt exceeding reasonable replacement value) **[**[F276]or section 308A (vesting in trustee of certain tenancies)**]** is capable of being, comprised in the bankrupt's estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to it, shall not be comprised in his estate for the purposes of the later bankruptcy.

(5) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier one, are not to be creditors of his in the later bankruptcy in respect of the same debts; but the existing trustee may prove in the later bankruptcy for—
   (a) the unsatisfied balance of the debts (including any debt under this subsection) provable against the bankrupt's estate in the earlier bankruptcy;
   (b) any interest payable on that balance; and
   (c) any unpaid expenses of the earlier bankruptcy.

(6) Any amount provable under subsection (5) ranks in priority after all the other debts provable in the later bankruptcy and after interest on those debts and, accordingly, shall not be paid unless those debts and that interest have first been paid in full.

Textual Amendments

F276 Words inserted by Housing Act 1988 (c. 50, SIF 61, 75:1), s. 140(1), **Sch. 17 Pt. I para. 74**

Modifications etc. (not altering text)

C677 S. 335 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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CHAPTER V

EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS TRANSACTTIONS, ETC.

[F277 Rights under trusts of land

Textual Amendments

F277 S. 335A and preceding cross-heading inserted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 23** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**

F278 335A Rights under trusts of land.

(1) Any application by a trustee of a bankrupt's estate under section 14 of the Trusts of Land and Appointment of Trustees Act 1996 (powers of court in relation to trusts of land) for an order under that section for the sale of land shall be made to the court having jurisdiction in relation to the bankruptcy.

(2) On such an application the court shall make such order as it thinks just and reasonable having regard to—

(a) the interests of the bankrupt's creditors;

(b) where the application is made in respect of land which includes a dwelling house which is or has been the home of the bankrupt or the **[**F279 bankrupt's spouse or civil partner or former spouse or former civil partner**]**—

(i) the conduct of the **[**F280 spouse, civil partner, former spouse or former civil partner**]**, so far as contributing to the bankruptcy,

(ii) the needs and financial resources of the **[**F280 spouse, civil partner, former spouse or former civil partner**]**, and

(iii) the needs of any children; and

(c) all the circumstances of the case other than the needs of the bankrupt.

(3) Where such an application is made after the end of the period of one year beginning with the first vesting under Chapter IV of this Part of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

(4) The powers conferred on the court by this section are exercisable on an application whether it is made before or after the commencement of this section.**]**

Textual Amendments

F278 S. 335A and preceding cross-heading inserted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 23** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**

F279 Words in s. 335A(2)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 118(a)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

F280 Words in s. 335A(2)(b)(i)(ii) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 118(b)**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

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Rights of occupation

336 Rights of occupation etc. of bankrupt's spouse [F281or civil partner].

(1) Nothing occurring in the initial period of the bankruptcy (that is to say, the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting of the bankrupt's estate in a trustee) is to be taken as having given rise to any **[**F282**[**F283home rights**]** under Part IV of the Family Law Act 1996**]** in relation to a dwelling house comprised in the bankrupt's estate.

(2) Where **[**F284a spouse's or civil partner's home rights**][**F285under the Act of 1996**]** are a charge on the estate or interest of the other spouse **[**F286or civil partner**]**, or of trustees for the other spouse **[**F286or civil partner**]**, and the other spouse **[**F286or civil partner**]** is adjudged bankrupt—

(a) the charge continues to subsist notwithstanding the bankruptcy and, subject to the provisions of that Act, binds the trustee of the bankrupts's estate and persons deriving title under the trustee, and

(b) any application for an order **[**F287under section 33 of that Act**]** shall be made to the court having jurisdiction in relation to the bankruptcy.

F288(3) . . . . . .

(4) On such an application as is mentioned in subsection (2) F289. . . the court shall make such order under **[**F290section 33 of the Act of 1996**]**. . . as it thinks just and reasonable having regard to—

(a) the interests of the bankrupt's creditors,

(b) the conduct of the spouse or former spouse **[**F291or civil partner or former civil partner**]**, so far as contributing to the bankruptcy,

(c) the needs and financial resources of the spouse or former spouse **[**F291or civil partner or former civil partner**]**,

(d) the needs of any children, and

(e) all the circumstances of the case other than the needs of the bankrupt.

(5) Where such an application is made after the end of the period of one year beginning with the first vesting under Chapter IV of this Part of the bankrupt's estate in a trustee, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

Textual Amendments

F281 Words in heading to s. 336 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 21(5)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F282 Words in s. 336(1) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 57(2)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

F283 Words in s. 336(1) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 21(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F284 Words in s. 336(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 21(3)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F285 Words in s. 336(2) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 57(3)(a)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

F286 Words in s. 336(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 21(3)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

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F287 Words in s. 336(2)(b) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 57(3)(b)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

F288 S. 336(3) repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch. 4** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**

F289 Words in s. 336(4) repealed (1.1.1997) by 1996 c. 47, s. 25(2), **Sch. 4** (with ss. 24(2), 25(4)); S.I. 1996/2974, **art. 2**

F290 Words in s. 336(4) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 57(4)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

F291 Words in s. 336(4)(b)(c) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 21(4)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

337 Rights of occupation of bankrupt.

(1) This section applies where—

(a) a person who is entitled to occupy a dwelling house by virtue of a beneficial estate or interest is adjudged bankrupt, and

(b) any persons under the age of 18 with whom that person had at some time occupied that dwelling house had their home with that person at the time when the bankruptcy petition was presented and at the commencement of the bankruptcy.

(2) Whether or not the bankrupt's **[**[F292]spouse or civil partner (if any) has home rights**]**[F293]under Part IV of the Family Law Act 1996**]**—

(a) the bankrupt has the followng rights as against the trustee of his estate—

(i) if in occupation, a right not to be evicted or excluded from the dwelling house or any part of it, except with the leave of the court,

(ii) if not in occupation, a right with the leave of the court to enter into and occupy the dwelling house, and

(b) the bankrupt's rights are a charge, having the like priority as an equitable interest created immediately before the commencement of the bankruptcy, on so much of his estate or interest in the dwelling house as vests in the trustee.

[[F294](3) The Act of 1996 has effect, with the necessary modifications, as if—

(a) the rights conferred by paragraph (a) of subsection (2) were **[**[F295]home rights**]** under that Act,

(b) any application for such leave as is mentioned in that paragraph were an application for an order under section 33 of that Act, and

(c) any charge under paragraph (b) of that subsection on the estate or interest of the trustee were a charge under that Act on the estate or interest of a spouse **[**[F296]or civil partner**]**.**]**

(4) Any application for leave such as is mentioned in subsection (2)(a) or otherwise by virtue of this section for an order under **[**[F297]section 33 of the Act of 1996**]** shall be made to the court having jurisdiction in relation to the bankruptcy.

(5) On such an application the court shall make such order under **[**[F297]section 33 of the Act of 1996**]** as it thinks just and reasonable having regard to the interests of the creditors, to the bankrupt's financial resources, to the needs of the children and to all the circumstances of the case other than the needs of the bankrupt.

(6) Where such an application is made after the end of the period of one year beginning with the first vesting (under Chapter IV of this Part) of the bankrupt's estate in a trustee,

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the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

Textual Amendments

F292 Words in s. 337(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 22(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F293 Words in s. 337(2) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 58(2)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

F294 S. 337(3) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 58(3)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

F295 Words in s. 337(3)(a) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 22(3)(a)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F296 Words in s. 337(3)(c) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 82, 263, **Sch. 9 para. 22(3)(b)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F297 Words in s. 337(4)(5) substituted (1.10.1997) by 1996 c. 27, s. 66(1), **Sch. 8 Pt. III para. 58(4)** (with Sch. 9 paras. 8-10); S.I. 1997/1892, **art. 3(1)(b)**

338 Payments in respect of premises occupied by bankrupt.

Where any premises comprised in a bankrupt's estate are occupied by him (whether by virtue of the preceding section or otherwise) on condition that he makes payments towards satisfying any liability arising under a mortgage of the premises or otherwise towards the outgoings of the premises, the bankrupt does not, by virtue of those payments, acquire any interest in the premises.

Adjustment of prior transactions, etc.

339 Transactions at an undervalue.

(1) Subject as follows in this section and sections 341 and 342, where an individual is adjudged bankrupt and he has at a relevant time (defined in section 341) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.

(3) For the purposes of this section and sections 341 and 342, an individual enters into a transaction with a person at an undervalue if—

(a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration,

(b) he enters into a transaction with that person in consideration of marriage **[**[F298]or the formation of a civil partnership**]**, or

(c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

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Textual Amendments

F298 Words in s. 339(3)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 119**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

Modifications etc. (not altering text)

C678 S.339 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 339 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

C679 S. 339 restricted by Drug Trafficking Offences Act 1986 (c.32, SIF 39:1), **s. 15(6)(a)(7)**
S. 339 restricted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 30(6)**, 34(5)(a), 47(4)(a)
S. 339 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 8(1)(a)**; S.I. 1991/878, art. 2, **Sch.**
S. 339 restricted by 1986 c. 32, **s. 15(6)(a)(b)** (as substituted (prosp.) by 1993 c. 36, **ss. 13(9)**, 78(3) (with s. 78(6)) (which amending provision was repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), **Sch. 3**))
S. 339 restricted (3.2.1995) by 1994 c. 37, ss. 32(5)(a), 69(2), **Sch. 2 para. 5** (with s. 66(2))
S. 339 restricted (1.11.1995) by 1988 c. 33, **s. 84(6)(a)** (as substituted by 1995 c. 11, **s. 8(7)** (with s. 16(5)(6)); S.I. 1995/2650, **art. 2**)
S. 339 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 2(5)**
S. 339 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(1)**
S. 339 restricted (24.3.2003) by 2002 c. 29, ss. 419(1)-(4), 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))

C680 S. 339 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 165(1)(a); S.I. 1991/878, art. 2, **Sch.**

C681 S. 339 modified (3.2.1995) by 1994 c. 37, ss. 32(5)(b), 69(2), **Sch. 2 para. 5** (with s. 66(2))

340 Preferences.

(1) Subject as follows in this and the next two sections, where an individual is adjudged bankrupt and he has at a relevant time (defined in section 341) given a preference to any person, the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not given that preference.

(3) For the purposes of this and the next two sections, an individual gives a preference to a person if—
   (a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities, and
   (b) the individual does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.

(4) The court shall not make an order under this section in respect of a preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (3)(b) above.

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(5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of his (otherwise than by reason only of being his employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (4).

(6) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

Modifications etc. (not altering text)

C682 S. 340 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 340 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

C683 S. 340 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 165(1)(b); S.I. 1991/878, art. 2, **Sch.**.

C684 S. 340 restricted (25.4.1991) by Companies Act 1989 (c.40), ss. 182(4), **Sch. 22 para. 8(1)(b)**; S.I. 1991/878, art. 2, **Sch.**
S. 340 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(1)**
S. 340 restricted (24.3.2003) by 2002 c. 29, ss. 419(1)-(4), 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))

341 "Relevant time" under ss. 339, 340.

(1) Subject as follows, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given—

(a) in the case of a transaction at an undervalue, at a time in the period of 5 years ending with the day of the presentation of the bankruptcy petition on which the individual is adjudged bankrupt,

(b) in the case of a preference which is not a transaction at an undervalue and is given to a person who is an associate of the individual (otherwise than by reason only of being his employee), at a time in the period of 2 years ending with that day, and

(c) in any other case of a preference which is not a transaction at an undervalue, at a time in the period of 6 months ending with that day.

(2) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (a), (b) or (c) of subsection (1) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the end of the period mentioned in paragraph (a)), that time is not a relevant time for the purposes of sections 339 and 340 unless the individual—

(a) is insolvent at that time, or

(b) becomes insolvent in consequence of the transaction or preference;

but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by an individual with a person who is an associate of his (otherwise than by reason only of being his employee).

(3) For the purposes of subsection (2), an individual is insolvent if—

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(a) he is unable to pay his debts as they fall due, or

(b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.

[[F299](4) A transaction entered into or preference given by a person who is subsequently adjudged bankrupt on a petition under section 264(1)(d) (criminal bankruptcy) is to be treated as having been entered into or given at a relevant time for the purposes of sections 339 and 340 if it was entered into or given at any time on or after the date specified for the purposes of this subsection in the criminal bankruptcy order on which the petition was based.**]**

[[F299](5) No order shall be made under section 339 or 340 by virtue of subsection (4) of this section where an appeal is pending (within the meaning of section 277) against the individual's conviction of any offence by virtue of which the criminal bankruptcy order was made.**]**

Textual Amendments

F299 S. 341(4)(5) repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**

Modifications etc. (not altering text)

C685 S. 341 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

342 Orders under ss. 339, 340.

(1) Without prejudice to the generality of section 339(2) or 340(2), an order under either of those sections with respect to a transaction or preference entered into or given by an individual who is subsequently adjudged bankrupt may (subject as follows)—

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate;

(b) require any property to be so vested it if represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) any security given by the individual;

(d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate as the court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the court thinks appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and

(g) provide for the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or

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other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under section 339 or 340 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual in question entered into the transaction or, as the case may be the person to whom the preference was given; but such an order—

(a) shall not prejudice any interest in property which was acquired from a person other than that individual and was acquired **[**[F300]in good faith and for value**]**, or prejudice any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction or preference **[**[F300]in good faith and for value**]** to pay a sum to the trustee of the bankrupt's estate except where he was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of that individual.

[[F301](2A) Where a person has acquired an interest in property from a person other than the individual in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

(a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or

(b) he was an associate of, or was connected with, either the individual in question or the person with whom that individual entered into the transaction or to whom that individual gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of paragraph (a) or (as the case may be) paragraph (b) of subsection (2) that the interest was acquired or the benefit was received otherwise than in good faith.**]**

(3) Any sums required to be paid to the trustee in accordance with an order under section 339 or 340 shall be comprised in the bankrupt's estate.

[[F302](4) For the purposes of subsection (2A)(a), the relevant surrounding circumstances are (as the case may require)—

(a) the fact that the individual in question entered into the transaction at an undervalue; or

(b) the circumstances which amounted to the giving of the preference by the individual in question.

(5) For the purposes of subsection (2A)(a), a person has notice of the relevant proceedings if he has notice—

(a) of the fact that the petition on which the individual in question is adjudged bankrupt has been presented; or

(b) of the fact that the individual in question has been adjudged bankrupt.

(6) Section 249 in Part VII of this Act shall apply for the purposes of subsection (2A)(b) as it applies for the purposes of the first Group of Parts.**]**

Textual Amendments

F300 Words in s. 342(2)(a)(b) substituted (26.7.1994) by 1994 c. 12, **ss. 2(1)**, 5, 6(2) (with ss. 5, 6(3)

F301 S. 342(2A) inserted (26.7.1994) by 1994 c. 12, **ss. 2(2)**, 5, 6(2) (with ss. 5, 6(3))

F302 S. 342(4)-(6) substituted for s. 342(4) (26.7.1994) by 1994 c. 12, **ss. 2(3)**, 5, 6(2) (with ss. 5, 6(3))

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Modifications etc. (not altering text)

C686 Ss. 342-345 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 342 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

[F303[F304342A Recovery of excessive pension contributions.

(1) Where an individual who is adjudged bankrupt—
  (a) has rights under an approved pension arrangement, or
  (b) has excluded rights under an unapproved pension arrangement,

the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) If the court is satisfied—
  (a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and
  (b) that the making of any of the relevant contributions ("the excessive contributions") has unfairly prejudiced the individual's creditors,

the court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.

(3) Subsection (4) applies where the court is satisfied that the value of the rights under the arrangement is, as a result of rights of the individual under the arrangement or any other pension arrangement having at any time become subject to a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999 (debits giving effect to pension-sharing), less than it would otherwise have been.

(4) Where this subsection applies—
  (a) any relevant contributions which were represented by the rights which became subject to the debit shall, for the purposes of subsection (2), be taken to be contributions of which the rights under the arrangement are the fruits, and
  (b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of paragraph (a) shall be treated as excessive contributions before any which are so represented by virtue of that paragraph.

(5) In subsections (2) to (4) "relevant contributions" means contributions to the arrangement or any other pension arrangement—
  (a) which the individual has at any time made on his own behalf, or
  (b) which have at any time been made on his behalf.

(6) The court shall, in determining whether it is satisfied under subsection (2)(b), consider in particular—
  (a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the individual's creditors or any of them, and
  (b) whether the total amount of any contributions—
    (i) made by or on behalf of the individual to pension arrangements, and

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(ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pension arrangements,

is an amount which is excessive in view of the individual's circumstances when those contributions were made.

(7) For the purposes of this section and sections 342B and 342C ("the recovery provisions"), rights of an individual under an unapproved pension arrangement are excluded rights if they are rights which are excluded from his estate by virtue of regulations under section 12 of the Welfare Reform and Pensions Act 1999.

(8) In the recovery provisions—

"approved pension arrangement" has the same meaning as in section 11 of the Welfare Reform and Pensions Act 1999;

"unapproved pension arrangement" has the same meaning as in section 12 of that Act.**]]**

Textual Amendments

F303 Ss. 342A-342C inserted (6.4.1996 for the purpose only of authorising the making of regulations) by 1995 c. 26, **s. 95(1)** (with s. 121(5)); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

F304 Ss. 342A-342C substituted (11.11.1999 for certain purposes and otherwise 6.4.2002) by 1999 c. 30, **ss. 15**, 89(5)(a); S.I. 2002/153, **art. 2(e)**

Modifications etc. (not altering text)

C687 S. 342A applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

[F305[F306342B Orders under section 342A.

(1) Without prejudice to the generality of section 342A(2), an order under section 342A may include provision—

(a) requiring the person responsible for the arrangement to pay an amount to the individual's trustee in bankruptcy,

(b) adjusting the liabilities of the arrangement in respect of the individual,

(c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the individual under the arrangement,

(d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the bankrupt's case with any requirement under section 342C(1) or in giving effect to the order.

(2) In subsection (1), references to adjusting the liabilities of the arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(3) In subsection (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (pension sharing orders and agreements).

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(4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under section 342A is the lesser of—
  (a) the amount of the excessive contributions, and
  (b) the value of the individual's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

(5) An order under section 342A which requires the person responsible for an arrangement to pay an amount ("the restoration amount") to the individual's trustee in bankruptcy must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of subsection (5), liabilities are correspondingly reduced if the difference between—
  (a) the amount of the liabilities immediately before the reduction, and
  (b) the amount of the liabilities immediately after the reduction,

  is equal to the restoration amount.

(7) An order under section 342A in respect of an arrangement—
  (a) shall be binding on the person responsible for the arrangement, and
  (b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.**]]**

Textual Amendments

F305 Ss. 342A-342C inserted (6.4.1996 for the purpose of authorising the making of regulations) by 1995 c. 26, **s. 95(1)** (with s. 121(5)); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

F306 Ss. 342A-342C substituted (11.11.1999 for certain purposes and otherwise 6.4.2002) by 1999 c. 30, **ss. 15**, 89(5)(a); S.I. 2002/153, **art. 2(e)**

[F307[F308]342C Orders under section 342A: supplementary.

(1) The person responsible for—
  (a) an approved pension arrangement under which a bankrupt has rights,
  (b) an unapproved pension arrangement under which a bankrupt has excluded rights, or
  (c) a pension arrangement under which a bankrupt has at any time had rights,

  shall, on the bankrupt's trustee in bankruptcy making a written request, provide the trustee with such information about the arrangement and rights as the trustee may reasonably require for, or in connection with, the making of applications under section 342A.

(2) Nothing in—
  (a) any provision of section 159 of the Pension Schemes Act 1993 or section 91 of the Pensions Act 1995 (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),
  (b) any provision of any enactment (whether passed or made before or after the passing of the Welfare Reform and Pensions Act 1999) corresponding to any of the provisions mentioned in paragraph (a), or

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(c) any provision of the arrangement in question corresponding to any of those provisions,

applies to a court exercising its powers under section 342A.

(3) Where any sum is required by an order under section 342A to be paid to the trustee in bankruptcy, that sum shall be comprised in the bankrupt's estate.

(4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—

(a) any such value as is mentioned in section 342B(4)(b);

(b) any such amounts as are mentioned in section 342B(6)(a) and (b).

(5) The power conferred by subsection (4) includes power to provide for calculation or verification—

(a) in such manner as may, in the particular case, be approved by a prescribed person; or

[[F309](b) in accordance with guidance from time to time prepared by a prescribed person.**]**

(6) References in the recovery provisions to the person responsible for a pension arrangement are to—

(a) the trustees, managers or provider of the arrangement, or

(b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.

(7) In this section and sections 342A and 342B—

"prescribed" means prescribed by regulations;

"the recovery provisions" means this section and sections 342A and 342B;

"regulations" means regulations made by the Secretary of State.

(8) Regulations under the recovery provisions may—

(a) make different provision for different cases;

(b) contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient.

(9) Regulations under the recovery provisions shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.**]]**

Textual Amendments

F307 Ss. 342A-342C inserted (6.4.1996 for the purpose only of authorising the making of regulations) by 1995 c. 26, **s. 95(1)** (with s. 121(5)); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

F308 Ss. 342A-342C substituted (11.11.1999 for certain purposes and otherwise 6.4.2002) by 1999 c. 30, **ss. 15**, 89(5)(a); S.I. 2002/153, **art. 2(e)**

F309 S. 342C(5)(b) substituted (1.11.2007) by Pensions Act 2007 (c. 22), ss. 17, 30(2)(c), **Sch. 5 para. 3**; S.I. 2007/3063, {art. 2 (b)}

[[F310]**342D Recovery of excessive contributions in pension-sharing cases.**

(1) For the purposes of sections 339, 341 and 342, a pension-sharing transaction shall be taken—

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(a) to be a transaction, entered into by the transferor with the transferee, by which the appropriate amount is transferred by the transferor to the transferee; and

(b) to be capable of being a transaction entered into at an undervalue only so far as it is a transfer of so much of the appropriate amount as is recoverable.

(2) For the purposes of sections 340 to 342, a pension-sharing transaction shall be taken—

(a) to be something (namely a transfer of the appropriate amount to the transferee) done by the transferor; and

(b) to be capable of being a preference given to the transferee only so far as it is a transfer of so much of the appropriate amount as is recoverable.

(3) If on an application under section 339 or 340 any question arises as to whether, or the extent to which, the appropriate amount in the case of a pension-sharing transaction is recoverable, the question shall be determined in accordance with subsections (4) to (8).

(4) The court shall first determine the extent (if any) to which the transferor's rights under the shared arrangement at the time of the transaction appear to have been (whether directly or indirectly) the fruits of contributions ("personal contributions")—

(a) which the transferor has at any time made on his own behalf, or

(b) which have at any time been made on the transferor's behalf,

to the shared arrangement or any other pension arrangement.

(5) Where it appears that those rights were to any extent the fruits of personal contributions, the court shall then determine the extent (if any) to which those rights appear to have been the fruits of personal contributions whose making has unfairly prejudiced the transferor's creditors ("the unfair contributions").

(6) If it appears to the court that the extent to which those rights were the fruits of the unfair contributions is such that the transfer of the appropriate amount could have been made out of rights under the shared arrangement which were not the fruits of the unfair contributions, then the appropriate amount is not recoverable.

(7) If it appears to the court that the transfer could not have been wholly so made, then the appropriate amount is recoverable to the extent to which it appears to the court that the transfer could not have been so made.

(8) In making the determination mentioned in subsection (5) the court shall consider in particular—

(a) whether any of the personal contributions were made for the purpose of putting assets beyond the reach of the transferor's creditors or any of them, and

(b) whether the total amount of any personal contributions represented, at the time the pension-sharing transaction was made, by rights under pension arrangements is an amount which is excessive in view of the transferor's circumstances when those contributions were made.

(9) In this section and sections 342E and 342F—

"appropriate amount", in relation to a pension-sharing transaction, means the appropriate amount in relation to that transaction for the purposes of section 29(1) of the Welfare Reform and Pensions Act 1999 (creation of pension credits and debits);

"pension-sharing transaction" means an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (orders and agreements which activate pension-sharing);

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"shared arrangement", in relation to a pension-sharing transaction, means the pension arrangement to which the transaction relates;

"transferee", in relation to a pension-sharing transaction, means the person for whose benefit the transaction is made;

"transferor", in relation to a pension-sharing transaction, means the person to whose rights the transaction relates.**]**

Textual Amendments

F310 S. 342D inserted (26.3.2002 for specified purposes otherwise 6.4.2002) by 1999 c. 30, s. 85, **Sch. 12 Pt II para. 71**; S.I. 2002/818, **art. 3**

Modifications etc. (not altering text)

C688 S. 342B-342F applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

[F311]342E Orders under section 339 or 340 in respect of pension-sharing transactions.

(1) This section and section 342F apply if the court is making an order under section 339 or 340 in a case where—

(a) the transaction or preference is, or is any part of, a pension-sharing transaction, and

(b) the transferee has rights under a pension arrangement ("the destination arrangement", which may be the shared arrangement or any other pension arrangement) that are derived, directly or indirectly, from the pension-sharing transaction.

(2) Without prejudice to the generality of section 339(2) or 340(2), or of section 342, the order may include provision—

(a) requiring the person responsible for the destination arrangement to pay an amount to the transferor's trustee in bankruptcy,

(b) adjusting the liabilities of the destination arrangement in respect of the transferee,

(c) adjusting any liabilities of the destination arrangement in respect of any other person that derive, directly or indirectly, from rights of the transferee under the destination arrangement,

(d) for the recovery by the person responsible for the destination arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the transferor's case with any requirement under section 342F(1) or in giving effect to the order,

(e) for the recovery, from the transferor's trustee in bankruptcy, by the person responsible for a pension arrangement, of costs incurred by that person in complying in the transferor's case with any requirement under section 342F(2) or (3).

(3) In subsection (2), references to adjusting the liabilities of the destination arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

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(4) The maximum amount which the person responsible for the destination arrangement may be required to pay by the order is the smallest of—
  (a) so much of the appropriate amount as, in accordance with section 342D, is recoverable,
  (b) so much (if any) of the amount of the unfair contributions (within the meaning given by section 342D(5)) as is not recoverable by way of an order under section 342A containing provision such as is mentioned in section 342B(1)(a), and
  (c) the value of the transferee's rights under the destination arrangement so far as they are derived, directly or indirectly, from the pension-sharing transaction.

(5) If the order requires the person responsible for the destination arrangement to pay an amount ("the restoration amount") to the transferor's trustee in bankruptcy it must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of subsection (5), liabilities are correspondingly reduced if the difference between—
  (a) the amount of the liabilities immediately before the reduction, and
  (b) the amount of the liabilities immediately after the reduction,

  is equal to the restoration amount.

(7) The order—
  (a) shall be binding on the person responsible for the destination arrangement, and
  (b) overrides provisions of the destination arrangement to the extent that they conflict with the provisions of the order.

Textual Amendments

F311 S. 342E inserted (26.3.2002 for specified purposes otherwise 6.4.2002) by 1999 c. 30, s. 85, **Sch. 12 Pt. II para. 71**; S.I. 2002/818, **art. 3**

Modifications etc. (not altering text)

C689 S. 342B-342F applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

[F312]342F Orders under section 339 or 340 in pension-sharing cases: supplementary.

(1) On the transferor's trustee in bankruptcy making a written request to the person responsible for the destination arrangement, that person shall provide the trustee with such information about—
  (a) the arrangement,
  (b) the transferee's rights under it, and
  (c) where the destination arrangement is the shared arrangement, the transferor's rights under it,

  as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.

(2) Where the shared arrangement is not the destination arrangement, the person responsible for the shared arrangement shall, on the transferor's trustee in bankruptcy

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making a written request to that person, provide the trustee with such information about—

(a) the arrangement, and

(b) the transferor's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.

(3) On the transferor's trustee in bankruptcy making a written request to the person responsible for any intermediate arrangement, that person shall provide the trustee with such information about—

(a) the arrangement, and

(b) the transferee's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under sections 339 and 340.

(4) In subsection (3) "intermediate arrangement" means a pension arrangement, other than the shared arrangement or the destination arrangement, in relation to which the following conditions are fulfilled—

(a) there was a time when the transferee had rights under the arrangement that were derived (directly or indirectly) from the pension-sharing transaction, and

(b) the transferee's rights under the destination arrangement (so far as derived from the pension-sharing transaction) are to any extent derived (directly or indirectly) from the rights mentioned in paragraph (a).

(5) Nothing in—

(a) any provision of section 159 of the [M34]Pension Schemes Act 1993 or section 91 of the [M35]Pensions Act 1995 (which prevent assignment and the making of orders which restrain a person from receiving anything which he is prevented from assigning),

(b) any provision of any enactment (whether passed or made before or after the passing of the Welfare Reform and Pensions Act 1999) corresponding to any of the provisions mentioned in paragraph (a), or

(c) any provision of the destination arrangement corresponding to any of those provisions,

applies to a court exercising its powers under section 339 or 340.

(6) Regulations may, for the purposes of sections 339 to 342, sections 342D and 342E and this section, make provision about the calculation and verification of—

(a) any such value as is mentioned in section 342E(4)(c);

(b) any such amounts as are mentioned in section 342E(6)(a) and (b).

(7) The power conferred by subsection (6) includes power to provide for calculation or verification—

(a) in such manner as may, in the particular case, be approved by a prescribed person; or

[[F313](b) in accordance with guidance from time to time prepared by a prescribed person.**]**

(8) In section 342E and this section, references to the person responsible for a pension arrangement are to—

(a) the trustees, managers or provider of the arrangement, or

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(b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.

(9) In this section—

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Secretary of State.

(10) Regulations under this section may—

(a) make different provision for different cases;

(b) contain such incidental, supplemental and transitional provisions as appear to the Secretary of State necessary or expedient.

(11) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F312 S. 342F inserted (26.3.2002 for specified purposes otherwise 6.4.2002) by 1999 c. 30, s. 15, **Sch. 12 Pt. II para. 71**; S.I. 2002/818, **art. 3**

F313 S. 342F(7)(b) substituted (1.11.2007) by Pensions Act 2007 (c. 22), ss. 17, 30(2), **Sch. 5 para. 4**; S.I. 2007/3063, {art. 2 (b)}

Modifications etc. (not altering text)

C690 S. 342B-342F applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

Marginal Citations

M34 1993 c. 48.

M35 1995 c. 26.

343 Extortionate credit transactions.

(1) This section applies where a person is adjudged bankrupt who is or has been a party to a transaction for, or involving, the provision to him of credit.

(2) The court may, on the application of the trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than 3 years before the commencement of the bankruptcy.

(3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

(a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or

(b) it otherwise grossly contravened ordinary principles of fair dealing;

and it shall be presumed, unless the contrary is proved, that a transaction, with respect to which an application is made under this section is or, as the case may be, was extortionate.

(4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit, that is to say—

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(a) provision setting aside the whole or part of any obligation created by the transaction;

(b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;

(c) provision requiring any person who is or was party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the bankrupt;

(d) provision requiring any person to surrender to the trustee any property held by him as security for the purposes of the transaction;

(e) provision directing accounts to be taken between any persons.

(5) Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this section shall be comprised in the bankrupt's estate.

(6) [F314]. . .

[F314]. . . the powers conferred by this section are exercisable in relation to any transaction concurrently with any powers exerciseable under this Act in relation to that transaction as a transaction at an undervalue.

Textual Amendments

F314 Words in s. 343(6) repealed (6.4.2007) by Consumer Credit Act 2006 (c. 14), ss. 69(1), 70, 71, **Sch. 4** (with Sch. 3 para. 15(5)); S.I. 2007/123, **art. 3(2)**, Sch. 2 (as amended by S.I. 2007/387, **art. 2(3)(e)(iii)**)

Modifications etc. (not altering text)

C691 Ss. 342-345 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 343 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

344 Avoidance of general assignment of book debts.

(1) The following applies where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt.

(2) The assignment is void against the trustee of the bankrupt's estate as regards book debts which were not paid before the presentation of the bankruptcy petition, unless the assignment has been registered under the [M36]Bills of Sale Act 1878.

(3) For the purposes of subsections (1) and (2)—

(a) "assignment" includes an assignment by way of security or charge on book debts, and

(b) "general assignment" does not include—

(i) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts, or

(ii) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

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(4) For the purposes of registration under the Act of 1878 an assignment of book debts is to be treated as if it were a bill of sale given otherwise than by way of security for the payment of a sum of money; and the provisions of that Act with respect to the registration of bills of sale apply accordingly with such necessary modifications as may be made by rules under that Act.

Modifications etc. (not altering text)
C692 Ss. 342–345 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Marginal Citations
M36 1878 c. 31.

345 Contracts to which bankrupt is a party.

(1) The following applies where a contract has been made with a person who is subsequently adjudged bankrupt.

(2) The court may, on the application of any other paty to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the court to be equitable.

(3) Any damages payable by the bankrupt by virtue of an order of the court under this section are provable as a bankruptcy debt.

(4) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

Modifications etc. (not altering text)
C693 Ss. 342–345 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
C694 S. 345 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. 345 excluded (11.12.1999) by S.I. 1999/2979, **reg. 16(1)**

346 Enforcement procedures.

(1) Subject to section 285 in Chapter II (restriction on proceedings and remedies) and to the following provisions of this section, where the creditor of any person who is adjudged bankrupt has, before the commencement of the bankruptcy—
   (a) issued execution against the goods or land of that person, or
   (b) attached a debt due to that person from another person,

that creditor is not entitled, as against the official reciever or trustee of the bankrupt's estate, to retain the benefit of the execution or attachment, or any sums paid to avoid it, unless the execution or attachment was completed, or the sums were paid, before the commencement of the bankruptcy.

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(2) Subject as follows, where any goods of a person have been taken in execution, then, if before the completion of the execution notice is given to the **[**[F315]enforcement officer**]** or other officer charged with the execution that that person has been adjudged bankrupt—

(a) the **[**[F315]enforcement officer**]** or other officer shall on request deliver to the official receiver or trustee of the bankrupt's estate the goods and any money seized or recovered in part satisfaction of the execution, but

(b) the costs of the execution are a first charge on the goods or money so delivered and the official receiver or trustee may sell the goods or a sufficient part of them for the purpose of satisfying the charge.

(3) Subject to subsection (6) below, where—

(a) under an execution in respect of a judgment for a sum exceeding such sum as may be prescribed for the purposes of this subsection, the goods of any person are sold or money is paid in order to avoid a sale, and

(b) before the end of the period of 14 days beginning with the day of the sale or payment the **[**[F315]enforcement officer**]** or other officer charged with the execution is given notice that a bankruptcy petition has been presented in relation to that person, and

(c) a bankruptcy order is or has been made on that petition,

the balance of the proceeds of sale or money paid, after deducting the costs of execution, shall (in priority to the claim of the execution creditor) be comprised in the bankrupt's estate.

(4) Accordingly, in the case of an execution in respect of a judgment for a sum exceeding the sum prescribed for the purposes of subsection (3), the **[**[F315]enforcement officer**]** or other officer charged with the execution—

(a) shall not dispose of the balance mentioned in subsection (3) at any time within the period of 14 days so mentioned or while there is pending a bankruptcy petition of which he has been given notice under that subsection, and

(b) shall pay that balance, where by virtue of that subsection it is comprised, in the bankrupt's estate, to the official receiver or (if there is one) to the trustee or that estate.

(5) For the purposes of this section—

(a) an execution against goods is completed by seizure and sale or by the making of a charging order under section 1 of the [M37]Charging Orders Act 1979;

(b) an execution against land is completed by seizure, by the appointment of a receiver or by the making of a charging order under that section;

(c) an attachment of a debt is completed by the receipt of the debt.

(6) The rights conferred by subsections (1) to (3) on the official receiver or the trustee may, to such extent and on such terms as it thinks fit, be set aside by the court in favour of the creditor who has issued the execution or attached the debt.

(7) Nothing in this section entitles the trustee of a bankrupt's estate to claim goods from a person who has acquired them in good faith under a sale by **[**[F316]an enforcement officer**]** or other officer charged with an execution.

(8) Neither subsection (2) nor subsection (3) applies in relation to any execution against property which has been acquired by or has devolved upon the bankrupt since the

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commencement of the bankruptcy, unless, at the time the execution is issued or before it is completed—

(a) the property has been or is claimed for the bankrupt's estate under section 307 (after-acquired property), and

(b) a copy of the notice given under that section has been or is served on the **[**[F315]enforcement officer**]** or other officer charged with the execution.

[[F317](9) In this section "enforcement officer" means an individual who is authorised to act as an enforcement officer under the Courts Act 2003.**]**

Textual Amendments

F315 Words in s. 346(2)(3)(b)(4)(8)(b) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 297(2)**; S.I. 2004/401, **art. 2** (with art. 3)

F316 Words in s. 346(7) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 297(3)**; S.I. 2004/401, **art. 2** (with art. 3)

F317 S. 346(9) inserted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 297(4)**; S.I. 2004/401, **art. 2** (with art. 3)

Marginal Citations

M37 1979 c. 53.

347 Distress, etc.

(1) The right of any landlord or other person to whom rent is payable to distrain upon the goods and effects of an undischarged bankrupt for rent due to him from the bankrupt is available (subject to **[**[F318]sections 252(2)(b) and 254(1) above and**]** subsection (5) below) against goods and effects comprised in the bankrupt's estate, but only for 6 months' rent accrued due before the commencement of the bankruptcy.

(2) Where a landlord or other person to whom rent is payable has distrained for rent upon the goods and effects of an individual to whom a bankruptcy petition relates and a bankruptcy order is subsequently made on that petition, any amount recovered by way of that distress which—

(a) is in excess of the amount which by virtue of subsection (1) would have been recoverable after the commencement of the bankruptcy, or

(b) is in respect of rent for a period or part of a period after the distress was levied,

shall be held for the bankrupt as apart of his estate.

(3) Where any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual who is adjudged bankrupt before the end of the period of 3 months beginning with the distraint, so much of those goods or effects, or of the proceeds of their sale, as is not held for the bankrupt under subsection (2) shall be charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting those debts.

(4) Where by virtue of any charge under subsection (3) any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or, as the case may be, the amount of the payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate

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as is available for the payment of preferential creditors by virtue of the surrender or payment.

(5) A landlord or other person to whom rent is payable is not at any time after the discharge of a bankrupt entitled to distrain upon any goods or effects comprised in the bankrupt's estate.

(6) Where in the case of any execution—

(a) a landlord is (apart from this section) entitled under section 1 of the [M38]Landlord and Tenant Act 1709 or section 102 of the [M39]County Courts Act 1984 (claims for rent where goods seized in execution) to claim for an amount not exceeding one year's rent, and

(b) the person against whom the execution is levied is adjudged bankrupt before the notice of claim is served on the **[**[F319]enforcement officer,**]** or other officer charged with the execution,

the right of the landlord to claim under that section is restricted to a right to claim for an amount not exceeding 6 months' rent and does not extend to any rent payable in respect of a period after the notice of claim is so served.

(7) Nothing in subsection (6) imposes any liability on **[**[F320]an enforcement officer**]** or other officer charged with an execution to account to the official receiver or the trustee of a bankrupt's estate for any sums paid by him to a landlord at any time before **[**[F321]the enforcement officer**]** or other officer was served with notice of the banktuptcy order in question.

But this subsection is without prejudice to the liability of the landlord.

(8) **[**[F322]Subject to sections 252(2)(b) and 254(1) above**]** nothing in this Group of Parts affects any right to distrain otherwise than for rent; and any such right is at any time exerciseable without restriction against property comprised in a bankrupt's estate, even if that right is expressed by any enactment to be exerciseable in like manner as a right to distrain for rent.

(9) Any right to distrain against property comprised in a bankrupt's estate is exerciseable notwithstanding that the propety has vested in the trustee.

(10) The provisions of this section are without prejudice to a landlord's right in a bankruptcy to prove for any bankruptcy debt in respect of rent.

[[F323](11) In this section "enforcement officer" means an individual who is authorised to act as an enforcement officer under the Courts Act 2003.**]**

Textual Amendments

F318 Words in s. 347(1) inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 14(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F319 Words in s. 347(6) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 298(2)**; S.I. 2004/401, **art. 2** (with art. 3)

F320 Words in s. 347(7) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 298(3)(a)**; S.I. 2004/401, **art. 2** (with art. 3)

F321 Words in s. 347(7) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 298(3)(b)**; S.I. 2004/401, **art. 2** (with art. 3)

F322 Words in s. 347(8) inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 14(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

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F323 S. 347(11) inserted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 298(4)**; S.I. 2004/401, **art. 2** (with art. 3)

Marginal Citations

M38 1709 c. 18.

M39 1984 c. 28.

348 Apprenticeships, etc.

(1) This section applies where—

(a) a bankruptcy order is made in respect of an individual to whom another individual was an apprentice or articled clerk at the time when the petition on which the order was made was presented, and

(b) the bankrupt or the apprentice or clerk gives notice to the trustee terminating the apprenticeship or articles.

(2) Subject to subsection (6) below, the indenture of apprenticeship or, as the case may be, the articles of agreement shall be discharged with effect from the commencement of the bankruptcy.

(3) If any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on an application made by or on behalf of the apprentice or clerk, pay such sum to the apprentice or clerk as to the trustee thinks reasonable, having regard to—

(a) the amount of the fee,

(b) the proportion of the period in respect of which the fee was paid that has been served by the apprentice or clerk before the commencement of the bankruptcy, and

(c) the other circumstances of the case.

(4) The power of the trustee to make a payment under subsection (3) has priority over his obligation to distribute the bankrupt's estate.

(5) Instead of making a payment under subsection (3), the trustee may, if it appears to him expedient to do so on an application made by or on behalf of the apprentice or clerk, transfer the indenture or articles to a person other than the bankrupt.

(6) Where a transfer is made under subsection (5), subsection (2) has effect only as between the apprentice or clerk and the bankrupt.

349 Unenforceability of liens on books, etc.

(1) Subject as follows, a lien or other right to retain possession of any of the books, papers or other records of a bankrupt is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the official receiver or the trustee of the bankrupt's estate.

(2) Subsection (1) does not apply to a lien on documents which give a title to property and are held as such.

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Modifications etc. (not altering text)

C695 Ss. 349, 350(1)(2)(4)–(6) applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

[F324 349A Arbitration agreements to which bankrupt is party.

(1) This section applies where a bankrupt had become party to a contract containing an arbitration agreement before the commencement of his bankruptcy.

(2) If the trustee in bankruptcy adopts the contract, the arbitration agreement is enforceable by or against the trustee in relation to matters arising from or connected with the contract.

(3) If the trustee in bankruptcy does not adopt the contract and a matter to which the arbitration agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings—

(a) the trustee with the consent of the creditors' committee, or

(b) any other party to the agreement,

may apply to the court which may, if it thinks fit in all the circumstances of the case, order that the matter be referred to arbitration in accordance with the arbitration agreement.

(4) In this section—

"arbitration agreement" has the same meaning as in Part I of the Arbitration Act 1996; and

"the court" means the court which has jurisdiction in the bankruptcy proceedings.]

Textual Amendments

F324 S. 349A inserted (31.1.1997) by 1996 c. 23, s. 107(1), **Sch. 3 para. 46** (with s. 81(2)); S.I. 1996/3146, art. 2, **Sch. 1** (with transitional provisions in Sch. 2)

CHAPTER VI

BANKRUPTCY OFFENCES

Preliminary

350 Scheme of this Chapter.

(1) Subject to section 360(3) below, this Chapter applies where the court has made a bankruptcy order on a bankruptcy petition.

(2) This Chapter applies whether or not the bankruptcy order is annulled, but proceedings for an offence under this Chapter shall not be instituted after the annulment.

(3) Without prejudice to his liability in respect of a subsequent bankruptcy, the bankrupt is not guilty of an offence under this Chapter in respect of anything done after his

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discharge; but nothing in this Group of Parts prevents the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.

[[F325](3A) Subsection (3) is without prejudice to any provision of this Chapter which applies to a person in respect of whom a bankruptcy restrictions order is in force.**]**

(4) It is not a defence in proceedings for an offence under this Chapter that anything relied on, in whole or in part, as constituting that offence was done outside England and Wales.

(5) Proceedings for an offence under this Chapter or under the rules shall not be instituted except by the Secretary of State or by or with the consent of the Director of Public Prosecutions.

(6) A person guilty of any offence under this Chapter is liable to imprisonment or a fine, or both.

Textual Amendments

F325 S. 350(3A) inserted (1.4.2004) by 2002 c. 40, ss. 257(3), 279, Sch. 21 para. 2 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C696 Ss. 349, 350(1)(2)(4)-(6) applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

351 Definitions.

In the following provisions of this Chapter—

(a) references to property comprised in the bankrupt's estate or to property possession of which is required to be delivered up to the official receiver or the trustee of the bankrupt's estate include any property which would be such property if a notice in respect of it were given under section 307 (after-acquired property) **[**[F326], section 308**]** (personal property and effects of bankrupt having more than replacement value) **[**[F327]or section 308A (vesting in trustee of certain tenancies)**]**;

(b) "the initial period" means the period between the presentation of the bankruptcy petition and the commencement of the bankruptcy; and

(c) a reference to a number of months or years before petition is to that period ending with the presentation of the bankruptcy petition.

Textual Amendments

F326 Words substituted by Housing Act 1988 (c. 50, SIF 61, 75:1), s. 140(1), **Sch. 17 Pt. I para. 75**

F327 Words inserted by Housing Act 1988 (c. 50, SIF 61, 75:1), s. 140(1), **Sch. 17 Pt. I para. 75**

Modifications etc. (not altering text)

C697 S. 351 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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352 Defence of innocent intention.

Where in the case of an offence under any provision of this Chapter it is stated that this section applies, a person is not guilty of the offence if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

Wrongdoing by the bankrupt before and after bankruptcy

353 Non-disclosure.

(1) The bankrupt is guilty of an offence if—

(a) he does not to the best of his knowledge and belief disclose all the property comprised in his estate to the official receiver or the trustee, or

(b) he does not inform the official receiver or the trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of.

(2) Subsection (1)(b) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.

(3) Section 352 applies to this offence.

354 Concealment of property.

(1) The bankrupt is guilty of an offence if—

(a) he does not deliver up possession to the official receiver or trustee, or as the official receiver or trustee may direct, of such part of the property comprised in his estate as is in his possession or under his control and possession of which he is required by law so to deliver up,

(b) he conceals any debt due to or from him or conceals any property the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the official receiver or trustee, or

(c) in the 12 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (b) above if the bankruptcy order had been made immediately before he did it.

Section 352 applies to this offence.

(2) The bankrupt is guilty of an offence if he removes, or in the initial period removed, any property the value of which was not less than the prescribed amount and possession of which he has or would have been required to deliver up to the official receiver or the trustee.

Section 352 applies to this offence.

(3) The bankrupt is guilty of an offence if he without reasonable excuse fails, on being required to do so by the official receiver **[**[F328], the trustee**]** or the court—

(a) to account for the loss of any substantial part of his property incurred in the 12 months before petition or in the initial period, or

(b) to give a satisfactory explanation of the manner in which such a loss was incurred.

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Textual Amendments

F328 Words in s. 354(3) inserted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 12 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

355 Concealment of books and papers; falsification.

(1) The bankrupt is guilty of an offence if he does not deliver up possession to the official receiver or the trustee, or as the official receiver or trustee may direct, of all books, papers and other records of which he has possession or control and which relate to his estate or his affairs.

Section 352 applies to this offence.

(2) The bankrupt is guilty of an offence if—

(a) he prevents, or in the initial period prevented, the production of any books, papers or records relating to his estate or affairs;

(b) he conceals destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his estate or affairs;

(c) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his estate or affairs; or

(d) in the 12 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (b) or (c) above if the bankruptcy order had been made before he did it.

Section 352 applies to this offence.

(3) The bankrupt is guilty of an offence if—

(a) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his estate or affairs, or

(b) in the 12 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (a) if the bankruptcy order had been made before he did it.

Section 352 applies to this offence.

[[F329](4) In their application to a trading record subsections (2)(d) and (3)(b) shall have effect as if the reference to 12 months were a reference to two years.

(5) In subsection (4) "trading record" means a book, document or record which shows or explains the transactions or financial position of a person's business, including—

(a) a periodic record of cash paid and received,

(b) a statement of periodic stock-taking, and

(c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.**]**

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Textual Amendments

F329 S. 355(4)(5) added (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 13 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

356 False statements.

(1) The bankrupt is guilty of an offence if he makes or has made any material omission in any statement made under any provision in this Group of Parts and relating to his affairs.

Section 352 applies to this offence.

(2) The bankrupt is guilty of an offence if—

(a) knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails to inform the trustee as soon as practicable; or

(b) he attempts to account for any part of his property by fictitious losses or expenses; or

(c) at any meeting of his creditors in the 12 months before petition or (whether or not such a meeting) at any time in the intial period, he did anything which would have been an offence under paragraph (b) if the bankruptcy order had been made before he did it; or

(d) he is, or at any time has been, guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

Modifications etc. (not altering text)

C698 S. 356(2)(d) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(6), **Sch. 4 Pt. II para. 25**

357 Fraudulent disposal of property.

(1) The bankrupt is guilty of an offence if he makes or causes to be made, or has in the period of 5 years ending with the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on,his property.

Section 352 applies to this offence.

(2) The reference to making a transfer of or charge on any property includes causing or conniving at the levying of any execution against that property.

(3) The bankrupt is guilty of an offence if he conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his property after, or within 2 months before, the date on which a judgment or order for the payment of money has been obtained against him, being a judgment or order which was not satisfied before the commencement of the bankruptcy.

Section 352 applies to this offence.

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358 Absconding.

The bankrupt is guilty of an offence if—

(a) he leaves, or attempts or makes preparations to leave, England and Wales with any property the value of whichis not less than the prescribed amount and possession of which he is required to deliver up to the official receiver or the trustee, or

(b) in the 6 months before petition, or in the initial period, he did anything which would have been an offence under paragraph (a) if the bankruptcy order had been made immediately before he did it.

Section 352 applies to this offence.

359 Fraudulent dealing with property obtained on credit.

(1) The bankrupt is guilty of an offence if, in the 12 months before petition, or in the initial period, he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for.

Section 352 applies to this offence.

(2) A person is guilty of an offence if, in the 12 months before petition or in the initial period, he acquired or received property from the bankrupt knowing or believing—

(a) that the bankrupt owed money in respect of the property, and

(b) that the bankrupt did not intend, or was unlikely to be able, to pay the money he so owed.

(3) A person is not guilty of an offence under subsection (1) or (2) if the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.

(4) In determining for the purposes of this section whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the property.

(5) In this section references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

Modifications etc. (not altering text)

C699 S. 359(1)(2) applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

360 Obtaining credit; engaging in business.

(1) The bankrupt is guilty of an offence if—

(a) either alone or jointly with any other person, he obtains credit to the extent of the prescribed amount or more without giving the person from whom he obtains it the relevant information about his status; or

(b) he engages (whether directly or indirectly) in any business under a name other than that in which he was adjudged bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.

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(2) The reference to the bankrupt obtaining credit includes the following cases—

(a) where goods are bailed to him under a hire-purchase agreement, or agreed to be sold to him under a conditional sale agreement, and

(b) where he is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) A person whose estate has been sequestrated in Scotland, or who has been adjudged bankrupt in Northern Ireland, is guilty of an offence if, before his discharge, he does anything in England and Wales which would be an offence under subsection (1) if he were an undischarged bankrupt and the sequestration of his estate or the adjudication in Northern Ireland were an adjudication under this Part.

(4) For the purposes of subsection (1)(a), the relevant information about the status of the person in question is the information that he is an undischarged bankrupt or, as the case may be, that his estate has been sequestrated in Scotland and that he has not been discharged.

[[F330](5) This section applies to the bankrupt after discharge while a bankruptcy restrictions order is in force in respect of him.

(6) For the purposes of subsection (1)(a) as it applies by virtue of subsection (5), the relevant information about the status of the person in question is the information that a bankruptcy restrictions order is in force in respect of him.**]**

Textual Amendments

F330 S. 360(5)(6) inserted (1.4.2004) by 2002 c. 40, ss. 257(3), 279, Sch. 21 para. 3 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

361 Failure to keep proper accounts of business.

[F331] . . . . . .

Textual Amendments

F331 S. 361 repealed (1.4.2004) by 2002 c. 40, ss. 263(a), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

362 Gambling.

[F332] . . . . . .

Textual Amendments

F332 S. 362 repealed (1.4.2004) by 2002 c. 40, ss. 263(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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CHAPTER VII

POWERS OF COURT IN BANKRUPTCY

363 General control of court.

(1) Every bankruptcy is under the general control of the court and, subject to the provisions in this Group of Parts, the court has full power to decide all questions of priorities and all other questions, whether of law or fact, arising in any bankruptcy.

(2) Without prejudice to any other provision in this Group of Parts, an undischarged bankrupt or a discharged bankrupt whose estate is still being administered under Chapter IV of this Part shall do all such things as he may be directed to do by the court for the purposes of his bankruptcy or, as the case may be, the administration of that estate.

(3) The official receiver or the trustee of a bankrupt's estate may at any time apply to the court for a direction under subsection (2).

(4) If any person without reasonable excuse fails to comply with any obligation imposed on him by subsection (2), he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which may be subject).

Modifications etc. (not altering text)
C700 Ss.363 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

364 Power of arrest.

(1) In the cases specified in the next subsection the court may cause a warrant to be issued to a constable or prescribed officer of the court—
   (a) for the arrest of a debtor to whom a bankruptcy petition relates or of an undischarged bankrupt, or of a discharged bankrupt whose estate is still being administered under Chapter IV of this Part, and
   (b) for the seizure of any books, papers, records, money or goods in the possession of a person arrested under the warrant,

   and may authorise a person arrested under such a 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.

(2) The powers conferred by subsection (1) are exercisable in relation to a debtor or undischarged or discharged bankrupt if, at any time after the presentation of the bankruptcy petition relating to him or the making of the bankruptcy order against him, it appears to the court—
   (a) that there are reasonable grounds for believing that he has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his debts or his appearance to a bankruptcy petition or to avoiding, delaying or disrupting any proceedings in bankruptcy against him or any examination of his affairs, or
   (b) that he is about to remove his goods with a view to preventing or delaying possession being taken of them by the official receiver or the trustee of his estate, or

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(c) that there are reasonable grounds for believing that he has concealed or destroyed, or is about to conceal or destroy, any of his goods or any books, papers or records which might be of use to his creditors in the course of his bankruptcy or in connection with the administration of his estate, or

(d) that he has, without the leave of the official receiver or the trustee of his estate, removed any goods in his possession which exceed in value such sums as may be prescribed for the purposes of this paragraph or

(e) that he has failed, without reasonable excuse, to attend any examination ordered by the court.

365 Seizure of bankrupt's property.

(1) At any time after a bankruptcy order has been made, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, issue a warrant authorising the person to whom it is directed to seize any property comprised in the bankrupt's estate which is, or any books, papers or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of the bankrupt or any other person who is required to deliver the property, books, papers or records to the official receiver or trustee.

(2) Any person executing a warrant under this section may, for the purpose of seizing any property comprised in the bankrupt's estate or any books, papers or records relating to the bankrupt's estate or affairs, break open any premises where the bankrupt or anything that may be seized under the warrant is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.

(3) If, after a bankruptcy order has been made, the court is satisfied that any property comprised in the bankrupt's estate is, or any books, papers or records relating to the bankrupt's estate or affairs are, concealed in any premises not belonging to him, it may issue a warrant authorising any constable or prescribed officer of the court to search those premises for the property, books, papers or records.

(4) A warrant under subsection (3) shall not be executed except in the prescribed manner and in accordance with its terms.

Modifications etc. (not altering text)
C701 S. 365 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

366 Inquiry into bankrupt's dealings and property.

(1) At any time after a bankruptcy order has been made the court may, on the application of the official receiver or the trustee of the bankrupt's estate, summon to appear before it—

(a) the bankrupt or the bankrupt's spouse or former spouse **[**[F333]or civil partner or former civil partner**]**,

(b) any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt,

(c) any person appearing to the court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property.

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The court may require any such person as is mentioned in paragraph (b) or (c) to submit an affidavit to the court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.

(2) Without prejudice to section 364, the following applies in a case where—
  (a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or
  (b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.

(3) The court may, for the purpose of bringing that person and anything in his possession before the court, 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.

(4) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the court under the warrant or until such other times as the court may order.

Textual Amendments

F333 Words in s. 366(1)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 120**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

Modifications etc. (not altering text)

C702 S. 366 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

367 Court's enforcement powers under s. 366.

(1) If it appears to the court, on consideration of any evidence obtained under section 366 or this section, that any person has in his possession any property comprised in the bankrupt's estate, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to deliver the whole or any part of the property to the official receiver or the trustee at such time, in such manner and on such terms as the court thinks fit.

(2) If it appears to the court, on consideration of any evidence obtained under section 366 or this section, that any person is indebted to the bankrupt, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to pay to the official receiver or trustee, at such time and in such manner as the court may direct, the whole or part of the amount due, whether in full discharge of the debt or otherwise as the court thinks fit.

(3) The court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under section 366 shall be examined in any part of the United Kingdom where he may be for the time being, or in any place outside the United Kingdom.

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(4) Any person who appears or is brought before the court under section 366 or this section may be examined on oath, either orally or by interrogatories, concerning the bankrupt or the bankrupt's dealings, affairs and property.

Modifications etc. (not altering text)
C703 S. 367 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

368 Provision corresponding to s. 366, where interim receiver appointed.

Sections 366 and 367 apply where an interim receiver has been appointed under section 286 as they apply where a bankruptcy order has been made, as if—

(a) references to the official receiver or the trustee were to the interim receiver, and

(b) references to the bankrupt and to his estate were (respectively) to the debtor and his property.

Modifications etc. (not altering text)
C704 S. 368, applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

369 Order for production of documents by inland revenue.

(1) For the purposes of an examination under section 290 (public examination of bankrupt) or proceedings under sections 366 to 368, the court may, on the application of the official receiver or the trustee of the bankrupt's estate, order an inland revenue official to produce to the court—

(a) any return, account or accounts submitted (whether before or after the commencement of the bankruptcy) by the bankrupt to any inland revenue official,

(b) any assessment or determination made (whether before or after the commencement of the bankruptcy) in relation to the bankrupt by any inland revenue official, or

(c) any correspondence (whether before or after the commencement of the bankruptcy) between the bankrupt and any inland revenue official.

(2) Where the court has made an order under subsection (1) for the purposes of any examination or proceedings, the court may, at any time after the document to which the order relates is produced to it, by order authorised the disclosure of the document, or of any part of its contents, to the official receiver, the trustee of the bankrupt's estate or the bankrupt's creditors.

(3) The court shall not address an order under subsection (1) to an inland revenue official unless it is satisfied that that official is dealing, or has dealt, with the affairs of the bankrupt.

(4) Where any document to which an order under subsection (1) relates is not in the possession of the official to whom the order is addressed, it is the duty of that official to take all reasonable steps to secure possession of it and, if he fails to do so, to report the reasons for his failure to the court.

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(5) Where any document to which an order under subsection (1) relates is in the possession of an inland revenue official other than the one to whom the order is addressed, it is the duty of the official in possession of the document, at the request of the official to whom the order is addressed, to deliver it to the official making the request.

(6) In this section "inland revenue official" means any inspector or collector of taxes appointed by the Commissioners of Inland Revenue or any person appointed by the Commissioners to serve in any other capacity.

(7) This section does not apply for the purposes of an examination under sections 366 and 367 which takes places by virtue of section 368 (interim receiver).

Modifications etc. (not altering text)
C705 S. 369 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

370 Power to appoint special manager.

(1) The court may, on an application under this section, appoint any person to be the special manager—
   (a) of a bankrupt's estate, or
   (b) of the business of an undischarged bankrupt, or
   (c) of the property or business of a debtor in whose case the official receiver has been appointed interim receiver under section 286.

(2) An application under this section may be made by the official receiver or the trustee of the bankrupt's estate in any case where it appears to the official receiver or trustee that the nature of the estate, property or business, or the interests of the creditors generally, require the appointment of another person to manage the estate, property or business.

(3) A special manager appointed under this section has such powers as may be entrusted to him by the court.

(4) The power of the court under subsection (3) to entrust powers to a special manager includes power to direct that any provision in ths Group of Parts that has effect in relation to the official receiver, interim receiver or trustee shall have the like effect in relation to the special manager for the purposes of the carrying out by the special manager of any of the functions of the official receiver, interim receiver or trustee.

(5) A special manager appointed under this section shall—
   (a) give such security 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)
C706 S. 370 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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371 Re-direction of bankrupt's letters, etc.

(1) Where a bankruptcy order has been made, the court may from time to time, on the application of the official receiver or the trustee of the bankrupt's estate, order **[**[F334]a postal operator (within the meaning of the Postal Services Act 2000)**]** to re-direct and send or deliver to the official receiver or trustee or otherwise any postal packet (within the meaning of **[**[F334M40]that Act**]**) which would otherwise be sent or delivered by **[**[F334]the operator concerned**]** to the bankrupt at such place or places as may be specified in the order.

(2) An order under this section has effect for such period, not exceeding 3 months, as may be specified in the order.

Textual Amendments

F334 Words in s. 371 substituted (26.3.2001) by 2000 c. 26, s. 127(4), **Sch. 8 Pt. II para. 20**; S.I. 2001/1148, art. 2, **Sch.** (subject to arts. 3-42)

Modifications etc. (not altering text)

C707 S. 371 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Marginal Citations

M40 2000 c. 26

PART X

INDIVIDUAL INSOLVENCY: GENERAL PROVISIONS

Modifications etc. (not altering text)

C708 Second Group of Parts (Pts. 8-11) modified (31.12.1996) by 1991 c. 57, **Sch. 10** (as substituted by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **art. 3**)
Second Group of Parts (Pts. 8-11) modified (11.11.1999 for specified purposes and 6.4.2002 otherwise) by 1999 c. 30, **s. 12(1)**; S.I. 2002/153, **art. 2(b)**

372 Supplies of gas, water, electricity, etc.

(1) This section applies where on any day ("the relevant day")—

(a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or

(b) a voluntary arrangement proposed by an individual is approved under Part VIII, or

(c) a deed of arrangement is made for the benefit of an individual's creditors;

and in this section "the office-holder" means the official receiver, the trustee in bankruptcy, the interim receiver, the supervisor of the voluntary arrangement or the trustee under the deed of arrangement, as the case may be.

(2) If a request falling within the next subsection is made for the giving after the relevant day of any of the supplies mentioned in subsection (4), the supplier—

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(a) may make it a condition of the giving of the supply that the office-holder personally guarantees the payment of any charges in respect of the supply, but

(b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the individual before the relevant day are paid.

(3) A request falls within this subsection if it is made—

(a) by or with the concurrence of the office-holder, and

(b) for the purposes of any business which is or has been carried on by the individual, by a firm or partnership of which the individual is or was a member, or by an agent or manager for the individual or for such a firm or partnership.

(4) The supplies referred to in subsection (2) are—

[[F335](a) a supply of gas by a gas supplier within the meaning of Part I of the Gas Act 1986;**]**

[[F336](b) a supply of electricity by an electricity supplier within the meaning of Part I of the Electricity Act 1989;**]**

(c) a supply of water by **[**[F337]a water undertaker**]**,

[[F338](d) a supply of communications services by a provider of a public electronic communications service.**]**

(5) The following applies to expressions used in subsection (4)—

[F339](a) . . . . . .

[F340](b) . . . . . .

[[F341](c) "communications services" do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003).**]**

Textual Amendments

F335 S. 372(4)(a) substituted (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 14(3)**; S.I. 1996/218, **art. 2**

F336 S. 372(4)(b) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 para. 47(3)(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

F337 Words substituted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 78(1)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

F338 S. 372(4)(d) substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by Communications Act 2003 (c. 21), ss. 406, 408, 411, **Sch. 17 para. 82(3)(a)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1) (with art. 3(2) (as amended (8.12.2003) by 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)

F339 S. 372(5)(a) repealed (1.3.1996) by 1995 c. 45, ss. 16(1), 17(5), Sch. 4 para. 14(4), **Sch. 6**; S.I. 1996/218, **art. 2**

F340 S. 372(5)(b) repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 6 para. 47(3)(b), **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3 to 20)

F341 S. 372(5)(c) substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by Communications Act 2003 (c. 21), ss. 406, 408, 411, **Sch. 17 para. 82(3)(b)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1) (with art. 3(2) (as amended (8.12.2003) by 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)

Modifications etc. (not altering text)

C709 S. 372, applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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373 Jurisdiction in relation to insolvent individuals.

(1) The High Court and the county courts have jurisdiction throughout England and Wales for the purposes of the Parts in this Group.

(2) For the purposes of those Parts, a county court has, in addition to its ordinary jurisdiction, all the powers and jurisdiction of the High Court; and the orders of the court may be enforced accordingly in the prescribed manner.

(3) Jurisdiction for the purposes of those Parts is exercised—

(a) by the High Court in relation to the proceedings, which, in accordance with the rules, are allocated to the London insolvency district, and

(b) by each county court in relation to the proceedings which are so allocated to the insolvency district of that court.

(4) Subsection (3) is without prejudice to the transfer of proceedings from one court to another in the manner prescribed by the rules; and nothing in that subsection invalidates any proceedings on the grounds that they were initiated or continued in the wrong court.

Modifications etc. (not altering text)

C710 s.373 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

374 Insolvency districts.

(1) The Lord Chancellor may **[**[F342], with the concurrence of the Lord Chief Justice,**]** by order designate the areas which are for the time being to be comprised, for the purposes of the Parts in this Group, in the London insolvency district and the insolvency district of each county court; and an order under this section may—

(a) exclude any county court from having jurisdiction for the purposes of those Parts, or

(b) confer jurisdiction for those purposes on any county court which has not previously had that jurisdiction.

(2) An order under this section may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor **[**[F343]and the Lord Chief Justice**]** necessary or expedient.

(3) An order under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

(4) Subject to any order under this section—

(a) the district which, immediately before the appointed day, is the London bankruptcy district becomes, on that day, the London insolvency district;

(b) any district which immediately before that day is the bankruptcy district of a county court becomes, on that day, the insolvency district of that court, and

(c) any county court which immediately before that day is excluded from having jurisdiction in bankruptcy is excluded, on and after that day, from having jurisdiction for the purposes of the Parts in this Group.

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[[F344](5) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.**]**

Textual Amendments

F342 Words in s. 374(1) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 187(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

F343 Words in s. 374(2) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 187(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

F344 S. 374(5) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 187(4)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

Modifications etc. (not altering text)

C711 S. 374 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

375 Appeals etc. from courts exercising insolvency jurisdiction.

(1) Every court having jurisdiction for the purposes of the Parts in this Group may review, rescind or vary any order made by it in the exercise of that jurisdiction.

(2) An appeal from a decision made in the exercise of jurisdiction for the purposes of those Parts by a county court or by a registrar in bankruptcy of the High Court lies to a single judge of the High Court; and an appeal from a decision of that judge on such an appeal lies [F345]. . . to the Court of Appeal.

(3) A county court is not, in the exercise of its jurisdiction for the purposes of those Parts, to be subject to be restrained by the order of any other court, and no appeal lies from its decision in the exercise of that jurisdiction except as provided by this section.

Textual Amendments

F345 Words in s. 375(2) repealed (27.9.1999) by 1999 c. 22, ss. 106, 108(3), **Sch. 15 Pt. III** (with s. 107, Sch. 14 paras. 7(2), 36(9))

Modifications etc. (not altering text)

C712 S. 375 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

376 Time-limits.

Where by any provision in this Group of Parts or by the rules the time for doing anything is limited, the court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.

Modifications etc. (not altering text)

C713 S. 376 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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377 Formal defects.

The acts of a person as the trustee of a bankrupt's estate or as a special manager, and the acts of the creditors' committee established for any bankruptcy, are valid notwithstanding any defect in the appointment, election or qualifications of the trustee or manager or, as the case may be, of any member of the committee.

Modifications etc. (not altering text)
C714 S. 377 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

378 Exemption from stamp duty.

Stamp duty shall not be charged on—

(a) any document, being a deed, conveyance, assignment, surrender, admission or other assurance relating solely to property which is comprised in a bankrupt's estate and which, after the execution of that document, is or remains at law or in equity the property of the bankrupt or of the trustee of that estate,

(b) any writ, order, certificate or other instrument relating solely to the property of a bankrupt or to any bankruptcy proceedings.

Modifications etc. (not altering text)
C715 S. 378 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

379 Annual report.

As soon as practicable after the end of 1986 and each subsequent calendar year, the Secretary of State shall prepare and lay before each House of Parliament a report about the operation during that year of so much of this Act as is comprised in this Group of Parts, and about proceedings in the course of that year under the [M41]Deeds of Arrangement Act 1914.

Modifications etc. (not altering text)
C716 S. 379 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Marginal Citations
M41 1914 c. 47.

PART XI

INTERPRETATION FOR SECOND GROUP OF PARTS

Modifications etc. (not altering text)
C717 Second Group of Parts (Pts. 8-11) modified (31.12.1996) by 1991 c. 57, **Sch. 10** (as substituted by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **art. 3**)

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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Second Group of Parts (Pts. 8-11) modified (11.11.1999 for specified purposes and 6.4.2002 otherwise) by 1999 c. 30, **s. 12(1)**; S.I. 2002/153, **art. 2(b)**

380 Introductory.

The next five sections have effect for the interpretation of the provisions of this Act which are comprised in this Group of Parts; and where a definition is provided for a particular expression, it applies except so far as the context otherwise requires.

Modifications etc. (not altering text)
C718 S. 380 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

381 "Bankrupt" and associated terminology.

(1) "Bankrupt" means an individual who has been adjudged bankrupt and, in relation to a bankruptcy order, it means the individual adjudged bankrupt by that order.

(2) "Bankruptcy order" means an order adjudging an individual bankrupt.

(3) "Bankruptcy petition" means a petition to the court for a bankruptcy order.

Modifications etc. (not altering text)
C719 S. 381 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

382 "Bankruptcy debt", etc.

(1) "Bankruptcy debt", in relation to a bankrupt, means (subject to the next subsection) any of the following—

(a) any debt or liability to which he is subject at the commencement of the bankruptcy,

(b) any debt or liability to which he may become subject after the commencement of the bankruptcy (including after his discharge from bankruptcy) by reason of any obligation incurred before the commencement of the bankruptcy,

[[F346](c) any amount specified in pursuance of section 39(3)(c) of the [M42]Powers of Criminal Courts Act 1973 in any criminal bankruptcy order made against him before the commencement of the bankruptcy, and**]**

(d) any interest provable as mentioned in section 322(2) in Chapter IV of Part IX.

(2) In determining for the purposes of any provision in this Group of Parts whether any liability in tort is a bankruptcy debt, the bankrupt is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued.

(3) For the purposes of references in this Group of Parts to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in this Group of Parts to owing a debt are to be read accordingly.

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(4) In this Group of Parts, except in so far as the context otherwise requires, "liability" means (subject to subsection (3) above) a liability to pay money or money's worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation to make restitution.

Textual Amendments

F346 S. 382(1)(*c*) repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**

Modifications etc. (not altering text)

C720 S. 382 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Marginal Citations

M42 1973 c. 62.

383 "Creditor", "security", etc.

(1) "Creditor"—

(a) in relation to a bankrupt, means a person to whom any of the bankruptcy debts is owed **[**[F347](being, in the case of an amount falling within paragraph (c) of the definition in section 382(1) or "bankruptcy debt", the person in respect of whom that amount is specified in the criminal bankruptcy order in question)**]**, and

(b) in relation to an individual to whom a bankruptcy petition relates, means a person who would be a creditor in the bankruptcy if a bankruptcy order were made on that petition.

(2) Subject to the next two subsections and any provision of the rules requiring a creditor to give up his security for the purposes of proving a debt, a debt is secured for the purposes of this Group of Parts to the extent that the person to whom the debt is owed holds any security for the debt (whether a mortgage, charge, lien or other security) over any property of the person by whom the debt is owed.

(3) Where a statement such as is mentioned in section 269(1)(a) in Chapter I of Part IX has been made by a secured creditor for the purposes of any bankruptcy petition and a bankruptcy order is subsequently made on that petition, the creditor is deemed for the purposes of the Parts in this Group to have given up the security specified in the statement.

(4) In subsection (2) the reference to a security does not include a lien on books, papers or other records, except to the extent that they consist of documents which give a title to property and are held as such.

Textual Amendments

F347 Words repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**

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Modifications etc. (not altering text)
C721 S. 383 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

384 "Prescribed" and "the rules".

(1) Subject to the next subsection **[**[F348]and sections 342C(7) and 342F(9) in Chapter V of Part IX**]**, "prescribed" means prescribed by the rules; and "the rules" means rules made under section 412 in Part XV.

(2) References in this Group of Parts to the amount prescribed for the purposes of any of the following provisions—

section 273;
[[F349]section 313A;**]**
section 346(3);
section 354(1) and (2);
section 358;
section 360(1);
section 361(2); and
section 364(2)(d),

and references in those provisions to the prescribed amount are to be read in accordance with section 418 in Part XV and orders made under that section.

Textual Amendments
F348 Words in s. 384(1) inserted (26.3.2002 for specified purposes, otherwise 6.4.2002) by 1999 c. 30, s. 84(1), **Sch. 12 Pt. II para. 72**: S.I. 2002/818, **art. 3**
F349 Words in s. 384(2) inserted (1.4.2004) by 2002 c. 40, ss. 261(5), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)
C722 S. 384 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

385 Miscellaneous definitions.

(1) The following definitions have effect—

"the court", in relation to any matter, means the court to which, in accordance with section 373 in Part X and the rules, proceedings with respect to that matter are allocated or transferred;

"creditor's petition" means a bankruptcy petition under section 264(1)(a);

[[F350]"criminal bankruptcy order" means an order under section 39(1) of the [M43]Powers of Criminal Courts Act 1973;**]**

"debt" is to be construed in accordance with section 382(3);

"the debtor"—

(a) in relation to a proposal for the purposes of Part VIII, means the individual making or intending to make that proposal, and

(b) in relation to a bankruptcy petition, means the individual to whom the petition relates;

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"debtor's petition" means a bankruptcy petition presented by the debtor himself under section 264(1)(b);

"dwelling house" includes any building or part of a building which is occupied as a dwelling and any yard, garden, garage or outhouse belonging to the dwelling house and occupied with it;

"estate", in relation to a bankrupt is to be construed in accordance with section 283 in Chapter II of Part IX;

"family", in relation to a bankrupt, means the persons (if any) who are living with him and are dependent on him;

[[F351]"insolvency administration order" means an order for the administration in bankruptcy of the insolvent estate of a deceased debtor (being an individual at the date of his death);

"insolvency administration petition" means a petition for an insolvency administration order;**]**

"secured" and related expressions are to be construed in accordance with section 383;

[[F351]"the Rules" means the Insolvency Rules 1986.**]** and

"the trustee", in relation to a bankruptcy and the bankrupt, means the trustee of the bankrupt's estate.

(2) References in this Group of Parts to a person's affairs include his business, if any.

Textual Amendments

F350 Definition repealed (omitted 1.10.2008 repealed prosp.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**; S.I. 1988/1408, art. 2, **Sch.**

F351 Definitions added by S.I. 1986/1999, **arts. 2**, 6

Modifications etc. (not altering text)

C723 S. 385 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Marginal Citations

M43 1973 c. 62.

THE THIRD GROUP OF PARTS

MISCELLANEOUS MATTERS BEARING ON BOTH COMPANY AND INDIVIDUAL INSOLVENCY; GENERAL INTERPRETATION; FINAL PROVISIONS

PART XII

PREFERENTIAL DEBTS IN COMPANY AND INDIVIDUAL INSOLVENCY

Modifications etc. (not altering text)

C724 Pt. XII (ss. 386, 387) extended with modifications by Building Societies Act 1986 (c. 53, SIF 16), **ss. 54(3)**(*a*)(5)(*a*), 90, 126(3), Sch. 15

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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Pt. XII (ss.386, 387) applied (with modifications) (1.2.1993) by Friendly Societies Act 1992 (c. 40), ss. 21(1), 22, 23, **Sch. 10 Pt. I para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3**
Pt. XII (ss. 386, 387) modified (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 Pt. I para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3**
Pt. XII (ss. 386-387) applied (1.12.1994) by S.I. 1994/2421, **art. 4(3)(c)**
Pt. XII (ss. 386-387) applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(4)(5)(8)(9), 10(2)(3)(6), Sch. 4 Pt. II, **Sch. 7**

C725 Third Group of Parts (Pts. 12-19) 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))

386 Categories of preferential debts.

(1) A reference in this Act to the preferential debts of a company or an individual is to the debts listed in Schedule 6 to this Act **[**[F352](contributions to occupational pension schemes; remuneration, &c. of employees; levies on coal and steel production)**]**; and references to preferential creditors are to be read accordingly.

(2) In that Schedule "the debtor" means the company or the individual concerned.

(3) Schedule 6 is to be read with **[**[F353]Schedule 4 to the Pension Schemes Act 1993**]** (occupational pension scheme contributions).

Textual Amendments

F352 Words in s. 386(1) substituted (15.9.2003) by 2002 c. 40, ss. 251(3), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F353 Words in s. 386(3) substituted (7.2.1994) by 1993 c. 48, s. 190, **Sch. 8 para. 18** (with s. 6(8)); S.I. 1994/86, **art. 2**

Modifications etc. (not altering text)

C726 S. 386 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C727 S. 386 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

C728 S. 386 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

387 "The relevant date".

(1) This section explains references in Schedule 6 to the relevant date (being the date which determines the existence and amount of a preferential debt).

(2) For the purposes of section 4 in Part I (meetings to consider company voluntary arrangement), the relevant date in relation to a company which is not being wound up is—

[[F354](a) if the company is in administration, the date on which it entered administration, and

(b) if the company is not in administration, the date on which the voluntary arrangement takes effect.**]**

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[[F355](2A) For the purposes of paragraph 31 of Schedule A1 (meetings to consider company voluntary arrangement where a moratorium under section 1A is in force), the relevant date in relation to a company is the date of filing.**]**

(3) In relation to a company which is being wound up, the following applies—

(a) if the winding up is by the court, and the winding-up order was made immediately upon the discharge of an administration order, the relevant date is **[**[F356]the date on which the company entered administration**]**;

[[F357](aa) if the winding up is by the court and the winding-up order was made following conversion of administration into winding up by virtue of Article 37 of the EC Regulation, the relevant date is **[**[F356]the date on which the company entered administration**]**;

(ab) if the company is deemed to have passed a resolution for voluntary winding up by virtue of an order following conversion of administration into winding up under Article 37 of the EC Regulation, the relevant date is **[**[F356]the date on which the company entered administration**]**;**]**

(b) if the case does not fall within paragraph (a) **[**[F358], (aa) or (ab)**]**and the company—

(i) is being wound up by the court, and

(ii) had not commenced to be wound up voluntarily before the date of the making of the winding-up order,

the relevant date is the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment has been made, the date of the winding-up order;

[[F359](ba) if the case does not fall within paragraph (a), (aa), (ab) or (b) and the company is being wound up following administration pursuant to paragraph 83 of Schedule B1, the relevant date is the date on which the company entered administration;**]**

(c) if the case does not fall within **[**[F360]paragraph (a), (aa), (ab), (b) or (ba)**]**, the relevant date is the date of the passing of the resolution for the winding up of the company.

[[F361](3A) In relation to a company which is in administration (and to which no other provision of this section applies) the relevant date is the date on which the company enters administration.**]**

(4) In relation to a company in receivership (where section 40 or, as the case may be, section 59 applies), the relevant date is—

(a) in England and Wales, the date of the appointment of the receiver by debenture-holders, and

(b) in Scotland, the date of the appointment of the receiver under section 53(6) or (as the case may be) 54(5).

(5) For the purposes of section 258 in Part VIII (individual voluntary arrangements), the relevant date is, in relation to a debtor who is not an undischarged bankrupt

[[F362](a) where an interim order has been made under section 252 with respect to his proposal, the date of that order, and

(b) in any other case, the date on which the voluntary arrangement takes effect.**]**

(6) In relation to a bankrupt, the following applies—

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(a) where at the time the bankruptcy order was made there was an interim receiver appointed under section 286, the relevant date is the date on which the interim receiver was first appointed after the presentation of the bankruptcy petition;

(b) otherwise, the relevant date is the date of the making of the bankruptcy order.

Textual Amendments

F354 S. 387(2)(a)(b) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 34(2) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F355 S. 387(2A) inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 9**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F356 Words in s. 387(3)(a)(aa)(ab) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 34(3)(a) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F357 S. 387(3)(aa)(ab) inserted (31.5.2002) by S.I. 2002/1240, **reg. 16(a)**

F358 Words in s. 387(3)(b) inserted (31.5.2002) by S.I. 2002/1240, **reg. 16(b)**

F359 S. 387(3)(ba) inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 34(3)(b) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F360 Words in s. 387(3)(c) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 34(3)(c) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F361 S. 387(3A) inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 34(4) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F362 S. 387(5)(a)(b) substituted (1.1.2003) for words in s. 387(5) by 2000 c. 39, s. 3, **Sch. 3 para. 15**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C729 S. 387 applied (7.2.1994) by 1993 c. 48, s. 128, **Sch. 4 para. 4(1)(a)**; S.I. 1994/86, **art. 2**

C730 S. 387 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

C731 S. 387 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

C732 S. 387(1)(5)(6) applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

PART XIII

INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

Modifications etc. (not altering text)

C733 Pt. 13 (ss. 388-398) modified by S.I. 1990/1392, **art. 7**
Pt. 13 (ss. 388-398) modified (1.2.1993) by Friendly Societies Act 1992 (c. 40), ss. 23, **Sch. 10 Pt. I para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**

C734 Pt. 13 (ss. 388-398) applied (with modifications) (1.2.1993) by Friendly Societies Act 1992 (c. 40), ss. 21(1), 22, 23, **Sch. 10 Pt. I para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**
Pt. 13 (ss. 388-398) applied (1.12.1994) by S.I. 1994/2421, **arts. 4(3)(d)**, 6(3)(d)
Pt. 13 (ss. 388-398) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(4)(5)(8)(9), 10(2)(3)(6), Sch. 4 Pt. II, **Sch. 7**

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Pt. 13 applied (with modifications) (5.10.2004) by Energy Act 2004 (c. 20), **ss. 171(3)**, 198; S.I. 2004/2575, **art. 2(1)**, Sch. 1

C735 Third Group of Parts (Pts. 12-19) 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))

Restrictions on unqualified persons acting as liquidator, trustee in bankruptcy, etc.

388 Meaning of "act as insolvency practitioner"

(1) A person acts as an insolvency practitioner in relation to a company by acting—

(a) as its liquidator, provisional liquidator, administrator or administrative receiver, or

[[F363](b) where a voluntary arrangement in relation to the company is proposed or approved under Part I, as nominee or supervisor**]**

(2) A person acts as an insolvency practitioner in relation to an individual by acting—

(a) as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate; or

(b) as trustee under a deed which is a deed of arrangement made for the benefit of his creditors or, in Scotland, a trust deed for his creditor; or

[[F364](c) where a voluntary arrangement in relation to the individual is proposed or approved under Part VIII, as nominee or supervisor**]**

(d) in the case of a deceased individual to the administration of whose estate this section applies by virtue of an order under section 421 (application of provisions of this Act to insolvent estates of deceased persons), as administrator of that estate.

[[F365](2A) A person acts as an insolvency practitioner in relation to an insolvent partnership by acting—

(a) as its liquidator, provisional liquidator or administrator, or

(b) as trustee of the partnership under article 11 of the Insolvent Partnerships Order 1994, or

[[F366](c) where a voluntary arrangement in relation to the insolvent partnership is proposed or approved under Part I of the Act, as nominee or supervisor.**]]**

[[F367](2B) In relation to a voluntary arrangement proposed under Part I or VIII, a person acts as nominee if he performs any of the functions conferred on nominees under the Part in question.**]**

(3) References in this section to an individual include, except in so far as the context otherwise requires, references [F368]. . . to any debtor within the meaning of the [M44]Bankruptcy (Scotland) Act 1985.

(4) In this section—

"administrative receiver" has the meaning given by section 251 in Part VII;

[[F369] "company" means a company within the meaning given by section 735(1) of the 1985 Act, a company which may be wound up under Part XXI of that Act or a building society within the meaning of the Building Societies Act 1986.**]**

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"interim trustee" and "permanent trustee" mean the same as in the Bankruptcy (Scotland) Act 1985.

[[F370](5) Nothing in this section applies to anything done by—

(a) the official receiver; or

(b) the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985).**]**

[[F371](6) Nothing in this section applies to anything done (whether in the United Kingdom or elsewhere) in relation to insolvency proceedings under the EC Regulation in a member State other than the United Kingdom.**]**

Textual Amendments

F363 S. 388(1)(b) substituted (1.1.2003) by 2000 c. 39, **s. 4(2)(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F364 S. 388(2)(c) substituted (1.1.2003) by 2000 c. 39, **s. 4(2)(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F365 S. 388(2A) inserted (1.12.1994) by S.I. 1994/2421, **arts. 1(2)**, 15(1)

F366 S. 388(2A)(c) substituted (1.1.2003) by S.I. 2002/2708, **art. 3** (with art. 11(1)(3))

F367 S. 388(2B) inserted (1.1.2003) by 2000 c. 39, **s. 4(2)(c)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F368 Words in s. 388(3) omitted (1.12.1994) by virtue of S.I. 1994/2421, **art. 15(2)**

F369 Definition of "Company" substituted by virtue of Interpretation Act 1978 (c. 30, SIF 115:1), **s. 17(2)**(*a*) and Building Societies Act 1986 (c. 53, SIF 16), **ss. 54(3)**(*a*)(5)(*a*), 120, Sch. 18 para. 17(2) in s. 388(4) (the reference to the 1985 Act in the new definition being a reference to the Companies Act 1985)

F370 S. 388(5) substituted (1.4.1993) by 1993 c. 6, **s. 11(1)** (with s. 12(6)); S.I. 1993/438, **art. 3** (with arts. 4, 5)

F371 S. 388(6) inserted (31.5.2002) by S.I. 2002/1240, **reg. 17**

Modifications etc. (not altering text)

C736 S. 388 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 388 applied (7.2.1994) by 1993 c. 48, **s. 119(8)** (with s. 6(8)); S.I. 1994/86, **art. 2**
S. 388 applied (31.10.1994) by 1994 c. 21, **s. 36(7)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
S. 388 applied (with modifications) (3.2.1995) by 1994 c. 37, **ss. 35(4)**, 69(2) (with s. 66(2))
S. 388 applied (with modifications) (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 5(3)**
S. 388 applied (with modifications) (E.W.) (13.6.2001 for certain purposes and 1.9.2001 otherwise) by 2001 c. 17, s. 38, **Sch. 6 para. 11(6)** (with ss. 27(3), 39, 78); S.I. 2001/2161, **arts. 2**, 3 (as amended by S.I. 2001/2304, **art. 2**)
S. 388 applied (with modifications) (S.) (10.12.2001) by 2001 asp 13, s. 20, **Sch. 6 para. 11(6)** (with s. 29); S.S.I. 2001/456, **art. 2**
S. 388 applied (with modifications) (24.3.2003) by 2002 c. 29, ss. 433(4), 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))
S. 388 applied (with modifications) (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 121(9)(11)**, 322(1) (with s. 313); S.I. 2005/275, **art. 2(7)**, Sch. Pt. 7 (subject to art. 2(12))

C737 S. 388 applied (with modifications) (*temp.* for a period of 12 months beginning with 22.3.1990: S.I. 1990/675; and for a further period of 12 months beginning with 22.3.1991: S.I. 1991/549, 779) by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), s. 13(8), **Sch. 4 para. 33(4)(a)**

C738 S. 388 excluded (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 8**

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Marginal Citations

M44 1985 c. 66.

389 Acting without qualification an offence.

(1) A person who acts as an insolvency practitioner in relation to a company or an individual at a time when he is not qualified to do so is liable to imprisonment or a fine, or to both.

[[F372](1A) This section is subject to section 389A.**]**

(2) This section does not apply to the official receiver **[**[F373]or the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985).**]**.

Textual Amendments

F372 S. 389(1A) inserted (1.1.2003) by 2000 c. 39, **s. 4(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F373 Words in s. 389(2) inserted (1.4.1993) by 1993 c. 6, **s. 11(2)** (with s. 12(6)); S.I. 1993/438, **art. 3** (with arts. 4, 5)

Modifications etc. (not altering text)

C739 S. 389 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C740 S. 389 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

C741 S. 389 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

[[F374]389A Authorisation of nominees and supervisors.

(1) Section 389 does not apply to a person acting, in relation to a voluntary arrangement proposed or approved under Part I or Part VIII, as nominee or supervisor if he is authorised so to act.

(2) For the purposes of subsection (1) and those Parts, an individual to whom subsection (3) does not apply is authorised to act as nominee or supervisor in relation to such an arrangement if—

(a) he is a member of a body recognised for the purpose by the Secretary of State, and

(b) there is in force security (in Scotland, caution) for the proper performance of his functions and that security or caution meets the prescribed requirements with respect to his so acting in relation to the arrangement.

(3) This subsection applies to a person if—

(a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,

(b) he is subject to a disqualification order made or a disqualification undertaking accepted under the [M45]Company Directors Disqualification Act 1986 or to a disqualification order made under Part II of the [M46]Companies (Northern Ireland) Order 1989 **[**[F375]or a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002**]**, [F376]. . .

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(c) he is a patient within the meaning of [F377]. . . **[**[F378]section 329(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003**]**.**[**[F379], or

(d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as nominee or supervisor**]**

(4) The Secretary of State may by order declare a body which appears to him to fall within subsection (5) to be a recognised body for the purposes of subsection (2)(a).

(5) A body may be recognised if it maintains and enforces rules for securing that its members—

(a) are fit and proper persons to act as nominees or supervisors, and

(b) meet acceptable requirements as to education and practical training and experience.

(6) For the purposes of this section, a person is a member of a body only if he is subject to its rules when acting as nominee or supervisor (whether or not he is in fact a member of the body).

(7) An order made under subsection (4) in relation to a body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within subsection (5).

(8) An order of the Secretary of State under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision for members of the body in question to continue to be treated as members of a recognised body for a specified period after the revocation takes effect.**]**

Textual Amendments

F374 S. 389A inserted (1.1.2003) by 2000 c. 39, **s. 4(4)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F375 Words in s. 389A(3)(b) inserted (1.9.2004 with application as mentioned in art. 1(2)) by The Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941), art. 3, **Sch. para. 2**

F376 Word in s. 389A(3) repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(1)(2), 68, Sch. 6 para. 31(2)(a), **Sch. 7** (with ss. 27-29, 62); S.I. 2007/1897, **art. 2(1)(d)**

F377 Words in s. 389A(3)(c) repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(1)(2), 68, Sch. 6 para. 31(2)(b), **Sch. 7** (with ss. 27-29, 62); S.I. 2007/1897, **art. 2(1)(d)**

F378 Words in s. 389A(3)(c) substituted (27.9.2005 for S. and 5.10.2005 otherwise) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 2, **Sch. 1 para. 18(2)** and The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), arts. 1, 15, **Sch. 1 para. 3(2)**

F379 S. 389A(3)(d) and preceding word inserted (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(1), 68, **Sch. 6 para. 31(2)(c)** (with ss. 27-29, 62); S.I. 2007/1897, **art. 2(1)(d)**

Marginal Citations

M45 1986 c. 46.

M46 S.I. 1989/2404 (N.I. 18).

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[F380 389B Official receiver as nominee or supervisor

(1) The official receiver is authorised to act as nominee or supervisor in relation to a voluntary arrangement approved under Part VIII provided that the debtor is an undischarged bankrupt when the arrangement is proposed.

(2) The Secretary of State may by order repeal the proviso in subsection (1).

(3) An order under subsection (2)—
  (a) must be made by statutory instrument, and
  (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F380 S. 389B inserted (1.4.2004) by 2002 c. 40, ss. 264(1), 279, Sch. 22 para. 3 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

The requisite qualification, and the means of obtaining it

390 Persons not qualified to act as insolvency practitioners.

(1) A person who is not an individual is not qualified to act as an insolvency practitioner.

(2) A person is not qualified to act as an insolvency practitioner at any time unless at that time—
  (a) he is authorised so to act by virtue of membership of a professional body recognised under section 391 below, being permitted so to act by or under the rules of that body, or
  (b) he holds an authorisation granted by a competent authority under section 393.

(3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless—
  (a) there is in force at that time security or, in Scotland, caution for the proper performance of his functions, and
  (b) that security or caution meets the prescribed requirements with respect to his so acting in relation to that other person.

(4) A person is not qualified to act as an insolvency practitioner at any time if at that time—
  (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
  (b) he is subject to a disqualification order made [F381 or a disqualification undertaking accepted] under the M47 Company Directors Disqualification Act 1986 [F382 or to a disqualification order made under Part II of the Companies (Northern Ireland) Order 1989][F383 or to a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002], F384 . . .
  (c) he is a patient within the meaning of F385 . . . [F386 section 329(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003][F387 or has had a guardian appointed to him under the Adults with Incapacity (Scotland) Act 2000 (asp 4).][F388, or

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(d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as an insolvency practitioner.**]**

[[F389](5) A person is not qualified to act as an insolvency practitioner while a bankruptcy restrictions order is in force in respect of him.**]**

Textual Amendments

F381 Words in s. 390(4)(b) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 16(2)(a)**; S.I. 2001/766, **art. 2** (subject to transitional provisions in art. 3)

F382 Words in s. 390(4)(b) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 16(2)(b)**; S.I. 2001/766, **art. 2** (subject to transitional provisions in art. 3)

F383 Words in s. 390(4)(b) inserted (1.9.2004 with application as mentioned in art. 1(2)) by The Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941, art. 3, **Sch. para. 3**

F384 Word in s. 390(4) repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(1)(2), 68, Sch. 6 para. 31(3)(a), **Sch. 7** (with ss. 27-29, 62); S.I. 2007/1897, **art. 2(1)(d)**

F385 Words in s. 390(4)(c) repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(1)(2), 68, Sch. 6 para. 31(3)(b), **Sch. 7** (with ss. 27-29, 62); S.I. 2007/1897, **art. 2(1)(d)**

F386 Words in s. 390(4)(c) substituted (27.9.2005 for S. and 5.10.2005 otherwise) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 2, **Sch. 1 para. 18(3)** and The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), arts. 1, 15, **Sch. 1 para. 3(3)**

F387 Words in s. 390(4)(c) inserted (S.) (1.4.2002) by 2000 asp 4, s. 88(2), **Sch. 5 para. 18**; S.S.I. 2001/81, art. 3, **Sch. 2**

F388 S. 390(4)(d) and preceding word inserted (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(1), 68, **Sch. 6 para. 31(3)(c)** (with ss. 27-29, 62); S.I. 2007/1897, **art. 2(1)(d)**

F389 S. 390(5) added (1.4.2004) by 2002 c. 40, ss. 257(3), 279, Sch. 21 para. 4 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C742 s.390 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C743 S. 390 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

C744 S. 390 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

C745 S. 390(2)(3) modified by S.I. 1990/1392, **art. 7**

Marginal Citations

M47 1986 c. 46.

391 Recognised professional bodies.

(1) The Secretary of State may by order declare a body which appears to him to fall within subsection (2) below to be a recognised professional body for the purposes of this section.

(2) A body may be recognised if it regulates the practice of a profession and maintains and enforces rules for securing that such of its members as are permitted by or under the rules to act as insolvency practitioners—

(a) are fit and proper persons so to act, and

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(b) meet acceptable requirements as to education and practical training and experience.

(3) References to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question.

The reference in section 390(2) above to membership of a professional body recognised under this section is to be read accordingly.

(4) An order made under subsection (1) in relation to a professional body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within subsection (2).

(5) An order of the Secretary of State under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision whereby members of the body in question continue to be treated as authorised to act as insolvency practitioners for a specified period after the revocation takes effect.

Modifications etc. (not altering text)

C746 S. 391 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C747 S. 391 extended (22.5.2000) by S.I. 2000/1119, reg. 37, **Sch. 4 para. 12**
S. 391 extended (S.) (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(2), **Sch. 2**

C748 S. 391 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

C749 S. 391 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

392 Authorisation by competent authority.

(1) Application may be made to a competent authority for authorisation to act as an insolvency practitioner.

(2) The competent authorities for this purpose are—

(a) in relation to a case of any description specified in directions given by the Secretary of State, the body or person so specified in relation to cases of that description, and

(b) in relation to a case not falling within paragraph (a), the Secretary of State.

(3) The application—

(a) shall be made in such manner as the competent authority may direct,

(b) shall contain or be accompanied by such information as that authority may reasonably require for the purpose of determining the application, and

(c) shall be accompanied by the prescribed fee;

and the authority may direct that notice of the making of the application shall be published in such manner as may be specified in the direction.

(4) At any time after receiving the application and before determining it the authority may require the applicant to furnish additional information.

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(5) Directions and requirements given or imposed under subsection (3) or (4) may differ as between different applications.

(6) Any information to be furnished to the competent authority under this section shall, if it so requires, be in such form or verified in such manner as it may specify.

(7) An application may be withdrawn before it is granted or refused.

(8) Any sums received under this section by a competent authority other than the Secretary of State may be retained by the authority; and any sums so received by the Secretary of State shall be paid into the Consolidated Fund.

[[F390](9) Subsection (3)(c) shall not have effect in respect of an application made to the Secretary of State (but this subsection is without prejudice to section 415A).**]**

Textual Amendments

F390 S. 392(9) added (1.4.2004) by 2002 c. 40, ss. 270(3), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8) (as amended by S.I. 2003/2332, art. 2 and S.I. 2003/3340, art. 2)

Modifications etc. (not altering text)

C750 S. 392 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

393 Grant, refusal and withdrawal of authorisation.

(1) The competent authority may, on an application duly made in accordance with section 392 and after being furnished with all such information as it may require under that section, grant or refuse the application.

(2) The authority shall grant the application if it appears to it from the information furnished by the applicant and having regard to such other information, if any, as it may have—

(a) that the applicant is a fit and proper person to act as an insolvency practitioner, and

(b) that the applicant meets the prescribed requirements with respect to education and practical training and experience.

(3) An authorisation granted under this section, if not previously withdrawn, continues in force for such period not exceeding the prescribed maximum as may be specified in the authorisation.

(4) An authorisation so granted may be withdrawn by the competent authority if it appears to it—

(a) that the holder of the authorisation is no longer a fit and proper person to act as an insolvency practitioner, or

(b) without prejudice to paragraph (a), that the holder—

(i) has failed to comply with any provision of this Part or of any regulations made under this Part or Part XV, or

(ii) in purported compliance with any such provision, has furnished the competent authority with false, inaccurate or misleading information.

(5) An authorisation granted under this section may be withdrawn by the competent authority at the request or with the consent of the holder of the authorisation.

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Modifications etc. (not altering text)
C751 S. 393 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

394 Notices.

(1) Where a competent authority grants an authorisation under section 393, it shall give written notice of that fact to the applicant, specifying the date on which the authorisation takes effect.

(2) Where the authority proposes to refuse an application, or to withdraw an authorisation under section 393(4), it shall give the applicant or holder of the authorisation written notice of its intention to do so, setting out particulars of the grounds on which it proposes to act.

(3) In the case of a proposed withdrawal the notice shall state the date on which it is proposed that the withdrawal should take effect.

(4) A notice under subsection (2) shall give particulars of the rights exercisable under the next two sections by a person on whom the notice is served.

Modifications etc. (not altering text)
C752 S. 394 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

395 Right to make representations.

(1) A person on whom a notice is served under section 394(2) may within 14 days after the date of service make written representations to the competent authority.

(2) The competent authority shall have regard to any representations so made in determining whether to refuse the application or withdraw the authorisation, as the case may be.

Modifications etc. (not altering text)
C753 S. 395 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

396 Reference to Tribunal.

(1) The Insolvency Practitioners Tribunal ("the Tribunal") continues in being; and the provisions of Schedule 7 apply to it.

(2) Where a person is served with a notice under section 394(2), he may—
  (a) at any time within 28 days after the date of service of the notice, or
  (b) at any time after the making by him of representations under section 395 and before the end of the period of 28 days after the date of the service on him of a notice by the competent authority that the authority does not propose to alter its decision in consequence of the representations,

give written notice to the authority requiring the case to be referred to the Tribunal.

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(3) Where a requirement is made under subsection (2), then, unless the competent authority—
  (a) has decided or decides to grant the application or, as the case may be, not to withdraw the authorisation, and
  (b) within 7 days after the date of the making of the requirement, gives written notice of that decision to the person by whom the requirement was made,

it shall refer the case to the Tribunal.

Modifications etc. (not altering text)
C754 S.. 396 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

397 Action of Tribunal on reference.

(1) On a reference under section 396 the Tribunal shall—
  (a) investigate the case, and
  (b) make a report to the competent authority stating what would in their opinion be the appropriate decision in the matter and the reasons for that opinion,

and it is the duty of the competent authority to decide the matter accordingly.

(2) The Tribunal shall send a copy of the report to the applicant or, as the case may be, the holder of the authorisation; and the competent authority shall serve him with a written notice of the decision made by it in accordance with the report.

(3) The competent authority may, if he thinks fit, publish the report of the Tribunal.

Modifications etc. (not altering text)
C755 S. 397 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

398 Refusal or withdrawal without reference to Tribunal.

Where in the case of any proposed refusal or withdrawal of an authorisation either—
  (a) the period mentioned in section 396(2)(a) has expired without the making of any requirement under that subsection or of any representations under section 395, or
  (b) the competent authority has given a notice such as is mentioned in section 396(2)(b) and the period so mentioned has expired without the making of any such requirement,

the competent authority may give written notice of the refusal or withdrawal to the person concerned in accordance with the proposal in the notice given under section 394(2).

Modifications etc. (not altering text)
C756 S. 398 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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PART XIV

PUBLIC ADMINISTRATION (ENGLAND AND WALES)

Modifications etc. (not altering text)

C757 Pt. XIV (ss. 399-410) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(4)(5)(8)(9), 10(2)(3)(6), Sch. 4 Pt. II, **Sch. 7**

C758 Third Group of Parts (Pts. 12-19) 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))

Official receivers

399 Appointment, etc. of official receivers.

(1) For the purposes of this Act the official receiver, in relation to any bankruptcy **[**[F391], winding up or individual voluntary arrangement**]**, is any person who by virtue of the following provisions of this section or section 401 below is authorised to act as the official receiver in relation to that bankruptcy **[**[F391], winding up or individual voluntary arrangement**]**.

(2) The Secretary of State may (subject to the approval of the Treasury as to numbers) appoint persons to the office of official receiver, and a person appointed to that office (whether under this section or section 70 of the [M48]Bankruptcy Act 1914)—

(a) shall be paid out of money provided by Parliament such salary as the Secretary of State may with the concurrence of the Treasury direct,

(b) shall hold office on such other terms and conditions as the Secretary of State may with the concurrence of the Treasury direct, and

(c) may be removed from office by a direction of the Secretary of State.

(3) Where a person holds the office of official receiver, the Secretary of State shall from time to time attach him either to the High Court or to a county court having jurisdiction for the purposes of the second Group of Parts of this Act.

(4) Subject to any directions under subsection (6) below, an official receiver attached to a particular court is the person authorised to act as the official receiver in relation to every bankruptcy **[**[F391], winding up or individual voluntary arrangement**]** falling within the jurisdiction of that court.

(5) The Secretary of State shall ensure that there is, at all times, at least one official receiver attached to the High Court and at least one attached to each county court having jurisdiction for the purposes of the second Group of Parts; but he may attach the same official receiver to two or more different courts.

(6) The Secretary of State may give directions with respect to the disposal of the business of official receivers, and such directions may, in particular—

(a) authorise an official receiver attached to one court to act as the official receiver in relation to any case or description of cases falling within the jurisdiction of another court;

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(b) provide, where there is more than one official receiver authorised to act as the official receiver in relation to cases falling within the jurisdiction of any court, for the distribution of their business between or among themselves.

(7) A person who at the coming into force of section 222 of the [M49]Insolvency Act 1985 (replaced by this section) is an official receiver attached to a court shall continue in office after the coming into force of that section as an official receiver attached to that court under this section.

Textual Amendments

F391 Words in s. 399(1)(4) substituted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 14(a)(b) (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C759 S. 399 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 399 applied (7.2.1994) by 1993 c. 48, **s. 119(8)** (with s. 6(8)); S.I. 1994/86, **art. 2**

Marginal Citations

M48 1914 c. 59.
M49 1985 c. 65.

400 Functions and status of official receivers.

(1) In addition to any functions conferred on him by this Act, a person holding the office of official receiver shall carry out such other functions as may from time to time be conferred on him by the Secretary of State.

(2) In the exercise of the functions of his office a person holding the office of official receiver shall act under the general directions of the Secretary of State and shall also be an officer of the court in relation to which he exercises those functions.

(3) Any property vested in his official capacity in a person holding the office of official receiver shall, on his dying, ceasing to hold office or being otherwise succeeded in relation to the bankruptcy or winding up in question by another official receiver, vest in his successor without any conveyance, assignment or transfer.

Modifications etc. (not altering text)

C760 S. 400 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

401 Deputy official receivers and staff.

(1) The Secretary of State may, if he thinks it expedient to do so in order to facilitate the disposal of the business of the official receiver attached to any court, appoint an officer of his department to act as deputy to that official receiver.

(2) Subject to any directions given by the Secretary of State under section 399 or 400, a person appointed to act as deputy to an official receiver has, on such conditions and for such period as may be specified in the terms of his appointment, the same status and functions as the official receiver to whom he is appointed deputy.

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Accordingly, references in this Act (except section 399(1) to (5)) to an official receiver include a person appointed to act as his deputy.

(3) An appointment made under subsection (1) may be terminated at any time by the Secretary of State.

(4) The Secretary of State may, subject to the approval of the Treasury as to numbers and remuneration and as to the other terms and conditions of the appointments, appoint officers of his department to assist official receivers in the carrying out of their functions.

Modifications etc. (not altering text)

C761 S. 401 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

The Official Petitioner

[[F392]402 Official Petitioner.

(1) There continues to be an officer known as the Official Petitioner for the purposes of discharging, in relation to cases in which a criminal bankruptcy order is made, the functions assigned to him by or under this Act; and the Director of Public Prosecutions continues, by virtue of his office, to be the Official Petitioner.

(2) The functions of the Official Petitioner include the following—

(a) to consider whether, in a case in which a criminal bankruptcy order is made, it is in the public interest that he should himself present a petition under section 264(1)(d) of this Act;

(b) to present such a petition in any case where he determines that it is in the public interest for him to do so;

(c) to make payments, in such cases as he may determine, towards expenses incurred by other persons in connection with proceedings in pursuance of such a petition; and

(d) to exercise, so far as he considers it in the public interest to do so, any of the powers conferred on him by or under this Act.

(3) Any functions of the Official Petitioner may be discharged on his behalf by any person acting with his authority.

(4) Neither the Official Petitioner nor any person acting with his authority is liable to any action or proceeding in respect of anything done or omitted to be done in the discharge, or purported discharge, of the functions of the Official Petitioner.

(5) In this section "criminal bankruptcy order" means an order under section 39(1) of the [M50]Powers of Criminal Courts Act 1973.]

Textual Amendments

F392 S. 402 repealed (*prosp.*) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 123, 170, 171, Sch. 8 para. 16, **Sch. 16**

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Modifications etc. (not altering text)
C762 S. 402 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Marginal Citations
M50 1973 c. 62.

Insolvency Service finance, accounting and investment

403 Insolvency Services Account.

(1) All money received by the Secretary of State in respect of proceedings under this Act as it applies to England and Wales shall be paid into the Insolvency Services Account kept by the Secretary of State with the Bank of England; and all payments out of money standing to the credit of the Secretary of State in that account shall be made by the Bank of England in such manner as he may direct.

(2) Whenever the cash balance standing to the credit of the Insolvency Services Account is in excess of the amount which in the opinion of the Secretary of State is required for the time being to answer demands in respect of bankrupts' estates or companies' estates, the Secretary of State shall—
   (a) notify the excess to the National Debt Commissioners, and
   (b) pay into the Insolvency Services Investment Account ("the Investment Account") kept by the Commissioners with the Bank of England the whole or any part of the excess as the Commissioners may require for investment in accordance with the following provisions of this Part.

(3) Whenever any part of the money so invested is, in the opinion of the Secrtetary of State, required to answer any demand in respect of bankrupt's estates or companies' estates, he shall notify to the National Debt Commissioners the amount so required and the Commissioners—
   (a) shall thereupon repay to the Secretary of State such sum as may be required to the credit of the Insolvency Services Account, and
   (b) for that purpose may direct the sale of such part of the securities in which the money has been invested as may be necessary.

Modifications etc. (not altering text)
C763 S. 403 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

404 Investment Account.

Any money standing to the credit of the Investment Account (including any money received by the National Debt Commissioners by way of interest on or proceeds of any investment under this section) may be invested by the Commissioners, in accordance with such directions as may be given by the Treasury, in any manner for the time being specified in Part II of Schedule 1 to the [M51]Trustee Investments Act 1961.

Modifications etc. (not altering text)
C764 S. 404 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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Marginal Citations

M51 1961 c. 62.

405 Application of income in Investment Account; adjustment of balances.

F393 . . . . . .

Textual Amendments

F393 S. 405 repealed (1.4.2004) by 2002 c. 40, ss. 272(1), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

406 [F394Interest on money received by liquidators or trustees in bankruptcy and invested.]

Where under rules made by virtue of paragraph 16 of Schedule 8 to this Act(investment of money received by company liquidators) **[**F395or paragraph 21 of Schedule 9 to this Act (investment of money received by trustee in bankruptcy) a company or a bankrupt's estate**]** has become entitled to any sum by way of interest, the Secretary of State shall certify that sum and the amount of tax payable on it to the National Debt Commissioners; and the Commissioners shall pay, out of the Investment Account—

(a) into the Insolvency Services Account, the sum so certified less the amount of tax so certified, and

(b) to the Commissioners of Inland Revenue, the amount of tax so certified.

Textual Amendments

F394 S. 406: sidenote substituted (2.4.2001) by 2000 c. 39, **s. 13(2)(b)**; S.I. 2001/766, **art. 2** (subject to transitional provisions in art. 3)

F395 Words in s. 406 substituted (2.4.2001) by 2000 c. 39, **s. 13(2)(a)**; S.I. 2001/766, **art. 2** (subject to transitional provisions in art. 3)

407 Unclaimed dividends and undistributed balances.

(1) The Secretary of State shall from time to time pay into the Consolidated Fund out of the Insolvency Services Account so much of the sums standing to the credit of that Account as represents—

(a) dividends which were declared before such date as the Treasury may from time to time determine and have not been claimed, and

(b) balances ascertained before that date which are too small to be divided among the persons entitled to them.

(2) For the purposes of this section the sums standing to the credit of the Insolvency Services Account are deemed to include any sums paid out of that Account and represented by any sums or securities standing to the credit of the Investment Account.

(3) The Secretary of State may require the National Debt Commissioners to pay out of the Investment Account into the Insolvency Services Account the whole or part of any sum which he is required to pay out of that account under subsection (1); and

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the Commissioners may direct the sale of such securities standing to the credit of the Investment Account as may be necessary for that purpose.

Modifications etc. (not altering text)
C765 S. 407 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

[F396 408 Adjustment of balances

(1) The Treasury may direct the payment out of the Consolidated Fund of sums into—
  (a) the Insolvency Services Account;
  (b) the Investment Account.

(2) The Treasury shall certify to the House of Commons the reason for any payment under subsection (1).

(3) The Secretary of State may pay sums out of the Insolvency Services Account into the Consolidated Fund.

(4) The National Debt Commissioners may pay sums out of the Investment Account into the Consolidated Fund.]

Textual Amendments
F396 S. 408 substituted (1.4.2004) by 2002 c. 40, ss. 272(2), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

409 Annual financial statement and audit.

(1) The National Debt Commissioners shall for each year ending on 31st March prepare a statement of the sums credited and debited to the Investment Account in such form and manner as the Treasury may direct and shall transmit it to the Comptroller and Auditor General before the end of November next following the year.

(2) The Secretary of State shall for each year ending 31st March prepare a statement of the sums received or paid by him under section 403 above in such form and manner as the Treasury may direct and shall transmit each statement to the Comptroller and Auditor General before the end of November next following the year.

(3) Every such statement shall include such additional information as the Treasury may direct.

(4) The Comptroller and Auditor General shall examine, certify and report on every such statement and shall lay copies of it, and of his report, before Parliament.

Modifications etc. (not altering text)
C766 S. 409 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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Supplementary

410 Extent of this Part.

This part of this Act extends to England and Wales only.

Modifications etc. (not altering text)

C767 S. 410 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

PART XV

SUBORDINATE LEGISLATION

Modifications etc. (not altering text)

C768 Pt. XV (ss. 411-422) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(4)(5)(8)(9), 10(2)(3)(6), Sch. 4 Pt. II, **Sch. 7**

C769 Third Group of Parts (Pts. 12-19) 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))

General insolvency rules

411 Company insolvency rules.

(1) Rules may be made—

(a) in relation to England and Wales, by the Lord Chancellor with the concurrence of the Secretary of State **[**[F397]and, in the case of rules that affect court procedure, with the concurrence of the Lord Chief Justice**]**, or

(b) in relation to Scotland, by the Secretary of State,

for the purpose of giving effect to Parts I to VII of this Act **[**[F398]or the EC Regulation**]**.

(2) Without prejudice to the generality of subsection (1), or to any provision of those Parts by virtue of which rules under this section may be made with respect to any matter, rules under this section may contain—

(a) any such provision as is specified in Schedule 8 to this Act or corresponds to provision contained immediately before the coming into force of section 106 of the [M52]Insolvency Act 1985 in rules made, or having effect as if made, under section 663(1) or (2) of the Companies Act (old winding-up rules), and

(b) such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor or, as the case may be, the Secretary of State necessary or expedient.

[[F399](2A) For the purposes of subsection (2), a reference in Schedule 8 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of the EC Regulation (in so far as the provision of this Act relates to a matter to which the EC Regulation applies).

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(2B) Rules under this section for the purpose of giving effect to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.**]**

(3) In Schedule 8 to this Act "liquidator" includes a provisional liquidator; and references above in this section to Parts I to VII of this Act are to be read as including **[**[F400]the Companies Acts**]** so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

(4) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Regulations made by the Secretary of State under a power conferred by rules under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

(6) Nothing in this section prejudices any power to make rules of court.

[[F401](7) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.**]**

Textual Amendments

F397 Words in s. 411(1)(a) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 188(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

F398 Words in s. 411(1) inserted (3.5.2002) by S.I. 2002/1037, **reg. 3(1)**

F399 S. 411(2A)(2B) inserted (3.5.2002) by S.I. 2002/1037, **reg. 3(2)**

F400 Words in s. 411(3) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 44** (with art. 12)

F401 S. 411(7) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 188(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

Modifications etc. (not altering text)

C770 S. 411 extended by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2)**, 25
S. 411 extended by Building Societies Act 1986 (c. 53, SIF 16), **ss. 54(3)**(a)(5)(a), 90, 126(3), Sch. 15 para. 58(1)
S. 411 extended by Financial Services Act 1986 (c. 60, SIF 69), **s. 54(6)**
S. 411 extended (E.W.) by Banking Act 1987 (c. 22, SIF 10), **s. 62(8)(a)**
S. 411 extended (S.) by Banking Act 1987 (c. 22, SIF 10), **s. 62(8)(b)(i)**
S. 411 extended (with modifications) (7.2.1994) by 1993 c. 43, **s. 59(5)**, 150(1)(c); S.I. 1994/86, **art. 2**
S. 411 extended (1.12.1997) by 1986 c. 53, **Sch. 15A para. 4(1)** (as inserted (1.12.1997) by 1997 c. 32, s. 39(2), **Sch. 6**; S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**)
Ss. 411, 412 extended (E.W.) (25.2.2001) by 2000 c. 8, **s. 215(8)(a)**; S.I. 2001/516, art. 2, **Sch. Pt. 1**

C771 S. 411 applied (1.12.1994) by S.I. 1994/2421, **arts. 4(3)(e)**, 6(3)(e)
S. 411 applied (1.2.2001) by 2000 c. 38, **s. 30(5)** (with s. 105(2)(b)(5), 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
S. 411 applied (with modifications) (15.7.2003) by 1999 c. 29, ss. 220(5), 425(2) (with ss. 165, 217, Sch. 12 para. 9(1)); S.I. 2003/1920, **art. 2(b)**
S. 411 applied (15.7.2003) by 1999 c. 29, ss. 221(3), 425(2) (with ss. 165, 217, Sch. 12 para. 9(1)); S.I. 2003/1920, **art. 2(b)**

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S. 411 applied (with modifications) (5.10.2004) by Energy Act 2004 (c. 20), **ss. 159(3)**, 198; S.I. 2004/2575, **art. 2(1)**, Sch. 1

S. 411 applied in part (20.1.2007 for specified purposes, otherwise 1.10.2007) by Companies Act 2006 (c. 46), **ss. 997**, 1300(2); S.I. 2006/3428, **art. 3(3)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); S.I. 2007/2194, **art. 2(1)(j)**

Marginal Citations

M52 1985 c. 65.

412 Individual insolvency rules (England and Wales).

(1) The Lord Chancellor may, with the concurrence of the Secretary of State **[**[F402]and, in the case of rules that affect court procedure, with the concurrence of the Lord Chief Justice**]**, make rules for the purpose of giving effect to Parts VIII to XI of this Act **[**[F403]or the EC Regulation**]**.

(2) Without prejudice to the generality of subsection (1), or to any provision of those Parts by virtue of which rules under this section may be made with respect to any matter, rules under this section may contain—

(a) any such provision as is specified in Schedule 9 to this Act or corresponds to provision contained immediately before the appointed day in rules made under section 132 of the [M53]Bankruptcy Act 1914; and

(b) such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor necessary or expedient.

[[F404](2A) For the purposes of subsection (2), a reference in Schedule 9 to this Act to doing anything under or for the purposes of a provision of this Act includes a reference to doing anything under or for the purposes of the EC Regulation (in so far as the provision of this Act relates to a matter to which the EC Regulation applies).

(2B) Rules under this section for the purpose of giving effect to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.**]**

(3) Rules under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Regulations made by the Secretary of State under a power conferred by rules under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

(5) Nothing in this section prejudices any power to make rules of court.

[[F405](6) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.**]**

Textual Amendments

F402 Words in s. 412(1) inserted (3.4.2006) by virtue of Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 189(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

F403 Words in s. 412(1) inserted (3.5.2002) by S.I. 2002/1037, **reg. 3(3)**

F404 S. 412(2A)(2B) inserted (3.5.2002) by S.I. 2002/1037, **reg. 3(4)**

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F405 S. 412(6) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 189(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

Modifications etc. (not altering text)

C772 S. 412 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C773 S. 412 extended by Financial Services Act 1986 (c. 60, SIF 69), **s. 54(6)**
S. 412 extended by Banking Act 1987 (c. 22, SIF 10), **s. 62(8)(a)**
Ss. 411, 412 extended (E.W.) (25.2.2001) by 2000 c. 8, **s. 215(8)(a)**; S.I. 2001/516, art. 2, **Sch. Pt. 1**

Marginal Citations

M53 1914 c. 59.

413 Insolvency Rules Committee.

(1) The committee established under section 10 of the [M54]Insolvency Act 1976 (advisory committee on bankruptcy and winding-up rules) continues to exist for the purpose of being consulted under this section.

(2) The Lord Chancellor shall consult the committee before making any rules under section 411 or 412 **[**[F406]other than rules which contain a statement that the only provision made by the rules is provision applying rules made under section 411, with or without modifications, for the purposes of provision made by section **[**[F407]any of sections 23 to 26 of the Water Industry Act 1991 or Schedule 3 to that Act**]][**[F408]or by any of sections 59 to 65 of, or Schedule 6 or 7 to, the Railways Act 1993.**]**.

(3) Subject to the next subsection, the committee shall consist of—
- (a) a judge of the High Court attached to the Chancery Division;
- (b) a circuit judge;
- (c) a registrar in bankruptcy of the High Court;
- (d) the registrar of a county court;
- (e) a practising barrister;
- (f) a practising solictor; and
- (g) a practising accountant;

and the appointment of any person as a member of the committee shall be made **[**[F409]in accordance with subsection (3A) or (3B)**]**.

[[F410](3A) The Lord Chief Justice must appoint the persons referred to in paragraphs (a) to (d) of subsection (3), after consulting the Lord Chancellor.

(3B) The Lord Chancellor must appoint the persons referred to in paragraphs (e) to (g) of subsection (3), after consulting the Lord Chief Justice.**]**

(4) The Lord Chancellor may appoint as additional members of the committee any persons appearing to him to have qualifications or experience that would be of value to the committee in considering any matter with which it is concerned.

[[F411](5) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.**]**

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Textual Amendments

F406 Words inserted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 78(2)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

F407 Words in S. 413(2) substituted (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60), ss. 2(1), 4(2), **Sch. 1 para. 46**.

F408 Words in s. 413(2) added (1.4.1994) by 1993 c. 43. ss. 150(1)(o), 152(1), Sch. 12 para.25; S.I. 1994/571, **art. 5**

F409 Words in s. 413(3) substituted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 190(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

F410 S. 413(3A)(3B) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 190(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

F411 S. 413(5) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 190(4)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

Modifications etc. (not altering text)

C774 S. 413 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C775 S. 413 applied (1.12.1994) by S.I. 1994/2421, **arts. 4(3)(e)**, 6(3)(e)

C776 S. 413(2) excluded (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 125(8)**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch.

C777 S. 413(2) excluded (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 160(6)**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch.

C778 S. 413(2) excluded (29.3.2009) by The Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805), **art. 16**

C779 S. 413(2) excluded (1.10.2011) by Postal Services Act 2011 (c. 5), **ss. 73(4)**, 93(2)(3); S.I. 2011/2329, **art. 3** (with arts. 4, 5)

Marginal Citations

M54 1976 c. 60.

Fees orders

414 Fees orders (company insolvency proceedings).

(1) There shall be paid in respect of—

(a) proceedings under any of Parts I to VII of this Act, and

(b) the performance by the official receiver or the Secretary of State of functions under those Parts,

such fees as the competent authority may with the sanction of the Treasury by order direct.

(2) That authority is—

(a) in relation to England and Wales, the Lord Chancellor, and

(b) in relation to Scotland, the Secretary of State.

(3) The Treasury may by order direct by whom and in what manner the fees are to be collected and accounted for.

(4) The Lord Chancellor may, with the sanction of the Treasury, by order provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for fees payable by virtue of this section.

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(5) An order under this section may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor, the Secretary of State or (as the case may be) the Treasury necessary or expedient.

(6) An order under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

(7) Fees payable by virtue of this section shall be paid into the Consolidated Fund.

(8) References in subsection (1) to Parts I to VII of this Act are to be read as including **[**[F412]the Companies Acts**]** so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

(9) Nothing in this section prejudices any power to make rules of court; and the application of this section to Scotland is without prejudice to section 2 of the [M55]Courts of Law Fees (Scotland) Act 1895.

Textual Amendments

F412 Words in s. 414(8) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 44** (with art. 12)

Modifications etc. (not altering text)

C780 S. 414 extended by Building Societies Act 1986 (c. 53, SIF 16), **ss. 54(3)**(*a*)(5)(*a*), 90, 126(3), Sch. 15 para. 58(2)

C781 S. 414 extended by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2)**, 25

C782 S. 414 applied (1.12.1994) by S.I. 1994/2421, **arts. 4(3)(e)**, 6(3)(e)
S. 414 extended (1.12.1997) by 1986 c. 53, **Sch. 15A para. 4(2)** (as inserted (1.12.1997) by 1997 c. 32, s. 39(2), **Sch. 6**; S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**)

C783 S. 414 extended (1.2.1993) by Friendly Societies Act 1992 (1992 c. 40), s. 23, **Sch. 10 para. 69(2)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3**

C784 S. 414(4) modified (1.12.1994) by S.I. 1994/2421, **art. 13(1)**

C785 S. 414(4) modified by S.I. 1986/2142, **arts. 1(2)**, 5(3), 15

Marginal Citations

M55 1895 c. 14

415 Fees orders (individual insolvency proceedings in England and Wales).

(1) There shall be paid in respect of—

(a) proceedings under Parts VIII to XI of this Act, and

(b) the performance by the official receiver or the Secretary of State of functions under those Parts,

such fees as the Lord Chancellor may with the sanction of the Treasury by order direct.

(2) The Treasury may by order direct by whom and in what manner the fees are to be collected and accounted for.

(3) The Lord Chancellor may, with the sanction of the Treasury, by order provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for—

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(a) fees payable by virtue of this section, and
(b) fees payable to any person who has prepared an insolvency practitioner's report under section 274 in Chapter I of Part IX.

(4) An order under this section may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor or, as the case may be, the Treasury, necessary or expedient.

(5) An order under this section shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.

(6) Fees payable by virtue of this section shall be paid into the Consolidated Fund.

(7) Nothing in this section prejudices any power to make rules of court.

Modifications etc. (not altering text)

C786 S. 415 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C787 S. 415(3) modified by S.I. 1986/2142, **arts. 1(2)**, 5(3), 15
S. 415(3) applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 13(1)**

[F413 415A Fees orders (general)

(1) The Secretary of State—
(a) may by order require a body to pay a fee in connection with the grant or maintenance of recognition of the body under section 391, and
(b) may refuse recognition, or revoke an order of recognition under section 391(1) by a further order, where a fee is not paid.

(2) The Secretary of State—
(a) may by order require a person to pay a fee in connection with the grant or maintenance of authorisation of the person under section 393, and
(b) may disregard an application or withdraw an authorisation where a fee is not paid.

(3) The Secretary of State may by order require the payment of fees in respect of—
(a) the operation of the Insolvency Services Account;
(b) payments into and out of that Account.

(4) The following provisions of section 414 apply to fees under this section as they apply to fees under that section—
(a) subsection (3) (manner of payment),
(b) subsection (5) (additional provision),
(c) subsection (6) (statutory instrument),
(d) subsection (7) (payment into Consolidated Fund), and
(e) subsection (9) (saving for rules of court).**]**

Textual Amendments

F413 S. 415A inserted (18.12.2003) by 2002 c. 40, ss. 270(1), 279 (with s. 249(6)); S.I. 2003/3340, **art. 3**

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Specification, increase and reduction of money sums relevant in the operation of this Act

416 Monetary limits (companies winding up).

(1) The Secretary of State may by order in a statutory instrument increase or reduce any of the money sums for the time being specified in the following provisions in the first Group of Parts—

section 117(2) (amount of company's share capital determining whether county court has jurisdiction to wind it up);

section 120(3) (the equivalent as respects sheriff court jurisdiction in Scotland);

section 123(1)(a) (minimum debt for service of demand on company by unpaid creditor);

section 184(3) (minimum value of judgment, affecting sheriff's duties on levying execution);

section 206(1)(a) and (b) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer).

(2) An order under this section may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.

(3) No order under this section increasing or reducing any of the money sums for the time being specified in section 117(2), 120(3) or 123(1)(a) shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(4) A statutory instrument containing an order under this section, other than an order to which subsection (3) applies, is subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C788 S. 416(1)(4) applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C789 S. 416(1) modified (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

417 Money sum in s. 222.

The Secretary of State may by regulations in a statutory instrument increase or reduce the money sum for the time being specified in section 222(1) (minimum debt for service of demand on unregistered company by unpaid creditor); but such regulations shall not be made unless a draft of the statutory instrument containing them has been approved by resolution of each House of Parliament.

[F414 417A Money sums (company moratorium).

(1) The Secretary of State may by order increase or reduce any of the money sums for the time being specified in the following provisions of Schedule A1 to this Act—

paragraph 17(1) (maximum amount of credit which company may obtain without disclosure of moratorium);

paragraph 41(4) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer).

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(2) An order under this section may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.

(3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F414 S. 417A inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 10**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

418 Monetary limits (bankruptcy).

(1) The Secretary of State may by order prescribe amounts for the purposes of the following provisions in the second Group of Parts—

section 273 (minimum value of debtor's estate determining whether immediate bankruptcy order should be made; small bankruptcies level);

[[F415]section 313A (value of property below which application for sale, possession or charge to be dismissed);**]**

section 346(3) (minimum amount of judgment, determining whether amount recovered on sale of debtor's goods is to be treated as part of his estate in bankruptcy);

section 354(1) and (2) (minimum amount of concealed debt, or value or property concealed or removed, determining criminal liability under the section);

section 358 (minimum value of property taken by a bankrupt out of England and Wales, determining his criminal liability);

section 360(1) (maximum amount of credit which bankrupt may obtain without disclosure of his status);

section 361(2) (exemption of bankrupt from criminal liability for failure to keep proper accounts, if unsecured debts not more than the prescribed minimum);

section 364(2)(d) (minimum value of goods removed by the bankrupt, determining his liability to arrest);

and references in the second Group of Parts to the amount prescribed for the purposes of any of those provisions, and references in those provisions to the prescribed amount, are to be construed accordingly.

(2) An order under this section may contain such transitional provisions as may appear to the Secretary of State necessary or expedient.

(3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F415 Words in s. 418(1) inserted (1.4.2004) by 2002 c. 40, ss. 261(6), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C790 S. 418 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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Insolvency practice

419 Regulations for purposes of Part XIII.

(1) The Secretary of State may make regulations for the purpose of giving effect to Part XIII of this Act; and "prescribed" in that Part means prescribed by regulations made by the Secretary of State.

(2) Without prejudice to the generality of subsection (1) or to any provision of that Part by virtue of which regulations may be made with respect to any matter, regulations under this section may contain—

(a) provision as to the matters to be taken into account in determining whether a person is a fit and proper person to act as an insolvency practitioner;

(b) provision prohibiting a person from so acting in prescribed cases, being cases in which a conflict of interest will or may arise;

(c) provision imposing requirments with respect to—

(i) the preparation and keeping by a person who acts as an insolvency practitioner of prescribed books, accounts and other records, and

(ii) the production of those books, accounts and records to prescribed persons;

(d) provision conferring power on prescribed persons—

(i) to require any person who acts or has acted as an insolvency practitioner to answer any inquiry in relation to a case in which he is so acting or has so acted, and

(ii) to apply to a court to examine such a person or any other person on oath concerning such a case;

(e) provision making non-co(mpliance with any of the regulations a criminal offence; and

(f) such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient.

(3) Any power conferred by Part XIII of this Part to make regulations, rules or orders is exercisable by statutory instrument subject to annulment by resolution of either House of Parliament.

(4) Any rule or regulation under Part XIII or this Part may make different provision with respect to different cases or descriptions of cases, including different provision for different areas.

Modifications etc. (not altering text)

C791 S. 419 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C792 S. 419 applied (1.12.1994) by S.I. 1994/2421, **arts. 4(3)(e)**, 6(3)(e)

Other order-making powers

420 Insolvent partnerships.

(1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State **[**[F416]and the Lord Chief Justice**]**, provide that such provisions of this Act as may

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be specified in the order shall apply in relation to insolvent partnerships with such modifications as may be so specified.

[[F417](1A) An order under this section may make provision in relation to the EC Regulation.

(1B) But provision made by virtue of this section in relation to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.**]**

(2) An order under this section may make different provision for different cases and may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor **[**[F418]and the Lord Chief Justice**]** necessary or expedient.

(3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

[[F419](4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.**]**

Textual Amendments

F416 Words in s. 420(1) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 191(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

F417 S. 420(1A)(1B) inserted (3.5.2002) by S.I. 2002/1037, **reg. 3(5)**

F418 Words in s. 420(2) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 191(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

F419 S. 420(4) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 191(4)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

Modifications etc. (not altering text)

C793 S. 420 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C794 S. 420 extended by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2)**, 25

C795 S. 420 amended (30.12.2002) by 2002 c. 29, **s. 311(6)**; S.I. 2002/3015, art. 2, **Sch.** (subject to savings in art. 3)

C796 S. 420 applied (with modifications) (6.4.2008) by Serious Crime Act 2007 (c. 27), **ss. 27(5)**, 94; S.I. 2008/755, **art. 15(1)(f)**

421 Insolvent estates of deceased persons.

(1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State **[**[F420]and the Lord Chief Justice**]**, provide that such provisions of this Act as may be specified in the order shall apply **[**[F421]in relation**]** to the administration of the insolvent estates of deceased persons with such modifications as may be so specified.

[[F422](1A) An order under this section may make provision in relation to the EC Regulation.

(1B) But provision made by virtue of this section in relation to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.**]**

(2) An order under this section may make different provision for different cases and may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor **[**[F423]and the Lord Chief Justice**]** necessary or expedient.

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(3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) For the purposes of this section the estate of a deceased person is insolvent if, when realised, it will be insufficient to meet in full all the debts and other liabilities to which it is subject.

[[F424](5) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.**]**

Textual Amendments

F420 Words in s. 421(1) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 192(2)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

F421 Words in s. 421(1) inserted (2.4.2001) by 2000 c. 39, **s. 12(2)**; S.I. 2001/766, **art. 2** (subject to transitional provisions in art. 3)

F422 S. 421(1A)(1B) inserted (3.5.2002) by S.I. 2002/1037, **reg. 3(6)**

F423 Words in s. 421(2) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 192(3)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

F424 S. 421(5) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(1), 148, **Sch. 4 para. 192(4)**; S.I. 2006/1014, **art. 2(a)**, Sch. 1

Modifications etc. (not altering text)

C797 S. 421 amended (30.12.2002) by 2002 c. 29, **s. 311(6)**; S.I. 2002/3015, art. 2, **Sch.** (subject to savings in art. 3)

[[F425]421A Insolvent estates: joint tenancies.

(1) This section applies where—

(a) an insolvency administration order has been made in respect of the insolvent estate of a deceased person,

(b) the petition for the order was presented after the commencement of this section and within the period of five years beginning with the day on which he died, and

(c) immediately before his death he was beneficially entitled to an interest in any property as joint tenant.

(2) For the purpose of securing that debts and other liabilities to which the estate is subject are met, the court may, on an application by the trustee appointed pursuant to the insolvency administration order, make an order under this section requiring the survivor to pay to the trustee an amount not exceeding the value lost to the estate.

(3) In determining whether to make an order under this section, and the terms of such an order, the court must have regard to all the circumstances of the case, including the interests of the deceased's creditors and of the survivor; but, unless the circumstances are exceptional, the court must assume that the interests of the deceased's creditors outweigh all other considerations.

(4) The order may be made on such terms and conditions as the court thinks fit.

(5) Any sums required to be paid to the trustee in accordance with an order under this section shall be comprised in the estate.

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(6) The modifications of this Act which may be made by an order under section 421 include any modifications which are necessary or expedient in consequence of this section.

(7) In this section, "survivor" means the person who, immediately before the death, was beneficially entitled as joint tenant with the deceased or, if the person who was so entitled dies after the making of the insolvency administration order, his personal representatives.

(8) If there is more than one survivor—

(a) an order under this section may be made against all or any of them, but

(b) no survivor shall be required to pay more than so much of the value lost to the estate as is properly attributable to him.

(9) In this section—

"insolvency administration order" has the same meaning as in any order under section 421 having effect for the time being,

"value lost to the estate" means the amount which, if paid to the trustee, would in the court's opinion restore the position to what it would have been if the deceased had been adjudged bankrupt immediately before his death.**]**

Textual Amendments

F425 S. 421A inserted (2.4.2001) by 2000 c. 39, **s. 12(1)**; S.I. 2001/766, **art. 2** (subject to transitional provisions in art. 3)

422 [[F426]Formerly authorised banks].

[[F427](1) The Secretary of State may by order made with the concurrence of the Treasury and after consultation with the Financial Services Authority provide that specified provisions in the first Group of Parts shall apply with specified modifications in relation to any person who—

(a) has a liability in respect of a deposit which he accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22), but

(b) does not have permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) (regulated activities) to accept deposits.

(1A) Subsection (1)(b) shall be construed in accordance with—

(a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),

(b) any relevant order under that section, and

(c) Schedule 2 to that Act (regulated activities).**]**

(1A) [F428] . . . . . .

(2) An order under this section may make different provision for different cases and may contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient.

(3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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Textual Amendments

F426 S. 422 cross-heading substituted (3.7.2002) by S.I. 2002/1555, **art. 16(2)**

F427 S. 422(1)(1A) substituted (15.9.2003) for s. 422(1) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 35 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2002/2332, art. 2))

F428 S. 422(1A) omitted (15.9.2003) by virtue of The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 4, **Sch. Pt. 1 para. 11** (with art. 6)

Modifications etc. (not altering text)

C798 S. 422 extended by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2)**, 25

PART XVI

PROVISIONS AGAINST DEBT AVOIDANCE (ENGLAND AND WALES ONLY)

Modifications etc. (not altering text)

C799 Pt. 16 (ss. 423-425) applied (1.12.1994) by S.I. 1994/2421, **arts. 4(3)(f)**, 6(3)(f)
Pt. 16 (ss. 423-425) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(4)(5)(8)(9), 10(2)(3)(6), Sch. 4 Pt. II, **Sch. 7**

C800 Third Group of Parts (Pts. 12-19) 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))

423 Transactions defrauding creditors.

(1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—

(a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;

(b) he enters into a transaction with the other in consideration of marriage **[**[F429]or the formation of a civil partnership**]**; or

(c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself.

(2) Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for—

(a) restoring the position to what it would have been if the transaction had not been entered into, and

(b) protecting the interests of persons who are victims of the transaction.

(3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose—

(a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or

(b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

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(4) In this section "the court" means the High Court or—

(a) if the person entering into the transaction is an individual, any other court which would have jurisdiction in relation to a bankruptcy petition relating to him;

(b) if that person is a body capable of being wound up under Part IV or V of this Act, any other court having jurisdiction to wind it up.

(5) In relation to a transaction at an undervalue, references here and below to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in the following two sections the person entering into the transaction is referred to as "the debtor".

Textual Amendments

F429 Words in s. 423(1)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 121**; S.I. 2005/3175, **art. 2(2)** (subject to art. 2(3)-(5))

Modifications etc. (not altering text)

C801 S. 423 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 423 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6, 9)

C802 S. 423 restricted by Drug Trafficking Offences Act 1986 (c. 32, SIF 39:1), **s. 15(6)**(a)(7)
S. 423 restricted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 30(6)**, 34(5)(a), 47(4)(a)
S. 423 restricted (25.4.1991) by Companies Act 1989 (c. 40), **s. 182(4) Sch. 22 para. 8(1)(c)**; S.I. 1991/878, art. 2, **Sch.**
S. 423 restricted by 1986 c. 32, **s. 15(6)(a)(b)** (as substituted (prosp.) by 1993 c. 36, **ss. 13(9)**, 78(3) (with s. 78(6) (which amending provision was repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), **Sch. 3**))
S. 423 restricted (3.2.1995) by 1994 c. 37, ss. 32(5)(a), 69(2), **Sch. 2 para. 5** (with s. 66(2))
S. 423 restricted (1.11.1995) by 1988 c. 33, **s. 84(6)(a)** (as substituted (1.11.1995) by 1995 c. 11, **s. 8(7)**; S.I. 1995/2650, **art. 2**)
S. 423 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 2(5)**
S. 423 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(1)**
S. 423 restricted (24.3.2003) by 2002 c. 29, ss. 419(1)-(4), 427(1)-(5), 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))

C803 S. 423 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 165(1)(c); S.I. 1991/878, art. 2, **Sch.**

C804 S. 423 modified (3.2.1995) by 1994 c. 37, ss. 32(5)(a), 69(2), **Sch. 2 para. 5** (with s. 66(2))

C805 S. 423 amended (1.12.2001) by 2000 c. 8, **s. 375(1)**; S.I. 2001/3538, **art. 2**

C806 Ss. 423-425 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

C807 Ss. 423-425 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

424 Those who may apply for an order under s. 423.

(1) An application for an order under section 423 shall not be made in relation to a transaction except—

(a) in a case where the debtor has been adjudged bankrupt or is a body corporate which is being wound up or **[**[F430]is in administration**]**, by the official receiver,

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by the trustee of the bankrupt's estate or the liquidator or adminstrator of the body corporate or (with the leave of the court) by a victim of the transaction;

(b) in a case where a victim of the transaction is bound by a voluntary arrangement approved under Part I or Part VIII of this Act, by the supervisor of the voluntary arrangement or by any person who (whether or not so bound) is such a victim; or

(c) in any other case, by a victim of the transaction.

(2) An application made under any of the paragraphs of subsection (1) is to be treated as made on behalf of every victim of the transaction.

Textual Amendments

F430 Words in s. 424(1)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 36 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C808 S. 424 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 424 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2**, {Sch. 1 Art. 23 paras. 2, 3}

C809 Ss. 423-425 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

C810 Ss. 423-425 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

425 Provision which may be made by order under s. 423.

(1) Without prejudice to the generality of section 423, an order made under that section with respect to a transaction may (subject as follows)—

(a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;

(b) require any property to be so vested if it represents, in any person's hands, the application either of the proceeds of sale of property so transferred or of the money so transferred;

(c) release or discharge (in whole or in part) any security given by the debtor;

(d) require any person to pay to any other person in respect of benefits received from the debtor such sums as the court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction to be under such new or revived obligations as the court thinks appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.

(2) An order under section 423 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order—

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(a) shall not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

(3) For the purposes of this section the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under section 423 may be made in respect of the transaction.

(4) In this section "security" means any mortgage, charge, lien or other security.

Modifications etc. (not altering text)

C811 S. 425 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 425 applied (with modifications) (4.4.2006) by The Cross Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, Sch. 1 Art. 23 paras. 2, **3**

C812 Ss. 423-425 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. 3

C813 Ss. 423-425 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

PART XVII

MISCELLANEOUS AND GENERAL

Modifications etc. (not altering text)

C814 Pt. 17 (ss. 426-434) applied (1.12.1994) by S.I. 1994/2421, **arts. 4(3)(f)**, 6(3)(f)
Pt. 17 (ss. 426-434) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(4)(5)(8)(9), 10(2)(3)(6), Sch. 4 Pt. II, **Sch. 7**

C815 Third Group of Parts (Pts. 12-19) 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))

426 Co-operation between courts exercising jurisdiction in relation to insolvency.

(1) An order made by a court in any part of the United Kingdom in the exercise of jurisdiction in relation to insolvency law shall be enforced in any other part of the United Kingdom as if it were made by a court exercising the corresponding jurisdiction in that other part.

(2) However, without prejudice to the following provisions of this section, nothing in subsection (1) requires a court in any part of the United Kingdom to enforce, in relation to property situated in that part, any order made by a court in any other part of the United Kingdom.

(3) The Secretary of State, with the concurrence in relation to property situated in England and Wales of the Lord Chancellor, may by order make provision for securing that a

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trustee or assignee under the insolvency law of any part of the United Kingdom has, with such modifications as may be specified in the order, the same rights in relation to any property situated in another part of the United Kingdom as he would have in the corresponding circumstances if he were a trustee or assignee under the insolvency law of that other part.

(4) The courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory.

(5) For the purposes of subsection (4) a request made to a court in any part of the United Kingdom by a court in any other part of the United Kingdom or in a relevant country or territory is authority for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction.

In exercising its descretion under this subsection, a court shall have regard in particular to the rules of private international law.

(6) Where a person who is a trustee or assignee under the insolvency law of any part of the United Kingdom claims property situated in any other part of the United Kingdom (whether by virtue of an order under subsection (3) or otherwise), the submission of that claim to the court exercising jurisdiction in relation to insolvency law in that other part shall be treated in the same manner as a request made by a court for the purpose of subsection (4).

(7) Section 38 of the [M56]Criminal Law Act 1977 (execution of warrant of arrest throughout the United Kingdom) applies to a warrant which, in exercise of any jurisdiction in relation to insolvency law, is issued in any part of the United Kingdom for the arrest of a person as it applies to a warrant issued in that part of the United Kingdom for the arrest of a person charged with an offence.

(8) Without prejudice to any power to make rules of court, any power to make provision by subordinate legislation for the purpose of giving effect in relation to companies or individuals to the insolvency law of any part of the United Kingdom includes power to make provision for the purpose of giving effect in that part to any provision made by or under the preceding provisions of this section.

(9) An order under subsection (3) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(10) In this section "insolvency law" means—

(a) in relation to England and Wales, provision **[**[F431]extending to England and Wales and**]** made by or under this Act or sections **[**[F431]1A**]** 6 to 10, **[**[F432]12 to 15**]**, 19(c) and 20 (with Schedule 1) of the [M57]Company Directors Disqualification Act 1986 **[**[F432]and sections 1 to 17 of that Act as they apply for the purposes of those provisions of that Act**]**;

(b) in relation to Scotland, provision extending to Scotland and made by or under this Act, sections **[**[F433]1A**]** 6 to 10, **[**[F434]12 to 15**]**, 19(c) and 20 (with Schedule 1) of the Company Directors Disqualification Act 1986 **[**[F433]and sections 1 to 17 of that Act as they apply for the purposes of those provisions of that Act**]**, Part XVIII of the Companies Act or the [M58]Bankruptcy (Scotland) Act 1985;

(c) in relation to Northern Ireland, provision made by or under **[**[F435]the Insolvency (Northern Ireland) Order 1989**][**[F436]or the Company Directors Disqualification (Northern Ireland) Order 2002**]**;

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(d) in relation to any relevant country or territory, so much of the law of that country or territory as corresponds to provisions falling within any of the foregoing paragraphs;

and references in this subsection to any enactment include, in relation to any time before the coming into force of that enactment the corresponding enactment in force at that time.

(11) In this section "relevant country or territory" means—

(a) any of the Channel Islands or the Isle of Man, or

(b) any country or territory designated for the purposes of this section by the Secretary of State by order made by statutory instrument.

[[F437](12) In the application of this section to Northern Ireland—

(a) for any reference to the Secretary of State there is substituted a reference to the Department of Economic Development in Northern Ireland;

(b) in subsection (3) for the words "another part of the United Kingdom" and the words "that other part" there is substituted the words "Northern Ireland";

(c) for subsection (9) there is substituted the following subsection—

"(9) An order made under subsection (3) by the Department of Economic Development in Northern Ireland shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 and shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.".**]**

Textual Amendments

F431 Words in s. 426(10)(a) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 16(3)(i)(ii)**; S.I. 2001/766, **art. 2** (subject to transitional provisions in art. 3)

F432 Words in s. 426(10)(a) substituted (2.4.2001) by 2000 c. 39, s.8, **Sch. 4 Pt. II para. 16(3)(a)(iii)(iv)**; S.I. 2001/766, **art. 2** (subject to transitional provisions in art. 3)

F433 Words in s. 426(10)(b) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para 16(3)(b)(i)(iii)**; S.I. 2001/766, **art. 2** (subject to transitional provisions in art. 3)

F434 Words in s. 426(10)(b) substituted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 16(3)(b)(ii)**; S.I. 2001/766, **art. 2** (subject to transitional provisions in art. 3)

F435 Words substituted (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381, **Sch. 9 Pt. II para. 41(a)**; S.R. 1991/411, **art. 2**

F436 Words in s. 426(10)(c) substituted (N.I.) (5.9.2003) by S.I. 2002/3150 (N.I. 4), art. 26(1)(2), Sch. 3 para. 2 (with transitional provisions and savings in Sch. 2); S.R. 2003/345, **art. 3(2)** (subject to transitional provisions in S.R. 2003/346, arts. 3-6)

F437 S. 426(12) inserted (1.10.1991) by S.I. 1989/2405 (N.I. 19), art. 381, **Sch. 9 Pt. II para. 41(b)**; S.R. 1991/411, **art. 2**

Modifications etc. (not altering text)

C816 S. 426 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C817 S. 426 amended (N.I.) (1.10.1991) by S.I. 1990/1504 (N.I. 10), **art. 104(1)**; S.R. 1991/438, **art. 2**

C818 S. 426 extended (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 183(1); S.I. 1991/878, art. 2, **Sch.**

C819 S. 426 restricted (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 183(2)(3); S.I. 1991/878, art. 2, **Sch.**

C820 S. 426 restricted (E.W.S.) (11.12.1999) by S.I. 1999/2979, **reg. 25(1)**

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Marginal Citations

M56 1977 c. 45.
M57 1986 c. 46.
M58 1985 c. 66.

[F438 426A Disqualification from Parliament (England and Wales)

(1) A person in respect of whom a bankruptcy restrictions order has effect shall be disqualified—
  (a) from membership of the House of Commons,
  (b) from sitting or voting in the House of Lords, and
  (c) from sitting or voting in a committee of the House of Lords or a joint committee of both Houses.

(2) If a member of the House of Commons becomes disqualified under this section, his seat shall be vacated.

(3) If a person who is disqualified under this section is returned as a member of the House of Commons, his return shall be void.

(4) No writ of summons shall be issued to a member of the House of Lords who is disqualified under this section.

(5) If a court makes a bankruptcy restrictions order or interim order in respect of a member of the House of Commons or the House of Lords the court shall notify the Speaker of that House.

(6) If the Secretary of State accepts a bankruptcy restrictions undertaking made by a member of the House of Commons or the House of Lords, the Secretary of State shall notify the Speaker of that House.]

Textual Amendments

F438 Ss. 426A-426C inserted (1.4.2004) by 2002 c. 40, ss. 266(1), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C821 S. 426A power to apply or amend conferred (1.4.2004) by 2002 c. 40, ss. 266(3)(a)(b), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F439 426B Devolution

(1) If a court makes a bankruptcy restrictions order or interim order in respect of a member of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales, the court shall notify the presiding officer of that body.

(2) If the Secretary of State accepts a bankruptcy restrictions undertaking made by a member of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales, the Secretary of State shall notify the presiding officer of that body.

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Textual Amendments

F439 Ss. 426A-426C inserted (1.4.2004) by 2002 c. 40, ss. 266(1), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C822 S. 426B power to apply or amend conferred (1.4.2004) by 2002 c. 40, ss. 266(3)(a)(b), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

[F440]426C Irrelevance of privilege

(1) An enactment about insolvency applies in relation to a member of the House of Commons or the House of Lords irrespective of any Parliamentary privilege.

(2) In this section "enactment" includes a provision made by or under—
  (a) an Act of the Scottish Parliament, or
  (b) Northern Ireland legislation.

Textual Amendments

F440 Ss. 426A-426C inserted (1.4.2004) by 2002 c. 40, ss. 266(1), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

427 [[F441]Disqualification from Parliament (Scotland and Northern Ireland)]

(1) Where a court in [F442]. . . Northern Ireland adjudges an individual bankrupt or a court in Scotland awards sequestrian of an individual's estate, the individual is disqualified—
  (a) for sitting or voting in the House of Lords,
  (b) for being elected to, or sitting or voting in, the House of Commons, and
  (c) for sitting or voting in a committee of either House.

(2) Where an individual is disqualified under this section, the disqualification ceases—
  (a) except where the adjudication is annulled or the award recalled or reduced without the individual having been first discharged, on the discharge of the individual, and
  (b) in the excepted case, on the annulment, recall or reduction, as the case may be.

(3) No writ of summons shall be issued to any lord of Parliament who is for the time being disqualified under this section for sitting and voting in the House of Lords.

(4) Where a member of the House of Commons who is disqualified under this section continues to be so disqualified until the end of the period of 6 months beginning with the day of the adjudication or award, his seat shall be vacated at the end of that period.

(5) A court which makes an adjudication or award such as is mentioned is subsection (1) in relation to any lord of Parliament or member of the House of Commons shall forthwith certify the adjudication or award to the Speaker of the House of Lords or, as the case may be, to the Speaker of the House of Commons.

(6) Where a court has certified an adjudication or award to the Speaker of the House of Commons under subsection (5), then immediately after it becomes apparent which of

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the following certificates is applicable, the court shall certify to the Speaker of the House of Commons—

(a) that the period of 6 months beginning with the day of the adjudication or award has expired without the adjudication or award having been annulled, recalled or reduced, or

(b) that the adjudication or award has been annulled, recalled or reduced before the end of that period.

[[F443](6A) Subsections (4) to (6) have effect in relation to a member of the Scottish Parliament but as if—

(a) references to the House of Commons were to the Parliament and references to the Speaker were to the Presiding Officer, and

(b) in subsection (4), for "under this section" there were substituted " under section 15(1)(b) of the Scotland Act 1998 by virtue of this section ".**]**

[[F444](6B) Subsections (4) to (6) have effect in relation to a member of the National Assembly for Wales but as if—

(a) references to the House of Commons were to the Assembly and references to the Speaker were to the presiding officer, and

(b) in subsection (4), for "under this section" there were substituted " under **[**[F445]section 16(2) of the Government of Wales Act 2006**]** by virtue of this section ".**]**

[[F446](6C) Subsection (1), as applied to a member of the Northern Ireland Assembly by virtue of section 36(4) of the Northern Ireland Act 1998, has effect as if "or Northern Ireland" were omitted; and subsections (4) to (6) have effect in relation to such a member as if—

(a) references to the House of Commons were to the Assembly and references to the Speaker were to the Presiding Officer; and

(b) in subsection (4), for "under this section" there were substituted " under section 36(4) of the Northern Ireland Act 1998 by virtue of this section ".

(7) [F447]. . . . . .**]**

Textual Amendments

F441 S. 427 title substituted (1.4.2004) by virtue of 2002 c. 40, ss. 266(1), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F442 Words in s. 427(1) repealed (1.4.2004) by 2002 c. 40, ss. 266(2)(a), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F443 S. 427(6A) inserted (19.11.1998) by 1998 c. 46, ss. 125, 130(1), **Sch. 8 para. 23(6)** (with s. 126(3)-(11))

F444 S. 427(6B) inserted (1.4.1999) by 1998 c. 38, s. 125, **Sch. 12 para. 24** (with ss. 139(2), 141(1), 143(2)); S.I. 1999/782, **art. 2**

F445 Words in s. 427(6B)(b) substituted by Government of Wales Act 2006 (c. 32), **ss. 160(1)**, 161, 162(1) {Sch. 10 para. 18} (with Sch. 11 para. 22), the amending provision coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(4)(c)(5) of the amending Act.

F446 S. 427(6C) inserted (2.12.1999) by 1998 c. 47, s. 99, **Sch. 13 para. 6** (with s. 95); S.I. 1999/3209, art. 2, **Sch.**

F447 S. 427(7) repealed (1.4.2004) by 2002 c. 40, ss. 266(2)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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428 Exemptions from Restrictive Trade Practices Act.

[F448](1) . . . . . .

[F448](2) . . . . . .

(3) In this section "insolvency services" means the services of persons acting as insolvency practitioners or carrying out under the law of Northern Ireland functions corresponding to those mentioned in section 388(1) or (2) in Part XIII, in their capacity as such [F448]. . ..

Textual Amendments

F448 S. 428(1)(2) and words in s. 428(3) repealed (1.3.2000) by S.I. 2000/311, **art. 16**

Modifications etc. (not altering text)

C823 S. 428 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

429 Disabilities on revocation of administration order against an individual.

(1) The following applies where a person fails to make any payment which he is required to make by virtue of an administration order under Part VI of the [M59]County Courts Act 1984.

(2) The court which is administering that person's estate under the order may, if it thinks fit—

(a) revoke the administration order, and

(b) make an order directing that this section and section 12 of the [M60]Company Directors Disqualification Act 1986 shall apply to the person for such period, **[**[F449]not exceeding one year**]**, as may be specified in the order.

(3) A person to whom this section so applies shall not—

(a) either alone or jointly with another person, obtain credit to the extent of the amount prescribed for the purposes of section 360(1)(a) or more, or

(b) enter into any transaction in the course of or for the purposes of any business in which he is directly or indirectly engaged,

without disclosing to the person from whom he obtains the credit, or (as the case may be) with whom the transaction is entered into, the fact that this section applies to him.

(4) The reference in subsection (3) to a person obtaining credit includes—

(a) a case where goods are bailed or hired to him under a hire-purchase agreement or agreed to be sold to him under a conditional sale agreement, and

(b) a case where he is paid in advance (whether in money or otherwise) for the supply of goods or services.

(5) A person who contravenes this section is guilty of an offence and liable to imprisonment or a fine, or both.

Textual Amendments

F449 Words in s. 429(2)(b) substituted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 15 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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Marginal Citations

M59 1984 c. 28.

M60 1986 c. 46.

430 Provision introducing Schedule of punishments.

(1) Schedule 10 to this Act has effect with respect to the way in which offences under this Act are punishable on conviction.

(2) In relation to an offence under a provision of this Act specified in the first column of the Schedule (the general nature of the offence being described in the second column), the third column shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in the one way or the other.

(3) The fourth column of the Schedule shows, in relation to an offence, the maximum punishment by way of fine or imprisonment under this Act which may be imposed on a person convicted of the offence in the way specified in relation to it in the third column (that is to say, on indictment or summarily) a reference to a period of years or months being to a term of imprisonment of that duration.

(4) The fifth column shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say, he is liable on a second or subsquent conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in the fourth column of the Scheudule).

(5) For the purpose of any enactment in this Act whereby an officer of a company who is in default is liable to a fine or penalty, the expression "officer who is in default" means any officer of the company who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment.

Modifications etc. (not altering text)

C824 S. 430 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 430 applied (1.2.1993) by Friendly Societies Act 1992 (c. 40), ss. 21(1), 22, 23, **Sch. 10 Pt. I para.1**(with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3**

C825 S. 430 modified by Building Societies Act 1986 (c. 53, SIF 16), **ss. 54(3)**(*a*)(5)(*a*), 90, 126(3), Sch. 15
S. 430 modified (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 Pt. I para.1** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3**

C826 S. 430 applied (with modifications) (1.12.1997) by 1986 c. 53, **Sch. 15A para. 2** (as inserted (1.12.1997)) by 1997 c. 32, s. 39(2), **Sch. 6**; S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**
S. 430 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C827 Ss. 430-432 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

C828 Ss. 430-432 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

C829 S. 430 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

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431 Summary proceedings.

(1) Summary proceedings for any offence under any of Parts I to VII of this Act may (without prejudice to any jurisdiction exercisable apart from this subsection) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.

(2) Notwithstanding anything in section 127(1) of the [M61]Magistrates' Courts Act 1980, an information relating to such an offence which is triable by a magistrates' court in England and Wales may be so tried if it is laid at any time within 3 years after the commission of the offence and within 12 months after the date on which evidence sufficient in the opinion of the Director of Public Prosecutions or the Secretary of State (as the case may be) to justify the proceedings comes to his knowledge.

(3) Summary proceedings in Scotland for such an offence shall not be commenced after the expiration of 3 years from the commission of the offence.

Subject to this (and notwithstanding anything in **[**[F450]section 136 of the Criminal Procdure (Scotland) Act 1995)**]**, such proceedings may (in Scotland) be commenced at any time within 12 months after the date on which evidence sufficient in the Lord Advocate's opinion to justify the proceedings came to his knowledge or, where such evidence was reported to him by the Secretary of State, within 12 months after the date on which it came to the knowledge of the latter; and subsection (3) of that section applies for the purpose of this subsection as it applies for the purpose of that section.

(4) For purposes of this section, a certificate of the Director of Public Prosecutions, the Lord Advocate or the Secretary of State (as the case may be) as to the date on which such evidence as is referred to above came to his knowledge is conclusive evidence.

Textual Amendments

F450 Words in s. 431(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 61**

Modifications etc. (not altering text)

C830 S. 431 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 431 applied (E.W.) (7.10.2001) by S.I. 2001/3352, **rule 9**.20 (with rule 1.2(3))

C831 S. 431 extended by S.I. 1986/1915, **rule 7**.29.(3)
S. 431 extended (E.W.) (1.10.2005) by The Energy Administration Rules 2005 (S.I. 2005/2483), rules 3, **174(5)**
S. 431 extended (S.) (6.4.2006) by The Energy Administration (Scotland) Rules 2006 (S.I. 2006/772), rules 3, **76**

C832 S. 431 applied (30.11.2007) by The PPP Administration Order Rules 2007 (S.I. 2007/3141), rules 3, **114**

C833 Ss. 430-432 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

C834 Ss. 430-432 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

C835 S. 431 applied (E.W.) (1.11.2009) by The Water Industry (Special Administration) Rules 2009 (S.I. 2009/2477), **rule 128** (with rules 3(2), 4)

C836 S. 431 applied (E.W.) (30.6.2011) by The Investment Bank Special Administration (England and Wales) Rules 2011 (S.I. 2011/1301), **rule 286(5)** (with rule 5(2))

C837 S. 431 applied (S.) (14.11.2011) by The Investment Bank Special Administration (Scotland) Rules 2011 (S.I. 2011/2262), **rule 163(2)**

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Marginal Citations

M61 1980 c. 43.

432 Offences by bodies corporate.

(1) This section applies to offences under this Act other than those excepted by subsection (4).

(2) Where a body corporate is guilty of an offence to which this section applies and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) The offences excepted from this section are those under sections 30, 39, 51, 53, 54, 62, 64, 66, 85, 89, 164, 188, 201, 206, 207, 208, 209, 210 and 211 **[**[F451]and those under paragraphs 16(2), 17(3)(a), 18(3)(a), 19(3)(a), 22(1) and 23(1)(a) of Schedule A1**]**.

Textual Amendments

F451 Words in s. 432(4) inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 11**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C838 Ss. 328, 329, 330, 331–335, 339, 359(1)(2), 363, 365–372, 373–382, 383, 384, 385, 386, 387(1)(5)(6), 388, 389–390, 403–410, 412, 413, 415, 418, 419, 420, 423, 424–426, 428, 430, 432–437 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 432 applied (1.2.1993) by Friendly Societies Act 1992 (c. 40), ss. 21(1), 22, 23, **Sch. 10 Pt. I para. 1** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**

C839 S. 432 modified by Building Societies Act 1986 (c. 53, SIF 16), **ss. 54(3)**(*a*)(5)(*a*), 90, 126(3), Sch. 15
S. 432 modified (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 Pt. I para. 1** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**

C840 S. 432 applied (with modifications) (1.12.1997) by 1986 c. 53, **Sch. 15A para. 2** (as inserted (1.12.1997)) by 1997 c. 32, s. 39(2), **Sch. 6**; S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**

C841 Ss. 430-432 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

C842 Ss. 430-432 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

433 Admissibility in evidence of statements of affairs, etc.

[[F452](1)**]** In any proceedings (whether or not under this Act)—

(a) a statement of affairs prepared for the purposes of any provision of this Act which is derived from the [M62]Insolvency Act 1985, and

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(b) any other statement made in pursuance of a requirement imposed by or under any such provision or by or under rules made under this Act,

may be used in evidence against any person making or concurring in making the statement.

[[F453](2) However, in criminal proceedings in which any such person is charged with an offence to which this subsection applies—

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Subsection (2) applies to any offence other than—

(a) an offence under section 22(6), 47(6), 48(8), 66(6), 67(8), 95(8), 98(6), 99(3)(a), 131(7), 192(2), 208(1)(a) or (d) or (2), 210, 235(5), 353(1), 354(1)(b) or (3) or 356(1) or (2)(a) or (b) or paragraph 4(3)(a) of Schedule 7;

(b) an offence which is—

(i) created by rules made under this Act, and

(ii) designated for the purposes of this subsection by such rules or by regulations made by the Secretary of State;

(c) an offence which is—

(i) created by regulations made under any such rules, and

(ii) designated for the purposes of this subsection by such regulations;

(d) an offence under section 1, 2 or 5 of the [M63]Perjury Act 1911 (false statements made on oath or made otherwise than on oath); or

(e) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).

(4) Regulations under subsection (3)(b)(ii) shall be made by statutory instrument and, after being made, shall be laid before each House of Parliament.**]**

Textual Amendments

F452 S. 433 renumbered as s. 433(1) (14.4.2000 (E.W.) and 1.1.2001 (S.)) by 1999 c. 23, s. 59, **Sch. 3 para. 7(2)** (with s. 63(2), Sch. 7 para. 3(3)); S.I. 2000/1034, **art. 2**; S.S.I. 2000/445, **art. 2**

F453 S. 433(2)-(4) inserted (14.4.2000 (E.W.) and 1.1.2001 (S.)) by 1999 c. 23, s. 59, **Sch. 3 para. 7(3)** (with s. 63(2), Sch. 7 para 3(3)); S.I. 2000/1034, **art. 2**; S.S.I. 2000/445, **art. 2**

Modifications etc. (not altering text)

C843 S. 433 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Marginal Citations

M62 1985 c. 65.

M63 1911 c. 6.

434 Crown application.

For the avoidance of doubt it is hereby declared that provisions of this Act which derive from the [M64]Insolvency Act 1985 bind the Crown so far as affecting or relating to the following matters, namely—

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(a) remedies against, or against the property of, companies or individuals;
(b) priorities of debts;
(c) transactions at an undervalue or preferences;
(d) voluntary arrangements approved under Part I or Part VIII, and
(e) discharge from bankruptcy.

Modifications etc. (not altering text)

C844 S. 434 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C845 S. 434 applied by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2)**, 25

C846 S. 434 applied (with modifications) (1.12.1997) by 1986 c. 53, **Sch. 15A para. 1(2)** (as inserted by 1997 c. 32, s. 39(2), **Sch. 6**); S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**

Marginal Citations

M64 1985 c. 65.

VALID FROM 06/04/2008

PART 17A

SUPPLEMENTARY PROVISIONS

[F454 434A Introductory

The provisions of this Part have effect for the purposes of—
(a) the First Group of Parts, and
(b) sections 411, 413, 414, 416 and 417 in Part 15.

Textual Amendments

F454 Pt. 17A inserted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), **Sch. 1 para. 105** (with arts. 6,11, 12)

434B Representation of corporations at meetings

(1) If a corporation is a creditor or debenture-holder, it may by resolution of its directors or other governing body authorise a person or persons to act as its representative or representatives—
(a) at any meeting of the creditors of a company held in pursuance of this Act or of rules made under it, or
(b) at any meeting of a company held in pursuance of the provisions contained in a debenture or trust deed.

(2) Where the corporation authorises only one person, that person is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor or debenture-holder.

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(3) Where the corporation authorises more than one person, any one of them is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor or debenture-holder.

(4) Where the corporation authorises more than one person and more than one of them purport to exercise a power under subsection (3)—

(a) if they purport to exercise the power in the same way, the power is treated as exercised in that way;

(b) if they do not purport to exercise the power in the same way, the power is treated as not exercised.

Textual Amendments

F454 Pt. 17A inserted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), **Sch. 1 para. 105** (with arts. 6,11, 12)

434C Legal professional privilege

In proceedings against a person for an offence under this Act nothing in this Act is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege (in Scotland, confidentiality of communications).

Textual Amendments

F454 Pt. 17A inserted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), **Sch. 1 para. 105** (with arts. 6,11, 12)

VALID FROM 01/10/2009

[F455 434D Enforcement of company's filing obligations

(1) This section applies where a company has made default in complying with any obligation under this Act—

(a) to deliver a document to the registrar, or

(b) to give notice to the registrar of any matter.

(2) The registrar, or any member or creditor of the company, may give notice to the company requiring it to comply with the obligation.

(3) If the company fails to make good the default within 14 days after service of the notice, the registrar, or any member or creditor of the company, may apply to the court for an order directing the company, and any specified officer of it, to make good the default within a specified time.

(4) The court's order may provide that all costs (in Scotland, expenses) of or incidental to the application are to be borne by the company or by any officers of it responsible for the default.

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(5) This section does not affect the operation of any enactment imposing penalties on a company or its officers in respect of any such default.

Textual Amendments

F454 Pt. 17A inserted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), **Sch. 1 para. 105** (with arts. 6,11, 12)

F455 Ss. 434D, 434E inserted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 81** (with art. 10, Sch. 1 para. 84)

VALID FROM 01/10/2009

434E Application of filing obligations to overseas companies

The provisions of this Act requiring documents to be forwarded or delivered to, or filed with, the registrar of companies apply in relation to an overseas company that is required to register particulars under section 1046 of the Companies Act 2006 as they apply in relation to a company registered under that Act in England and Wales or Scotland.**]]**

Textual Amendments

F454 Pt. 17A inserted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), **Sch. 1 para. 105** (with arts. 6,11, 12)

F455 Ss. 434D, 434E inserted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 81** (with art. 10, Sch. 1 para. 84)

PART XVIII

INTERPRETATION

Modifications etc. (not altering text)

C847 Pt. 18 (ss. 435-436) applied (1.12.1994) by S.I. 1994/2421, **arts. 4(3)(f)**, 6(3)(f)
Pt. 18 (ss. 435-436) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(4)(5)(8)(9), 10(2)(3)(6), Sch. 4 Pt. II, **Sch. 7**
Pt. 18 (ss. 435-436) applied (with modifications) (1.12.1997) by 1986 c. 53, **Sch. 15A para. 1(2)** (as inserted by 1997 c. 32, s. 39(2), **Sch. 6**); S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**

C848 Third Group of Parts (Pts. 12-19) 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))

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435 Meaning of "associate".

(1) For the purposes of this Act any question whether a person is an associate of another person is to be determined in accordance with the following provisions of this section (any provision that a person is an associate of another person being taken to mean that they are associates of each other).

[[F456](2) A person is an associate of an individual if that person is—

(a) the individual's husband or wife or civil partner,

(b) a relative of—

(i) the individual, or

(ii) the individual's husband or wife or civil partner, or

(c) the husband or wife or civil partner of a relative of—

(i) the individual, or

(ii) the individual's husband or wife or civil partner.**]**

(3) A person is an associate of any person with whom he is in partnership, and of the husband or wife **[**[F457]or civil partner**]** or a relative of any individual with whom he is in partnership; and a Scottish firm is an associate of any person who is a member of the firm.

(4) A person is an associate of any person whom he employs or by whom he is employed.

(5) A person in his capacity as trustee of a trust other than—

(a) a trust arising under any of the second Group of Parts or the [M65]Bankruptcy (Scotland) Act 1985, or

(b) a pension scheme or an employees' share scheme (within the meaning of the Companies Act),

is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that other person or an associate of that other person.

(6) A company is an associate of another company—

(a) if the same person has control of both, or a person has control of one and persons who are his associates, or he and persons who are his associates, have control of the other, or

(b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(7) A company is an associate of another person if that person has control of it or if that person and persons who are his associates together have control of it.

(8) For the purposes of this section a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating—

(a) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child, and

(b) an illegitimate child as the legitimate child of his mother and reputed father;

and references in this section to a husband or wife include a former husband or wife and a reputed husband or wife **[**[F458]and references to a civil partner include a former civil partner**][**[F459]and a reputed civil partner**]**.

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(9) For the purposes of this section any director or other officer of a company is to be treated as employed by that company.

(10) For the purposes of this section a person is to be taken as having control of a company if—

(a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions, or

(b) he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company of or another company which has control of it;

and where two or more persons together satisfy either of the above conditions, they are to be taken as having control of the company.

(11) In this section "company" includes any body corporate (whether incorporated in Great Britain or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company have effect with any necessary modifications.

Textual Amendments

F456 S. 435(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 122(2)**; S.I. 2005/3175, **art. 2(2)**, Sch. 1 (subject to art. 2(3)-(5))

F457 Words in s. 435(3) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 122(3)**; S.I. 2005/3175, **art. 2(2)** Sch. 1 (subject to art. 2(3)-(5))

F458 Words in s. 435(8) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, **Sch. 27 para. 122(4)**; S.I. 2005/3175, **art. 2(2)**, Sch. 1 (subject to art. 2(3)-(5))

F459 Words in s. 435(8) inserted (5.12.2005) by The Civil Partnership Act 2004 (Overseas Relationships and Consequential, etc. Amendments) Order 2005 (S.I. 2005/3129), art. 4(4), **Sch. 4 para. 8**

Modifications etc. (not altering text)

C849 S. 435 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
S. 435 applied by Social Security Pensions Act 1975 (c. 60, SIF 113:1), **s. 57A(4)** (as inserted by Social Security Act 1990 (c. 27, SIF 113:1), s. 14, **Sch. 4 Pt. I para. 3**)
S. 435 applied by Social Security Pensions Act 1975 (c. 60, SIF 113:1), **s. 57C(4)** (as inserted by Social Security Act 1990 (c. 27, SIF 113:1), s. 14, **Sch. 4 Pt. I para. 1**)
S. 435 applied (7.2.1994) by 1993 c. 48, **ss. 112(4)**, 119(4) (with s. 6(8)); S.I. 1994/86, **art. 2**
S. 435 applied (6.4.1997) by 1995 c. 26, **s. 123(1)** (with s. 121(5)); S.I. 1997/664, art. 2(3), **Sch. Pt. II** (with arts. 3-14)
S. 435 applied (1.10.2000) by S.I. 2000/1403, **reg. 1**
S. 435 applied (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 38(10)(b)**, **51(3)(b)**, **53(6)(b)**, 322(1) (with s. 313); S.I. 2005/275, **art. 2(7)**, Sch. Pt. 7 (subject to art. 2(12))

C850 S. 435: power to apply (with modifications) conferred (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 57**, 322(1) (with s. 313); S.I. 2005/275, **art. 2(7)**, Sch. Pt. 3 (subject to art. 2(12))

Marginal Citations

M65 1985 c. 66.

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436 Expressions used generally.

In this Act, except in so far as the context otherwise requires (and subject to Parts VII and XI)—

[[F460]"agricultural charge" has the same meaning as in the [M66]Agricultural Credits Act 1928;

"agricultural receiver" means a receiver appointed under an agricultural charge;**]**

"the appointed day" means the day of which this Act comes into force under section 443;

"associate" has the meaning given by section 435;

"business" includes a trade or profession;

"the Companies Act" means the [M67]Companies Act 1985;

[[F461]"the Companies Acts" means the Companies Acts (as defined in section 2 of the Companies Act 2006) as they have effect in Great Britain;**]**

"conditional sale agreement" and "hire-purchase agreement" have the same meanings as in the [M68]Consumer Credit Act 1974;

[[F460]"corporate member" means an insolvent member which is a company;

"the court", in relation to an insolvent partnership, means the court which has jurisdiction to wind up the partnership;**]**

[[F462]"the EC Regulation" means Council Regulation (EC) No. 1346/2000;**]**

[[F463]"EEA State" means a state that is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;**]**

[[F460]"individual member" means an insolvent member who is an individual;

"insolvency order" means—

(a) in the case of an insolvent partnership or a corporate member, a winding-up order; and

(b) in the case of an individual member, a bankruptcy order;

"insolvency petition" means, in the case of a petition presented to the court—

(a) against a corporate member, a petition for its winding up by the court;

(b) against an individual member, a petition for a bankruptcy order to be made against that individual,

where the petition is presented in conjunction with a petition for the winding up of the partnership by the court as an unregistered company under the Act;

"insolvency proceedings" means any proceedings under the Act, this Order or the [M69]Insolvency Rules 1986

"insolvent member" means a member of an insolvent partnership, against whom an insolvency petition is being or has been presented;

"joint bankruptcy petition" means a petition by virtue of article 11 of this Order;

"joint debt" means a debt of an insolvent partnership in respect of which an order is made by virtue of Part IV or V of this Order;

"joint estate" means the partnership property of an insolvent partnership in respect of which an order is made by virtue of Part IV or V of this Order;

"joint expenses" means expenses incurred in the winding up of an insolvent partnership or in the winding up of the business of an insolvent partnership and the administration of its property;

"limited partner" has the same meaning as in the [M70]Limited Partnerships Act 1907;

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"member" means a member of a partnership and any person who is liable as a partner within the meaning of section 14 of the [M71]Partnership Act 1890;**]**

"modifications" includes additions, alterations and omissions and cognate expressions shall be construed accordingly;

[[F460]"officer", in relation to an insolvent partnership, means—

(a) a member; or

(b) a person who has management or control of the partnership business;

"partnership property" has the same meaning as in the Partnership Act 1890;

"postponed debt" means a debt the payment of which is postponed by or under any provision of the Act or of any other enactment;**]**

"property" includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

"records" includes computer records and other non-documentary records;

[[F460]"responsible insolvency practitioner" means—

(a) in winding up, the liquidator of an insolvent partnership or corporate member; and

(b) in bankruptcy, the trustee of the estate of an individual member,

and in either case includes the official receiver when so acting;

"separate debt" means a debt for which a member of a partnership is liable, other than a joint debt;

"separate estate" means the property of an insolvent member against whom an insolvency order has been made;

"separate expenses" means expenses incurred in the winding up of a corporate member, or in the bankruptcy of an individual member; and**]**

"subordinate legislation" has the same meaning as in the [M72]Interpretation Act 1978; and

"transaction" includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.

[[F460]"trustee of the partnership" means a person authorised by order made by virtue of article 11 of this Order to wind up the business of an insolvent partnership and to administer its property.**]**

Textual Amendments

F460 S. 436(1): definitions added (1.12.1994) by S.I. 1994/2421, **art. 2(1)(2)**

F461 S. 436: definition inserted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 45** (with art. 12)

F462 Words in s. 436 inserted (3.5.2002) by S.I. 2002/1037, **reg. 4**

F463 In s. 436 definition of "EEA State" inserted (13.4.2005) by The Insolvency Act 1986 (Amendment) Regulations 2005 (S.I. 2005/879), **reg. 2(3)** (with reg. 3)

Modifications etc. (not altering text)

C851 S. 436 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

C852 S. 436 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C853 S. 436 modified (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

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Marginal Citations

M66 1928 c.43.
M67 1985 c. 6.
M68 1974 c. 39.
M69 S.I. 1986/1925, amended by S.I. 1987/1919, **S.I**. 1989/397, S.I. 1991/495 and S.I. 1993/602.
M70 1907 c.24.
M71 1890 c.39.
M72 1978 c. 30.

[F464 436A *Proceedings under EC Regulations: modified definition of property*

In the application of this Act to proceedings by virtue of Article 3 of the EC Regulation, a reference to property is a reference to property which may be dealt with in the proceedings.**]**

Textual Amendments

F464 S. 436A inserted (31.5.2002) by S.I. 2002/1240, **reg. 18**

VALID FROM 06/04/2010

[F465 436B References to things in writing

(1) A reference in this Act to a thing in writing includes that thing in electronic form.

(2) Subsection (1) does not apply to the following provisions—
- (a) section 53 (mode of appointment by holder of charge),
- (b) section 67(2) (report by receiver),
- (c) section 70(4) (reference to instrument creating a charge),
- (d) section 111(2) (dissent from arrangement under s. 110),
- (e) in the case of a winding up of a company registered in Scotland, section 111(4),
- (f) section 123(1) (definition of inability to pay debts),
- (g) section 198(3) (duties of sheriff principal as regards examination),
- (h) section 222(1) (inability to pay debts: unpaid creditor for £750 or more), and
- (i) section 223 (inability to pay debts: debt remaining unsatisfied after action brought).**]**

Textual Amendments

F465 S. 436B inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 4(1)**

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PART XIX

FINAL PROVISIONS

Modifications etc. (not altering text)

C854 Pt. 19 (ss. 437-444) applied (1.12.1994) by S.I. 1994/2421, **arts. 4(3)(f)**, 6(3)(f)
Pt. 19 (ss. 437-444) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(4)(5)(8)(9), 10(2)(3)(6), Sch. 4 Pt. II, **Sch. 7**

C855 Third Group of Parts (Pts. 12-19) 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))

437 Transitional provisions, and savings.

The transitional provisions and savings set out in Schedule 11 to this Act shall have effect, the Schedule comprising the following Parts—

Part I: company insolvency and winding up (matters arising before appointed day, and continuance of proceedings in certain cases as before that day);

Part II: individual insolvency (matters so arising, and continuance of bankruptcy proceedings in certain cases as before that day);

Part III: transactions entered into before the appointed day and capable of being affected by orders of the court under Part XVI of this Act;

Part IV: insolvency practitioners acting as such before the appointed day; and

Part V: general transitional provisions and savings required consequentially on, and in connection with, the repeal and replacement by this Act and the [M73]Company Directors Disqualification Act 1986 of provisions of the Companies Act, the greater part of the [M74]Insolvency Act 1985 and other enactments.

Modifications etc. (not altering text)

C856 S. 437 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

Marginal Citations

M73 1986 c. 46.
M74 1985 c. 65.

438 Repeals.

The enactments specified in the second column of Schedule 12 to this Act are repealed to the extent specified in the third column of that Schedule.

439 Amendment of enactments.

(1) The Companies Act is amended as shown in Parts I and II of Schedule 13 to this Act, being amendments consequential on this Act and the Company Directors Disqualification Act 1986.

(2) The enactments specified in the first column of Schedule 14 to this Act (being enactments which refer, or otherwise relate, to those which are repealed and replaced

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by this Act or the Company Directors Diqualification Act 1986) are amended as shown in the second column of that Schedule.

(3) The Lord Chancellor may by order make such consequential modifications of any provision contained in any subordinate legislation made before the appointed day and such transitional provisions in connection with those modifications as appear to him necessary or expedient in respect of—

(a) any reference in that subordinate legislation to the [M75]Bankruptcy Act 1914;

(b) any reference in that subordinate legislation to any enactment repealed by Part III or IV or Schedule 10 to the [M76]Insolvency Act 1985; or

(c) any reference in that subordinate legislation to any matter provided for under the Act of 1914 or under any enactment so repealed.

(4) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Marginal Citations

M75 1914 c. 59.

M76 1985 c. 65.

440 Extent (Scotland).

(1) Subject to the next subsection, provisions of this Act contained in the first Group of Parts extend to Scotland except where otherwise stated.

(2) The following provisions of this Act do not extend to Scotland—

(a) in the first Group of Parts—

section 43;

sections 238 to 241; and

section 246;

(b) the second Group of Parts;

(c) in the third Group of Parts—

sections 399 to 402,

sections 412, 413, 415, **[**[F466]415A(3),**]** 418, 420 and 421,

sections 423 to 425, and

section 429(1) and (2); and

(d) in the Schedules—

Parts II and III of Schedule 11; and

Schedules 12 and 14 so far as they repeal or amend enactments which extend to England and Wales only.

Textual Amendments

F466 Words in s. 440(2)(c) inserted (18.12.2003) by 2002 c. 40, ss. 270(4), 279 (with s. 249(6)); S.I. 2003/3340, **art. 3**

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441 Extent (Northern Ireland).

(1) The following provisions of this Act extend to Northern Ireland—

(a) sections 197, 426, 427 and 428; and

(b) so much of section 439 and Schedule 14 as relates to enactments which extend to Northern Ireland.

(2) Subject as above, and to any provision expressly relating to companies incorporated elsewhere than in Great Britain, nothing in this Act extends to Northern Ireland or applies to or in relation to companies registered or incorporated in Northern Ireland.

442 Extent (other territories).

Her Majesty may, by Order in Council, direct that such of the provisions of this Act as are specified in the Order, being provisions formerly contained in the [M77]Insolvency Act 1985, shall extend to any of the Channel Islands or any colony with such modifications as may be so specified.

Marginal Citations

M77 1985 c. 65.

443 Commencement.

This Act comes into force on the day appointed under section 236(2) of the Insolvency Act 1985 for the coming into force of Part III of that Act (individual insolvency and bankruptcy), immediately after that Part of that Act comes into force for England and Wales.

Subordinate Legislation Made

P2 29.12.1986 appointed for coming into force of Part III of the 1985 Act by S.I. 1986/1924

444 Citation.

This Act may be cited as the Insolvency Act 1986.

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SCHEDULES

[F467SCHEDULE A1

MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT

Textual Amendments

F467 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C857 Sch. A1 applied (with modifications) (E.W.) (1.1.2003) by S.I. 1994/2421, art. 4(1), **Sch. 1** (as amended (1.1.2003) by S.I. 2002/2708, **arts. 4-6** (with transitional provisions in art. 11) and (1.7.2005) by S.I. 2005/1516, **art. 6**)

C858 Sch. A1 extended (24.6.2003) by The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003 (S.I. 2003/1633), regs. 1, 15, **Sch. 2 para. 7**

PART I

INTRODUCTORY

Interpretation

F468 1 In this Schedule—

"the beginning of the moratorium" has the meaning given by paragraph 8(1),

"the date of filing" means the date on which the documents for the time being referred to in paragraph 7(1) are filed or lodged with the court,

"hire-purchase agreement" includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

"market contract" and "market charge" have the meanings given by Part VII of the M78Companies Act 1989,

F469 . . .

"moratorium" means a moratorium under section 1A,

"the nominee" includes any person for the time being carrying out the functions of a nominee under this Schedule,

F469 . . .

"the settlement finality regulations" means the M79Financial Markets and Insolvency (Settlement Finality) Regulations 1999,

"system-charge" has the meaning given by the M80Financial Markets and Insolvency Regulations 1996.

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Textual Amendments

F468 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F469 Sch. A1 para. 1: definitions of "money market contract" and "money market charge" and "related contract" repealed (3.7.2002) by S.I. 2002/1555, **art. 28(2)**

Marginal Citations

M78 1989 c. 40.

M79 S.I. 1999/2979.

M80 S.I. 1996/1469

Eligible companies

F470 2 (1) A company is eligible for a moratorium if it meets the requirements of paragraph 3, unless—

(a) it is excluded from being eligible by virtue of paragraph 4, or

(b) it falls within sub-paragraph (2).

(2) A company falls within this sub-paragraph if—

F471 [(a) it effects or carries out contracts of insurance, but is not exempt from the general prohibition, within the meaning of section 19 of the Financial Services and Markets Act 2000, in relation to that activity,

(b) it has permission under Part IV of that Act to accept deposits,

(bb) it has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22),]

(c) it is a party to a market contract F472. . . or any of its property is subject to a market charge F472. . . or a system-charge, or

(d) it is a participant (within the meaning of the settlement finality regulations) or any of its property is subject to a collateral security charge (within the meaning of those regulations).

F473 [Paragraphs (a), (b) and (bb) of sub-paragraph (2) must be read with—

(3) (a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.]

Textual Amendments

F470 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, ss. 1, 16, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions arts. 3-5)

F471 Sch. A1 para. 2(a)-(bb) substituted for Sch. A1 para. 2(a)-(b) (3.7.2002) by S.I. 2002/1555, **art. 29(2)**

F472 Words in Sch. A1 para. 2(2)(c) omitted (3.7.2002) by virtue of S.I. 2002/1555, **art. 28(3)**

F473 Sch. A1 para. 2(3) inserted (3.7.2002) by S.I. 2002/1555, **art. 29(3)**

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[F474]3 (1) A company meets the requirements of this paragraph if the qualifying conditions are met—

(a) in the year ending with the date of filing, or

(b) in the financial year of the company which ended last before that date.

(2) For the purposes of sub-paragraph (1)—

(a) the qualifying conditions are met by a company in a period if, in that period, it satisfies two or more of the requirements for being a small company specified for the time being in section 247(3) of the [M81]Companies Act 1985, and

(b) a company's financial year is to be determined in accordance with that Act.

(3) Subsections (4), (5) and (6) of section 247 of that Act apply for the purposes of this paragraph as they apply for the purposes of that section.

[[F475](4) A company does not meet the requirements of this paragraph if it is a holding company of a group of companies which does not qualify as a small group or a medium-sized group in respect of the financial year of the company which ended last before the date of filing.

(5) For the purposes of sub-paragraph (4) "group" has the meaning given by section 262 of the Companies Act 1985 (c. 6) (definitions for Part VII) and a group qualifies as small or medium-sized if it qualifies as such under section 249 of the Companies Act 1985 (qualification of group as small or medium-sized).**]**

Textual Amendments

F474 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions arts. 3-5)

F475 Sch. A1 para. 3(4)(5) inserted (1.1.2003) by S.I. 2002/1990, **regs. 2**, 3(2); S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5 of the commencing S.I.)

Marginal Citations

M81 1985 c. 6.

[F476]4 (1) A company is excluded from being eligible for a moratorium if, on the date of filing—

[F477](a) **[** the company is in administration,**]**

(b) the company is being wound up,

(c) there is an administrative receiver of the company,

(d) a voluntary arrangement has effect in relation to the company,

(e) there is a provisional liquidator of the company,

(f) a moratorium has been in force for the company at any time during the period of 12 months ending with the date of filing and—

(i) no voluntary arrangement had effect at the time at which the moratorium came to an end, or

(ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely, or

[F478](fa) **[** an administrator appointed under paragraph 22 of Schedule B1 has held office in the period of 12 months ending with the date of filing,**]**

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(g) a voluntary arrangement in relation to the company which had effect in pursuance of a proposal under section 1(3) has come to an end prematurely and, during the period of 12 months ending with the date of filing, an order under section 5(3)(a) has been made.

(2) Sub-paragraph (1)(b) does not apply to a company which, by reason of a winding-up order made after the date of filing, is treated as being wound up on that date.

Textual Amendments

F476 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F477 Sch. A1 para. 4(1)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 37(2)(a) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F478 Sch. A1 para. 4(1)(fa) inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 37(2)(b) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Capital market arrangement

[[F479]4A A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a party to an agreement which is or forms part of a capital market arrangement under which—

(i) a party has incurred, or when the agreement was entered into was expected to incur, a debt of at least £10 million under the arrangement, and

(ii) the arrangement involves the issue of a capital market investment.**]**

Textual Amendments

F479 Sch. A1 paras. 4A-4K inserted (1.1.2003) by S.I. 2002/1990, **art. 3(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provision in arts. 3-5 of the commencing S.I.)

Public private partnership

[[F480]4B A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a project company of a project which—

(i) is a public-private partnership project, and

(ii) includes step-in rights.**]**

Textual Amendments

F480 Sch. A1 paras. 4A-4K inserted (1.1.2003) by S.I. 2002/1990, **art. 3(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provision in arts. 3-5 of the commencing S.I.)

Liability under an arrangement

[[F481]4C (1) A company is also excluded from being eligible for a moratorium if, on the date of filing, it has incurred a liability under an agreement of £10 million or more.

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(2) Where the liability in sub-paragraph (1) is a contingent liability under or by virtue of a guarantee or an indemnity or security provided on behalf of another person, the amount of that liability is the full amount of the liability in relation to which the guarantee, indemnity or security is provided.

(3) In this paragraph—

(a) the reference to "liability" includes a present or future liability whether, in either case, it is certain or contingent,

(b) the reference to "liability" includes a reference to a liability to be paid wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the liability is incurred).**]**

Textual Amendments

F481 Sch. A1 paras. 4A-4K inserted (1.1.2003) by S.I. 2002/1990, **art. 3(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provision in arts. 3-5 of the commencing S.I.)

Interpretation of capital market arrangement

[F482 4D (1) For the purposes of paragraph 4A an arrangement is a capital market arrangement if—

(a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or

(b) at least one party guarantees the performance of obligations of another party, or

(c) at least one party provides security in respect of the performance of obligations of another party, or

(d) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (options, futures and contracts for differences).

(2) For the purposes of sub-paragraph (1)—

(a) a reference to holding as trustee includes a reference to holding as nominee or agent,

(b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and

(c) a person holds a capital market investment if he has a legal or beneficial interest in it.

(3) In paragraph 4A, 4C, 4J and this paragraph—

"agreement" includes an agreement or undertaking effected by—

(a) contract,

(b) deed, or

(c) any other instrument intended to have effect in accordance with the law of England and Wales, Scotland or another jurisdiction, and

"party" to an arrangement includes a party to an agreement which—

(a) forms part of the arrangement,

(b) provides for the raising of finance as part of the arrangement, or

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(c) is necessary for the purposes of implementing the arrangement.**]**

Textual Amendments

F482 Sch. A1 paras. 4A-4K inserted (1.1.2003) by S.I. 2002/1990, **art. 3(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provision in arts. 3-5 of the commencing S.I.)

Capital market investment

[F4834E(1) For the purposes of paragraphs 4A and 4D, an investment is a capital market investment if—

(a) it is within article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (debt instruments) and

(b) it is rated, listed or traded or designed to be rated, listed or traded.

(2) In sub-paragraph (1)—

"listed" means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation),

"rated" means rated for the purposes of investment by an internationally recognised rating agency,

"traded" means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

(3) In sub-paragraph (2)—

"foreign market" has the same meaning as "relevant market" in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335) (foreign markets),

"recognised investment exchange" has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange).**]**

Textual Amendments

F483 Sch. A1 paras. 4A-4K inserted (1.1.2003) by S.I. 2002/1990, **art. 3(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provision in arts. 3-5 of the commencing S.I.)

[F4844F(1) For the purposes of paragraphs 4A and 4D an investment is also a capital market investment if it consists of a bond or commercial paper issued to one or more of the following—

(a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,

(b) a person who is, when the agreement mentioned in paragraph 4A is entered into, a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that order,

(c) a person to whom article 49(2) of that order applies (high net worth company, &c.),

(d) a person who is, when the agreement mentioned in paragraph 4A is entered into, a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that order, and

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(e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(2) For the purposes of sub-paragraph (1)—

(a) in applying article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 for the purposes of sub-paragraph (1)(a)—

(i) in article 19(5)(b), ignore the words after "exempt person",

(ii) in article 19(5)(c)(i), for the words from "the controlled activity" to the end substitute "a controlled activity", and

(iii) in article 19(5)(e) ignore the words from "where the communication" to the end, and

(b) in applying article 49(2) of that order for the purposes of sub-paragraph (1)(c), ignore article 49(2)(e).

(3) In sub-paragraph (1)—

"bond" shall be construed in accordance with article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), and

"commercial paper" has the meaning given by article 9(3) of that order.**]**

Textual Amendments

F484 Sch. A1 paras. 4A-4K inserted (1.1.2003) by S.I. 2002/1990, **art. 3(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provision in arts. 3-5 of the commencing S.I.)

Debt

[F485 4G The debt of at least £10 million referred to in paragraph 4A—

(a) may be incurred at any time during the life of the capital market arrangement, and

(b) may be expressed wholly or partly in a foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into).**]**

Textual Amendments

F485 Sch. A1 paras. 4A-4K inserted (1.1.2003) by S.I. 2002/1990, **art. 3(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provision in arts. 3-5 of the commencing S.I.)

Interpretation of project company

[F486 4H (1) For the purposes of paragraph 4B a company is a "project company" of a project if—

(a) it holds property for the purpose of the project,

(b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,

(c) it is one of a number of companies which together carry out the project,

(d) it has the purpose of supplying finance to enable the project to be carried out, or

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(e) it is the holding company of a company within any of paragraphs (a) to (d).

(2) But a company is not a "project company" of a project if—

(a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but

(b) it also performs a function which is not—

(i) within sub-paragraph (1)(a) to (d),

(ii) related to a function within sub-paragraph (1)(a) to (d), or

(iii) related to the project.

(3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.**]**

Textual Amendments

F486 Sch. A1 paras. 4A-4K inserted (1.1.2003) by S.I. 2002/1990, **art. 3(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provision in arts. 3-5 of the commencing S.I.)

Public-private partnership project

[F487 4I (1) In paragraph 4B "public-private partnership project" means a project—

(a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or

(b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.

(2) In sub-paragraph (1) "resources" includes—

(a) funds (including payment for the provision of services or facilities),

(b) assets,

(c) professional skill,

(d) the grant of a concession or franchise, and

(e) any other commercial resource.

(3) In sub-paragraph (1) "public body" means—

(a) a body which exercises public functions,

(b) a body specified for the purposes of this paragraph by the Secretary of State, and

(c) a body within a class specified for the purposes of this paragraph by the Secretary of State.

(4) A specification under sub-paragraph (3) may be—

(a) general, or

(b) for the purpose of the application of paragraph 4B to a specified case.**]**

Textual Amendments

F487 Sch. A1 paras. 4A-4K inserted (1.1.2003) by S.I. 2002/1990, **art. 3(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provision in arts. 3-5 of the commencing S.I.)

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Step-in rights

[F488 4J (1) For the purposes of paragraph 4B a project has "step-in rights" if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—

(i) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or

(ii) make arrangements for carrying out all or part of the project.

(2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.]

Textual Amendments

F488 Sch. A1 paras. 4A-4K inserted (1.1.2003) by S.I. 2002/1990, **art. 3(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provision in arts. 3-5 of the commencing S.I.)

"Person"

[F489 4K For the purposes of paragraphs 4A to 4J, a reference to a person includes a reference to a partnership or another unincorporated group of persons.]

Textual Amendments

F489 Sch. A1 paras. 4A-4K inserted (1.1.2003) by S.I. 2002/1990, **art. 3(3)**; S.I. 2002/2711, **art. 2** (subject to transitional provision in arts. 3-5 of the commencing S.I.)

F490 5 The Secretary of State may by regulations modify the qualifications for eligibility of a company for a moratorium.

Textual Amendments

F490 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

PART II

OBTAINING A MORATORIUM

Nominee's statement

F491 6 (1) Where the directors of a company wish to obtain a moratorium, they shall submit to the nominee—

(a) a document setting out the terms of the proposed voluntary arrangement,

(b) a statement of the company's affairs containing—

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and

(ii) such other information as may be prescribed, and

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(c) any other information necessary to enable the nominee to comply with sub-paragraph (2) which he requests from them.

(2) The nominee shall submit to the directors a statement in the prescribed form indicating whether or not, in his opinion—

(a) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,

(b) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and

(c) meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(3) In forming his opinion on the matters mentioned in sub-paragraph (2), the nominee is entitled to rely on the information submitted to him under sub-paragraph (1) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (2)(b) to the company's business is to that business as the company proposes to carry it on during the moratorium.

Textual Amendments

F491 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Documents to be submitted to court

F492 7 (1) To obtain a moratorium the directors of a company must file (in Scotland, lodge) with the court—

(a) a document setting out the terms of the proposed voluntary arrangement,

(b) a statement of the company's affairs containing—

(i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and

(ii) such other information as may be prescribed,

(c) a statement that the company is eligible for a moratorium,

(d) a statement from the nominee that he has given his consent to act, and

(e) a statement from the nominee that, in his opinion—

(i) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,

(ii) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and

(iii) meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(2) Each of the statements mentioned in sub-paragraph (1)(b) to (e), except so far as it contains the particulars referred to in paragraph (b)(i), must be in the prescribed form.

(3) The reference in sub-paragraph (1)(e)(ii) to the company's business is to that business as the company proposes to carry it on during the moratorium.

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(4) The Secretary of State may by regulations modify the requirements of this paragraph as to the documents required to be filed (in Scotland, lodged) with the court in order to obtain a moratorium.

Textual Amendments

F492 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Duration of moratorium

F493 8 (1) A moratorium comes into force when the documents for the time being referred to in paragraph 7(1) are filed or lodged with the court and references in this Schedule to "the beginning of the moratorium" shall be construed accordingly.

(2) A moratorium ends at the end of the day on which the meetings summoned under paragraph 29(1) are first held (or, if the meetings are held on different days, the later of those days), unless it is extended under paragraph 32.

(3) If either of those meetings has not first met before the end of the period of 28 days beginning with the day on which the moratorium comes into force, the moratorium ends at the end of the day on which those meetings were to be held (or, if those meetings were summoned to be held on different days, the later of those days), unless it is extended under paragraph 32.

(4) If the nominee fails to summon either meeting within the period required by paragraph 29(1), the moratorium ends at the end of the last day of that period.

(5) If the moratorium is extended (or further extended) under paragraph 32, it ends at the end of the day to which it is extended (or further extended).

(6) Sub-paragraphs (2) to (5) do not apply if the moratorium comes to an end before the time concerned by virtue of—
- (a) paragraph 25(4) (effect of withdrawal by nominee of consent to act),
- (b) an order under paragraph 26(3), 27(3) or 40 (challenge of actions of nominee or directors), or
- (c) a decision of one or both of the meetings summoned under paragraph 29.

(7) If the moratorium has not previously come to an end in accordance with sub-paragraphs (2) to (6), it ends at the end of the day on which a decision under paragraph 31 to approve a voluntary arrangement takes effect under paragraph 36.

(8) The Secretary of State may by order increase or reduce the period for the time being specified in sub-paragraph (3).

Textual Amendments

F493 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

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Notification of beginning of moratorium

F494 9 (1) When a moratorium comes into force, the directors shall notify the nominee of that fact forthwith.

(2) If the directors without reasonable excuse fail to comply with sub-paragraph (1), each of them is liable to imprisonment or a fine, or both.

Textual Amendments

F494 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F495 10 (1) When a moratorium comes into force, the nominee shall, in accordance with the rules—

(a) advertise that fact forthwith, and

(b) notify the registrar of companies, the company and any petitioning creditor of the company of whose claim he is aware of that fact.

(2) In sub-paragraph (1)(b), "petitioning creditor" means a creditor by whom a winding-up petition has been presented before the beginning of the moratorium, as long as the petition has not been dismissed or withdrawn.

(3) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he is liable to a fine.

Textual Amendments

F495 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Notification of end of moratorium

F496 11 (1) When a moratorium comes to an end, the nominee shall, in accordance with the rules—

(a) advertise that fact forthwith, and

(b) notify the court, the registrar of companies, the company and any creditor of the company of whose claim he is aware of that fact.

(2) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he is liable to a fine.

Textual Amendments

F496 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

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[F497]PART III

EFFECTS OF MORATORIUM

Textual Amendments

F497 Sch. A1 (Pts. I-VI) inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 para. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Effect on creditors, etc.

[F498]12 (1) During the period for which a moratorium is in force for a company—

(a) no petition may be presented for the winding up of the company,

(b) no meeting of the company may be called or requisitioned except with the consent of the nominee or the leave of the court and subject (where the court gives leave) to such terms as the court may impose,

(c) no resolution may be passed or order made for the winding up of the company,

[[F499](d) no administration application may be made in respect of the company,

(da) no administrator of the company may be appointed under paragraph 14 or 22 of Schedule B1,**]**

(e) no administrative receiver of the company may be appointed,

(f) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose,

(g) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the court and subject to such terms as the court may impose, and

(h) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the court and subject to such terms as the court may impose.

(2) Where a petition, other than an excepted petition, for the winding up of the company has been presented before the beginning of the moratorium, section 127 shall not apply in relation to any disposition of property, transfer of shares or alteration in status made during the moratorium or at a time mentioned in paragraph 37(5)(a).

(3) In the application of sub-paragraph (1)(h) to Scotland, the reference to execution being commenced or continued includes a reference to diligence being carried out or continued, and the reference to distress being levied is omitted.

(4) Paragraph (a) of sub-paragraph (1) does not apply to an excepted petition and, where such a petition has been presented before the beginning of the moratorium or is presented during the moratorium, paragraphs (b) and (c) of that sub-paragraph do not apply in relation to proceedings on the petition.

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(5) For the purposes of this paragraph, "excepted petition" means a petition under—

(a) section 124A **[**[F500]or 124B**]** of this Act,

(b) section 72 of the [M82]Financial Services Act 1986 on the ground mentioned in subsection (1)(b) of that section, or

(c) section 92 of the [M83]Banking Act 1987 on the ground mentioned in subsection (1)(b) of that section.

[F501]**[**(d) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.**]**

Textual Amendments

F498 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F499 Sch. A1 para. 12(1)(d)(da) substituted (15.9.2003) for Sch. A1 para. 12(1)(d) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 37(3) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F500 Words in Sch. A1 para. 12(5)(a) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 73(4)(b)**

F501 Sch. A1 para. 12(5)(d) inserted (3.7.2002) by S.I. 2002/1555, **art. 30**

Modifications etc. (not altering text)

C859 Sch. A1 para. 12(1)(g) excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 8(5)**

C860 Sch. A1 para. 12(1)(g) excluded by The Financial Market and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 19(4) (as inserted (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 7(c)**)

Marginal Citations

M82 1986 c. 60.

M83 1987 c. 22.

13 (1) This paragraph applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.

(2) If the conditions for the holder of the charge to give a notice having the effect mentioned in sub-paragraph (4) are met at any time, the notice may not be given at that time but may instead be given as soon as practicable after the moratorium has come to an end.

(3) If any other event occurs at any time which (apart from this sub-paragraph) would have the effect mentioned in sub-paragraph (4), then—

(a) the event shall not have the effect in question at that time, but

(b) if notice of the event is given to the company by the holder of the charge as soon as is practicable after the moratorium has come to an end, the event is to be treated as if it had occurred when the notice was given.

(4) The effect referred to in sub-paragraphs (2) and (3) is—

(a) causing the crystallisation of the floating charge, or

(b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.

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(5) Application may not be made for leave under paragraph 12(1)(g) or (h) with a view to obtaining—

(a) the crystallisation of the floating charge, or

(b) the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.

Modifications etc. (not altering text)

C861 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F502 14 Security granted by a company at a time when a moratorium is in force in relation to the company may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the company.

Textual Amendments

F502 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Effect on company

F503 15 (1) Paragraphs 16 to 23 apply in relation to a company for which a moratorium is in force.

(2) The fact that a company enters into a transaction in contravention of any of paragraphs 16 to 22 does not—

(a) make the transaction void, or

(b) make it to any extent unenforceable against the company.

Textual Amendments

F503 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Company invoices, etc.

F504 16 (1) Every invoice, order for goods or business letter which—

(a) is issued by or on behalf of the company, and

(b) on or in which the company's name appears,

shall also contain the nominee's name and a statement that the moratorium is in force for the company.

(2) If default is made in complying with sub-paragraph (1), the company and (subject to sub-paragraph (3)) any officer of the company is liable to a fine.

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(3) An officer of the company is only liable under sub-paragraph (2) if, without reasonable excuse, he authorises or permits the default.

Textual Amendments

F504 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Obtaining credit during moratorium

F505 17 (1) The company may not obtain credit to the extent of £250 or more from a person who has not been informed that a moratorium is in force in relation to the company.

(2) The reference to the company obtaining credit includes the following cases—

(a) where goods are bailed (in Scotland, hired) to the company under a hire-purchase agreement, or agreed to be sold to the company under a conditional sale agreement, and

(b) where the company is paid in advance (whether in money or otherwise) for the supply of goods or services.

(3) Where the company obtains credit in contravention of sub-paragraph (1)—

(a) the company is liable to a fine, and

(b) if any officer of the company knowingly and wilfully authorised or permitted the contravention, he is liable to imprisonment or a fine, or both.

(4) The money sum specified in sub-paragraph (1) is subject to increase or reduction by order under section 417A in Part XV.

Textual Amendments

F505 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Disposals and payments

F506 18 (1) Subject to sub-paragraph (2), the company may only dispose of any of its property if—

(a) there are reasonable grounds for believing that the disposal will benefit the company, and

(b) the disposal is approved by the committee established under paragraph 35(1) or, where there is no such committee, by the nominee.

(2) Sub-paragraph (1) does not apply to a disposal made in the ordinary way of the company's business.

(3) If the company makes a disposal in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the court—

(a) the company is liable to a fine, and

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(b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he is liable to imprisonment or a fine, or both.

Textual Amendments

F506 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F507 19 (1) Subject to sub-paragraph (2), the company may only make any payment in respect of any debt or other liability of the company in existence before the beginning of the moratorium if—

(a) there are reasonable grounds for believing that the payment will benefit the company, and

(b) the payment is approved by the committee established under paragraph 35(1) or, where there is no such committee, by the nominee.

(2) Sub-paragraph (1) does not apply to a payment required by paragraph 20(6).

(3) If the company makes a payment in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the court—

(a) the company is liable to a fine, and

(b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he is liable to imprisonment or a fine, or both.

Textual Amendments

F507 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Disposal of charged property, etc.

F508 20 (1) This paragraph applies where—

(a) any property of the company is subject to a security, or

(b) any goods are in the possession of the company under a hire-purchase agreement.

(2) If the holder of the security consents, or the court gives leave, the company may dispose of the property as if it were not subject to the security.

(3) If the owner of the goods consents, or the court gives leave, the company may dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.

(4) Where property subject to a security which, as created, was a floating charge is disposed of under sub-paragraph (2), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

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(5) Sub-paragraph (6) applies to the disposal under sub-paragraph (2) or (as the case may be) sub-paragraph (3) of—
  (a) any property subject to a security other than a security which, as created, was a floating charge, or
  (b) any goods in the possession of the company under a hire-purchase agreement.

(6) It shall be a condition of any consent or leave under sub-paragraph (2) or (as the case may be) sub-paragraph (3) that—
  (a) the net proceeds of the disposal, and
  (b) where those proceeds are less than such amount as may be agreed, or determined by the court, to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

  shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(7) Where a condition imposed in pursuance of sub-paragraph (6) relates to two or more securities, that condition requires—
  (a) the net proceeds of the disposal, and
  (b) where paragraph (b) of sub-paragraph (6) applies, the sums mentioned in that paragraph,

  to be applied towards discharging the sums secured by those securities in the order of their priorities.

(8) Where the court gives leave for a disposal under sub-paragraph (2) or (3), the directors shall, within 14 days after leave is given, send an office copy of the order giving leave to the registrar of companies.

(9) If the directors without reasonable excuse fail to comply with sub-paragraph (8), they are liable to a fine.

Textual Amendments

F508 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C862 Sch. A1 para. 20 excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226, **reg. 8(5)**

F509 21 (1) Where property is disposed of under paragraph 20 in its application to Scotland, the company shall grant to the disponee an appropriate document of transfer or conveyance of the property, and
  (a) that document, or
  (b) where any recording, intimation or registration of the document is a legal requirement for completion of title to the property, that recording, intimation or registration,

  has the effect of disencumbering the property of, or (as the case may be) freeing the property from, the security.

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(2) Where goods in the possession of the company under a hire-purchase agreement are disposed of under paragraph 20 in its application to Scotland, the disposal has the effect of extinguishing, as against the disponee, all rights of the owner of the goods under the agreement.

Textual Amendments

F509 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F510 22 (1) If the company—

(a) without any consent or leave under paragraph 20, disposes of any of its property which is subject to a security otherwise than in accordance with the terms of the security,

(b) without any consent or leave under paragraph 20, disposes of any goods in the possession of the company under a hire-purchase agreement otherwise than in accordance with the terms of the agreement, or

(c) fails to comply with any requirement imposed by paragraph 20 or 21,

it is liable to a fine.

(2) If any officer of the company, without reasonable excuse, authorises or permits any such disposal or failure to comply, he is liable to imprisonment or a fine, or both.

Textual Amendments

F510 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Market contracts, etc.

F511 23 (1) If the company enters into any transaction to which this paragraph applies—

(a) the company is liable to a fine, and

(b) if any officer of the company, without reasonable excuse, authorised or permitted the company to enter into the transaction, he is liable to imprisonment or a fine, or both.

(2) A company enters into a transaction to which this paragraph applies if it—

(a) enters into a market contract, F512. . .

(b) gives a transfer order,

(c) grants a market charge F512. . . or a system-charge, or

(d) provides any collateral security.

(3) The fact that a company enters into a transaction in contravention of this paragraph does not—

(a) make the transaction void, or

(b) make it to any extent unenforceable by or against the company.

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(4) Where during the moratorium a company enters into a transaction to which this paragraph applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of paragraphs 12(1)(g), 14 or 16 to 22.

(5) Paragraph 20 does not apply in relation to any property which is subject to a market charge, [F512]. . . a system-charge or a collateral security charge.

(6) In this paragraph, "transfer order", "collateral security" and "collateral security charge" have the same meanings as in the settlement finality regulations.

Textual Amendments

F511 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F512 Words in Sch. A1 para. 23(2)(a)(c)(5) omitted (3.7.2002) by virtue of S.I. 2002/1555, **art. 28(4)(a)(b)(c)**

PART IV

NOMINEES

Monitoring of company's activities

[F513]24 (1) During a moratorium, the nominee shall monitor the company's affairs for the purpose of forming an opinion as to whether—

(a) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 31(7), the proposed arrangement with those modifications has a reasonable prospect of being approved and implemented, and

(b) the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.

(2) The directors shall submit to the nominee any information necessary to enable him to comply with sub-paragraph (1) which he requests from them.

(3) In forming his opinion on the matters mentioned in sub-paragraph (1), the nominee is entitled to rely on the information submitted to him under sub-paragraph (2) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (1)(b) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

Textual Amendments

F513 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

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Withdrawal of consent to act

F514 25 (1) The nominee may only withdraw his consent to act in the circumstances mentioned in this paragraph.

(2) The nominee must withdraw his consent to act if, at any time during a moratorium—

(a) he forms the opinion that—

(i) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 31(7), the proposed arrangement with those modifications no longer has a reasonable prospect of being approved or implemented, or

(ii) the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business,

(b) he becomes aware that, on the date of filing, the company was not eligible for a moratorium, or

(c) the directors fail to comply with their duty under paragraph 24(2).

(3) The reference in sub-paragraph (2)(a)(ii) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

(4) If the nominee withdraws his consent to act, the moratorium comes to an end.

(5) If the nominee withdraws his consent to act he must, in accordance with the rules, notify the court, the registrar of companies, the company and any creditor of the company of whose claim he is aware of his withdrawal and the reason for it.

(6) If the nominee without reasonable excuse fails to comply with sub-paragraph (5), he is liable to a fine.

Textual Amendments

F514 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Challenge of nominee's actions, etc.

F515 26 (1) If any creditor, director or member of the company, or any other person affected by a moratorium, is dissatisfied by any act, omission or decision of the nominee during the moratorium, he may apply to the court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1) the court may—

(a) confirm, reverse or modify any act or decision of the nominee,

(b) give him directions, or

(c) make such other order as it thinks fit.

(4) An order under sub-paragraph (3) may (among other things) bring the moratorium to an end and make such consequential provision as the court thinks fit.

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Textual Amendments

F515 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F516 27 (1) Where there are reasonable grounds for believing that—

(a) as a result of any act, omission or decision of the nominee during the moratorium, the company has suffered loss, but

(b) the company does not intend to pursue any claim it may have against the nominee,

any creditor of the company may apply to the court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1) the court may—

(a) order the company to pursue any claim against the nominee,

(b) authorise any creditor to pursue such a claim in the name of the company, or

(c) make such other order with respect to such a claim as it thinks fit,

unless the court is satisfied that the act, omission or decision of the nominee was in all the circumstances reasonable.

(4) An order under sub-paragraph (3) may (among other things)—

(a) impose conditions on any authority given to pursue a claim,

(b) direct the company to assist in the pursuit of a claim,

(c) make directions with respect to the distribution of anything received as a result of the pursuit of a claim,

(d) bring the moratorium to an end and make such consequential provision as the court thinks fit.

(5) On an application under sub-paragraph (1) the court shall have regard to the interests of the members and creditors of the company generally.

Textual Amendments

F516 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Replacement of nominee by court

F517 28 (1) The court may—

(a) on an application made by the directors in a case where the nominee has failed to comply with any duty imposed on him under this Schedule or has died, or

(b) on an application made by the directors or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

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direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(2) A person may only be appointed as a replacement nominee under this paragraph if he submits to the court a statement indicating his consent to act.

Textual Amendments

F517 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

PART V

CONSIDERATION AND IMPLEMENTATION OF VOLUNTARY ARRANGEMENT

Summoning of meetings

F518 29 (1) Where a moratorium is in force, the nominee shall summon meetings of the company and its creditors for such a time, date (within the period for the time being specified in paragraph 8(3)) and place as he thinks fit.

(2) The persons to be summoned to a creditors' meeting under this paragraph are every creditor of the company of whose claim the nominee is aware.

Textual Amendments

F518 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Conduct of meetings

F519 30 (1) Subject to the provisions of paragraphs 31 to 35, the meetings summoned under paragraph 29 shall be conducted in accordance with the rules.

(2) A meeting so summoned may resolve that it be adjourned (or further adjourned).

(3) After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the court, and, immediately after reporting to the court, shall give notice of the result of the meeting to such persons as may be prescribed.

Textual Amendments

F519 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

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Approval of voluntary arrangement

F520 31 (1) The meetings summoned under paragraph 29 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3) The modifications shall not include one by virtue of which the proposal ceases to be a proposal such as is mentioned in section 1.

(4) A meeting summoned under paragraph 29 shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(5) Subject to sub-paragraph (6), a meeting so summoned shall not approve any proposal or modification under which—

(a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, or

(b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(6) The meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(7) The directors of the company may, before the beginning of the period of seven days which ends with the meetings (or either of them) summoned under paragraph 29 being held, give notice to the nominee of any modifications of the proposal for which the directors intend to seek the approval of those meetings.

(8) References in this paragraph to preferential debts and preferential creditors are to be read in accordance with section 386 in Part XII of this Act.

Textual Amendments

F520 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Extension of moratorium

F521 32 (1) Subject to sub-paragraph (2), a meeting summoned under paragraph 29 which resolves that it be adjourned (or further adjourned) may resolve that the moratorium be extended (or further extended), with or without conditions.

(2) The moratorium may not be extended (or further extended) to a day later than the end of the period of two months which begins—

(a) where both meetings summoned under paragraph 29 are first held on the same day, with that day,

(b) in any other case, with the day on which the later of those meetings is first held.

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(3) At any meeting where it is proposed to extend (or further extend) the moratorium, before a decision is taken with respect to that proposal, the nominee shall inform the meeting—

(a) of what he has done in order to comply with his duty under paragraph 24 and the cost of his actions for the company, and

(b) of what he intends to do to continue to comply with that duty if the moratorium is extended (or further extended) and the expected cost of his actions for the company.

(4) Where, in accordance with sub-paragraph (3)(b), the nominee informs a meeting of the expected cost of his intended actions, the meeting shall resolve whether or not to approve that expected cost.

(5) If a decision not to approve the expected cost of the nominee's intended actions has effect under paragraph 36, the moratorium comes to an end.

(6) A meeting may resolve that a moratorium which has been extended (or further extended) be brought to an end before the end of the period of the extension (or further extension).

(7) The Secretary of State may by order increase or reduce the period for the time being specified in sub-paragraph (2).

Textual Amendments

F521 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F522 33 (1) The conditions which may be imposed when a moratorium is extended (or further extended) include a requirement that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(2) A person may only be appointed as a replacement nominee by virtue of sub-paragraph (1) if he submits to the court a statement indicating his consent to act.

(3) At any meeting where it is proposed to appoint a replacement nominee as a condition of extending (or further extending) the moratorium—

(a) the duty imposed by paragraph 32(3)(b) on the nominee shall instead be imposed on the person proposed as the replacement nominee, and

(b) paragraphs 32(4) and (5) and 36(1)(e) apply as if the references to the nominee were to that person.

Textual Amendments

F522 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

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F523 34 (1) If a decision to extend, or further extend, the moratorium takes effect under paragraph 36, the nominee shall, in accordance with the rules, notify the registrar of companies and the court.

(2) If the moratorium is extended, or further extended, by virtue of an order under paragraph 36(5), the nominee shall, in accordance with the rules, send an office copy of the order to the registrar of companies.

(3) If the nominee without reasonable excuse fails to comply with this paragraph, he is liable to a fine.

Textual Amendments

F523 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Moratorium committee

F524 35 (1) A meeting summoned under paragraph 29 which resolves that the moratorium be extended (or further extended) may, with the consent of the nominee, resolve that a committee be established to exercise the functions conferred on it by the meeting.

(2) The meeting may not so resolve unless it has approved an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.

(3) Any expenses, not exceeding the amount of the estimate, incurred by the committee in the exercise of its functions shall be reimbursed by the nominee.

(4) The committee shall cease to exist when the moratorium comes to an end.

Textual Amendments

F524 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Effectiveness of decisions

F525 36 (1) Sub-paragraph (2) applies to references to one of the following decisions having effect, that is, a decision, under paragraph 31, 32 or 35, with respect to—

(a) the approval of a proposed voluntary arrangement,
(b) the extension (or further extension) of a moratorium,
(c) the bringing of a moratorium to an end,
(d) the establishment of a committee, or
(e) the approval of the expected cost of a nominee's intended actions.

(2) The decision has effect if, in accordance with the rules—

(a) it has been taken by both meetings summoned under paragraph 29, or
(b) (subject to any order made under sub-paragraph (5)) it has been taken by the creditors' meeting summoned under that paragraph.

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(3) If a decision taken by the creditors' meeting under any of paragraphs 31, 32 or 35 with respect to any of the matters mentioned in sub-paragraph (1) differs from one so taken by the company meeting with respect to that matter, a member of the company may apply to the court.

(4) An application under sub-paragraph (3) shall not be made after the end of the period of 28 days beginning with—
- (a) the day on which the decision was taken by the creditors' meeting, or
- (b) where the decision of the company meeting was taken on a later day, that day.

(5) On an application under sub-paragraph (3), the court may—
- (a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or
- (b) make such other order as it thinks fit.

Textual Amendments

F525 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (with arts. 3-5)

Effect of approval of voluntary arrangement

F526 37 (1) This paragraph applies where a decision approving a voluntary arrangement has effect under paragraph 36.

(2) The approved voluntary arrangement—
- (a) takes effect as if made by the company at the creditors' meeting, and
- (b) binds every person who in accordance with the rules—
  - (i) was entitled to vote at that meeting (whether or not he was present or represented at it), or
  - (ii) would have been so entitled if he had had notice of it,

  as if he were a party to the voluntary arrangement.

(3) If—
- (a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of sub-paragraph (2)(b)(ii) has not been paid, and
- (b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement.

(4) Where a petition for the winding up of the company, other than an excepted petition within the meaning of paragraph 12, was presented before the beginning of the moratorium, the court shall dismiss the petition.

(5) The court shall not dismiss a petition under sub-paragraph (4)—
- (a) at any time before the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required by paragraph 30(3) has been made to the court, or

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(b) at any time when an application under paragraph 38 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

Textual Amendments

F526 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Challenge of decisions

F527 38 (1) Subject to the following provisions of this paragraph, any of the persons mentioned in sub-paragraph (2) may apply to the court on one or both of the following grounds—

(a) that a voluntary arrangement approved at one or both of the meetings summoned under paragraph 29 and which has taken effect unfairly prejudices the interests of a creditor, member or contributory of the company,

(b) that there has been some material irregularity at or in relation to either of those meetings.

(2) The persons who may apply under this paragraph are—

(a) a person entitled, in accordance with the rules, to vote at either of the meetings,

(b) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it, and

(c) the nominee.

(3) An application under this paragraph shall not be made—

(a) after the end of the period of 28 days beginning with the first day on which each of the reports required by paragraph 30(3) has been made to the court, or

(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within sub-paragraph (2)(b) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on an application under this paragraph the court is satisfied as to either of the grounds mentioned in sub-paragraph (1), it may do any of the following—

(a) revoke or suspend—

(i) any decision approving the voluntary arrangement which has effect under paragraph 36, or

(ii) in a case falling within sub-paragraph (1)(b), any decision taken by the meeting in question which has effect under that paragraph,

(b) give a direction to any person—

(i) for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the directors may make, or

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(ii) in a case falling within sub-paragraph (1)(b), for the summoning of a further company or (as the case may be) creditors' meeting to reconsider the original proposal.

(5) Where at any time after giving a direction under sub-paragraph (4)(b)(i) the court is satisfied that the directors do not intend to submit a revised proposal, the court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect under paragraph 36.

(6) Where the court gives a direction under sub-paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect of the moratorium.

(7) Sub-paragraph (8) applies in a case where the court, on an application under this paragraph—
(a) gives a direction under sub-paragraph (4)(b), or
(b) revokes or suspends a decision under sub-paragraph (4)(a) or (5).

(8) In such a case, the court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—
(a) things done under the voluntary arrangement since it took effect, and
(b) such things done since that time as could not have been done if a moratorium had been in force in relation to the company when they were done.

(9) Except in pursuance of the preceding provisions of this paragraph, a decision taken at a meeting summoned under paragraph 29 is not invalidated by any irregularity at or in relation to the meeting.

Textual Amendments

F527 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 para. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Implementation of voluntary arrangement

F528 39 (1) This paragraph applies where a voluntary arrangement approved by one or both of the meetings summoned under paragraph 29 has taken effect.

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—
(a) by virtue of the approval of the arrangement, on the nominee, or
(b) by virtue of paragraph 31(2), on a person other than the nominee,
shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the court.

(4) On an application under sub-paragraph (3) the court may—
(a) confirm, reverse or modify any act or decision of the supervisor,
(b) give him directions, or
(c) make such other order as it thinks fit.

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(5) The supervisor—

(a) may apply to the court for directions in relation to any particular matter arising under the voluntary arrangement, and

(b) is included among the persons who may apply to the court for the winding up of the company or for an administration order to be made in relation to it.

(6) The court may, whenever—

(a) it is expedient to appoint a person to carry out the functions of the supervisor, and

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,

make an order appointing a person who is qualified to act as an insolvency practitioner, or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

(7) The power conferred by sub-paragraph (6) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

Textual Amendments

F528 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

PART VI

MISCELLANEOUS

Challenge of directors' actions

F529 40 (1) This paragraph applies in relation to acts or omissions of the directors of a company during a moratorium.

(2) A creditor or member of the company may apply to the court for an order under this paragraph on the ground—

(a) that the company's affairs, business and property are being or have been managed by the directors in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including at least the petitioner), or

(b) that any actual or proposed act or omission of the directors is or would be so prejudicial.

(3) An application for an order under this paragraph may be made during or after the moratorium.

(4) On an application for an order under this paragraph the court may—

(a) make such order as it thinks fit for giving relief in respect of the matters complained of,

(b) adjourn the hearing conditionally or unconditionally, or

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(c) make an interim order or any other order that it thinks fit.

(5) An order under this paragraph may in particular—

(a) regulate the management by the directors of the company's affairs, business and property during the remainder of the moratorium,

(b) require the directors to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained they have omitted to do,

(c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the court may direct,

(d) bring the moratorium to an end and make such consequential provision as the court thinks fit.

(6) In making an order under this paragraph the court shall have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.

F530(7)**[** F531(a) Sub-paragraph (8) applies where—

the appointment of an administrator has effect in relation to the company and that appointment was in pursuance of—

(i) an administration application made, or

(ii) a notice of intention to appoint filed,

before the moratorium came into force, or**]**

(b) the company is being wound up in pursuance of a petition presented before the moratorium came into force.

(8) No application for an order under this paragraph may be made by a creditor or member of the company; but such an application may be made instead by the administrator or (as the case may be) the liquidator.**]**

Textual Amendments

F529 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F530 Sch. A1 para. 40(7)(8) substituted (15.9.2003) for Sch. A1 para. 40(7) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 37(4) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F531 Sch. A1 para. 40(7)(a) substituted (15.10.2004) by The Enterprise Act 2002 (Insolvency) Order 2004 (S.I. 2004/2312), **art. 2**

Offences

F532 41 (1) This paragraph applies where a moratorium has been obtained for a company.

(2) If, within the period of 12 months ending with the day on which the moratorium came into force, a person who was at the time an officer of the company—

(a) did any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or

(b) was privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,

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he is to be treated as having committed an offence at that time.

(3) If, at any time during the moratorium, a person who is an officer of the company—
- (a) does any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
- (b) is privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,

he commits an offence.

(4) Those things are—
- (a) concealing any part of the company's property to the value of £500 or more, or concealing any debt due to or from the company, or
- (b) fraudulently removing any part of the company's property to the value of £500 or more, or
- (c) concealing, destroying, mutilating or falsifying any book or paper affecting or relating to the company's property or affairs, or
- (d) making any false entry in any book or paper affecting or relating to the company's property or affairs, or
- (e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company's property or affairs, or
- (f) pawning, pledging or disposing 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).

(5) For the purposes of this paragraph, "officer" includes a shadow director.

(6) It is a defence—
- (a) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (a) or (f) of sub-paragraph (4) to prove that he had no intent to defraud, and
- (b) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (c) or (d) of sub-paragraph (4) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(7) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under sub-paragraph (2) or (3), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in circumstances which—
- (a) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under sub-paragraph (2), or
- (b) amount to an offence under sub-paragraph (3),

commits an offence.

(8) A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.

(9) The money sums specified in paragraphs (a) and (b) of sub-paragraph (4) are subject to increase or reduction by order under section 417A in Part XV.

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Textual Amendments

F532 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F533 42 (1) If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for a company, a person who is an officer of the company—

(a) makes any false representation, or

(b) fraudulently does, or omits to do, anything,

he commits an offence.

(2) Sub-paragraph (1) applies even if no moratorium or extension is obtained.

(3) For the purposes of this paragraph, "officer" includes a shadow director.

(4) A person guilty of an offence under this paragraph is liable to imprisonment or a fine, or both.

Textual Amendments

F533 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Void provisions in floating charge documents

F534 43 (1) A provision in an instrument creating a floating charge is void if it provides for—

(a) obtaining a moratorium, or

(b) anything done with a view to obtaining a moratorium (including any preliminary decision or investigation),

to be an event causing the floating charge to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company or a ground for the appointment of a receiver.

(2) In sub-paragraph (1), "receiver" includes a manager and a person who is appointed both receiver and manager.

Textual Amendments

F534 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Functions of the Financial Services Authority

F535 44 (1) This Schedule has effect in relation to a moratorium for a regulated company with the modifications in sub-paragraphs (2) to (16) below.

(2) Any notice or other document required by virtue of this Schedule to be sent to a creditor of a regulated company must also be sent to the Authority.

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(3) The Authority is entitled to be heard on any application to the court for leave under paragraph 20(2) or 20(3) (disposal of charged property, etc.).

(4) Where paragraph 26(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the court include the Authority.

(5) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.

(6) Where paragraph 27(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the court include the Authority.

(7) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.

(8) The persons to be summoned to a creditors' meeting under paragraph 29 include the Authority.

(9) A person appointed for the purpose by the Authority is entitled to attend and participate in (but not to vote at)—
   (a) any creditors' meeting summoned under that paragraph,
   (b) any meeting of a committee established under paragraph 35 (moratorium committee).

(10) The Authority is entitled to be heard on any application under paragraph 36(3) (effectiveness of decisions).

(11) Where paragraph 38(1) (challenge of decisions) applies, the persons who may apply to the court include the Authority.

(12) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.

(13) Where paragraph 39(3) (implementation of voluntary arrangement) applies, the persons who may apply to the court include the Authority.

(14) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.

(15) Where paragraph 40(2) (challenge of directors' actions) applies, the persons who may apply to the court include the Authority.

(16) If a person other than the Authority applies to the court under that paragraph, the Authority is entitled to be heard on the application.

(17) This paragraph does not prejudice any right the Authority has (apart from this paragraph) as a creditor of a regulated company.

(18) In this paragraph—

"the Authority" means the Financial Services Authority, and

"regulated company" means a company which—

(a) is, or has been, an authorised person within the meaning given by section 31 of the [M84]Financial Services and Markets Act 2000,

(b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or

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(c) is carrying on, or has carried on, a regulated activity, within the meaning given by section 22 of that Act, in contravention of the general prohibition within the meaning given by section 19 of that Act.

Textual Amendments

F535 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Marginal Citations

M84 2000 c. 8.

Subordinate legislation

F536 45 (1) Regulations or an order made by the Secretary of State under this Schedule may make different provision for different cases.

(2) Regulations so made may make such consequential, incidental, supplemental and transitional provision as may appear to the Secretary of State necessary or expedient.

(3) Any power of the Secretary of State to make regulations under this Schedule may be exercised by amending or repealing any enactment contained in this Act (including one contained in this Schedule) or contained in the M85 Company Directors Disqualification Act 1986.

(4) Regulations (except regulations under paragraph 5) or an order made by the Secretary of State under this Schedule shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Regulations under paragraph 5 of this Schedule are to be made by statutory instrument and shall only be made if a draft containing the regulations has been laid before and approved by resolution of each House of Parliament.**]**

Textual Amendments

F536 Sch. A1 inserted (11.5.2001 so far as is necessary to give effect to Sch. A1 paras. 5, 45(1)-(3)(5) and 1.1.2003 in so far as not already in force) by 2000 c. 39, s. 1, **Sch. 1 para. 4**; S.I. 2001/1751, **art. 2**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

Marginal Citations

M85 1986 c. 46.

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[F537SCHEDULE B1

ADMINISTRATION

Textual Amendments

F537 Sch. B1 inserted (15.9.2003) by 2002 c. 40, ss. 248(2), 279, Sch. 16 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C863 Sch. B1 applied in part (with modifications) (5.10.2004) by Energy Act 2004 (c. 20), ss. 159(1), 198, **Sch. 20 Pts. 1-3**; S.I. 2004/2575, **art. 2(1)**, Sch. 1

C864 Sch. B1 applied (with modifications) (1.7. 2005) by S.I. 1994/2421, art. 6(1), Sch. 2 (as amended (1.7.2005) by S.I. 2005/1516, **arts. 3**, 7, Sch. 1 (with art. 2))

C865 Sch. B1: specified provisions applied (with modifications) (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 73, 93(2)(3), {Sch. 10 Pts. 1, 2}; S.I. 2011/2329, **art. 3** (with arts. 4, 5)

ARRANGEMENT OF SCHEDULE

Nature of administration	Paragraphs 1 to 9
Appointment of administrator by court	Paragraphs 10 to 13
Appointment of administrator by holder of floating charge	Paragraphs 14 to 21
Appointment of administrator by company or directors	Paragraphs 22 to 34
Administration application: special cases	Paragraphs 35 to 39
Effect of administration	Paragraphs 40 to 45
Process of administration	Paragraphs 46 to 58
Functions of administrator	Paragraphs 59 to 75
Ending administration	Paragraphs 76 to 86
Replacing administrator	Paragraphs 87 to 99
General	Paragraphs 100 to 116

NATURE OF ADMINISTRATION

Administration

1 (1) For the purposes of this Act "administrator" of a company means a person appointed under this Schedule to manage the company's affairs, business and property.

(2) For the purposes of this Act—

(a) a company is "in administration" while the appointment of an administrator of the company has effect,

(b) a company "enters administration" when the appointment of an administrator takes effect,

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(c) a company ceases to be in administration when the appointment of an administrator of the company ceases to have effect in accordance with this Schedule, and

(d) a company does not cease to be in administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office.

2 A person may be appointed as administrator of a company—

(a) by administration order of the court under paragraph 10,

(b) by the holder of a floating charge under paragraph 14, or

(c) by the company or its directors under paragraph 22.

Purpose of administration

3 (1) The administrator of a company must perform his functions with the objective of—

(a) rescuing the company as a going concern, or

(b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or

(c) realising property in order to make a distribution to one or more secured or preferential creditors.

(2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole.

(3) The administrator must perform his functions with the objective specified in sub-paragraph (1)(a) unless he thinks either—

(a) that it is not reasonably practicable to achieve that objective, or

(b) that the objective specified in sub-paragraph (1)(b) would achieve a better result for the company's creditors as a whole.

(4) The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if—

(a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and

(b) he does not unnecessarily harm the interests of the creditors of the company as a whole.

4 The administrator of a company must perform his functions as quickly and efficiently as is reasonably practicable.

Status of administrator

5 An administrator is an officer of the court (whether or not he is appointed by the court).

General restrictions

6 A person may be appointed as administrator of a company only if he is qualified to act as an insolvency practitioner in relation to the company.

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7 A person may not be appointed as administrator of a company which is in administration (subject to the provisions of paragraphs 90 to 97 and 100 to 103 about replacement and additional administrators).

8 (1) A person may not be appointed as administrator of a company which is in liquidation by virtue of—
(a) a resolution for voluntary winding up, or
(b) a winding-up order.

(2) Sub-paragraph (1)(a) is subject to paragraph 38.

(3) Sub-paragraph (1)(b) is subject to paragraphs 37 and 38.

9 (1) A person may not be appointed as administrator of a company which—
(a) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22), but
(b) is not an authorised deposit taker.

(2) A person may not be appointed as administrator of a company which effects or carries out contracts of insurance.

(3) But sub-paragraph (2) does not apply to a company which—
(a) is exempt from the general prohibition in relation to effecting or carrying out contracts of insurance, or
(b) is an authorised deposit taker effecting or carrying out contracts of insurance in the course of a banking business.

(4) In this paragraph—
"authorised deposit taker" means a person with permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, and
"the general prohibition" has the meaning given by section 19 of that Act.

(5) This paragraph shall be construed in accordance with—
(a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),
(b) any relevant order under that section, and
(c) Schedule 2 to that Act (regulated activities).

APPOINTMENT OF ADMINISTRATOR BY COURT

Administration order

10 An administration order is an order appointing a person as the administrator of a company.

Conditions for making order

11 The court may make an administration order in relation to a company only if satisfied—
(a) that the company is or is likely to become unable to pay its debts, and
(b) that the administration order is reasonably likely to achieve the purpose of administration.

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Administration application

12 (1) An application to the court for an administration order in respect of a company (an "administration application") may be made only by—

(a) the company,

(b) the directors of the company,

(c) one or more creditors of the company,

(d) the **[**[F538]designated officer**]** for a magistrates' court in the exercise of the power conferred by section 87A of the Magistrates' Courts Act 1980 (c. 43) (fine imposed on company), or

(e) a combination of persons listed in paragraphs (a) to (d).

(2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify—

(a) any person who has appointed an administrative receiver of the company,

(b) any person who is or may be entitled to appoint an administrative receiver of the company,

(c) any person who is or may be entitled to appoint an administrator of the company under paragraph 14, and

(d) such other persons as may be prescribed.

(3) An administration application may not be withdrawn without the permission of the court.

(4) In sub-paragraph (1) "creditor" includes a contingent creditor and a prospective creditor.

[F539](5) **[** Sub-paragraph (1) is without prejudice to section 7(4)(b).**]**

Textual Amendments

F538 Words in Sch. B1 para. 12(1)(d) substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 299**; S.I. 2005/910, **art. 3(y)**

F539 Sch. B1 para. 12(5) added (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), **art. 2(2)**

Powers of court

13 (1) On hearing an administration application the court may—

(a) make the administration order sought;

(b) dismiss the application;

(c) adjourn the hearing conditionally or unconditionally;

(d) make an interim order;

(e) treat the application as a winding-up petition and make any order which the court could make under section 125;

(f) make any other order which the court thinks appropriate.

(2) An appointment of an administrator by administration order takes effect—

(a) at a time appointed by the order, or

(b) where no time is appointed by the order, when the order is made.

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(3) An interim order under sub-paragraph (1)(d) may, in particular—

(a) restrict the exercise of a power of the directors or the company;

(b) make provision conferring a discretion on the court or on a person qualified to act as an insolvency practitioner in relation to the company.

(4) This paragraph is subject to paragraph 39.

Modifications etc. (not altering text)

C866 Sch. B1 para. 13 restricted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 162(3)**, 198; S.I. 2004/2575, **art. 2(1)**, Sch. 1

APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE

Power to appoint

14 (1) The holder of a qualifying floating charge in respect of a company's property may appoint an administrator of the company.

(2) For the purposes of sub-paragraph (1) a floating charge qualifies if created by an instrument which—

(a) states that this paragraph applies to the floating charge,

(b) purports to empower the holder of the floating charge to appoint an administrator of the company,

(c) purports to empower the holder of the floating charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by section 29(2), or

(d) purports to empower the holder of a floating charge in Scotland to appoint a receiver who on appointment would be an administrative receiver.

(3) For the purposes of sub-paragraph (1) a person is the holder of a qualifying floating charge in respect of a company's property if he holds one or more debentures of the company secured—

(a) by a qualifying floating charge which relates to the whole or substantially the whole of the company's property,

(b) by a number of qualifying floating charges which together relate to the whole or substantially the whole of the company's property, or

(c) by charges and other forms of security which together relate to the whole or substantially the whole of the company's property and at least one of which is a qualifying floating charge.

Modifications etc. (not altering text)

C867 Sch. B1 para. 14 restricted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 163**, 198; S.I. 2004/2575, **art. 2(1)**, Sch. 1

Restrictions on power to appoint

15 (1) A person may not appoint an administrator under paragraph 14 unless—

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(a) he has given at least two business days' written notice to the holder of any prior floating charge which satisfies paragraph 14(2), or

(b) the holder of any prior floating charge which satisfies paragraph 14(2) has consented in writing to the making of the appointment.

(2) One floating charge is prior to another for the purposes of this paragraph if—

(a) it was created first, or

(b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

(3) Sub-paragraph (2) shall have effect in relation to Scotland as if the following were substituted for paragraph (a)—

(") it has priority of ranking in accordance with section 464(4)(b) of the Companies Act 1985 (c. 6), ".

16 An administrator may not be appointed under paragraph 14 while a floating charge on which the appointment relies is not enforceable.

17 An administrator of a company may not be appointed under paragraph 14 if—

(a) a provisional liquidator of the company has been appointed under section 135, or

(b) an administrative receiver of the company is in office.

Notice of appointment

18 (1) A person who appoints an administrator of a company under paragraph 14 shall file with the court—

(a) a notice of appointment, and

(b) such other documents as may be prescribed.

(2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—

(a) that the person is the holder of a qualifying floating charge in respect of the company's property,

(b) that each floating charge relied on in making the appointment is (or was) enforceable on the date of the appointment, and

(c) that the appointment is in accordance with this Schedule.

(3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—

(a) that he consents to the appointment,

(b) that in his opinion the purpose of administration is reasonably likely to be achieved, and

(c) giving such other information and opinions as may be prescribed.

(4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).

(5) The notice of appointment and any document accompanying it must be in the prescribed form.

(6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.

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(7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
(a) which is false, and
(b) which he does not reasonably believe to be true.

Commencement of appointment

19 The appointment of an administrator under paragraph 14 takes effect when the requirements of paragraph 18 are satisfied.

20 A person who appoints an administrator under paragraph 14—
(a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 18 are satisfied, and
(b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

Invalid appointment: indemnity

21 (1) This paragraph applies where—
(a) a person purports to appoint an administrator under paragraph 14, and
(b) the appointment is discovered to be invalid.

(2) The court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS

Power to appoint

22 (1) A company may appoint an administrator.

(2) The directors of a company may appoint an administrator.

Modifications etc. (not altering text)
C868 Sch. B1 para. 22 restricted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 163**, 198; S.I. 2004/2575, **art. 2(1)**, Sch. 1

Restrictions on power to appoint

23 (1) This paragraph applies where an administrator of a company is appointed—
(a) under paragraph 22, or
(b) on an administration application made by the company or its directors.

(2) An administrator of the company may not be appointed under paragraph 22 during the period of 12 months beginning with the date on which the appointment referred to in sub-paragraph (1) ceases to have effect.

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24 (1) If a moratorium for a company under Schedule A1 ends on a date when no voluntary arrangement is in force in respect of the company, this paragraph applies for the period of 12 months beginning with that date.

(2) This paragraph also applies for the period of 12 months beginning with the date on which a voluntary arrangement in respect of a company ends if—

(a) the arrangement was made during a moratorium for the company under Schedule A1, and

(b) the arrangement ends prematurely (within the meaning of section 7B).

(3) While this paragraph applies, an administrator of the company may not be appointed under paragraph 22.

25 An administrator of a company may not be appointed under paragraph 22 if—

(a) a petition for the winding up of the company has been presented and is not yet disposed of,

(b) an administration application has been made and is not yet disposed of, or

(c) an administrative receiver of the company is in office.

Notice of intention to appoint

26 (1) A person who proposes to make an appointment under paragraph 22 shall give at least five business days' written notice to—

(a) any person who is or may be entitled to appoint an administrative receiver of the company, and

(b) any person who is or may be entitled to appoint an administrator of the company under paragraph 14.

(2) A person who proposes to make an appointment under paragraph 22 shall also give such notice as may be prescribed to such other persons as may be prescribed.

(3) A notice under this paragraph must—

(a) identify the proposed administrator, and

(b) be in the prescribed form.

27 (1) A person who gives notice of intention to appoint under paragraph 26 shall file with the court as soon as is reasonably practicable a copy of—

(a) the notice, and

(b) any document accompanying it.

(2) The copy filed under sub-paragraph (1) must be accompanied by a statutory declaration made by or on behalf of the person who proposes to make the appointment—

(a) that the company is or is likely to become unable to pay its debts,

(b) that the company is not in liquidation, and

(c) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by paragraphs 23 to 25, and

(d) to such additional effect, and giving such information, as may be prescribed.

(3) A statutory declaration under sub-paragraph (2) must—

(a) be in the prescribed form, and

(b) be made during the prescribed period.

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(4) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
  (a) which is false, and
  (b) which he does not reasonably believe to be true.

28 (1) An appointment may not be made under paragraph 22 unless the person who makes the appointment has complied with any requirement of paragraphs 26 and 27 and—
  (a) the period of notice specified in paragraph 26(1) has expired, or
  (b) each person to whom notice has been given under paragraph 26(1) has consented in writing to the making of the appointment.

(2) An appointment may not be made under paragraph 22 after the period of ten business days beginning with the date on which the notice of intention to appoint is filed under paragraph 27(1).

Notice of appointment

29 (1) A person who appoints an administrator of a company under paragraph 22 shall file with the court—
  (a) a notice of appointment, and
  (b) such other documents as may be prescribed.

(2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—
  (a) that the person is entitled to make an appointment under paragraph 22,
  (b) that the appointment is in accordance with this Schedule, and
  (c) that, so far as the person making the statement is able to ascertain, the statements made and information given in the statutory declaration filed with the notice of intention to appoint remain accurate.

(3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—
  (a) that he consents to the appointment,
  (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
  (c) giving such other information and opinions as may be prescribed.

(4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).

(5) The notice of appointment and any document accompanying it must be in the prescribed form.

(6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.

(7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
  (a) which is false, and
  (b) which he does not reasonably believe to be true.

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30 In a case in which no person is entitled to notice of intention to appoint under paragraph 26(1) (and paragraph 28 therefore does not apply)—
(a) the statutory declaration accompanying the notice of appointment must include the statements and information required under paragraph 27(2), and
(b) paragraph 29(2)(c) shall not apply.

Commencement of appointment

31 The appointment of an administrator under paragraph 22 takes effect when the requirements of paragraph 29 are satisfied.

32 A person who appoints an administrator under paragraph 22—
(a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 29 are satisfied, and
(b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

33 If before the requirements of paragraph 29 are satisfied the company enters administration by virtue of an administration order or an appointment under paragraph 14—
(a) the appointment under paragraph 22 shall not take effect, and
(b) paragraph 32 shall not apply.

Invalid appointment: indemnity

34 (1) This paragraph applies where—
(a) a person purports to appoint an administrator under paragraph 22, and
(b) the appointment is discovered to be invalid.

(2) The court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

ADMINISTRATION APPLICATION – SPECIAL CASES

Application by holder of floating charge

35 (1) This paragraph applies where an administration application in respect of a company—
(a) is made by the holder of a qualifying floating charge in respect of the company's property, and
(b) includes a statement that the application is made in reliance on this paragraph.

(2) The court may make an administration order—
(a) whether or not satisfied that the company is or is likely to become unable to pay its debts, but
(b) only if satisfied that the applicant could appoint an administrator under paragraph 14.

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Intervention by holder of floating charge

36 (1) This paragraph applies where—

(a) an administration application in respect of a company is made by a person who is not the holder of a qualifying floating charge in respect of the company's property, and

(b) the holder of a qualifying floating charge in respect of the company's property applies to the court to have a specified person appointed as administrator (and not the person specified by the administration applicant).

(2) The court shall grant an application under sub-paragraph (1)(b) unless the court thinks it right to refuse the application because of the particular circumstances of the case.

Application where company in liquidation

37 (1) This paragraph applies where the holder of a qualifying floating charge in respect of a company's property could appoint an administrator under paragraph 14 but for paragraph 8(1)(b).

(2) The holder of the qualifying floating charge may make an administration application.

(3) If the court makes an administration order on hearing an application made by virtue of sub-paragraph (2)—

(a) the court shall discharge the winding-up order,

(b) the court shall make provision for such matters as may be prescribed,

(c) the court may make other consequential provision,

(d) the court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and

(e) this Schedule shall have effect with such modifications as the court may specify.

38 (1) The liquidator of a company may make an administration application.

(2) If the court makes an administration order on hearing an application made by virtue of sub-paragraph (1)—

(a) the court shall discharge any winding-up order in respect of the company,

(b) the court shall make provision for such matters as may be prescribed,

(c) the court may make other consequential provision,

(d) the court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and

(e) this Schedule shall have effect with such modifications as the court may specify.

Effect of administrative receivership

39 (1) Where there is an administrative receiver of a company the court must dismiss an administration application in respect of the company unless—

(a) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order,

(b) the court thinks that the security by virtue of which the receiver was appointed would be liable to be released or discharged under sections 238

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to 240 (transaction at undervalue and preference) if an administration order were made,

(c) the court thinks that the security by virtue of which the receiver was appointed would be avoided under section 245 (avoidance of floating charge) if an administration order were made, or

(d) the court thinks that the security by virtue of which the receiver was appointed would be challengeable under section 242 (gratuitous alienations) or 243 (unfair preferences) or under any rule of law in Scotland.

(2) Sub-paragraph (1) applies whether the administrative receiver is appointed before or after the making of the administration application.

EFFECT OF ADMINISTRATION

Dismissal of pending winding-up petition

40 (1) A petition for the winding up of a company—

(a) shall be dismissed on the making of an administration order in respect of the company, and

(b) shall be suspended while the company is in administration following an appointment under paragraph 14.

(2) Sub-paragraph (1)(b) does not apply to a petition presented under—

(a) section 124A (public interest), or

F540 [(aa) section 124B (SEs),]

(b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).

(3) Where an administrator becomes aware that a petition was presented under a provision referred to in sub-paragraph (2) before his appointment, he shall apply to the court for directions under paragraph 63.

Textual Amendments

F540 Sch. B1 para. 40(2)(aa) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 73(4)(c)**

Modifications etc. (not altering text)

C869 Sch. B1 para. 40 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 119**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C870 Sch. B1 para. 40(1)(a) 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

Dismissal of administrative or other receiver

41 (1) When an administration order takes effect in respect of a company any administrative receiver of the company shall vacate office.

(2) Where a company is in administration, any receiver of part of the company's property shall vacate office if the administrator requires him to.

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(3) Where an administrative receiver or receiver vacates office under sub-paragraph (1) or (2)—

(a) his remuneration shall be charged on and paid out of any property of the company which was in his custody or under his control immediately before he vacated office, and

(b) he need not take any further steps under section 40 or 59.

(4) In the application of sub-paragraph (3)(a)—

(a) "remuneration" includes expenses properly incurred and any indemnity to which the administrative receiver or receiver is entitled out of the assets of the company,

(b) the charge imposed takes priority over security held by the person by whom or on whose behalf the administrative receiver or receiver was appointed, and

(c) the provision for payment is subject to paragraph 43.

Modifications etc. (not altering text)

C871 Sch. B1 para. 41 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

C872 Sch. B1 para. 41(2) excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 8(2)**

Moratorium on insolvency proceedings

42 (1) This paragraph applies to a company in administration.

(2) No resolution may be passed for the winding up of the company.

(3) No order may be made for the winding up of the company.

(4) Sub-paragraph (3) does not apply to an order made on a petition presented under—

(a) section 124A (public interest), or

[F541 (aa) section 124B (SEs),**]**

(b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).

(5) If a petition presented under a provision referred to in sub-paragraph (4) comes to the attention of the administrator, he shall apply to the court for directions under paragraph 63.

Textual Amendments

F541 Sch. B1 para. 42(4)(aa) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 73(4)(c)**

Modifications etc. (not altering text)

C873 Sch. B1 para. 42 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 119**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

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C874 Sch. B1 para. 42 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

Moratorium on other legal process

43 (1) This paragraph applies to a company in administration.

(2) No step may be taken to enforce security over the company's property except—
(a) with the consent of the administrator, or
(b) with the permission of the court.

(3) No step may be taken to repossess goods in the company's possession under a hire-purchase agreement except—
(a) with the consent of the administrator, or
(b) with the permission of the court.

(4) A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company except—
(a) with the consent of the administrator, or
(b) with the permission of the court.

(5) In Scotland, a landlord may not exercise a right of irritancy in relation to premises let to the company except—
(a) with the consent of the administrator, or
(b) with the permission of the court.

(6) No legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the company or property of the company except—
(a) with the consent of the administrator, or
(b) with the permission of the court.

F542(6A) **[** An administrative receiver of the company may not be appointed.**]**

(7) Where the court gives permission for a transaction under this paragraph it may impose a condition on or a requirement in connection with the transaction.

(8) In this paragraph "landlord" includes a person to whom rent is payable.

Textual Amendments

F542 Sch. B1 para. 43(6A) inserted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), **art. 2(3)**

Modifications etc. (not altering text)

C875 Sch. B1 para. 43 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

C876 Sch. B1 para. 43(2) excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 8(1)(a)**

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Interim moratorium

44 (1) This paragraph applies where an administration application in respect of a company has been made and—
(a) the application has not yet been granted or dismissed, or
(b) the application has been granted but the administration order has not yet taken effect.

(2) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator under paragraph 14 is filed with the court until—
(a) the appointment of the administrator takes effect, or
(b) the period of five business days beginning with the date of filing expires without an administrator having been appointed.

(3) Sub-paragraph (2) has effect in relation to a notice of intention to appoint only if it is in the prescribed form.

(4) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator is filed with the court under paragraph 27(1) until—
(a) the appointment of the administrator takes effect, or
(b) the period specified in paragraph 28(2) expires without an administrator having been appointed.

(5) The provisions of paragraphs 42 and 43 shall apply (ignoring any reference to the consent of the administrator).

(6) If there is an administrative receiver of the company when the administration application is made, the provisions of paragraphs 42 and 43 shall not begin to apply by virtue of this paragraph until the person by or on behalf of whom the receiver was appointed consents to the making of the administration order.

(7) This paragraph does not prevent or require the permission of the court for—
(a) the presentation of a petition for the winding up of the company under a provision mentioned in paragraph 42(4),
(b) the appointment of an administrator under paragraph 14,
(c) the appointment of an administrative receiver of the company, or
(d) the carrying out by an administrative receiver (whenever appointed) of his functions.

Modifications etc. (not altering text)

C877 Sch. B1 para. 44 restricted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 162(4)**, **163(4)**, 198; S.I. 2004/2575, **art. 2(1)**, Sch. 1

C878 Sch. B1 para. 44 restricted (1.10.2011) by Postal Services Act 2011 (c. 5), **ss. 76(4)**, 85(8), 93(2)(3); S.I. 2011/2329, **art. 3** (with arts. 4, 5)

C879 Sch. B1 para. 44 restricted (1.10.2011) by Postal Services Act 2011 (c. 5), **ss. 77(5)**, 85(8), 93(2)(3); S.I. 2011/2329, **art. 3** (with arts. 4, 5)

C880 Sch. B1 para. 44(1)(a) 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

C881 Sch. B1 para. 44(5) 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

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Publicity

45 (1) While a company is in administration every business document issued by or on behalf of the company or the administrator must state—
(a) the name of the administrator, and
(b) that the affairs, business and property of the company are being managed by him.

(2) Any of the following commits an offence if without reasonable excuse he authorises or permits a contravention of sub-paragraph (1)—
(a) the administrator,
(b) an officer of the company, and
(c) the company.

(3) In sub-paragraph (1) "business document" means—
(a) an invoice,
(b) an order for goods or services, and
(c) a business letter.

PROCESS OF ADMINISTRATION

Announcement of administrator's appointment

46 (1) This paragraph applies where a person becomes the administrator of a company.

(2) As soon as is reasonably practicable the administrator shall—
(a) send a notice of his appointment to the company, and
(b) publish a notice of his appointment in the prescribed manner.

(3) As soon as is reasonably practicable the administrator shall—
(a) obtain a list of the company's creditors, and
(b) send a notice of his appointment to each creditor of whose claim and address he is aware.

(4) The administrator shall send a notice of his appointment to the registrar of companies before the end of the period of 7 days beginning with the date specified in sub-paragraph (6).

(5) The administrator shall send a notice of his appointment to such persons as may be prescribed before the end of the prescribed period beginning with the date specified in sub-paragraph (6).

(6) The date for the purpose of sub-paragraphs (4) and (5) is—
(a) in the case of an administrator appointed by administration order, the date of the order,
(b) in the case of an administrator appointed under paragraph 14, the date on which he receives notice under paragraph 20, and
(c) in the case of an administrator appointed under paragraph 22, the date on which he receives notice under paragraph 32.

(7) The court may direct that sub-paragraph (3)(b) or (5)—
(a) shall not apply, or
(b) shall apply with the substitution of a different period.

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(8) A notice under this paragraph must—
  (a) contain the prescribed information, and
  (b) be in the prescribed form.

(9) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

Modifications etc. (not altering text)
C882 Sch. B1 para. 46 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

Statement of company's affairs

47 (1) As soon as is reasonably practicable after appointment the administrator of a company shall by notice in the prescribed form require one or more relevant persons to provide the administrator with a statement of the affairs of the company.

(2) The statement must—
  (a) be verified by a statement of truth in accordance with Civil Procedure Rules,
  (b) be in the prescribed form,
  (c) give particulars of the company's property, debts and liabilities,
  (d) give the names and addresses of the company's creditors,
  (e) specify the security held by each creditor,
  (f) give the date on which each security was granted, and
  (g) contain such other information as may be prescribed.

(3) In sub-paragraph (1) "relevant person" means—
  (a) a person who is or has been an officer of the company,
  (b) a person who took part in the formation of the company during the period of one year ending with the date on which the company enters administration,
  (c) a person employed by the company during that period, and
  (d) a person who is or has been during that period an officer or employee of a company which is or has been during that year an officer of the company.

(4) For the purpose of sub-paragraph (3) a reference to employment is a reference to employment through a contract of employment or a contract for services.

(5) In Scotland, a statement of affairs under sub-paragraph (1) must be a statutory declaration made in accordance with the Statutory Declarations Act 1835 (c. 62) (and sub-paragraph (2)(a) shall not apply).

Modifications etc. (not altering text)
C883 Sch. B1 para. 47 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

48 (1) A person required to submit a statement of affairs must do so before the end of the period of 11 days beginning with the day on which he receives notice of the requirement.

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(2) The administrator may—
- (a) revoke a requirement under paragraph 47(1), or
- (b) extend the period specified in sub-paragraph (1) (whether before or after expiry).

(3) If the administrator refuses a request to act under sub-paragraph (2)—
- (a) the person whose request is refused may apply to the court, and
- (b) the court may take action of a kind specified in sub-paragraph (2).

(4) A person commits an offence if he fails without reasonable excuse to comply with a requirement under paragraph 47(1).

Modifications etc. (not altering text)

C884 Sch. B1 para. 48 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

Administrator's proposals

49 (1) The administrator of a company shall make a statement setting out proposals for achieving the purpose of administration.

(2) A statement under sub-paragraph (1) must, in particular—
- (a) deal with such matters as may be prescribed, and
- (b) where applicable, explain why the administrator thinks that the objective mentioned in paragraph 3(1)(a) or (b) cannot be achieved.

(3) Proposals under this paragraph may include—
- (a) a proposal for a voluntary arrangement under Part I of this Act (although this paragraph is without prejudice to section 4(3));
- (b) a proposal for a compromise or arrangement to be sanctioned under section 425 of the Companies Act (compromise with creditors or members).

(4) The administrator shall send a copy of the statement of his proposals—
- (a) to the registrar of companies,
- (b) to every creditor of the company of whose claim and address he is aware, and
- (c) to every member of the company of whose address he is aware.

(5) The administrator shall comply with sub-paragraph (4)—
- (a) as soon as is reasonably practicable after the company enters administration, and
- (b) in any event, before the end of the period of eight weeks beginning with the day on which the company enters administration.

(6) The administrator shall be taken to comply with sub-paragraph (4)(c) if he publishes in the prescribed manner a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.

(7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

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(8) A period specified in this paragraph may be varied in accordance with paragraph 107.

Creditors' meeting

50 (1) In this Schedule "creditors' meeting" means a meeting of creditors of a company summoned by the administrator—

(a) in the prescribed manner, and

(b) giving the prescribed period of notice to every creditor of the company of whose claim and address he is aware.

(2) A period prescribed under sub-paragraph (1)(b) may be varied in accordance with paragraph 107.

(3) A creditors' meeting shall be conducted in accordance with the rules.

Modifications etc. (not altering text)

C885 Sch. B1 para. 50-58 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

Requirement for initial creditors' meeting

51 (1) Each copy of an administrator's statement of proposals sent to a creditor under paragraph 49(4)(b) must be accompanied by an invitation to a creditors' meeting (an "initial creditors' meeting").

(2) The date set for an initial creditors' meeting must be—

(a) as soon as is reasonably practicable after the company enters administration, and

(b) in any event, within the period of ten weeks beginning with the date on which the company enters administration.

(3) An administrator shall present a copy of his statement of proposals to an initial creditors' meeting.

(4) A period specified in this paragraph may be varied in accordance with paragraph 107.

(5) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

Modifications etc. (not altering text)

C886 Sch. B1 para. 50-58 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)**)

52 (1) Paragraph 51(1) shall not apply where the statement of proposals states that the administrator thinks—

(a) that the company has sufficient property to enable each creditor of the company to be paid in full,

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(b) that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a), or

(c) that neither of the objectives specified in paragraph 3(1)(a) and (b) can be achieved.

(2) But the administrator shall summon an initial creditors' meeting if it is requested—

(a) by creditors of the company whose debts amount to at least 10% of the total debts of the company,

(b) in the prescribed manner, and

(c) in the prescribed period.

(3) A meeting requested under sub-paragraph (2) must be summoned for a date in the prescribed period.

(4) The period prescribed under sub-paragraph (3) may be varied in accordance with paragraph 107.

Modifications etc. (not altering text)

C887 Sch. B1 para. 50-58 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)**)

Business and result of initial creditors' meeting

53 (1) An initial creditors' meeting to which an administrator's proposals are presented shall consider them and may—

(a) approve them without modification, or

(b) approve them with modification to which the administrator consents.

(2) After the conclusion of an initial creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—

(a) the court,

(b) the registrar of companies, and

(c) such other persons as may be prescribed.

(3) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (2).

Modifications etc. (not altering text)

C888 Sch. B1 para. 50-58 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), 5(5))

Revision of administrator's proposals

54 (1) This paragraph applies where—

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(a) an administrator's proposals have been approved (with or without modification) at an initial creditors' meeting,
(b) the administrator proposes a revision to the proposals, and
(c) the administrator thinks that the proposed revision is substantial.

(2) The administrator shall—
(a) summon a creditors' meeting,
(b) send a statement in the prescribed form of the proposed revision with the notice of the meeting sent to each creditor,
(c) send a copy of the statement, within the prescribed period, to each member of the company of whose address he is aware, and
(d) present a copy of the statement to the meeting.

(3) The administrator shall be taken to have complied with sub-paragraph (2)(c) if he publishes a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to a specified address.

(4) A notice under sub-paragraph (3) must be published—
(a) in the prescribed manner, and
(b) within the prescribed period.

(5) A creditors' meeting to which a proposed revision is presented shall consider it and may—
(a) approve it without modification, or
(b) approve it with modification to which the administrator consents.

(6) After the conclusion of a creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—
(a) the court,
(b) the registrar of companies, and
(c) such other persons as may be prescribed.

(7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (6).

Modifications etc. (not altering text)

C889 Sch. B1 para. 50-58 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), 5(5))

Failure to obtain approval of administrator's proposals

55 (1) This paragraph applies where an administrator reports to the court that—
(a) an initial creditors' meeting has failed to approve the administrator's proposals presented to it, or
(b) a creditors' meeting has failed to approve a revision of the administrator's proposals presented to it.

(2) The court may—

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(a) provide that the appointment of an administrator shall cease to have effect from a specified time;
(b) adjourn the hearing conditionally or unconditionally;
(c) make an interim order;
(d) make an order on a petition for winding up suspended by virtue of paragraph 40(1)(b);
(e) make any other order (including an order making consequential provision) that the court thinks appropriate.

Modifications etc. (not altering text)

C890 Sch. B1 para. 50-58 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)**)

Further creditors' meetings

56 (1) The administrator of a company shall summon a creditors' meeting if—
(a) it is requested in the prescribed manner by creditors of the company whose debts amount to at least 10% of the total debts of the company, or
(b) he is directed by the court to summon a creditors' meeting.

(2) An administrator commits an offence if he fails without reasonable excuse to summon a creditors' meeting as required by this paragraph.

Modifications etc. (not altering text)

C891 Sch. B1 para. 50-58 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)**)

Creditors' committee

57 (1) A creditors' meeting may establish a creditors' committee.

(2) A creditors' committee shall carry out functions conferred on it by or under this Act.

(3) A creditors' committee may require the administrator—
(a) to attend on the committee at any reasonable time of which he is given at least seven days' notice, and
(b) to provide the committee with information about the exercise of his functions.

Modifications etc. (not altering text)

C892 Sch. B1 paras. 50-58 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

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(as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)**)

Correspondence instead of creditors' meeting

58 (1) Anything which is required or permitted by or under this Schedule to be done at a creditors' meeting may be done by correspondence between the administrator and creditors—

(a) in accordance with the rules, and

(b) subject to any prescribed condition.

(2) A reference in this Schedule to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in reliance on sub-paragraph (1).

(3) A requirement to hold a creditors' meeting is satisfied by conducting correspondence in accordance with this paragraph.

Modifications etc. (not altering text)

C893 Sch. B1 para. 50-58 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

FUNCTIONS OF ADMINISTRATOR

General powers

59 (1) The administrator of a company may do anything necessary or expedient for the management of the affairs, business and property of the company.

(2) A provision of this Schedule which expressly permits the administrator to do a specified thing is without prejudice to the generality of sub-paragraph (1).

(3) A person who deals with the administrator of a company in good faith and for value need not inquire whether the administrator is acting within his powers.

Modifications etc. (not altering text)

C894 Sch. B1 para. 59 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

60 The administrator of a company has the powers specified in Schedule 1 to this Act.

Modifications etc. (not altering text)

C895 Sch. B1 para. 60 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

61 The administrator of a company—

(a) may remove a director of the company, and

(b) may appoint a director of the company (whether or not to fill a vacancy).

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Modifications etc. (not altering text)

C896 Sch. B1 para. 61 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

62 The administrator of a company may call a meeting of members or creditors of the company.

Modifications etc. (not altering text)

C897 Sch. B1 para. 62 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)**)

63 The administrator of a company may apply to the court for directions in connection with his functions.

Modifications etc. (not altering text)

C898 Sch. B1 para. 63 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

64 (1) A company in administration or an officer of a company in administration may not exercise a management power without the consent of the administrator.

(2) For the purpose of sub-paragraph (1)—

(a) "management power" means a power which could be exercised so as to interfere with the exercise of the administrator's powers,

(b) it is immaterial whether the power is conferred by an enactment or an instrument, and

(c) consent may be general or specific.

Modifications etc. (not altering text)

C899 Sch. B1 para. 64 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

Distribution

65 (1) The administrator of a company may make a distribution to a creditor of the company.

(2) Section 175 shall apply in relation to a distribution under this paragraph as it applies in relation to a winding up.

(3) A payment may not be made by way of distribution under this paragraph to a creditor of the company who is neither secured nor preferential unless the court gives permission.

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Modifications etc. (not altering text)

C900 Sch. B1 para. 65 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

C901 Sch. B1 para. 65(1) restricted (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(5)**

C902 Sch. B1 para. 65(2) applied 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)**)

66 The administrator of a company may make a payment otherwise than in accordance with paragraph 65 or paragraph 13 of Schedule 1 if he thinks it likely to assist achievement of the purpose of administration.

Modifications etc. (not altering text)

C903 Sch. B1 para. 66 restricted (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(5)**

C904 Sch. B1 para. 66 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

General duties

67 The administrator of a company shall on his appointment take custody or control of all the property to which he thinks the company is entitled.

Modifications etc. (not altering text)

C905 Sch. B1 para. 67 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

68 (1) Subject to sub-paragraph (2), the administrator of a company shall manage its affairs, business and property in accordance with—

(a) any proposals approved under paragraph 53,

(b) any revision of those proposals which is made by him and which he does not consider substantial, and

(c) any revision of those proposals approved under paragraph 54.

(2) If the court gives directions to the administrator of a company in connection with any aspect of his management of the company's affairs, business or property, the administrator shall comply with the directions.

(3) The court may give directions under sub-paragraph (2) only if—

(a) no proposals have been approved under paragraph 53,

(b) the directions are consistent with any proposals or revision approved under paragraph 53 or 54,

(c) the court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under paragraph 53 or 54, or

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(d) the court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under paragraph 53 or 54.

Modifications etc. (not altering text)

C906 Sch. B1 para. 68 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

Administrator as agent of company

69 In exercising his functions under this Schedule the administrator of a company acts as its agent.

Modifications etc. (not altering text)

C907 Sch. B1 para. 69 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

Charged property: floating charge

70 (1) The administrator of a company may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge.

(2) Where property is disposed of in reliance on sub-paragraph (1) the holder of the floating charge shall have the same priority in respect of acquired property as he had in respect of the property disposed of.

(3) In sub-paragraph (2) "acquired property" means property of the company which directly or indirectly represents the property disposed of.

Modifications etc. (not altering text)

C908 Sch. B1 para. 70 excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 8(1)(b)**

C909 Sch. B1 para. 70 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

Charged property: non-floating charge

71 (1) The court may by order enable the administrator of a company to dispose of property which is subject to a security (other than a floating charge) as if it were not subject to the security.

(2) An order under sub-paragraph (1) may be made only—

(a) on the application of the administrator, and

(b) where the court thinks that disposal of the property would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums secured by the security—

(a) the net proceeds of disposal of the property, and

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(b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property at market value.

(4) If an order under this paragraph relates to more than one security, application of money under sub-paragraph (3) shall be in the order of the priorities of the securities.

(5) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar of companies before the end of the period of 14 days starting with the date of the order.

(6) An administrator commits an offence if he fails to comply with sub-paragraph (5) without reasonable excuse.

Modifications etc. (not altering text)

C910 Sch. B1 para. 71 excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 8(1)(b)**

C911 Sch. B1 para. 71 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

Hire-purchase property

72 (1) The court may by order enable the administrator of a company to dispose of goods which are in the possession of the company under a hire-purchase agreement as if all the rights of the owner under the agreement were vested in the company.

(2) An order under sub-paragraph (1) may be made only—

(a) on the application of the administrator, and

(b) where the court thinks that disposal of the goods would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums payable under the hire-purchase agreement—

(a) the net proceeds of disposal of the goods, and

(b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the goods at market value.

(4) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar of companies before the end of the period of 14 days starting with the date of the order.

(5) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (4).

Modifications etc. (not altering text)

C912 Sch. B1 para. 72 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

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Protection for secured or preferential creditor

73 (1) An administrator's statement of proposals under paragraph 49 may not include any action which—
- (a) affects the right of a secured creditor of the company to enforce his security,
- (b) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts, or
- (c) would result in one preferential creditor of the company being paid a smaller proportion of his debt than another.

(2) Sub-paragraph (1) does not apply to—
- (a) action to which the relevant creditor consents,
- (b) a proposal for a voluntary arrangement under Part I of this Act (although this sub-paragraph is without prejudice to section 4(3)), or
- (c) a proposal for a compromise or arrangement to be sanctioned under section 425 of the Companies Act (compromise with creditors or members).

(3) The reference to a statement of proposals in sub-paragraph (1) includes a reference to a statement as revised or modified.

Challenge to administrator's conduct of company

74 (1) A creditor or member of a company in administration may apply to the court claiming that—
- (a) the administrator is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors), or
- (b) the administrator proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors).

(2) A creditor or member of a company in administration may apply to the court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.

(3) The court may—
- (a) grant relief;
- (b) dismiss the application;
- (c) adjourn the hearing conditionally or unconditionally;
- (d) make an interim order;
- (e) make any other order it thinks appropriate.

(4) In particular, an order under this paragraph may—
- (a) regulate the administrator's exercise of his functions;
- (b) require the administrator to do or not do a specified thing;
- (c) require a creditors' meeting to be held for a specified purpose;
- (d) provide for the appointment of an administrator to cease to have effect;
- (e) make consequential provision.

(5) An order may be made on a claim under sub-paragraph (1) whether or not the action complained of—
- (a) is within the administrator's powers under this Schedule;

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(b) was taken in reliance on an order under paragraph 71 or 72.

(6) An order may not be made under this paragraph if it would impede or prevent the implementation of—

(a) a voluntary arrangement approved under Part I,

(b) a compromise or arrangement sanctioned under section 425 of the Companies Act (compromise with creditors and members), or

(c) proposals or a revision approved under paragraph 53 or 54 more than 28 days before the day on which the application for the order under this paragraph is made.

Misfeasance

75 (1) The court may examine the conduct of a person who—

(a) is or purports to be the administrator of a company, or

(b) has been or has purported to be the administrator of a company.

(2) An examination under this paragraph may be held only on the application of—

(a) the official receiver,

(b) the administrator of the company,

(c) the liquidator of the company,

(d) a creditor of the company, or

(e) a contributory of the company.

(3) An application under sub-paragraph (2) must allege that the administrator—

(a) has misapplied or retained money or other property of the company,

(b) has become accountable for money or other property of the company,

(c) has breached a fiduciary or other duty in relation to the company, or

(d) has been guilty of misfeasance.

(4) On an examination under this paragraph into a person's conduct the court may order him—

(a) to repay, restore or account for money or property;

(b) to pay interest;

(c) to contribute a sum to the company's property by way of compensation for breach of duty or misfeasance.

(5) In sub-paragraph (3) "administrator" includes a person who purports or has purported to be a company's administrator.

(6) An application under sub-paragraph (2) may be made in respect of an administrator who has been discharged under paragraph 98 only with the permission of the court.

Modifications etc. (not altering text)

C913 Sch. B1 para. 75 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

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ENDING ADMINISTRATION

Automatic end of administration

76 (1) The appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.

(2) But—

(a) on the application of an administrator the court may by order extend his term of office for a specified period, and

(b) an administrator's term of office may be extended for a specified period not exceeding six months by consent.

77 (1) An order of the court under paragraph 76—

(a) may be made in respect of an administrator whose term of office has already been extended by order or by consent, but

(b) may not be made after the expiry of the administrator's term of office.

(2) Where an order is made under paragraph 76 the administrator shall as soon as is reasonably practicable notify the registrar of companies.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

78 (1) In paragraph 76(2)(b) "consent" means consent of—

(a) each secured creditor of the company, and

(b) if the company has unsecured debts, creditors whose debts amount to more than 50% of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(2) But where the administrator has made a statement under paragraph 52(1)(b) "consent" means—

(a) consent of each secured creditor of the company, or

(b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—

(i) each secured creditor of the company, and

(ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(3) Consent for the purposes of paragraph 76(2)(b) may be—

(a) written, or

(b) signified at a creditors' meeting.

(4) An administrator's term of office—

(a) may be extended by consent only once,

(b) may not be extended by consent after extension by order of the court, and

(c) may not be extended by consent after expiry.

(5) Where an administrator's term of office is extended by consent he shall as soon as is reasonably practicable—

(a) file notice of the extension with the court, and

(b) notify the registrar of companies.

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(6) An administrator who fails without reasonable excuse to comply with sub-paragraph (5) commits an offence.

Court ending administration on application of administrator

79 (1) On the application of the administrator of a company the court may provide for the appointment of an administrator of the company to cease to have effect from a specified time.

(2) The administrator of a company shall make an application under this paragraph if—
- (a) he thinks the purpose of administration cannot be achieved in relation to the company,
- (b) he thinks the company should not have entered administration, or
- (c) a creditors' meeting requires him to make an application under this paragraph.

(3) The administrator of a company shall make an application under this paragraph if—
- (a) the administration is pursuant to an administration order, and
- (b) the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company.

(4) On an application under this paragraph the court may—
- (a) adjourn the hearing conditionally or unconditionally;
- (b) dismiss the application;
- (c) make an interim order;
- (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

Termination of administration where objective achieved

80 (1) This paragraph applies where an administrator of a company is appointed under paragraph 14 or 22.

(2) If the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company he may file a notice in the prescribed form—
- (a) with the court, and
- (b) with the registrar of companies.

(3) The administrator's appointment shall cease to have effect when the requirements of sub-paragraph (2) are satisfied.

(4) Where the administrator files a notice he shall within the prescribed period send a copy to every creditor of the company of whose claim and address he is aware.

(5) The rules may provide that the administrator is taken to have complied with sub-paragraph (4) if before the end of the prescribed period he publishes in the prescribed manner a notice undertaking to provide a copy of the notice under sub-paragraph (2) to any creditor of the company who applies in writing to a specified address.

(6) An administrator who fails without reasonable excuse to comply with sub-paragraph (4) commits an offence.

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Modifications etc. (not altering text)

C914 Sch. B1 para. 80 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

Court ending administration on application of creditor

81 (1) On the application of a creditor of a company the court may provide for the appointment of an administrator of the company to cease to have effect at a specified time.

(2) An application under this paragraph must allege an improper motive—

(a) in the case of an administrator appointed by administration order, on the part of the applicant for the order, or

(b) in any other case, on the part of the person who appointed the administrator.

(3) On an application under this paragraph the court may—

(a) adjourn the hearing conditionally or unconditionally;

(b) dismiss the application;

(c) make an interim order;

(d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

Public interest winding-up

82 (1) This paragraph applies where a winding-up order is made for the winding up of a company in administration on a petition presented under—

(a) section 124A (public interest), or

F543 [(aa) section 124B (SEs),]

(b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).

(2) This paragraph also applies where a provisional liquidator of a company in administration is appointed following the presentation of a petition under any of the provisions listed in sub-paragraph (1).

(3) The court shall order—

(a) that the appointment of the administrator shall cease to have effect, or

(b) that the appointment of the administrator shall continue to have effect.

(4) If the court makes an order under sub-paragraph (3)(b) it may also—

(a) specify which of the powers under this Schedule are to be exercisable by the administrator, and

(b) order that this Schedule shall have effect in relation to the administrator with specified modifications.

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Textual Amendments

F543 Sch. B1 para. 82(1)(aa) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 73(4)(c)**

Moving from administration to creditors' voluntary liquidation

83 (1) This paragraph applies in England and Wales where the administrator of a company thinks—
- (a) that the total amount which each secured creditor of the company is likely to receive has been paid to him or set aside for him, and
- (b) that a distribution will be made to unsecured creditors of the company (if there are any).

(2) This paragraph applies in Scotland where the administrator of a company thinks—
- (a) that each secured creditor of the company will receive payment in respect of his debt, and
- (b) that a distribution will be made to unsecured creditors (if there are any).

(3) The administrator may send to the registrar of companies a notice that this paragraph applies.

(4) On receipt of a notice under sub-paragraph (3) the registrar shall register it.

(5) If an administrator sends a notice under sub-paragraph (3) he shall as soon as is reasonably practicable—
- (a) file a copy of the notice with the court, and
- (b) send a copy of the notice to each creditor of whose claim and address he is aware.

(6) On the registration of a notice under sub-paragraph (3)—
- (a) the appointment of an administrator in respect of the company shall cease to have effect, and
- (b) the company shall be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the notice is registered.

(7) The liquidator for the purposes of the winding up shall be—
- (a) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period, or
- (b) if no person is nominated under paragraph (a), the administrator.

(8) In the application of Part IV to a winding up by virtue of this paragraph—
- (a) section 85 shall not apply,
- (b) section 86 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (3),
- (c) section 89 does not apply,
- (d) sections 98, 99 and 100 shall not apply,
- (e) section 129 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (3), and

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(f) any creditors' committee which is in existence immediately before the company ceases to be in administration shall continue in existence after that time as if appointed as a liquidation committee under section 101.

Moving from administration to dissolution

84 (1) If the administrator of a company thinks that the company has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the registrar of companies.

(2) The court may on the application of the administrator of a company disapply sub-paragraph (1) in respect of the company.

(3) On receipt of a notice under sub-paragraph (1) the registrar shall register it.

(4) On the registration of a notice in respect of a company under sub-paragraph (1) the appointment of an administrator of the company shall cease to have effect.

(5) If an administrator sends a notice under sub-paragraph (1) he shall as soon as is reasonably practicable—

(a) file a copy of the notice with the court, and

(b) send a copy of the notice to each creditor of whose claim and address he is aware.

(6) At the end of the period of three months beginning with the date of registration of a notice in respect of a company under sub-paragraph (1) the company is deemed to be dissolved.

(7) On an application in respect of a company by the administrator or another interested person the court may—

(a) extend the period specified in sub-paragraph (6),

(b) suspend that period, or

(c) disapply sub-paragraph (6).

(8) Where an order is made under sub-paragraph (7) in respect of a company the administrator shall as soon as is reasonably practicable notify the registrar of companies.

(9) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

Modifications etc. (not altering text)

C915 Sch. B1 para. 84 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(6)(a)**)

Discharge of administration order where administration ends

85 (1) This paragraph applies where—

(a) the court makes an order under this Schedule providing for the appointment of an administrator of a company to cease to have effect, and

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(b) the administrator was appointed by administration order.

(2) The court shall discharge the administration order.

Modifications etc. (not altering text)

C916 Sch. B1 para. 85 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

Notice to Companies Registrar where administration ends

86 (1) This paragraph applies where the court makes an order under this Schedule providing for the appointment of an administrator to cease to have effect.

(2) The administrator shall send a copy of the order to the registrar of companies within the period of 14 days beginning with the date of the order.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

Modifications etc. (not altering text)

C917 Sch. B1 para. 86 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

REPLACING ADMINISTRATOR

Resignation of administrator

87 (1) An administrator may resign only in prescribed circumstances.

(2) Where an administrator may resign he may do so only—

(a) in the case of an administrator appointed by administration order, by notice in writing to the court,

(b) in the case of an administrator appointed under paragraph 14, by notice in writing to the **[**[F544]holder of the floating charge by virtue of which the appointment was made**]**,

(c) in the case of an administrator appointed under paragraph 22(1), by notice in writing to the company, or

(d) in the case of an administrator appointed under paragraph 22(2), by notice in writing to the directors of the company.

Textual Amendments

F544 Words in Sch. B1 para. 87(2)(b) substituted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), **art. 2(4)**

Modifications etc. (not altering text)

C918 Sch. B1 para. 87 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

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Removal of administrator from office

88 The court may by order remove an administrator from office.

Modifications etc. (not altering text)

C919 Sch. B1 para. 88 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

Administrator ceasing to be qualified

89 (1) The administrator of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

(2) Where an administrator vacates office by virtue of sub-paragraph (1) he shall give notice in writing—

(a) in the case of an administrator appointed by administration order, to the court,

(b) in the case of an administrator appointed under paragraph 14, to the **[**[F545]holder of the floating charge by virtue of which the appointment was made**]**,

(c) in the case of an administrator appointed under paragraph 22(1), to the company, or

(d) in the case of an administrator appointed under paragraph 22(2), to the directors of the company.

(3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

Textual Amendments

F545 Words in Sch. B1 para. 89(2)(b) substituted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), **art. 2(5)**

Modifications etc. (not altering text)

C920 Sch. B1 para. 89 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

Supplying vacancy in office of administrator

90 Paragraphs 91 to 95 apply where an administrator—

(a) dies,

(b) resigns,

(c) is removed from office under paragraph 88, or

(d) vacates office under paragraph 89.

Modifications etc. (not altering text)

C921 Sch. B1 para. 90 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

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91 (1) Where the administrator was appointed by administration order, the court may replace the administrator on an application under this sub-paragraph made by—
- (a) a creditors' committee of the company,
- (b) the company,
- (c) the directors of the company,
- (d) one or more creditors of the company, or
- (e) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remains in office.

(2) But an application may be made in reliance on sub-paragraph (1)(b) to (d) only where—
- (a) there is no creditors' committee of the company,
- (b) the court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement, or
- (c) the court is satisfied that for another reason it is right for the application to be made.

Modifications etc. (not altering text)

C922 Sch. B1 para. 91 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

92 Where the administrator was appointed under paragraph 14 the holder of the floating charge by virtue of which the appointment was made may replace the administrator.

93 (1) Where the administrator was appointed under paragraph 22(1) by the company it may replace the administrator.

(2) A replacement under this paragraph may be made only—
- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
- (b) where consent is withheld, with the permission of the court.

94 (1) Where the administrator was appointed under paragraph 22(2) the directors of the company may replace the administrator.

(2) A replacement under this paragraph may be made only—
- (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
- (b) where consent is withheld, with the permission of the court.

95 The court may replace an administrator on the application of a person listed in paragraph 91(1) if the court—
- (a) is satisfied that a person who is entitled to replace the administrator under any of paragraphs 92 to 94 is not taking reasonable steps to make a replacement, or
- (b) that for another reason it is right for the court to make the replacement.

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Substitution of administrator: competing floating charge-holder

96 (1) This paragraph applies where an administrator of a company is appointed under paragraph 14 by the holder of a qualifying floating charge in respect of the company's property.

(2) The holder of a prior qualifying floating charge in respect of the company's property may apply to the court for the administrator to be replaced by an administrator nominated by the holder of the prior floating charge.

(3) One floating charge is prior to another for the purposes of this paragraph if—

(a) it was created first, or

(b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.

(4) Sub-paragraph (3) shall have effect in relation to Scotland as if the following were substituted for paragraph (a)—

(") it has priority of ranking in accordance with section 464(4)(b) of the Companies Act 1985 (c. 6), ".

Modifications etc. (not altering text)

C923 Sch. B1 para. 96 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

Substitution of administrator appointed by company or directors: creditors' meeting

97 (1) This paragraph applies where—

(a) an administrator of a company is appointed by a company or directors under paragraph 22, and

(b) there is no holder of a qualifying floating charge in respect of the company's property.

(2) A creditors' meeting may replace the administrator.

(3) A creditors' meeting may act under sub-paragraph (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.

Vacation of office: discharge from liability

98 (1) Where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.

(2) The discharge provided by sub-paragraph (1) takes effect—

(a) in the case of an administrator who dies, on the filing with the court of notice of his death,

(b) in the case of an administrator appointed under paragraph 14 or 22, at a time appointed by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors, or

(c) in any case, at a time specified by the court.

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(3) For the purpose of the application of sub-paragraph (2)(b) in a case where the administrator has made a statement under paragraph 52(1)(b), a resolution shall be taken as passed if (and only if) passed with the approval of—
- (a) each secured creditor of the company, or
- (b) if the administrator has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors—
  - (i) each secured creditor of the company, and
  - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(4) Discharge—
- (a) applies to liability accrued before the discharge takes effect, and
- (b) does not prevent the exercise of the court's powers under paragraph 75.

Modifications etc. (not altering text)

C924 Sch. B1 para. 98 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)**)

Vacation of office: charges and liabilities

99 (1) This paragraph applies where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect).

(2) In this paragraph—

"the former administrator" means the person referred to in sub-paragraph (1), and

"cessation" means the time when he ceases to be the company's administrator.

(3) The former administrator's remuneration and expenses shall be—
- (a) charged on and payable out of property of which he had custody or control immediately before cessation, and
- (b) payable in priority to any security to which paragraph 70 applies.

(4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—
- (a) charged on and payable out of property of which the former administrator had custody or control immediately before cessation, and
- (b) payable in priority to any charge arising under sub-paragraph (3).

(5) Sub-paragraph (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—
- (a) action taken within the period of 14 days after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract,

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(b) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment, and

(c) no account shall be taken of a liability to make a payment other than wages or salary.

(6) In sub-paragraph (5)(c) "wages or salary" includes—

(a) a sum payable in respect of a period of holiday (for which purpose the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued),

(b) a sum payable in respect of a period of absence through illness or other good cause,

(c) a sum payable in lieu of holiday,

(d) in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security, and

(e) a contribution to an occupational pension scheme.

Modifications etc. (not altering text)

C925 Sch. B1 para. 99 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

C926 Sch. B1 para. 99(3) applied by The Financial Market and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 14(5)(a)(iii) (as substituted (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 4(d)(iii)**)

GENERAL

Joint and concurrent administrators

100 (1) In this Schedule—

(a) a reference to the appointment of an administrator of a company includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator of a company, and

(b) a reference to the appointment of a person as administrator of a company includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator of a company.

(2) The appointment of a number of persons to act as administrator of a company must specify—

(a) which functions (if any) are to be exercised by the persons appointed acting jointly, and

(b) which functions (if any) are to be exercised by any or all of the persons appointed.

Modifications etc. (not altering text)

C927 Sch. B1 paras. 100-103 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

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101 (1) This paragraph applies where two or more persons are appointed to act jointly as the administrator of a company.

(2) A reference to the administrator of the company is a reference to those persons acting jointly.

(3) But a reference to the administrator of a company in paragraphs 87 to 99 of this Schedule is a reference to any or all of the persons appointed to act jointly.

(4) Where an offence of omission is committed by the administrator, each of the persons appointed to act jointly—

(a) commits the offence, and

(b) may be proceeded against and punished individually.

(5) The reference in paragraph 45(1)(a) to the name of the administrator is a reference to the name of each of the persons appointed to act jointly.

(6) Where persons are appointed to act jointly in respect of only some of the functions of the administrator of a company, this paragraph applies only in relation to those functions.

Modifications etc. (not altering text)

C928 Sch. B1 paras. 100-103 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

102 (1) This paragraph applies where two or more persons are appointed to act concurrently as the administrator of a company.

(2) A reference to the administrator of a company in this Schedule is a reference to any of the persons appointed (or any combination of them).

Modifications etc. (not altering text)

C929 Sch. B1 paras. 100-103 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

103 (1) Where a company is in administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the company.

(2) Where a company entered administration by administration order, an appointment under sub-paragraph (1) must be made by the court on the application of—

(a) a person or group listed in paragraph 12(1)(a) to (e), or

(b) the person or persons acting as the administrator of the company.

(3) Where a company entered administration by virtue of an appointment under paragraph 14, an appointment under sub-paragraph (1) must be made by—

(a) the holder of the floating charge by virtue of which the appointment was made, or

(b) the court on the application of the person or persons acting as the administrator of the company.

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(4) Where a company entered administration by virtue of an appointment under paragraph 22(1), an appointment under sub-paragraph (1) above must be made either by the court on the application of the person or persons acting as the administrator of the company or—

(a) by the company, and

(b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the court.

(5) Where a company entered administration by virtue of an appointment under paragraph 22(2), an appointment under sub-paragraph (1) must be made either by the court on the application of the person or persons acting as the administrator of the company or—

(a) by the directors of the company, and

(b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the court.

(6) An appointment under sub-paragraph (1) may be made only with the consent of the person or persons acting as the administrator of the company.

Modifications etc. (not altering text)

C930 Sch. B1 paras. 100-103 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

Presumption of validity

104 An act of the administrator of a company is valid in spite of a defect in his appointment or qualification.

Modifications etc. (not altering text)

C931 Sch. B1 para. 104 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

Majority decision of directors

105 A reference in this Schedule to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company.

Penalties

106 (1) A person who is guilty of an offence under this Schedule is liable to a fine (in accordance with section 430 and Schedule 10).

(2) A person who is guilty of an offence under any of the following paragraphs of this Schedule is liable to a daily default fine (in accordance with section 430 and Schedule 10)—

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(a) paragraph 20,
(b) paragraph 32,
(c) paragraph 46,
(d) paragraph 48,
(e) paragraph 49,
(f) paragraph 51,
(g) paragraph 53,
(h) paragraph 54,
(i) paragraph 56,
(j) paragraph 71,
(k) paragraph 72,
(l) paragraph 77,
(m) paragraph 78,
(n) paragraph 80,
(o) paragraph 84,
(p) paragraph 86, and
(q) paragraph 89.

Modifications etc. (not altering text)

C932 Sch. B1 para. 106 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)**)

Extension of time limit

107 (1) Where a provision of this Schedule provides that a period may be varied in accordance with this paragraph, the period may be varied in respect of a company—
(a) by the court, and
(b) on the application of the administrator.

(2) A time period may be extended in respect of a company under this paragraph—
(a) more than once, and
(b) after expiry.

Modifications etc. (not altering text)

C933 Sch. B1 paras. 107-109 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)**)

108 (1) A period specified in paragraph 49(5), 50(1)(b) or 51(2) may be varied in respect of a company by the administrator with consent.

(2) In sub-paragraph (1) "consent" means consent of—
(a) each secured creditor of the company, and

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(b) if the company has unsecured debts, creditors whose debts amount to more than 50% of the company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(3) But where the administrator has made a statement under paragraph 52(1)(b) "consent" means—

(a) consent of each secured creditor of the company, or

(b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—

(i) each secured creditor of the company, and

(ii) preferential creditors whose debts amount to more than 50% of the total preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.

(4) Consent for the purposes of sub-paragraph (1) may be—

(a) written, or

(b) signified at a creditors' meeting.

(5) The power to extend under sub-paragraph (1)—

(a) may be exercised in respect of a period only once,

(b) may not be used to extend a period by more than 28 days,

(c) may not be used to extend a period which has been extended by the court, and

(d) may not be used to extend a period after expiry.

Modifications etc. (not altering text)

C934 Sch. B1 paras. 107-109 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)**

109 Where a period is extended under paragraph 107 or 108, a reference to the period shall be taken as a reference to the period as extended.

Modifications etc. (not altering text)

C935 Sch. B1 paras. 107-109 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)**)

Amendment of provision about time

110 (1) The Secretary of State may by order amend a provision of this Schedule which—

(a) requires anything to be done within a specified period of time,

(b) prevents anything from being done after a specified time, or

(c) requires a specified minimum period of notice to be given.

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(2) An order under this paragraph—

(a) must be made by statutory instrument, and

(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C936 Sch. B1 para. 110 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

Interpretation

111 (1) In this Schedule—

"administrative receiver" has the meaning given by section 251,

"administrator" has the meaning given by paragraph 1 and, where the context requires, includes a reference to a former administrator,

F546 . . . . . .

"correspondence" includes correspondence by telephonic or other electronic means,

"creditors' meeting" has the meaning given by paragraph 50,

"enters administration" has the meaning given by paragraph 1,

"floating charge" means a charge which is a floating charge on its creation,

"in administration" has the meaning given by paragraph 1,

"hire-purchase agreement" includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

"holder of a qualifying floating charge" in respect of a company's property has the meaning given by paragraph 14,

"market value" means the amount which would be realised on a sale of property in the open market by a willing vendor,

"the purpose of administration" means an objective specified in paragraph 3, and

"unable to pay its debts" has the meaning given by section 123.

[F547(1A) In this Schedule, "company" means—

(a) a company within the meaning of section 735(1) of the Companies Act 1985,

(b) a company incorporated in an EEA State other than the United Kingdom, or

(c) a company not incorporated in an EEA State but having its centre of main interests in a member State other than Denmark.

(1B) In sub-paragraph (1A), in relation to a company, "centre of main interests" has the same meaning as in the EC Regulation and, in the absence of proof to the contrary, is presumed to be the place of its registered office (within the meaning of that Regulation).**]**

(2) A reference in this Schedule to a thing in writing includes a reference to a thing in electronic form.

(3) In this Schedule a reference to action includes a reference to inaction.

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Insolvency Act 1986 is up to date with all changes known to be in force on or before 18 July 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)*

Textual Amendments

F546 In Sch. B1 para. 111(1) definition of "company" omitted (13.4.2005) by virtue of The Insolvency Act 1986 (Amendment) Regulations 2005 (S.I. 2005/879), **reg. 2(4)(a)** (with reg. 3)

F547 Sch. B1 para. 111(1A)(1B) inserted (13.4.2005) by The Insolvency Act 1986 (Amendment) Regulations 2005 (S.I. 2005/879), **reg. 2(4)(b)** (with reg. 3)

Modifications etc. (not altering text)

C937 Sch. B1 para. 111 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

Non-UK companies

[
F548 111A A company incorporated outside the United Kingdom that has a principal place of business in Northern Ireland may not enter administration under this Schedule unless it also has a principal place of business in England and Wales or Scotland (or both in England and Wales and in Scotland).**]**

Textual Amendments

F548 Sch. B1 para. 111A inserted (13.4.2005) by The Insolvency Act 1986 (Amendment) Regulations 2005 (S.I. 2005/879), **reg. 2(4)(c)** (with reg. 3)

Scotland

112 In the application of this Schedule to Scotland—

(a) a reference to filing with the court is a reference to lodging in court, and

(b) a reference to a charge is a reference to a right in security.

Modifications etc. (not altering text)

C938 Sch. B1 paras. 112-116 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

113 Where property in Scotland is disposed of under paragraph 70 or 71, the administrator shall grant to the disponee an appropriate document of transfer or conveyance of the property, and—

(a) that document, or

(b) recording, intimation or registration of that document (where recording, intimation or registration of the document is a legal requirement for completion of title to the property),

has the effect of disencumbering the property of or, as the case may be, freeing the property from, the security.

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Modifications etc. (not altering text)

C939 Sch. B1 paras. 112-116 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

114 In Scotland, where goods in the possession of a company under a hire-purchase agreement are disposed of under paragraph 72, the disposal has the effect of extinguishing as against the disponee all rights of the owner of the goods under the agreement.

Modifications etc. (not altering text)

C940 Sch. B1 paras. 112-116 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

115 (1) In Scotland, the administrator of a company may make, in or towards the satisfaction of the debt secured by the floating charge, a payment to the holder of a floating charge which has attached to the property subject to the charge.

(2) In Scotland, where the administrator thinks that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a), he may file a notice to that effect with the registrar of companies.

(3) On delivery of the notice to the registrar of companies, any floating charge granted by the company shall, unless it has already so attached, attach to the property which is subject to the charge and that attachment shall have effect as if each floating charge is a fixed security over the property to which it has attached.

Modifications etc. (not altering text)

C941 Sch. B1 paras. 112-116 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

116 In Scotland, the administrator in making any payment in accordance with paragraph 115 shall make such payment subject to the rights of any of the following categories of persons (which rights shall, except to the extent provided in any instrument, have the following order of priority)—

(a) the holder of any fixed security which is over property subject to the floating charge and which ranks prior to, or pari passu with, the floating charge,

(b) creditors in respect of all liabilities and expenses incurred by or on behalf of the administrator,

(c) the administrator in respect of his liabilities, expenses and remuneration and any indemnity to which he is entitled out of the property of the company,

(d) the preferential creditors entitled to payment in accordance with paragraph 65,

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(e) the holder of the floating charge in accordance with the priority of that charge in relation to any other floating charge which has attached, and

(f) the holder of a fixed security, other than one referred to in paragraph (a), which is over property subject to the floating charge.**]**

Modifications etc. (not altering text)

C942 Sch. B1 paras. 112-116 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

SCHEDULE 1

Sections 14, 42.

POWERS OF ADMINISTRATOR OR ADMINISTRATIVE RECEIVER

Modifications etc. (not altering text)

C943 Sch. 1 modified (15.7.2003) by Greater London Authority Act 1999 (c. 29), ss. 220(3), 425, Sch. 14 paras. 11, 19 (with Sch. 12 para. 9(1)); S.I. 2003/1920, **art. 2(b)**

C944 Sch. 1 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

1 Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.

2 Power to sell or otherwise dispose of the property of the company by public auction or private contract or, in Scotland, to sell, **[**[F549]feu,**]** hire out or otherwise dispose of the property of the company by public roup or private bargain.

Textual Amendments

F549 Word in Sch. 1 para. 2 repealed (S.) (28.11.2004) by 2000 asp 5, ss. 71, 76(2), 77(2), Sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

3 Power to raise or borrow money and grant security therefor over the property of the company.

4 Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.

5 Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.

6 Power to refer to arbitration any question affecting the company.

7 Power to effect and maintain insurances in respect of the business and property of the company.

8 Power to use the company's seal.

9 Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.

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10 Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.

11 Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.

12 Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.

13 Power to make any payment which is necessary or incidental to the performance of his functions.

14 Power to carry on the business of the company.

15 Power to establish subsidiaries of the company.

16 Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.

17 Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.

18 Power to make any arrangement or compromise on behalf of the company.

19 Power to call up any uncalled capital of the company.

20 Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.

21 Power to present or defend a petition for the winding up of the company.

22 Power to change the situation of the company's registered office.

23 Power to do all other things incidental to the exercise of the foregoing powers.

SCHEDULE 2

Section 55.

POWERS OF A SCOTTISH RECEIVER (ADDITIONAL TO THOSE CONFERRED ON HIM BY THE INSTRUMENT OF CHARGE)

Modifications etc. (not altering text)
C945 Sch. 2 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**
C946 Sch. 10 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

1 Power to take possession of, collect and get in the property from the company or a liquidator thereof or any other person, and for that purpose, to take such proceedings as may seem to him expedient.

2 Power to sell, **[**[F550]feu,**]** hire out or otherwise dispose of the property by public roup or private bargain and with or without advertisement.

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Insolvency Act 1986 is up to date with all changes known to be in force on or before 18 July 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)*

Textual Amendments

F550 Word in Sch. 2 para. 2 repealed (S.) (28.11.2004) by 2000 asp 5, ss. 71, 76(2), 77(2), Sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, **art. 2**

3 Power to raise or borrow money and grant security therefor over the property.

4 Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.

5 Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.

6 Power to refer to arbitration all questions affecting the company.

7 Power to effect and maintain insurances in respect of the business and property of the company.

8 Power to use the company's seal.

9 Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.

10 Power to to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.

11 Power to to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent, and power to employ and dismiss employees.

12 Power to do all such things (including the carrying out of works), as may be necessary for the realisation of the property.

13 Power to make any payment which is necessary or incidental to the performance of his functions.

14 Power to carry on the business of the company or any part of it.

15 Power to grant or accept a surrender of a lease or tenancy of any of the property, and to take a lease or tenancy of any property required or convenient for the business of the company.

16 Power to make any arrangement or compromise on behalf of the company.

17 Power to call up any uncalled capital of the company.

Modifications etc. (not altering text)

C947 Sch. 2 para. 17 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

18 Power to to establish subsidiaries of the company.

19 Power to to transfer to subsidiaries of the company the business of the company or any part of it and any of the property.

20 Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person or company indebted to the company and to receive dividends, and to accede to trust deeds for creditors of any such person.

21 Power to present or defend a petition for the winding up of the company.

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22 Power to change the situation of the company's registered office.

23 Power to do all other things incidental to the exercise of the powers mentioned in section 55(1) of this Act or above in this Schedule.

[F551SCHEDULE 2A

EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER: SUPPLEMENTARY PROVISIONS

Textual Amendments

F551 Sch. 2A inserted (15.9.2003) by 2002 c. 40, s. 250(2), 279, Sch. 18 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C948 Sch. 2A extended (24.6.2003) by The Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003 (S.I. 2003/1633), regs. 1, 15, **Sch. 2 para. 7**

Capital market arrangement

1 (1) For the purposes of section 72B an arrangement is a capital market arrangement if—

(a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or

[it involves a grant of security to—

F552(aa) (i) a party to the arrangement who issues a capital market investment, or

(ii) a person who holds the security as trustee for a party to the arrangement in connection with the issue of a capital market investment, or

(ab) it involves a grant of security to a person who holds the security as trustee for a party to the arrangement who agrees to provide finance to another party, or]

(b) at least one party guarantees the performance of obligations of another party, or

(c) at least one party provides security in respect of the performance of obligations of another party, or

(d) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (options, futures and contracts for differences).

(2) For the purposes of sub-paragraph (1)—

(a) a reference to holding as trustee includes a reference to holding as nominee or agent,

(b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and

(c) a person holds a capital market investment if he has a legal or beneficial interest in it[F553; and

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(d) the reference to the provision of finance includes the provision of an indemnity**]**

(3) In section 72B(1) and this paragraph "party" to an arrangement includes a party to an agreement which—

(a) forms part of the arrangement,

(b) provides for the raising of finance as part of the arrangement, or

(c) is necessary for the purposes of implementing the arrangement.

Textual Amendments

F552 Sch. 2A para. 1(1)(aa)(ab) inserted (15.9.2003) by The Insolvency Act 1986 (Amendment) (Administrative Receivership and Capital Market Arrangements) Order 2003 (S.I. 2003/1468), arts. 1, **2**; S.I. 2003/2093, art. 2(1), Sch. 1

F553 Sch. 2A para. 1(2)(d) and word inserted (15.9.2003) by The Insolvency Act 1986 (Amendment) (Administrative Receivership and Capital Market Arrangements) Order 2003 (S.I. 2003/1468), arts. 1, **3**; S.I. 2003/2093, art. 2(1), Sch. 1

Capital market investment

2 (1) For the purposes of section 72B an investment is a capital market investment if it—

(a) is within article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (debt instruments), and

(b) is rated, listed or traded or designed to be rated, listed or traded.

(2) In sub-paragraph (1)—

"rated" means rated for the purposes of investment by an internationally recognised rating agency,

"listed" means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation), and

"traded" means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.

(3) In sub-paragraph (2)—

"recognised investment exchange" has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange), and

"foreign market" has the same meaning as "relevant market" in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335) (foreign markets).

3 (1) An investment is also a capital market investment for the purposes of section 72B if it consists of a bond or commercial paper issued to one or more of the following—

(a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,

(b) a person who is, when the agreement mentioned in section 72B(1) is entered into, a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that order,

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(c) a person to whom article 49(2) of that order applies (high net worth company, &c.),

(d) a person who is, when the agreement mentioned in section 72B(1) is entered into, a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that order, and

(e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(2) In sub-paragraph (1)—

"bond" shall be construed in accordance with article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), and

"commercial paper" has the meaning given by article 9(3) of that order.

(3) For the purposes of sub-paragraph (1)—

(a) in applying article 19(5) of the Financial Promotion Order for the purposes of sub-paragraph (1)(a)—

(i) in article 19(5)(b), ignore the words after "exempt person",

(ii) in article 19(5)(c)(i), for the words from "the controlled activity" to the end substitute "a controlled activity", and

(iii) in article 19(5)(e) ignore the words from "where the communication" to the end, and

(b) in applying article 49(2) of that order for the purposes of sub-paragraph (1)(c), ignore article 49(2)(e).

"Agreement"

4 For the purposes of sections 72B and 72E and this Schedule "agreement" includes an agreement or undertaking effected by—

(a) contract,

(b) deed, or

(c) any other instrument intended to have effect in accordance with the law of England and Wales, Scotland or another jurisdiction.

Debt

5 The debt of at least £50 million referred to in section 72B(1)(a) or 72E(2)(a)—

(a) may be incurred at any time during the life of the capital market arrangement or financed project, and

(b) may be expressed wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into or the project begins).

Step-in rights

6 (1) For the purposes of sections 72C to 72E a project has "step-in rights" if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—

(a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or

(b) make arrangements for carrying out all or part of the project.

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(2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

Project company

7 (1) For the purposes of sections 72C to 72E a company is a "project company" of a project if—
- (a) it holds property for the purpose of the project,
- (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,
- (c) it is one of a number of companies which together carry out the project,
- (d) it has the purpose of supplying finance to enable the project to be carried out, or
- (e) it is the holding company of a company within any of paragraphs (a) to (d).

(2) But a company is not a "project company" of a project if—
- (a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but
- (b) it also performs a function which is not—
  - (i) within sub-paragraph (1)(a) to (d),
  - (ii))related to a function within sub-paragraph (1)(a) to (d), or
  - (iii) related to the project.

(3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

"Resources"

8 In section 72C "resources" includes—
- (a) funds (including payment for the provision of services or facilities),
- (b) assets,
- (c) professional skill,
- (d) the grant of a concession or franchise, and
- (e) any other commercial resource.

"Public body"

9 (1) In section 72C "public body" means—
- (a) a body which exercises public functions,
- (b) a body specified for the purposes of this paragraph by the Secretary of State, and
- (c) a body within a class specified for the purposes of this paragraph by the Secretary of State.

(2) A specification under sub-paragraph (1) may be—
- (a) general, or
- (b) for the purpose of the application of section 72C to a specified case.

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Regulated business

10 (1) For the purposes of section 72D a business is regulated if it is carried on—

(a) **[**[F554]in reliance on a licence granted to a person under section 7 of the Telecommunications Act 1984 (c. 12) (telecommunications service),**]**

(b) in reliance on a licence under section 7 or 7A of the Gas Act 1986 (c. 44) (transport and supply of gas),

(c) in reliance on a licence granted by virtue of section 41C of that Act (power to prescribe additional licensable activity),

(d) in reliance on a licence under section 6 of the Electricity Act 1989 (c. 29) (supply of electricity),

(e) by a water undertaker,

(f) by a sewerage undertaker,

(g) by a universal service provider within the meaning given by section 4(3) and (4) of the Postal Services Act 2000 (c. 26),

(h) by the Post Office company within the meaning given by section 62 of that Act (transfer of property),

(i) by a relevant subsidiary of the Post Office Company within the meaning given by section 63 of that Act (government holding),

(j) in reliance on a licence under section 8 of the Railways Act 1993 (c. 43) (railway services),

(k) in reliance on a licence exemption under section 7 of that Act (subject to sub-paragraph (2) below),

(l) by the operator of a system of transport which is deemed to be a railway for a purpose of Part I of that Act by virtue of section 81(2) of that Act (tramways, &c.), [F555]. . .

(m) by the operator of a vehicle carried on flanged wheels along a system within paragraph (l)**[**[F556] or

(n) in reliance on a European licence granted pursuant to a provision contained in any instrument made for the purpose of implementing Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council, or pursuant to any action taken by an EEA State for that purpose.**]**

(2) Sub-paragraph (1)(k) does not apply to the operator of a railway asset on a railway unless on some part of the railway there is a permitted line speed exceeding 40 kilometres per hour.

[[F557](2A) For the purposes of section 72D a business is also regulated to the extent that it consists in the provision of a public electronic communications network or a publicelectronic communications service.**]**

[[F558](2B) In sub-paragraph (1)(n), an "EEA State" means a member State, Norway, Iceland or Liechtenstein.**]**

Textual Amendments

F554 Sch. 2A para. 10(1)(a) repealed (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406, 408, 411, **Sch. 19(1)**, Note 1 (with Sch. 18);

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S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1) (with art. 3(2) (as amended (8.12.2003) by 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)

F555 Word in Sch. 2A para. 10(1)(l) omitted (28.11.2005) by virtue of The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), regs. 3, 4, 20, **Sch. 1 para. 2(a)** (with Sch. 4)

F556 Sch. 2A para. 10(1)(n) and preceding word added (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), regs. 3, 4, 20, **Sch. 1 para. 2(b)** (with Sch. 4)

F557 Sch. 2A para. 10(2A) inserted (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406, 408, 411, **Sch. 17 para. 82(b)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1) (with art. 3(2) (as amended (8.12.2003) by 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)

F558 Sch. 2A para. 10(2B) added (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), regs. 3, 4, 20, **Sch. 1 para. 2(c)** (with Sch. 4)

"Person"

11 A reference to a person in this Schedule includes a reference to a partnership or another unincorporated group of persons.**]**

SCHEDULE 3

Section 162.

ORDERS IN COURSE OF WINDING UP PRONOUNCED IN VACATION (SCOTLAND)

Modifications etc. (not altering text)

C949 Sch. 3 applied (with modifications) (S.) (6.4.2002) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

PART I

ORDERS WHICH ARE TO BE FINAL

Orders under section 153, as to the time for proving debts and claims.

Orders under section 195 as to meetings for ascertaining wishes of creditors or contributories.

Orders under section 198, as to the examination of witnesses in regard to the property or affairs of a company.

PART II

ORDERS WHICH ARE TO TAKE EFFECT UNTIL MATTER DISPOSED OF BY INNER HOUSE

Orders under section 126(1), 130(2) or (3), 147, 227 or 228, restraining or permitting the commencement or the continuance of legal proceedings.

Orders under section 135(5),limiting the powers of provisional liquidators.

Orders under section 108, appointing a liquidator to fill a vacancy.

Orders under section 167 or 169, sanctioning the exercise of any powers by a liquidator, other than the powers specified in paragraphs 1, 2 and 3 of Schedule 4 to this Act.

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Insolvency Act 1986 is up to date with all changes known to be in force on or before 18 July 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)*

Orders under section 158, as to the arrest and detention of an absconding contributory and his property.

SCHEDULE 4

Sections 165, 167.

POWERS OF LIQUIDATOR IN A WINDING UP

Modifications etc. (not altering text)

C950 Sch. 4 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C951 Sch. 4 excluded (1.12.2001) by 2000 c. 8, **s. 376(12)**; S.I. 2001/3538, **art. 2**

C952 Sch. 4 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

C953 Sch. 4 applied (with modifications) (S.) (29.3.2009 at 4.00 p.m.) by The Building Society Special Administration (Scotland) Rules 2009 (S.I. 2009/806), **rules 2**, 38-41

PART I

POWERS EXERCISABLE WITH SANCTION

Modifications etc. (not altering text)

C954 Sch. 4, Pt. I (paras. 1–3), Pt. II (paras. 4, 5), Pt. III (paras. 6–13) extended by S.I. 1990/1338, art. 2, **Sch. 1 para. 2(7)**

1 Power to pay any class of creditors in full.

2 Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.

3 Power to compromise, on such terms as may be agreed—

(a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and

(b) all questions in any way relating to or affecting the assets or the winding up of the company,

and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

[[F559]3A Power to bring legal proceedings under section 213, 214, 238, 239, 242, 243 or 423.**]**

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Textual Amendments

F559 Sch. 4 Pt. I para. 3A inserted (15.9.2003) by 2002 c. 40, ss. 253, 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

PART II

POWERS EXERCISABLE WITHOUT SANCTION IN VOLUNTARY WINDING UP, WITH SANCTION IN WINDING UP BY THE COURT

Modifications etc. (not altering text)

C955 Sch. 4, Pt. I (paras. 1–3), Pt. II (paras. 4, 5), Pt. III (paras. 6–13) extended by S.I. 1990/1338, art. 2, **Sch. 1 para. 2(7)**

4 Power to bring or defend any action or other legal proceeding in the name annd on behalf of the company.

5 Power to carry on the business of the company so far as may be necessary for its beneficial winding up.

PART III

POWERS EXERCISABLE WITHOUT SANCTION IN ANY WINDING UP

Modifications etc. (not altering text)

C956 Sch. 4, Pt. I (paras. 1–3), Pt. II (paras. 4, 5), Pt. III (paras. 6–13) extended by S.I. 1990/1338, art. 2, **Sch. 1 para. 2(7)**

6 Power to sell any of the company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.

VALID FROM 06/04/2010

[F560 6A In the case of a winding up in England and Wales, power to compromise, on such terms as may be agreed—

(a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and

(b) subject to paragraph 2 in Part 1 of this Schedule, all questions in any way relating to or affecting the assets or the winding up of the company,

and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.]

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Textual Amendments

F560 Sch. 4 para. 6A inserted (E.W.) (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 10(2)** (with art. 12(5))

7 Power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company's seal.

8 Power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

9 Power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.

10 Power to raise on the security of the assets of the company any money requisite.

11 Power to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the company.

In all such cases the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.

12 Power to appoint an agent to do any business which the liquidator is unable to do himself.

13 Power to do all such other things as may be necessary for winding up the company's affairs and distributing its assets.

Modifications etc. (not altering text)

C957 Sch. 4 para. 13 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

VALID FROM 24/02/2009

[F561SCHEDULE 4ZA

CONDITIONS FOR MAKING A DEBT RELIEF ORDER

Textual Amendments

F561 Sch. 4ZA inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 108(2), 148(5), **Sch. 18**; S.I. 2009/382, **art. 2**

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 24/02/2009

[F562SCHEDULE 4ZB

DEBT RELIEF RESTRICTIONS ORDERS AND UNDERTAKINGS

Textual Amendments

F562 Sch. 4ZB inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 108(2), 148(5), **Sch. 19**; S.I. 2009/382, **art. 2**

Debt relief restrictions order

1 (1) A debt relief restrictions order may be made by the court in relation to a person in respect of whom a debt relief order has been made.

(2) An order may be made only on the application of—

(a) the Secretary of State, or

(b) the official receiver acting on a direction of the Secretary of State.

Grounds for making order

2 (1) The court shall grant an application for a debt relief restrictions order if it thinks it appropriate to do so having regard to the conduct of the debtor (whether before or after the making of the debt relief order).

(2) The court shall, in particular, take into account any of the following kinds of behaviour on the part of the debtor—

(a) failing to keep records which account for a loss of property by the debtor, or by a business carried on by him, where the loss occurred in the period beginning two years before the application date for the debt relief order and ending with the date of the application for the debt relief restrictions order;

(b) failing to produce records of that kind on demand by the official receiver;

(c) entering into a transaction at an undervalue in the period beginning two years before the application date for the debt relief order and ending with the date of the determination of that application;

(d) giving a preference in the period beginning two years before the application date for the debt relief order and ending with the date of the determination of that application;

(e) making an excessive pension contribution;

(f) a failure to supply goods or services that were wholly or partly paid for;

(g) trading at a time, before the date of the determination of the application for the debt relief order, when the debtor knew or ought to have known that he was himself to be unable to pay his debts;

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(h) incurring, before the date of the determination of the application for the debt relief order, a debt which the debtor had no reasonable expectation of being able to pay;

(i) failing to account satisfactorily to the court or the official receiver for a loss of property or for an insufficiency of property to meet his debts;

(j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of his inability to pay his debts before the application date for the debt relief order or which took place between that date and the date of the determination of the application for the debt relief order;

(k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of his inability to pay his debts;

(l) fraud or fraudulent breach of trust;

(m) failing to co-operate with the official receiver.

(3) The court shall also, in particular, consider whether the debtor was an undischarged bankrupt at some time during the period of six years ending with the date of the application for the debt relief order.

(4) For the purposes of sub-paragraph (2)—

"excessive pension contribution" shall be construed in accordance with section 342A;

"preference" shall be construed in accordance with paragraph 10(2) of Schedule 4ZA;

"undervalue" shall be construed in accordance with paragraph 9(2) of that Schedule.

Timing of application for order

3 An application for a debt relief restrictions order in respect of a debtor may be made—

(a) at any time during the moratorium period relating to the debt relief order in question, or

(b) after the end of that period, but only with the permission of the court.

Duration of order

4 (1) A debt relief restrictions order—

(a) comes into force when it is made, and

(b) ceases to have effect at the end of a date specified in the order.

(2) The date specified in a debt relief restrictions order under sub-paragraph (1)(b) must not be—

(a) before the end of the period of two years beginning with the date on which the order is made, or

(b) after the end of the period of 15 years beginning with that date.

Interim debt relief restrictions order

5 (1) This paragraph applies at any time between—

(a) the institution of an application for a debt relief restrictions order, and

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(b) the determination of the application.

(2) The court may make an interim debt relief restrictions order if the court thinks that—

(a) there are prima facie grounds to suggest that the application for the debt relief restrictions order will be successful, and

(b) it is in the public interest to make an interim debt relief restrictions order.

(3) An interim debt relief restrictions order may only be made on the application of—

(a) the Secretary of State, or

(b) the official receiver acting on a direction of the Secretary of State.

(4) An interim debt relief restrictions order—

(a) has the same effect as a debt relief restrictions order, and

(b) comes into force when it is made.

(5) An interim debt relief restrictions order ceases to have effect—

(a) on the determination of the application for the debt relief restrictions order,

(b) on the acceptance of a debt relief restrictions undertaking made by the debtor, or

(c) if the court discharges the interim debt relief restrictions order on the application of the person who applied for it or of the debtor.

6 (1) This paragraph applies to a case in which both an interim debt relief restrictions order and a debt relief restrictions order are made.

(2) Paragraph 4(2) has effect in relation to the debt relief restrictions order as if a reference to the date of that order were a reference to the date of the interim debt relief restrictions order.

Debt relief restrictions undertaking

7 (1) A debtor may offer a debt relief restrictions undertaking to the Secretary of State.

(2) In determining whether to accept a debt relief restrictions undertaking the Secretary of State shall have regard to the matters specified in paragraph 2(2) and (3).

8 A reference in an enactment to a person in respect of whom a debt relief restrictions order has effect (or who is "the subject of" a debt relief restrictions order) includes a reference to a person in respect of whom a debt relief restrictions undertaking has effect.

9 (1) A debt relief restrictions undertaking—

(a) comes into force on being accepted by the Secretary of State, and

(b) ceases to have effect at the end of a date specified in the undertaking.

(2) The date specified under sub-paragraph (1)(b) must not be—

(a) before the end of the period of two years beginning with the date on which the undertaking is accepted, or

(b) after the end of the period of 15 years beginning with that date.

(3) On an application by the debtor the court may—

(a) annul a debt relief restrictions undertaking;

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(b) provide for a debt relief restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

Effect of revocation of debt relief order

10 Unless the court directs otherwise, the revocation at any time of a debt relief order does not —

(a) affect the validity of any debt relief restrictions order, interim debt relief restrictions order or debt relief restrictions undertaking which is in force in respect of the debtor;

(b) prevent the determination of any application for a debt relief restrictions order, or an interim debt relief restrictions order, in relation to the debtor that was instituted before that time;

(c) prevent the acceptance of a debt relief restrictions undertaking that was offered before that time; or

(d) prevent the institution of an application for a debt relief restrictions order or interim debt relief restrictions order in respect of the debtor, or the offer or acceptance of a debt relief restrictions undertaking by the debtor, after that time.**]**

[[F563]SCHEDULE 4A

Textual Amendments

F563 Sch. 4A inserted (1.4.2004) by 2002 c. 40, ss. 257(2), 279, Sch. 20 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

BANKRUPTCY RESTRICTIONS ORDER AND UNDERTAKING

Bankruptcy restrictions order

1 (1) A bankruptcy restrictions order may be made by the court.

(2) An order may be made only on the application of—

(a) the Secretary of State, or

(b) the official receiver acting on a direction of the Secretary of State.

Grounds for making order

2 (1) The court shall grant an application for a bankruptcy restrictions order if it thinks it appropriate having regard to the conduct of the bankrupt (whether before or after the making of the bankruptcy order).

(2) The court shall, in particular, take into account any of the following kinds of behaviour on the part of the bankrupt—

(a) failing to keep records which account for a loss of property by the bankrupt, or by a business carried on by him, where the loss occurred in the period beginning 2 years before petition and ending with the date of the application;

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(b) failing to produce records of that kind on demand by the official receiver or the trustee;
(c) entering into a transaction at an undervalue;
(d) giving a preference;
(e) making an excessive pension contribution;
(f) a failure to supply goods or services which were wholly or partly paid for which gave rise to a claim provable in the bankruptcy;
(g) trading at a time before commencement of the bankruptcy when the bankrupt knew or ought to have known that he was himself to be unable to pay his debts;
(h) incurring, before commencement of the bankruptcy, a debt which the bankrupt had no reasonable expectation of being able to pay;
(i) failing to account satisfactorily to the court, the official receiver or the trustee for a loss of property or for an insufficiency of property to meet bankruptcy debts;
(j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of the bankruptcy or which took place between presentation of the petition and commencement of the bankruptcy;
(k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of the bankruptcy;
(l) fraud or fraudulent breach of trust;
(m) failing to cooperate with the official receiver or the trustee.

(3) The court shall also, in particular, consider whether the bankrupt was an undischarged bankrupt at some time during the period of six years ending with the date of the bankruptcy to which the application relates.

(4) For the purpose of sub-paragraph (2)—

"before petition" shall be construed in accordance with section 351(c),

"excessive pension contribution" shall be construed in accordance with section 342A,

"preference" shall be construed in accordance with section 340, and

"undervalue" shall be construed in accordance with section 339.

Timing of application for order

3 (1) An application for a bankruptcy restrictions order in respect of a bankrupt must be made—
(a) before the end of the period of one year beginning with the date on which the bankruptcy commences, or
(b) with the permission of the court.

(2) The period specified in sub-paragraph (1)(a) shall cease to run in respect of a bankrupt while the period set for his discharge is suspended under section 279(3).

Duration of order

4 (1) A bankruptcy restrictions order—
(a) shall come into force when it is made, and

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(b) shall cease to have effect at the end of a date specified in the order.

(2) The date specified in a bankruptcy restrictions order under sub-paragraph (1)(b) must not be—

(a) before the end of the period of two years beginning with the date on which the order is made, or

(b) after the end of the period of 15 years beginning with that date.

Interim bankruptcy restrictions order

5 (1) This paragraph applies at any time between—

(a) the institution of an application for a bankruptcy restrictions order, and

(b) the determination of the application.

(2) The court may make an interim bankruptcy restrictions order if the court thinks that—

(a) there are prima facie grounds to suggest that the application for the bankruptcy restrictions order will be successful, and

(b) it is in the public interest to make an interim order.

(3) An interim order may be made only on the application of—

(a) the Secretary of State, or

(b) the official receiver acting on a direction of the Secretary of State.

(4) An interim order—

(a) shall have the same effect as a bankruptcy restrictions order, and

(b) shall come into force when it is made.

(5) An interim order shall cease to have effect—

(a) on the determination of the application for the bankruptcy restrictions order,

(b) on the acceptance of a bankruptcy restrictions undertaking made by the bankrupt, or

(c) if the court discharges the interim order on the application of the person who applied for it or of the bankrupt.

6 (1) This paragraph applies to a case in which both an interim bankruptcy restrictions order and a bankruptcy restrictions order are made.

(2) Paragraph 4(2) shall have effect in relation to the bankruptcy restrictions order as if a reference to the date of that order were a reference to the date of the interim order.

Bankruptcy restrictions undertaking

7 (1) A bankrupt may offer a bankruptcy restrictions undertaking to the Secretary of State.

(2) In determining whether to accept a bankruptcy restrictions undertaking the Secretary of State shall have regard to the matters specified in paragraph 2(2) and (3).

8 A reference in an enactment to a person in respect of whom a bankruptcy restrictions order has effect (or who is "the subject of" a bankruptcy restrictions order) includes a reference to a person in respect of whom a bankruptcy restrictions undertaking has effect.

9 (1) A bankruptcy restrictions undertaking—

(a) shall come into force on being accepted by the Secretary of State, and

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(b) shall cease to have effect at the end of a date specified in the undertaking.

(2) The date specified under sub-paragraph (1)(b) must not be—

(a) before the end of the period of two years beginning with the date on which the undertaking is accepted, or

(b) after the end of the period of 15 years beginning with that date.

(3) On an application by the bankrupt the court may—

(a) annul a bankruptcy restrictions undertaking;

(b) provide for a bankruptcy restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

Effect of annulment of bankruptcy order

10 Where a bankruptcy order is annulled under section 282(1)(a) or (2)—

(a) any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt shall be annulled,

(b) no new bankruptcy restrictions order or interim order may be made in respect of the bankrupt, and

(c) no new bankruptcy restrictions undertaking by the bankrupt may be accepted.

11 Where a bankruptcy order is annulled under section 261, 263D or 282(1)(b)—

(a) the annulment shall not affect any bankruptcy restrictions order, interim order or undertaking in respect of the bankrupt,

(b) the court may make a bankruptcy restrictions order in relation to the bankrupt on an application instituted before the annulment,

(c) the Secretary of State may accept a bankruptcy restrictions undertaking offered before the annulment, and

(d) an application for a bankruptcy restrictions order or interim order in respect of the bankrupt may not be instituted after the annulment.

Registration

12 The Secretary of State shall maintain a register of—

(a) bankruptcy restrictions orders,

(b) interim bankruptcy restrictions orders, and

(c) bankruptcy restrictions undertakings.**]**

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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SCHEDULE 5

Section 314.

POWERS OF TRUSTEE IN BANKRUPTCY

PART I

POWERS EXERCISABLE WITH SANCTION

1 Power to carry on any business of the bankrupt so far as may be necessary for winding it up beneficially and so far as the trustee is able to do so without contravening any requirement imposed by or under any enactment.

2 Power to bring, institute or defend any action or legal proceedings relating to the property comprised in the bankrupt's estate.

[F564 2A Power to bring legal proceedings under section 339, 340 or 423.]

Textual Amendments

F564 Sch. 5 Pt. I para. 2A inserted (15.9.2003) by 2002 c. 40, ss. 262, 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

3 Power to accept as the consideration for the sale of any property comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditors' committee or the court thinks fit.

4 Power to mortgage or pledge any part of the property comprised in the bankrupt's estate for the purpose of raising money for the payment of his debts.

5 Power, where any right, option or other power forms part of the bankrupt's estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power.

6 Power to refer to arbitration, or compromise on such terms as may be agreed on, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

7 Power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of bankruptcy debts.

8 Power to make such compromise or other arrangement as ay be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the trustee by any person or by the trustee on any person.

PART II

GENERAL POWERS

9 Power to sell any part of the property for the time being comprised in the bankrupt's estate, including the goodwill and book debts of any business.

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VALID FROM 06/04/2010

[F565 9A Power to refer to arbitration, or compromise on such terms as may be agreed, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

Textual Amendments

F565 Sch. 5 paras. 9A 9B inserted (E.W.) (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 11(2)** (with art. 12(5))

VALID FROM 06/04/2010

9B Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made by the trustee on any person.]

Textual Amendments

F565 Sch. 5 paras. 9A 9B inserted (E.W.) (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 11(2)** (with art. 12(5))

10 Power to give receipts for any money received by him, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application.

11 Power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate.

12 Power to exercise in relation to any property comprised in the bankrupt's estate any powers the capacity to exercise which is vested in him under Parts VIII to XI of this Act.

13 Power to deal with any property comprised in the estate to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

PART III

ANCILLARY POWERS

14 For the purposes of, or in connection with, the exercise of any of his powers under Parts VIII to XI of this Act, the trustee may, by his official name—

(a) hold property of every description,

(b) make contracts,

(c) sue and be sued,

(d) enter into engagements binding on himself and, in respect of the bankrupt's estate, on his successors in office,

(e) employ an agent,

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(f) execute any power of attorney, deed or other instrument;

and he may do any other act which is necessary or expedient for the purposes of or in connection with the exercise of those powers.

SCHEDULE 6

Section 386.

THE CATEGORIES OF PREFERENTIAL DEBTS

Modifications etc. (not altering text)

C958 Sch. 6 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

C959 Sch. 6 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

Category 1: Debts due to Inland Revenue

1 **[**[F566]Sums due at the relevant date from the debtor on account of deductions of income tax from **[**[F567]taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003)**]** paid during the period of 12 months next before that date.

The deductions here referred to are those which the debtor was liable to make under **[**[F568]PAYE regulations**]**, less the amount of the repayments of income tax which the debtor was liable to make during that period.**]**

Textual Amendments

F566 Sch. 6 para. 1 ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(a), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F567 Words in Sch. 6 para. 1 substituted (6.4.2003 with effect as mentioned in s. 723(1)(a)(b)) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), ss. 722, 723, **Sch. 6 Pt. 2 para. 154(a)** (subject to transitional provisions and savings in Sch. 7)

F568 Words in Sch. 6 para. 1 substituted (6.4.2003 with effect as mentioned in s. 723(1)(a)(b)) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), ss. 722, 723, **Sch. 6 Pt. 2 para. 154(b)** (subject to transitional provisions and savings in Sch. 7)

2 **[**[F569]Sums due to the relevant date from the debtor in respect of such deductions as are required to be made by the debtor for that period under section **[**[F570]559 of the Income and Corporation Taxes Act 1988**]** (sub-contractors in the construction industry).**]**

Textual Amendments

F569 Sch. 6 para. 2 ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(a), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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F570 Words subsituted by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844, Sch. 29 para. 32, **Sch. 30 para. 6(1)**

Category 2: Debts due to Customs and Excise

3 **[**[F571]Any value added tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as "the 6-month period").

For the purposes of this paragraph—

(a) where the whole of the prescribed accounting period to which any value added tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and

(b) in any other case the amount of any value added tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting reference period in question as falls within the 6-month period;

and in sub-paragraph (a) "prescribed" means prescribed by regulations under the [M86]Value Added Tax Act **[**[F572]1994**]**.**]**

Textual Amendments

F571 Sch. 6 para. 3 ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F572 Words in Sch. 6 para. 3 substituted (1.9.1994) by 1994 c. 23, ss. 100(1), 101(1), **Sch. 14 para. 8** (with Sch. 13 para. 9)

Marginal Citations

M86 1983 c. 55.

[[F573]**[**[F574]3A Any insurance premium tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as "the 6-month period").

For the purposes of this paragraph—

(a) where the whole of the accounting period to which any insurance premium tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and

(b) in any other case the amount of any insurance premium tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1994.**]]**

Textual Amendments

F573 Sch. 6 para. 3A ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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F574 Sch. 6 para. 3A inserted (3.5.1994) by 1994 c. 9, s. 64, **Sch. 7 Pt. III para. 7(2)**

[F575[F576 3B Any landfill tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as "the 6-month period").

For the purposes of this paragraph—

(a) where the whole of the accounting period to which any landfill tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and

(b) in any other case the amount of any landfill tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1996.]]

Textual Amendments

F575 Sch. 6 para. 3B ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F576 Sch. 6 para. 3B inserted (29.4.1996) by 1996 c. 8, s. 60, **Sch. 5 Pt. III para. 12(1)**

[F577[F578 3C Any climate change levy which is referable to the period of 6 months next before the relevant date (which period is referred to below as "the 6-month period").

For the purposes of this paragraph—

(a) where the whole of the accounting period to which any climate change levy is attributable falls within the 6-month period, the whole amount of that levy is referable to that period; and

(b) in any other case the amount of any climate change levy which is referable to the 6-month period is the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Schedule 6 to the Finance Act 2000.]]

Textual Amendments

F577 Sch. 6 para. 3C ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F578 Sch. 6 para. 3C inserted (28.7.2000) by 2000 c. 17, s. 30, **Sch. 7 para. 3(1)(b)(2)**

[F579[F580 3D Any aggregates levy which is referable to the period of 6 months next before the relevant date (which period is referred to below as "the 6-month period").

For the purposes of this paragraph—

(a) where the whole of the accounting period to which any aggregates levy is attributable falls within the 6-month period, the whole amount of that levy is referable to that period; and

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(b) in any other case the amount of any aggregates levy which is referable to the 6-month period is the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Part 2 of the Finance Act 2001.**]]**

Textual Amendments

F579 Sch. 6 para. 3D ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F580 Sch. 6 para. 3D inserted (11.5.2001) by 2001 c. 9, s. 27, **Sch. 5 para. 17(b)(2)**

4 **[**[F581]The amount of any car tax which is due at the relevant date from the debtor and which became due within a period of 12 months next before that date.**]**

Textual Amendments

F581 Sch. 6 para. 4 ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

5 **[**[F582]Any amount which is due—

(a) by way of general betting duty **[**[F583], bingo duty or gaming duty**]**, or

(b) under section 12(1) of the [M87]Betting and Gaming Duties Act 1981 (general betting duty and pool betting duty recoverable from agent collecting stakes), [F584]. . .

[F584](c) . . . . . .

from the debtor at the relevant date and which became due within the period of 12 months next before that date.**]**

Textual Amendments

F582 Sch. 6 para. 5 ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F583 Words in Sch. 6 para. 5(a) substituted (19.3.1997) by 1997 c. 16, ss. 13(2), 15, **Sch. 2 Pt. II para. 6**

F584 Sch. 6 para. 5(c) and word preceding it repealed (19.3.1997 but without application in relation to any amount due in respect of duty chargeable for a period beginning before 1.10.1997) by 1997 c. 16, s. 113, **Sch. 18 Pt. II** Notes 1, 2

Marginal Citations

M87 1981 c. 63.

[[F585]**[**[F586]5A The amount of any excise duty on beer which is due at the relevant date from the debtor and which became due within a period of 6 months next before that date.**]]**

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Textual Amendments

F585 Sch. 6 para. 5A ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F586 Sch. 6 para. 5A inserted (1.6.1993) by Finance Act 1991 (c. 31), s. 7, **Sch. 2 para. 22**; S.I. 1993/1152, art. 3, **Sch. 1 Pt. II**

[F587[F588 5B Any amount which is due by way of lottery duty from the debtor at the relevant date and which became due within the period of 12 months next before that date.]]

Textual Amendments

F587 Sch. 6 para. 5B ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F588 Sch. 6 para. 5B inserted (1.12.1993) by 1993 c. 34, **ss. 36(2)**, 40(2)(3); S.I. 1993/2842, **art. 3(1)**

[F589[F590 5C Any amount which is due by way of air passenger duty from the debtor at the relevant date and which became due within the period of six months next before that date.]]

Textual Amendments

F589 Sch. 6 para. 5C ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(b), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F590 Sch. 6 para. 5C inserted (3.5.1994 with application to any carriage of a passenger on an aircraft which begins after 31.10.1994) by 1994 c. 9, ss. 40(2), 44, **Sch. 6 para. 13(1)**

Category 3: Social security contributions

6 [F591 All sums which on the relevant date are due from the debtor on account of Class 1 or Class 2 contributions under the [F592 Social Security Contributions and Benefits Act 1992] or the M88 Social Security (Northern Ireland) Act 1975 and which became due from the debtor in the 12 months next before the relevant date.]

Textual Amendments

F591 Sch. 6 para. 6 ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(c), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F592 Words in Sch. 6 para. 6 substituted (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 4, 7(2), **Sch. 2 para.73**

Marginal Citations

M88 1975 c. 15

7

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[[F593]All sums which on the relevant date have been assessed on and are due from the debtor on account of Class 4 contributions under either of those Acts of 1975, being sums which—

(a) are due to the Commissioners of Inland Revenue (rather than to the Secretary of State or a Northern Ireland department), and

(b) are assessed on the debtor up to 5th April next before the relevant date,

but not exceeding, in the whole, any one year's assessment.**]**

Textual Amendments

F593 Sch. 6 para. 7 ceased to have effect (15.9.2003) and repealed (prosp.) by 2002 c. 40, ss. 251(1)(c), 278, 279, Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Category 4: Contributions to occupational pension schemes, etc.

8 Any sum which is owed by the debtor and is a sum to which **[**[F594]Schedule 4 to the Pension Schemes Act 1993**]**applies (contributions to occupational pension schemes and state scheme premiums).

Textual Amendments

F594 Words in Sch. 6 para. 8 substituted (7.2.1994) by 1993 c. 48, s. 190, **Sch. 8 para.18** (with s. 6(8)); S.I. 1994/86, **art. 2**

Category 5: Remuneration, etc., of employees

9 So much of any amount which—

(a) is owed by the debtor to a person who is or has been an employee of the debtor, and

(b) is payable by way of remuneration in respect of the whole or any part of the period of 4 months next before the relevant date,

as does not exceed so much as may be prescribed by order made by the Secretary of State.

10 An amount owed by way of accrued holiday remuneration, in respect of any period of employment before the relevant date, to a person whose employment by the debtor has been terminated, whether before, on or after that date.

11 So much of any sum owed in respect of money advanced for the purpose as has been applied for the payment of a debt which, if it had not been paid, would have been a debt falling within paragraph 9 or 10.

12 So much of any amount which—

(a) is ordered (whether before or after the relevant date) to be paid by the debtor under the [M89]Reserve Forces (Safeguard of Employment) Act 1985, and

(b) is so ordered in respect of a default made by the debtor before that date in the discharge of his obligations under that Act,

as does not exceed such amount as may be prescribed by order made by the Secretary of State.

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Marginal Citations
M89 1985 c. 17.

Interpertation for Category 5

13 (1) For the purposes of paragraphs 9 to 12, a sum is payable by the debtor to a person by way of remuneration in respect of any period if—
(a) it is paid as wages or salary (whether payable for time or for piece work or earned wholly or partly by way of commission) in respect of services rendered to the debtor in that period, or
(b) it is an amount falling within the following sub-paragraph and is payable by the debtor in respect of that period.

[[F595](2) An amount falls within this sub-paragraph if it is—
(a) a guarantee payment under Part III of the Employment Rights Act 1996 (employee without work to do);
(b) any payment for time off under section 53 (time off to look for work or arrange training) or section 56 (time off for ante-natal care) of that Act or under section 169 of the Trade Union and Labour Relations (Consolidation) Act 1992 (time off for carrying out trade union duties etc.);
(c) remuneration on suspension on medical grounds, or on maternity grounds, under Part VII of the Employment Rights Act 1996; or
(d) remuneration under a protective award under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancy dismissal with compensation).**]**

Textual Amendments
F595 Sch. 6 para. 13(2) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 29** (with ss. 191-195, 202)

14 (1) This paragraph relates to a case in which a person's employment has been terminated by or in consequence of his employer going into liquidation or being adjudged bankrupt or (his employer being a company not in liquidation) by or in consequence of—
(a) a receiver being appointed as mentioned in section 40 of this Act (debenture-holders secured by floating charge), or
(b) the appointment of a receiver under section 53(6) or 54(5) of this Act (Scottish company with property subject to floating charge), or
(c) the taking of possession by debenture-holders (so secured), as mentioned in section 196 of the Companies Act.

(2) For the purposes of paragraphs 9 to 12, holiday remuneration is deemed to have accrued to that person in respect of any period of employment if, by virtue of his contract of employment or of any enactment that remuneration would have accrued in respect of that period if his employment had continued until he became entitled to be allowed the holiday.

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(3) The reference in sub-paragraph (2) to any enactment includes an order or direction made under an enactment.

15 Without prejudice to paragraphs 13 and 14—

(a) any remuneration payable by the debtor to a person in respect of a period of holiday or of absence from work through sickness or other good cause is deemed to be wages or (as the case may be) salary in respect of services rendered to the debtor in that period, and

(b) references here and in those paragraphs to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.

[F596 Category 6: Levies on coal and steel production

Textual Amendments

F596 Sch. 6 para. 15A inserted by S.I. 1987/2093, **reg. 2(1)(3)**

15A Any sums due at the relevant date from the debtor in respect of—

(a) the levies on the production of coal and steel referred to in Articles 49 and 50 of the E.C.S.C. Treaty, or

(b) any surcharge for delay provided for in Article 50(3) of that Treaty and Article 6 of Decision 3/52 of the High Authority of the Coal and Steel Community.**]**

Orders

16 An order under paragraph 9 or 12—

(a) may contain such transitional provisions as may appear to the Secretary of State necessary or expedient;

(b) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

SCHEDULE 7

Section 396.

INSOLVENCY PRACTITIONERS TRIBUNAL

Panels of members

1 (1) The Secretary of State shall draw up and from time to time revise—

(a) a panel of persons who

[F597(i) have a 7 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990;

(ii) are advocates or solicitors in Scotland of at least 7 years' standing,**]**, and are nominated for the purpose by the Lord Chancellor or the Lord President of the Court of Session, and

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(b) a panel of persons who are experienced in insolvency matters;

and the members of the Tribunal shall be selected from those panels in accordance with this Schedule.

(2) The power to revise the panels includes power to terminate a person's membership of either of them, and is accordingly to that extent subject to **[**[F598]section 7 of the Tribunals and Inquiries Act 1992**]**(which makes it necessary to obtain the concurrence of the Lord Chancellor and the Lord President of the Court of Session to dismissals in certain cases).

Textual Amendments

F597 Sch. 7 para. 1(1)(*a*)(i)(ii) substituted by Courts and Legal Services Act 1990 (c. 41, SIF 37), s. 71(2), **Sch. 10 para. 67**

F598 Words in Sch. 7 para. 1(2) substituted (1.10.1992) by Tribunals and Enquiries Act 1992 (c. 53),ss. 18(1), 19(2), Sch. 3 para.19

Remuneration of members

2 The Secretary of State may out of money provided by Parliament pay to members of the Tribunal such remuneration as he may with the approval of the Treasury determine; and such expenses of the Tribunal as the Secretary of State and the Treasury may approve shall be defrayed by the Secretary of State out of money so provided.

Sittings of Tribunal

3 (1) For the purposes of carrying out their functions in relation to any cases referred to them, the Tribunal may sit either as a single tribunal or in two or more divisions.

(2) The functions of the Tribunal in relation to any case referred to them shall be exercised by three members consisting of—

(a) a chairman selected by the Secretary of State from the panel drawn up under paragraph 1(1)(a) above, and

(b) two other members selected by the Secretary of State from the panel drawn up under paragraph 1(1)(b).

Procedure of Tribunal

4 (1) Any investigation by the Tribunal shall be so conducted as to afford a reasonable opportunity for representations to be made to the Tribunal by or on behalf of the person whose case is the subject of the investigation.

(2) For the purposes of any such investigation, the Tribunal—

(a) may be summons require any person to attend, at such time and place as is specified in the summons, to give evidence or to produce any books, papers and other records in his possession or under his control which the Tribunal consider it necessary for the purposes of the investigation to examine, and

(b) may take evidence on oath, and for the purpose administer oaths, or may, instead of administering an oath, require the person examined to make and

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subscribe a declaration of the truth of the matter respecting which he is examined;

but no person shall be required, in obedience to such a summons, to go more than ten miles from his place of residence, unless the necessary expenses of his attendance are paid or tendered to him.

(3) Every person who—

(a) without reasonable excuse fails to attend in obedience to a summons issued under this paragraph, or refuses to give evidence, or

(b) intentionally alters, suppresses, conceals or destroys or refuses to produce any document which he may be required to produce for the purpose of an investigation by the Tribunal,

is liable to a fine.

(4) Subject to the provisions of this paragraph, the Secretary of State may make rules for regulating the procedure on any investigation by the Tribunal.

(5) In their application to Scotland, sub-paragraphs (2) and (3) above have effect as if for any reference to a summons there were substituted a reference to a notice in writing.

SCHEDULE 8

Section 411.

PROVISIONS CAPABLE OF INCLUSION IN COMPANY INSOLVENCY RULES

Modifications etc. (not altering text)

C960 Sch. 8 applied (with modifications) (S.) (6.4.2001 to the extent that that Sch. does not apply to voluntary arrangements or administrations within the meaning of Pts. I, II of the Act) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

Courts

1 Provision for supplementing, in relation to the insolvency or winding up of companies, any provision made by or under section 117 of this Act (jurisdiction in relation to winding up).

2 (1) Provision for regulating the practice and procedure of any court exercising jurisdiction for the purposes of Parts I to VII of this Act or **[**[F599]the Companies Acts**]** so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies, being any provision that could be made by rules of court.

[[F600](2) Rules made by virtue of this paragraph about the consequence of failure to comply with practice or procedure may, in particular, include provision about the termination of administration.**]**

Textual Amendments

F599 Words in Sch. 8 para. 2(1) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), art. 10(1), **Sch. 4 para. 44** (with art. 12)

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F600 Sch. 8 para. 2 renumbered as Sch. 8 para. 2(1) and Sch. 8 para. 2(2) inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 38(2) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Notices, etc.

3 Provision requiring notice of any proceedings in connection with or arising out of the insolvency or winding up of a company to be given or published in the manner prescribed by the rules.

4 Provision with respect to the form, manner of serving, contents and proof of any petition, application, order, notice, statement or other document required to be presented, made, given, published or prepared under any enactment or subordinate legislation relating to, or to matters connected with or arising out of, the insolvency or winding up of companies.

5 Provision specifying the persons to whom any notice is to be given.

Registration of voluntary arrangements

6 Provision for the registration of voluntary arrangements approved under Part I of this Act, including provision for the keeping and inspection of a register.

Provisional liquidator

7 Provision as to the manner in which a provisional liquidator appointed under section 135 is to carry out his functions.

Conduct of insolvency

8 Provision with respect to the certification of any person as, and as to the proof that a person is, the liquidator, administrator or administrative receiver of a company.

9 The following provision with respect to meetings of a company's creditors, contributories or members—

(a) provision as to the manner of summoning a meeting (including provision as to how any power to require a meeting is to be exercised, provision as to the manner of determining the value of any debt or contribution for the purposes of any such power and provision making the exercise of any such power subject to the deposit of a sum sufficient to cover the expenses likely to be incurred in summoning and holding a meeting);

(b) provision specifying the time and place at which a meeting may be held and the period of notice required for a meeting;

(c) provision as to the procedure to be followed at a meeting (including the manner in which decisions may be reached by a meeting and the manner in which the value of any vote at a meeting is to be determined);

(d) provision for requiring a person who is or has been an officer of the company to attend a meeting;

(e) provision creating, in the prescribed circumstances, a presumption that a meeting has been duly summoned and held;

(f) provision as to the manner of proving the decisions of a meeting.

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10 (1) Provision as to the functions, membership and proceedings of a committee established under **[**[F601]section 49, 68, 101, 141 or 142 of, or paragraph 57 of Schedule B1 to, this Act**]**.

(2) The following provision with respect to the establishment of a committee under section 101, 141 or 142 of this Act, that is to say—

(a) provision for resolving differences between a meeting of the company's creditors and a meeting of its contributories or members;

(b) provision authorising the establishment of the committee without a meeting of contributories in a case where a company is being wound up on grounds including its inability to pay its debts; and

(c) provision modifying the requirements of this Act with respect to the establishment of the committee in a case where a winding-up order has been made immediately upon the discharge of an administration order.

Textual Amendments

F601 Words in Sch. 8 para. 10 substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 38(3) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

11 Provision as to the manner in which any requirement that may be imposed on a person under any of Parts I to VII of this Act by the official receiver, the liquidator, administrator or administrative receiver of a company or a special manager appointed under section 177 is to be so imposed.

12 Provision as to the debts that may be proved in a winding up, as to the manner and conditions of proving a debt and as to the manner and expenses of establishing the value of any debt or security.

13 Provision with respect to the manner of the distribution of the property of a company that is being wound up, including provision with respect to unclaimed funds and dividends.

14 Provision which, with or without modifications, applies in relation to the winding up of companies any enactment contained in Parts VIII to XI of this Act or in the [M90]Bankruptcy (Scotland) Act 1985.

Marginal Citations

M90 1985 c. 66.

[[F602]14A Provision about the application of section 176A of this Act which may include, in particular—

(a) provision enabling a receiver to institute winding up proceedings;

(b) provision requiring a receiver to institute winding up proceedings.**]**

Textual Amendments

F602 Sch. 8 para. 14A inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 38(4) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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Administration

[F603 14B Provision which—

(a) applies in relation to administration, with or without modifications, a provision of Parts IV to VII of this Act, or

(b) serves a purpose in relation to administration similar to a purpose that may be served by the rules in relation to winding up by virtue of a provision of this Schedule.]

Textual Amendments

F603 Sch. 8 para. 14B inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 38(5) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Financial provisions

15 Provision as to the amount, or manner of determining the amount, payable to the liquidator, administrator or administrative receiver of a company or a special manager appointed under section 177, by way of remuneration for the carrying out of functions in connection with or arising out of the insolvency or winding up of a company.

16 Provision with respect to the manner in which moneys received by the liquidator of a company in the course of carrying out his functions as such are to be invested or otherwise handled and with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Services Account.

[F604 16A Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.]

Textual Amendments

F604 S. 16A inserted (18.12.2003) by 2002 c. 40, ss. 271(1), 279 (with s. 249(6)); S.I. 2003/3340, **art. 3**

17 Provision as to the fees, costs, charges and other expenses that may be treated as the expenses of a winding up.

18 Provision as to the fees, costs, charges and other expenses that may be treated as properly incurred by the administrator or administrative receiver of a company.

19 Provision as to the fees, costs, charges and other expenses that may be incurred for any of the purposes of Part I of this Act or in the administration of any voluntary arrangement approved under that Part.

Information and records

20 Provision requiring registrars and other officers of courts having jurisdiction in England and Wales in relation to, or to matters connected with or arising out of, the insolvency or winding up of companies—

(a) to keep books and other records with respect to the exercise of that jurisdiction, and

(b) to make returns to the Secretary of State of the business of those courts.

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21 Provision requiring a creditor, member or contributory, or such a committee as is mentioned in paragraph 10 above, to be supplied (on payment in prescribed cases of the prescribed fee) with such information and with copies of such documents as may be prescribed.

22 Provision as to the manner in which public examinations under section 133 and 134 of this Act and proceedings under sections 236 and 237 are to be conducted, as to the circumstances in which records of such examinations or proceedings are to be made available to prescribed persons and as to the costs of such examinations and proceedings.

23 Provision imposing requirements with respect to—

(a) the preparation and keeping by the liquidator, administrator or administrative receiver of a company, or by the supervisor of a voluntary arrangement approved under Part I of this Act, of prescribed books, accounts and other records;

(b) the production of those books, accounts and records for inspection by prescribed persons;

(c) the auditing of accounts kept by the liquidator, administrator or administrative receiver of a company, or the supervisor of such a voluntary arrangement; and

(d) the issue by the administrator or administrative receiver of a company of such a certificate as is mentioned in section 22(3)(b) of the [M91]Value Added Tax Act 1983 (refund of tax in cases of bad debts) and the supply of copies of the certificate to creditors of the company.

Marginal Citations

M91 1983 c. 55.

24 Provision requiring the person who is the supervisor of a voluntary arrangement approved under Part I, when it appears to him that the voluntary arrangement has been fully implemented and that nothing remains to be done by him under the arrangement—

(a) to give notice of that fact to persons bound by the voluntary arrangement, and

(b) to report to those persons on the carrying out of the functions conferred on the supervisor of the arrangement.

25 Provision as to the manner in which the liquidator of a company is to act in relation to the books, papers and other records of the company, including provision authorising their disposal.

26 Provision imposing requirements in connection with the carrying out of functions under section 7(3) of the [M92]Company Directors Disqualification Act 1986 (including, in particular, requirements with respect to the making of periodic returns).

Marginal Citations

M92 1986 c. 46.

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General

27 Provision conferring power on the Secretary of State to make regulations with respect to so much of any matter that may be provided for in the rules as relates to the carrying out of the functions of the liquidator, administrator or administrative receiver of a company.

28 Provision conferring a discretion on the court.

29 Provision conferring power on the court to make orders for the purpose of securing compliance with obligations imposed by or under **[**[F605]section 47, 66, 131, 143(2) or 235 of, or paragraph 47 of Schedule B1 to, this Act**]** or section 7(4) of the Company Directors Disqualification Act 1986.

Textual Amendments

F605 Words in Sch. 8 para. 29 substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 38(6) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

30 Provision making non-compliance with any of the rules a criminal offence.

31 Provision making different provision for different cases or descriptions of cases, including different provisions for different areas.

SCHEDULE 9

Section 412.

PROVISIONS CAPABLE OF INCLUSION IN INDIVIDUAL INSOLVENCY RULES

Courts

1 Provision with respect to the arrangement and disposition of the business under Parts VIII to XI of this Act of courts having jurisdiction for the purpose of those Parts, including provision for the allocation of proceedings under those Parts to particular courts and for the transfer of such proceedings from one court to another.

2 Provision for enabling a registrar in bankruptcy of the High Court or a registrar of a county court having jurisdiction for the purposes of those Parts to exercise such of the jurisdiction conferred for those purposes on the High Court or, as the case may be, that county court as may be prescribed.

3 Provision for regulating the practice and procedure of any court exercising jurisdiction for the purposes of those Parts, being any provision that could be made by rules of court.

4 Provision conferring rights of audience, in courts exercising jurisdiction for the purposes of those Parts, on the official receiver and on solicitors.

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Notices, etc.

5 Provision requiring notice of any proceedings under Parts VIII to XI of this Act or of any matter relating to or arising out of a proposal under Part VIII or a bankruptcy to be given or published in the prescribed manner.

6 Provision with respect to the form, manner of serving, contents and proof of any petition, application, order, notice, statement or other document required to be presented, made, given, published or prepared under any enactment contained in Parts VIII to XI or subordinate legislation under those Parts or Part XV (including provision requiring prescribed matters to be verified by affidavit).

7 Provision specifying the persons to whom any notice under Parts VIII to XI is to be given.

VALID FROM 24/02/2009

[F606 Debt relief orders

Textual Amendments

F606 Sch. 9 paras. 7A-7E and cross-headings inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 108(3), 148(5), **Sch. 20 para. 14(5)**; S.I. 2009/382, **art. 2**

7A Provision as to the manner in which the official receiver is to carry out his functions under Part 7A.

7B Provision as to the manner in which any requirement that may be imposed by the official receiver on a person under Part 7A is to take effect.

7C Provision modifying the application of Part 7A in relation to an individual who has died at a time when a moratorium period under a debt relief order applies in relation to him.

VALID FROM 24/02/2009

Debt relief restrictions orders and undertakings

7D Provision about debt relief restrictions orders, interim orders and undertakings, including provision about evidence.

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VALID FROM 24/02/2009

Register of debt relief orders and debt relief restrictions orders etc

7E Provision about the register required to be maintained by section 251W and the information to be contained in it, including provision—

(a) enabling the amalgamation of the register with another register;

(b) enabling inspection of the register by the public.**]**

Registration of voluntary arrangements

8 Provision for the registration of voluntary arrangements approved under Part VIII of this Act, including provision for the keeping and inspection of a register.

Official receiver acting on voluntary arrangement

[[F607]8A Provision about the official receiver acting as nominee or supervisor in relation to a voluntary arrangement under Part VIII of this Act, including—

(a) provision requiring the official receiver to act in specified circumstances;

(b) provision about remuneration;

(c) provision prescribing terms or conditions to be treated as forming part of a voluntary arrangement in relation to which the official receiver acts as nominee or supervisor;

(d) provision enabling those terms or conditions to be varied or excluded, in specified circumstances or subject to specified conditions, by express provision in an arrangement.**]**

Textual Amendments

F607 Sch. 9 para. 8A inserted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 16(2) (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Interim receiver

9 Provision as to the manner in which an interim receiver appointed under section 286 is to carry out his functions, including any such provision as is specified in relation to the trustee of a bankrupt's estate in paragraph 21 or 27 below.

Receiver or manager

10 Provision as to the manner in which the official receiver is to carry out his functions as receiver or manager of a bankrupt's estate under section 287, including any such provision as is specified in relation to the trustee of a bankrupt's estate in paragraph 21 or 27 below.

Administration of individual insolvency

11 Provision with respect to the certification of the appointment of any person as trustee of a bankrupt's estate and as to the proof of that appointment.

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12 The following provision with respect to meetings of creditors—

(a) provision as to the manner of summoning a meeting (including provision as to how any power to require a meeting is to be exercised, provision as to the manner of determining the value of any debt for the purposes of any such power and provision making the exercise of any such power subject to the deposit of a sum sufficient to cover the expenses likely to be incurred in summoning and holding a meeting);

(b) provision specifying the time and place at which a meeting may be held and the period of notice required for a meeting;

(c) provision as to the procedure to be followed at such a meeting (including the manner in which decisions may be reached by a meeting and the manner in which the value of any vote at a meeting is to be determined);

(d) provision for requiring a bankrupt or debtor to attend a meeting;

(e) provision creating, in the prescribed circumstances, a presumption that a meeting has been duly summoned and held; and

(f) provision as to the manner of proving the decisions of a meeting.

13 Provision as to the functions, membership and proceedings of a creditors' committee established under section 301.

14 Provision as to the manner in which any requirement that may be imposed on a person under Parts VIII to XI of this Act by the official receiver, the trustee of a bankrupt's estate or a special manager appointed under section 370 is to be so imposed and, in the case of any requirement imposed under section 305(3) (information etc. to be given by the trustee to the official receiver), provision conferring power on the court to make orders for the purpose of securing compliance with that requirement.

15 Provision as to the manner in which any requirement imposed by virtue of section 310(3) (compliance with income payments order) is to take effect.

16 Provision as to the terms and conditions that may be included in a charge under section 313 (dwelling house forming part of bankrupt's estate).

17 Provision as to the debts that may be proved in any bankruptcy, as to the manner and conditions of proving a debt and as to the manner and expenses of establishing the value of any debt or security.

18 Provision with respect to the manner of the distribution of a bankrupt's estate, including provision with respect to unclaimed funds and dividends.

19 Provision modifying the application of Parts VIII to XI of this Act in relation to a debtor or bankrupt who has died.

Financial provisions

20 Provision as to the amount, or manner of determining the amount, payable to an interim receiver, the trustee of a bankrupt's estate or a special manager appointed under section 370 by way of remuneration for the performance of functions in connection with or arising out of the bankruptcy of any person.

21 Provision with respect to the manner in which moneys received by the trustee of a bankrupt's estate in the course of carrying out his functions as such are to be **[**[F608]invested or otherwise handled and with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Services Account**]**.

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Textual Amendments

F608 Words in Sch. 9 para. 21 substituted (2.4.2001) by 2000 c. 39, **s. 13(1)**; S.I. 2001/766, **art. 2(b)** (subject to transitional provisions in art. 3)

[[F609]21A Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.]

Textual Amendments

F609 Sch. 9 para. 21A inserted (18.12.2003) by 2002 c. 40, ss. 271(2), 279 (with s. 249(6)); S.I. 2003/3340, **art. 3**

22 Provision as to the fees, costs, charges and other expenses that may be treated as the expenses of a bankruptcy.

23 Provision as to the fees, costs, charges and other expenses that may be incurred for any of the purposes of Part VIII of this Act or in the administration of any voluntary arrangement approved under that Part.

Information and records

24 Provision requiring registrars and other officers of courts having jurisdiction for the purposes of Parts VIII to XI—

(a) to keep books and other records with respect to the exercise of that jurisdiction and of jurisidction under the [M93]Deeds of Arrangement Act 1914, and

(b) to make returns to the Secretary of State of the business of those courts.

Marginal Citations

M93 1914 c. 47.

25 Provision requiring a creditor or a committee established under section 301 to be supplied (on payment in prescribed cases of the prescribed fee) with such information and with copies of such documents as may be prescribed.

26 Provision as to the manner in which public examinations under section 290 and proceedings under sections 366 to 368 are to be conducted, as to the circumstances in which records of such examinations and proceedings are to be made available to prescribed persons and as to the costs of such examinations and proceedings.

27 Provision imposing requirements with respect to—

(a) the preparation and keeping by the trustee of a bankrupt's estate, or the supervisor of a voluntary arrangement approved under Part VIII, of prescribed books, accounts and other records;

(b) the production of those books, accounts and records for inspection by prescribed persons; and

(c) the auditing of accounts kept by the trustee of a bankrupt's estate or the supervisor of such a voluntary arrangement.

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28 Provision requiring the person who is the supervisor of a voluntary arrangement approved under Part VIII, when it appears to him that the voluntary arrangement has been fully implemented and that nothing remains to be done by him under it—

(a) to give notice of that fact to persons bound by the voluntary arrangement, and

(b) to report to those persons on the carrying out of the functions conferred on the supervisor of it.

29 Provision as to the manner in which the trustee of a bankrupt's estate is to act in relation to the books, papers and other records of the bankrupt, including provision authorising their disposal.

Bankruptcy restrictions orders and undertakings

[[F610]29A Provision about bankruptcy restrictions orders, interim orders and undertakings, including—

(a) provision about evidence;

(b) provision enabling the amalgamation of the register mentioned in paragraph 12 of Schedule 4A with another register;

(c) provision enabling inspection of that register by the public.**]**

Textual Amendments

F610 Sch. 9 para. 29A inserted (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 16(3) (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

General

30 Provision conferring power on the Secretary of State to make regulations with respect to so much of any matter that may be provided for in the rules as relates to the carrying out of the functions of an interim receiver appointed under section 286, of the official receiver while acting as a receiver or manager under section 287 or of a trustee of a bankrupt's estate.

31 Provision conferring a discretion on the court.

32 Provision making non-compliance with any of the rule a criminal offence.

33 Provision making different provision for different cases including different provision for different areas.

SCHEDULE 10

Section 430.

PUNISHMENT OF OFFENCES UNDER THIS ACT

Modifications etc. (not altering text)

C961 Sch. 10 modified by Building Societies Act 1986 (c. 53, SIF 16), **ss. 54(3)**(*a*)(5)(*a*), 90, 126(3), Sch. 15 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **2(2)**)

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Sch. 10 modified (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10**, Pt. I para.1 (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3**

Sch. 10 applied (1.2.1993) by Friendly Societies Act 1992 (c. 40), ss. 21(1), 22, 23, **Sch. 10**, Pt. I para.1 (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3**

C962 Sch. 10 applied (with modifications) (1.12.1997) by 1986 c. 53, **Sch. 15A**, para. 1(2) (as inserted by 1997 c. 32, s. 39(2), **Sch. 6**); S.I. 1997/2668, art. 2, **Sch. Pt. I**)

Sch. 10 applied (with modifications) (S.) (6.4.2001 to the extent as mentioned) by S.S.I. 2001/128, reg. 4, Sch. 2, **Sch. 3**

C963 Sch. 10 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

C964 Sch. 10 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(5)**)

C965 Sch. 10 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), {ss. 145 table 2}, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

[F611]*Note:*. . . . . .

Section of Act creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
[[F612] 6A(1).	False representation or fraud for purpose of obtaining members' or creditors' approval of proposed voluntary arrangement.	1. On indictment. 7 years or a fine, or both. 2. Summary. 6 months or the statutory maximum, or both.]		
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. . .	. . .	. . .	. . .	. . .
30	Body corporate acting as receiver.	1.On indictment 2.Summary.	A fine. Thestatutory maximum.	
31	F614 . . . bankrupt acting as receiver or manager.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
38(5)	Receiver failing to deliver accounts to registrar.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
39(2)	Company and others failing to state in correspondence that receiver appointed.	Summary.	One-fifth of the statutory maximum.	
43(6)	Administrative receiver failing to file office copy of order permitting disposal of charged property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
45(5)	Administrative receiver failing to file notice of vacation of office.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
46(4)	Administrative receiver failing to give notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
47(6)	Failure to comply with provisions relating to statement of affairs, where administrative receiver appointed.	1.On indictment 2.Summary.	A fine. Thestatutory maximum.	One-tenth of the statutory maximum.
48(8)	Administrative receiver failing to comply with requirements as to his report.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

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51(4)	Body corporate or Scottish firm acting as receiver.	1.On indictment 2.Summary.	A fine. Thestatutory maximum.	
51(5)	Undischarged bankrupt acting as receiver (Scotland).	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
53(2)	Failing to deliver to registrar copy of instrument of appointment of receiver.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
54(3)	Failing to deliver to registrar the court's interlocutor appointing receiver.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
61(7)	Receiver failing to send to registrar certified copy of court order authorising disposal of charged property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
62(5)	Failing to give notice to registrar of cessation or removal of receiver.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
64(2)	Company and others failing to state on correspondence etc. that receiver appointed.	Summary.	One-fifth of the statutory maximum.	
65(4)	Receiver failing to send or publish notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
66(6)	Failing to comply with provisions concerning statement of affairs,	1.On indictment 2.Summary.	A fine. Thestatutory maximum.	One-tenth of the statutory maximum.

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	where receiver appointed.			
67(8)	Receiver failing to comply with requirements as to his report.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
85(2)	Company failing to give notice in Gazette of resolution for voluntary winding up.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
89(4)	Director making statutory declaration of company's solvency without reasonable grounds for his opinion.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum.	
89(6)	Declaration under section 89 not delivered to registrar within prescribed time.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
93(3)	Liquidator failing to summon general meeting of company at each year's end.	Summary.	One-fifth of the statutory maximum.	
94(4)	Liquidator failing to send a registrar a copy of account of winding up and return of final meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
94(6)	Liquidator failing to call final meeting.	Summary.	One-fifth of the statutory maximum.	
95(8)	Liquidator failing to comply with s. 95, where company insolvent.	Summary.	The statutory maximum.	
98(6)	Company failing to comply with	1.On indictment 2.Summary.	A fine. Thestatutory maximum.	

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	s. 98 in respect of summoning and giving notice of creditors' meeting.			
99(3)	Directors failing to attend and lay statement in prescribed from before creditors' meeting.	1.On indictment 2.Summary.	A fine. Thestatutory maximum.	
105(3)	Liquidator failing to summon company general meeting and creditors' meeting at each year's end.	Summary.	One-fifth of the statutory maximum.	
106(4)	Liquidator failing to send to registrar account of winding up and return of final meetings.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
106(6)	Liquidator failing to call final meeting of company or creditors.	Summary.	One-fifth of the statutory maximum.	
109(2)	Liquidator failing to publish notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
114(4)	Directors exercising powers in breach of s. 114, where no liquidator.	Summary.	The statutory maximum.	
131(7)	Failing to comply with requirements as to statement of affairs, where liquidator appointed.	1.On indictment 2.Summary.	A fine. Thestatutory maximum.	One-tenth of the statutory maximum.
164	Giving, offering etc. corrupt inducement	1.On indictment 2.Summary.	A fine. Thestatutory maximum.	

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	affecting appointment of liquidator.			
166(7)	Liquidator failing to comply with requirements of s. 166 in creditors' voluntary winding up.	Summary.	The statutory maximum.	
188(2)	Default in compliance with s. 188 as to notification that company being wound up.	Summary.	One-fifth of the statutory maximum.	
192(2)	Liquidator failing to notify registrar as to progress of winding up.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
201(4)	Failing to deliver to registrar office copy of court order deferring dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
203(6)	Failing to deliver to registrar copy of directions or result of appeal under s. 203.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
204(7)	Liquidator failing to deliver to registrar copy of court order for early dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
204(8)	Failing to deliver to registrar copy of court order deferring early dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
205(7)	Failing to deliver to registrar copy of Secretary of State's directions or court order deferring dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

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206(1)	Fraud etc. in anticipation of winding up.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
206(2)	Privity to fraud in anticipation of winding up; fraud, or privity to fraud, after commmencement of winding up.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
206(5)	Knowingly taking in pawn or pledge, or otherwise receiving, company property.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
207	Officer of company entering into transaction in fraud of company's creditors.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
208	Officer of company misconducting himself in course of winding up.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
209	Officer or contributory destroying, falsifying, etc. company's books.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
210	Officer of company making material omission from statement relating to company's affairs.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
211	False representation or fraud for purpose of obtaining creditors' consent to an	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.

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	agreement in connection with winding up.			
216(4)	Contravening restrictions on re-use of name of company in insolvent liquadation.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
235(5)	Failing to co-operate with office-holder.	1.On indictment 2.Summary.	A fine. Thestatutory maximum	One-tenth of the statutory maximum.
[[F615] 262A(1).	False representation or fraud for purpose of obtaining creditors' approval of proposed voluntary arrangement.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.**]**	
353(1)	Bankrupt failing to disclose property or disposals to official receiver or trustee.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
354(1)	Bankrupt failing to deliver property to, or concealing property from, official receiver or trustee.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
354(2)	Bankrupt removing property which he is required to deliver to official receiver or trustee.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
354(3)	Bankrupt failing to account for loss of substantial part of property.	1.On indictment 2.Summary.	2years or a fine, or both. 6 months or the statutory maximum, or both.	
355(1)	Bankrupt failing to deliver books, papers	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	

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	and records to official receiver or trustee.		
355(2)	Bankrupt concealing, destroying etc. books, papers or records, or making false entries in them.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
355(3)	Bankrupt disposing of, or altering, books, papers or records relating to his estate or affairs.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
356(1)	Bankrupt making material omission in statement relating to his affairs.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
356(2)	Bankrupt making false statement, or failing to inform trustee, where false debt proved.	1.On indictment 2.Summary.	7 ears or a fine, or both. 6 months or the statutory maximum, or both.
357	Bankrupt fraudulently disposing of property.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
358	Bankrupt absconding with property he is required to deliver to official receiver or trustee.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
359(1)	Bankrupt disposing of property obtained on credit and not paid for.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
359(2)	Obtaining property in respect of which	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.

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	money is owed by a bankrupt.		
360(1)	Bankrupt obtaining credit or engaging in business without disclosing his status or name in which he was made bankrupt.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
360(3)	Person made bankrupt in Scotland or Northern Ireland obtaining credit, etc. in England and Wales.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
F616	F616	F616	F616
. . .	. . .	. . .	. . .
F616	F616	F616	F616
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389	Acting as insolvency practitioner when not qualified.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
429(5)	Contravening s. 429 in respect of disabilities imposed by county court on revocation of administration order.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
[[F617]Sch. A1, para. 9(2) .	Directors failing to notify nominee of beginning of moratorium.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.**]**
[[F617]Sch. A1, para. 10(3).	Nominee failing to advertise or notify beginning of moratorium.	Summary.	One-fifth of the statutory maximum.**]**
[[F617]Sch. A1, para. 11(2).	Nominee failing to advertise or notify end of moratorium.	Summary.	One-fifth of the statutory maximum.**]**

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[[F617]Sch. A1, para. 16(2).	Company and officers failing to state in correspondence etc. that moratorium in force.	Summary.	One-fifth of the statutory maximum.**]**
[[F617]Sch. A1, para. 17(3)(a).	Company obtaining credit without disclosing existence of moratorium.	1.On indictment 2.Summary.	A fine. The statutory maximum.**]**
[[F617]Sch. A1, para. 17(3)(b).	Obtaining credit for company without disclosing existence of moratorium.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.**]**
[[F617]Sch. A1, para. 18(3)(a).	Company disposing of property otherwise than in ordinary way of business.	1.On indictment 2.Summary.	A fine. The statutory maximum.**]**
[[F617]Sch. A1, para. 18(3)(b).	Authorising or permitting disposal of company property.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.**]**
[[F617]Sch. A1, para. 19(3)(a).	Company making payments in respect of liabilities existing before beginning of moratorium.	1.On indictment 2.Summary.	A fine. Thestatutory maximum.**]**
[[F617]Sch. A1, para. 19(3)(b).	Authorising or permitting such a payment.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.**]**
[[F617]Sch. A1, para. 20(9).	Directors failing to send to registrar office copy of court order permitting disposal of charged property.	Summary.	One-fifth of the statutory maximum.**]**

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[F617Sch. A1, para. 22(1).	Company disposing of charged property.	1.On indictment 2.Summary.	A fine. Thestatutory maximum.**]**
[F617Sch. A1, para. 22(2).	Authorising or permitting such a disposal.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.**]**
[F617Sch. A1, para. 23(1)(a).	Company entering into market contract, etc.	1.On indictment 2.Summary.	A fine. Thestatutory maximum.**]**
[F617Sch. A1, para. 23(1)(b).	Authorising or permitting company to do so.	1.On indictment 2.Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.**]**
[F617Sch. A1, para. 25(6).	Nominee failing to give notice of withdrawal of consent to act.	Summary.	One-fifth of the statutory maximum.**]**
[F617Sch. A1, para. 34(3).	Nominee failing to give notice of extension of moratorium.	Summary.	One-fifth of the statutory maximum.**]**
[F617Sch. A1, para. 41(2).	Fraud or privity to fraud in anticipation of moratorium.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.**]**
[F617Sch. A1, para. 41(3).	Fraud or privity to fraud in anticipation of moratorium.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.**]**
[F617Sch. A1, para. 41(7).	Knowingly taking in pawn or pledge, or otherwise receiving, company property.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.**]**
[F617Sch. A1, para. 42(1).	False representation or fraud for purpose of obtaining or extending moratorium.	1.On indictment 2.Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.**]**
[F618Sch. B1, para. 18(7).	Making false statement in statutory declaration where	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory

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	administrator appointed by holder of floating charge.		maximum or both.]	
[[F618]Sch. B1, para. 20.	Holder of floating charge failing to notify administrator or others of commencement of appointment.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.]	One-tenth of the statutory maximum.
[[F618]Sch. B1, para. 27(4).	Making false statement in statutory declaration where appointment of administrator proposed by company or directors.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.]	
[[F618]Sch. B1, para. 29(7).	Making false statement in statutory declaration where administrator appointed by company or directors.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.]	
[[F618]Sch. B1, para. 32.	Company or directors failing to notify administrator or others of commencement of appointment.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.	One-tenth of the statutory maximum.]
[[F618]Sch. B1, para. 45(2).	Administrator, company or officer failing to state in business document that administrator appointed.	Summary.	One-fifth of the statutory maximum.]	
[[F618]Sch. B1, para. 46(9).	Administrator failing to give notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]

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[F618 Sch. B1, para. 48(4).	Failing to comply with provisions about statement of affairs where administrator appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.]
[F618 Sch. B1, para. 49(7).	Administrator failing to send out statement of his proposals.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F618 Sch. B1, para. 51(5).	Administrator failing to arrange initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F618 Sch. B1, para. 53(3).	Administrator failing to report decision taken at initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F618 Sch. B1, para. 54(7).	Administrator failing to report decision taken at creditors' meeting summoned to consider revised proposal.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F618 Sch. B1, para. 56(2).	Administrator failing to summon creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F618 Sch. B1, para. 71(6).	Administrator failing to file court order enabling disposal of charged property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F618 Sch. B1, para. 72(5).	Administrator failing to file court order enabling disposal of hire-purchase property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F618 Sch. B1, para. 77(3).	Administrator failing to notify Registrar of Companies of	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]

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	automatic end of administration.			
[F618 Sch. B1, para. 78(6).	Administrator failing to give notice of extension by consent of term of office.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F618 Sch. B1, para. 80(6).	Administrator failing to give notice of termination of administration where objective achieved.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F618 Sch. B1, para. 84(9).	Administrator failing to comply with provisions where company moves to dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F618 Sch. B1, para. 86(3).	Administrator failing to notify Registrar of Companies where court terminates administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
[F618 Sch. B1, para. 89(3).	Administrator failing to give notice on ceasing to be qualified.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.]
Sch. 7, para. 4(3)..	Failure to attend and give evidence to Insolvency Practitioners Tribunal; suppressing, concealing, etc. relevant documents..	Summary.	Level 3 on the standardscale withinthe meaning given by section 75 of the Criminal Justice Act 1982.	

Textual Amendments

F611 Note in Sch. 10 repealed (5.11.1993) by 1993 c. 50, s. 1(1), **Sch. 1 Pt. XIV** Group 2

F612 Entry in Sch. 10 inserted (1.1.2003) by 2000 c. 39, s. 2, **Sch. 2 Pt. I para. 12**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

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F613 Entries in Sch. 10 repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 39(3)(a)-(h), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F614 Word in entry in Sch. 10 repealed (1.4.2004) by 2002 c. 40, ss. 269, 278, 279, Sch. 23 para. 17(a), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F615 Entry in Sch. 10 inserted (1.1.2003) by 2000 c. 39, s. 3, **Sch. 3 para. 16**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F616 Entry in Sch. 10 repealed (1.4.2004) by 2002 c. 40, ss. 269, 279, Sch. 23 para. 17(b), Sch. 26 (with s. 249(6)); S.I. 2003/2093, **art. 2(2)**, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F617 Entries in Sch. 10 inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 12**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)

F618 Entries in Sch. 10 inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 39(2) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C966 Sch. 10: entry relating to s. 93(3) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

C967 Sch. 10: entry relating to s. 105(3) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

C968 Sch. 10: entry relating to s. 106(6) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

SCHEDULE 11

Section 437.

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

COMPANY INSOLVENCY AND WINDING UP

Administration orders

1 (1) Where any right to appoint an administrative receiver of a company is conferred by any debentures or floating charge created before the appointed day, the conditions precedent to the exercise of that right are deemed to include the presentation of a petition applying for an administration order to be made in relation to the company.

(2) "Administrative receiver" here has the meaning assigned by section 251.

Receivers and managers (England and Wales)

2 (1) In relation to any receiver or manager of a company's property who was appointed before the appointed day, the new law does not apply; and the relevant provisions of the former law continue to have effect.

(2) "The new law" here means Chapter I of Part III, and Part VI, of this Act; and "the former law" means the Companies Act and so much of this Act as replaces provisions of that Act (without the amendments in paragraphs 15 to 17 of Schedule 6 to the [M94]Insolvency Act 1985, or the associated repeals by that Act), and any provision of the Insolvency Act 1985 which was in force before the appointed day.

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Insolvency Act 1986 is up to date with all changes known to be in force on or before 18 July 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)*

(3) This paragraph is without prejudice to the power conferred by this Act under which rules under section 411 may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to the receiver or manager of a company's property notwithstanding that he was appointed before the coming into force of the rules or section 411.

Marginal Citations
M94 1985 c. 65.

Receivers (Scotland)

3 (1) In relation to any receiver appointed under section 467 of the Com panies Act before the appointed day, the new law does not apply and the relevant provisions of the former law continue to have effect.

(2) "The new law" here means Chapter II of Part III, and Part VI, of this Act; and "the former law" means the Companies Act and so much of this Act as replaces provisions of that Act (without the amendments in paragraphs 18 to 22 of Schedule 6 to the Insolvency Act 1985 or the associated repeals made by the Act), and any provision of the Insolvency Act 1985 which was in force before the appointed day.

(3) This paragraph is without prejudice to the power conferred by this Act under which rules under section 411 may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to a receiver appointed under section 467 notwithstanding that he was appointed before the coming into force of the rules or section 411.

Winding up already in progress

4 (1) In relation to any winding up which has commenced, or is treated as having commenced, before the appointed day, the new law does not apply, and the former law continues to have effect, subject to the following paragraphs.

(2) "The new law" here means any provisions in the first Group of Parts of this Act which replace sections 66 to 87 and 89 to 105 of the [M95]Insolvency Act 1985; and "the former law" means Parts XX and XXI of the Companies Act (without the amendments in paragraphs 23 to 52 of Schedule 6 to the Insolvency Act 1985, or the associated repeals made by the Act).

Marginal Citations
M95 1985 c. 65.

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Statement of affairs

5 (1) Where a winding up by the court in England and Wales has commenced, or is treated as having commenced, before the appointed day, the official receiver or (on appeal from a refusal by him) the court may, at any time on or after that day—

(a) release a person from an obligation imposed on him by or under section 528 of the Companies Act (statement of affairs), or

(b) extend the period specified in subsection (6) of that section.

(2) Accordingly, on and after the appointed day, section 528(6) has effect in relation to a winding up to which this paragraph applies with the omission of the words from "or within" onwards.

Provisions relating to liquidator

6 (1) This paragraph applies as regards the liquidator in the case of winding up by the court in England and Wales commenced, or treated as having commenced, before the appointed day.

(2) The official receiver may, at any time when he is liquidator of the company, apply to the Secretary of State for the appointment of a liquidator in his (the official receiver's) place; and on any such application the Secretary of State shall either make an appointment or decline to make one.

(3) Where immediately before the appointed day the liquidator of the company has not made an application under section 545 of the Companies Act (release of liquidators), then—

(a) except where the Secretary of State otherwise directs, sections 146(1) and (2) and 172(8) of this Act apply, and section 545 does not apply, in relation to any liquidator of that company who holds office on or at any time after the appointed day and is not the official receiver;

(b) section 146(3) applies in relation to the carrying out at any time after that day by any liquidator of the company of any of his functions; and

(c) a liquidator in relation to whom section 172(8) has effect by virtue of this paragraph has his release with effect from the time specified in section 174(4)(d) of this Act.

(4) Subsection (6) of section 174 of this Act has effect for the purposes of sub-paragraph (3)(c) above as it has for the purposes of that section, but as if the reference to section 212 were to section 631 of the Companies Act.

(5) The liquidator may employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection; but if he does so employ a solicitor he shall inform the committee of inspection that he has done so.

Winding up under supervision of the court

7 The repeals in Part II of Schedule 10 the [M96]Insolvency Act 1985 of references (in the Companies Act and elsewhere) to a winding up under the supervision of the court do not affect the operation of the enactments in which the references

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are contained in relation to any case in which an order under section 606 of the Companies Act (power to order winding up under supervision) was made before the appointed day.

Marginal Citations
M96 1985 c. 65.

Saving for power to make rules

8 (1) Paragraphs 4 to 7 are without prejudice to the power conferred by this Act under which rules made under section 411 may make transitional provision in connection with the coming into force of those rules.

(2) Such provision may apply those rules in relation to a winding up notwithstanding that the winding up commenced, or is treated as having commenced, before the coming into force of the rules or section 411.

Setting aside of preferences and other transactions

9 (1) Where a provision in Part VI of this Act applies in relation to a winding up or in relation to a case in which an administration order has been made, a preference given, floating charge created or other transaction entered into before the appointed day shall not be set aside under the provision except to the extent that it could have been set aside under the law in force immediately before that day, assuming for this purpose that any relevant administration order had been winding-up order.

(2) The references above to setting aside a preference, floating charge or other transaction include the making of an order which varies or reverses any effect of a preference, floating charge or other transaction.

PART II

INDIVIDUAL INSOLVENCY

Bankruptcy (general)

10 (1) Subject to the following provisions of this Part of this Schedule, so much of this Act as replaces Part III of the [M97]Insolvency Act 1985 does not apply in relation to any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before the appointed day.

(2) In relation to any such case as is mentioned above, the enactments specified in Schedule 8 to that Act, so far as they relate to bankruptcy, and those specified in Parts III and IV of Schedule 10 to that Act, so far as they so relate, have effect without the amendments and repeals specified in those Schedules.

(3) Where any subordinate legislation made under an enactment referred to in sub-paragraph (2) is in force immediately before the appointed day, that subordinate legislation continues to have effect on and after that day in relation to any such case as is mentioned in sub-paragraph (1).

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Marginal Citations
M97 1985 c. 65.

11 (1) In relation to any such case as is mentioned in paragraph 10(1) the references in any enactment or subordinate legislation to a petition, order or other matter which is provided for under the [M98]Bankruptcy Act 1914 and corresponds to a petition, order or other matter provided for under provisions of this Act replacing Part III of the Insolvency Act 1985 continue on and after the appointed day to have effect as references to the petition, order or matter provided for by the Act of 1914; but otherwise those references have effect on and after that day as references to the petition, order or matter provided for by those provisions of this Act.

(2) Without prejudice to sub-paragraph (1), in determining for the purposes of section 279 of this Act (period of bankruptcy) or paragraph 13 below whether any person was an undischarged bankrupt at a time before the appointed day, an adjudication in bankruptcy and an annulment of a bankruptcy under the Act of 1914 are to be taken into account in the same way, respectively, as a bankruptcy order under the provisions of this Act replacing Part III of the Insolvency Act 1985 and the annulment under section 282 of this Act of such an order.

Marginal Citations
M98 1914 c. 59.

12 Transactions entered into before the appointed day have effect on and after that day as if references to acts of bankruptcy in the provisions for giving effect to those transactions continued to be references to acts of bankruptcy within the meaning of the Bankruptcy Act 1914, but as if such acts included failure to comply with a statutory demand served under section 268 of this Act.

Discharge from old bankruptcy

13 (1) Where a person—
(a) was adjudged bankrupt before the appointed day or is adjudged bankrupt on or after that day on a petition presented before that day, and
(b) that person was not an undischarged bankrupt at any time in the period of 15 years ending with the adjudication,

that person is deemed (if not previously discharged) to be discharged from his bankruptcy for the purposes of the [M99]Bankruptcy Act 1914 at the end of the discharge period.

(2) Subject to sub-paragraph (3) below, the discharge period for the purposes of this paragraph is—
(a) in the case of a person adjudged bankrupt before the appointed day, the period of 3 years beginning with that day, and
(b) in the case of a person who is adjudged bankrupt on or after that day on a petition presented before that day, the period of 3 years beginning with the date of the adjudication.

(3) Where the court exercising jurisdiction in relation to a bankruptcy to which this paragraph applies is satisfied, on the application of the official receiver, that the

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bankrupt has failed, or is failing, to comply with any of his obligations under the Bankruptcy Act 1914, any rules made under that Act or any such rules as are mentioned in paragraph 19(1) below, the court may order that the discharge period shall cease to run for such period, or until the fulfilment of such conditions (including a condition requiring the court to be satisfied as to any matter) as may be specified in the order.

Marginal Citations
M99 1914 c. 59.

Provisions relating to trustee

14 (1) This paragraph applies as regards the trustee in the case of a person adjudged bankrupt before the appointed day, or adjudged bankrupt on or after that day on a petition presented before that day.

(2) The official receiver may at any time when he is the trustee of the bankrupt's estate apply to the Secretary of State for the appointment of a person as trustee instead of the official receiver; and on any such application the Secretary of State shall either make an appointment or decline to make one.

(3) Where on the appointed day the trustee of a bankrupt's estate has not made an application under section 93 of the Bankruptcy Act 1914 (release of trustee), then—

(a) except where the Secretary of State otherwise directs, sections 298(8), 304 and 331(1) to (3) of this Act apply, and section 93 of the Act of 1914 does not apply, in relation to any trustee of the bankrupt's estate who holds office on or at any time after the appointed day and is not the official receiver;

(b) section 331(4) of this Act applies in relation to the carrying out at any time on or after the appointed day by the trustee of the bankrupt's estate of any of his functions; and

(c) a trustee in relation to whom section 298(8) of this Act has effect by virtue of this paragraph has his release with effect from the time specified in section 299(3)(d).

(4) Subsection (5) of this section 299 has effect for the purposes of sub-paragraph (3)(c) as it has for the purposes of that section 8.

(5) In the application of subsection (3) of section 331 in relation to a case by virtue of this paragraph, the reference in that subsection to section 330(1) has effect as a reference to section 67 of the [M100]Bankruptcy Act 1914.

(6) The trustee of the bankrupt's estate may employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection; but if he does so employ a solicitor, he shall inform the committee of inspection that he has done so.

Marginal Citations
M100 1914 c. 59.

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Copyright

15 (1) Where a person who is adjudged bankrupt on a petition presented on or after the appointed day is liable, by virtue of a transaction entered into before that day, to pay royalties or a share of the profits to any person in respect of any copyright or interest in copyright comprised in the bankrupt's estate, section 60 of the Bankruptcy Act 1914 (limitation on trustee's powers in relation to copyright) applies in relation to the trustee of that estate as it applies in relation to a trustee in bankruptcy under the Act of 1914.

Second bankruptcy

16 (1) Sections 334 and 335 of this Act apply with the following modifications where the earlier bankruptcy (within the meaning of section 334) is a bankruptcy in relation to which the Act of 1914 applies instead of the second Group of Parts in this Act, that is to say—

(a) references to property vested in the existing trustee under section 307(3) of this Act have effect as references to such property vested in that trustee as was acquired by or devolved on the bankrupt after the commencement (within the meaning of the Act of 1914) of the earlier bankruptcy; and

(b) references to an order under section 310 of this Act have effect as references to an order under section 51 of the Act of 1914.

(2) Section 39 of the Act of 1914 (second bankruptcy) does not apply where a person is an undischarged bankrupt under that Act is adjudged bankrupt under this Act.

Setting aside of preferences and other transactions

17 (1) A performance given, assignment made or other transaction entered into before the appointed day shall not be set aside under any of sections 339 to 344 of this Act except to the extent that it could have been set aside under the law in force immediately before that day.

(2) References in sub-paragraph (1) to setting aside a preference, assignment or other transaction include the making of any order which varies or reverses any effect of a preference, assignment or other transaction.

Bankruptcy offences

18 (1) Where a bankruptcy order is made under this Act on or after the appointed day, a person is not guilty of an offence under Chapter VI of Part IX in respect of anything done before that day; but, notwithstanding the repeal by the [M101]Insolvency Act 1985 of the [M102]Bankruptcy Act 1914, is guilty of an offence under the Act of 1914 in respect of anything done before the appointed day which would have been an offence under that Act if the making of the bankruptcy order had been the making of a receiving order under that Act.

(2) Subsection (5) of section 350 of this Act applies (instead of sections 157(2), 158(2), 161 and 165 of the Act of 1914) in relation to proceedings for an offence under that Act which are instituted (whether by virtue of sub-paragraph (1) or otherwise) after the appointed day.

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Marginal Citations
M101 1985 c. 65.
M102 1914 c. 59.

Power to make rules

19 (1) The preceding provisions of this Part of this Schedule are without prejudice to the power conferred by this Act under which rules under section 412 may make transitional provision in connection with the coming into force of those rules; and such provision may apply those rules in relation to a bankrutpcy notwithstanding that it arose from a petition presented before either the coming into forc He of the rules or the appointed day.

(2) Rules under section 412 may provide for such notices served before the appointed day as may be prescribed to be treated for the purposes of this Act as statutory demands served under section 268.

PART III

TRANSITIONAL EFFECT OF PART XVI

20 (1) A transaction entered into before the appointed day shall not be set aside under Part XVI of this Act except to the extent that it could have been set aside under the law in force immediately before that day.

(2) References above to setting aside a transaction include the making of any order which varies or reverses any effect of a transaction.

PART IV

INSOLVENCY PRACTITIONERS

21 Where an individual began to act as an insolvency practitioner in relation to any person before the appointed day, nothing in section 390(2) or (3) prevents that individual from being qualified to act as an insolvency practitioner in relation to that person.

PART V

GENERAL TRANSITIONAL PROVISIONS AND SAVINGS

Interpretation for this Part

22 In this Part of this Schedule, "the former enactments" means so much of the Companies Act as is repealed and replaced by this Act, the [M103]Insolvency Act 1985 and the other enactments repealed by this Act.

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Marginal Citations
M103 1985 c. 65.

General saving for past acts and events

23 So far as anything done or treated as done under or for the purposes of any provision of the former enactments could have been done under or for the purposes of the corresponding provision of this Act, it is not invalidated by the repeal of that provision by has effect as if done under or for the purposes of the corresponding provision; and any order, regulation, rule or other instrument made or having effect under any provision of the former enactments shall, insofar as its effect is preserved by this paragraph, be treated for all purposes as made and having effect under the corresponding provision.

Periods of time

24 Where any period of time specified in a provision of the former enactments is current immediately before the appointed day, this Act has effect as if the corresponding provision had been in force when the period began to run; and (without prejudice to the foregoing) any period of time so specified and current is deemed for the purposes of this Act—

(a) to run from the date or event from which it was running immediately before the appointed day, and

(b) to expire (subject to any provision of this Act for its extension) whenever it would have expired if this Act had not been passed;

and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of such period as above mentioned shall be under this Act as they were or would have been under the former enactments.

Internal cross-references in this Act

25 Where in any provision of this Act there is a reference to another such provision, and the first-mentioned provision operates, or is capable of operating, in relation to things done or omitted, or events occurring or not occurring, in the past (including in particular past act of compliance with any enactment, failures of compliance, contraventions, offences and convictions of offences), the reference to the other provision is to be read as including a reference to the corresponding provision of the former enactments.

Punishment of offences

26 (1) Offences committed before the appointed day under any provision of the former enactments may, notwithstanding any repeal by this Act, be prosecuted and punished after that day as if this Act had not passed.

(2) A contravention of any provision of the former enactments committed before the appointed day shall not be visited with any severer punishment under or by virtue of this Act than would have been applicable under that provision at the time of the contravention; but where an offence for the continuance of which a penalty

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was provided has been comitted under any provision of the former enactments, proceedings may be taken under this Act in respect of the continuance of the offence on and after the appointed day in the like manner as if the offence had been committed under the corresponding provision of this Act.

References elsewhere to the former enactments

27 (1) A reference in any enactment, instrument or document (whether express or implied, and in whatever phraseology) to a provision of the former enactments (including the corresponding provision of any yet earlier enactment) is to be read, where necessary to retain for the enactment, instrument or document the same force and effect as it would have had but for the passing of this Act, as, or as including, a reference to the corresponding provision by which it is replaced in this Act.

(2) The generality of the preceding sub-paragraph is not affected by any specific conversion of references made by this Act, nor by the inclusion in any provision of this Act of a reference (whether express or implied, and in whatever phraseology) to the provision of the former enactments corresponding to that provision, or to a provision of the former enactments which is replaced by a corresponding provision of this Act.

Saving for power to repeal provisions in section 51

28 The Secretary of State may by order in a statutory instrument repeal subsections (3) to (5) of section 51 of this Act and the entries in Schedule 10 relating to subsections (4) and (5) of that section.

Saving for Interpretation Act 1978 ss. 16, 17

29 Nothing in this Schedule is to be taken as prejudicing sections 16 and 17 of the [M104]Interpretation Act 1978 (savings from, and effect of, repeals); and for the purposes of section 17(2) of that Act (construction of references to enactments repealed and replaced, etc.), so much of section 18 of the [M105]Insolvency Act 1985 as is replaced by a provision of this Act is deemed to have been repealed by this Act and not by the [M106]Company Directors Disqualification Act 1986.

Marginal Citations

M104 1978 c. 30.
M105 1985 c. 65.
M106 1986 c. 46.

SCHEDULE 12

Section 438

ENACTMENTS REPEALED

Chapter	Short title	Extent of repeal

Status: *Point in time view as at 01/11/2007. This version of this Act contains provisions that are not valid for this point in time.*
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1970 c. 8.	The Insolvency Services (Accounting and Investment) Act 1970.	The whole Act.
1976 c. 60	The Insolvency Act 1976.	Section 3.
1985 c. 6.	The Companies Act 1985.	In section 463(4), the words “Subject to section 617”.
		Sections 467 to 485.
		In section 486, in the definition of “company” the words “other than in Chapter II of this Part”; and the definitions of “instrument of appointment”, “prescribed”, “receiver” and “register of charges”.
		Sections 488 to 650.
		Sections 659 to 664.
		Sections 665 to 674.
		Section 709(4).
		Section 710(4).
		Section 724.
		Schedule 16.
		In Schedule 24, the entries relating to section 467; all entries thereafter up to and including section 641(2); and the entry relating to section 710(4).
1985 c. 65.	The Insolvency Act 1985.	Sections 1 to 11.
		Section 15.
		Section 17.
		Section 19.
		Sections 20 to 107.
		Section 108(1) and (3) to (7).
		Sections 109 to 211.
		Sections 212 to 214.
		Section 216.
		Section 217(1) to (3).
		Sections 221 to 234.

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		In section 235, subsections (2) to (5). In section 236, subsections (3) to (5). In Schedule 1, paragraphs 1 to 4, and sub-paragraph (4) of paragraph 5. Schedules 3 to 5. In Schedule 6, paragraphs 5, 6, 9, 15 to 17, 20 to 22, 25 to 44 and 48 to 52. Schedule 7. In Schedule 9, paragraphs 1 and 4 to 24. Schedule 10.
1985 c. 66.	The Bankruptcy (Scotland) Act 1985.	In Schedule 7, paragraphs 19 to 22.
1986 c. 44.	The Gas Act 1986.	In Schedule 7, paragraph 31.

SCHEDULE 13

Section 439(1)

CONSEQUENTIAL AMENDMENTS OF COMPANIES ACT 1985

PART I

INTERNAL AND OTHER SECTION REFERENCES AMENDED OR RE-AMENDED

Section of Act	Consequential amendment or re-amendment
Section 13(4)	After “this Act”, add “and the Insolvency Act”.
Section 44(7)	In paragraph (a), for “section 582” substitute “section 110 of the Insolvency Act”.
Section 103(7)	In paragraph (a), the same amendment.
Section 131(7)	The same amendment.
Section 140(2)	In paragraph (b), for “section 518” substitute “section 123 of the Insolvency Act”.
Section 153(3)	In paragraph (f), for “section 582” substitute “section 110 of the Insolvency Act”.

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	In paragraph (g), for "Chapter II of Part II of the Insolvency Act 1985" substitute "Part I of the Insolvency Act".
Section 156(3)	For "section 517" substitute "section 122 of the Insolvency Act".
Section 173(4)	The same amendment.
Section 196	For this section substitute—"196.—(1) The following applies in the case of a company registered in England and Wales, where debentures of the company are secured by a charge which, as created, was a floating charge.(2) If possession is taken, by or on behalf of the holders of any of the debentures, of any property comprised in or subject to charge, and the company is not at that time in course of being wound up, the company's preferential debts shall be paid out of assets coming to the hands of the person taking possession in priority to any claims for princpipal or interest in respect of the debentures.(3) "Preferential debts" means the categories of debts listed in Schedule 6 to the Insolvency Act; and for the purposes of that Schedule "the relevant date" is the date of possession being taken as above mentioned.(4) Payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors."
F619	**F619**
. . .	. . .
F619	**F619**
. . .	. . .
F620	**F620**
. . .	. . .
Section 441(1)	For "section 13 of the Insolvency Act 1985" substitute "section 8 of the Company Directors Disqualification Act 1986".
F621	**F621**
. . .	. . .
F620	**F620**
. . .	. . .
Section 462(5)	After "this Part" insert "and Part III of the Insolvency Act 1986".

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Section 463(2)	For "Part XX (except section 623(4))" substitute "Part IV of the Insolvency Act (except section 185)".
Section 463(3)	For this subsection substitute—"(3) Nothing in this section derogates from the provisions of sections 53(7) and 54(6) of the Insolvency Act (attachment of floating charge on appointment of receiver), or prejudices the operation of sections 175 and 176 of that Act (payment of preferential debts in winding up)".
Section 464(6)	For "section 89 of the Insolvency Act 1985" substitute "sections 175 and 176 of the Insolvency Act".
Section 657(2)	For "subsections (3) and (5) to (7) of section 91 of the Insolvency Act 1985 and section 92 of that Act" substitute "section 178(4) and sections 179 to 182 of the Insolvency Act".
Section 658(1)	For "Subsection (7) of section 91 of the Insolvency Act 1985" substitute "Section 180 of the Insolvency Act".
Section 711(2)	In paragraph (b), for "section 600" substitute "section 109 of the Insolvency Act".
Section 733	In subsection (1), omit "295(7)".
	F619
	. . .

Textual Amendments

F619 Entries in Pt. I of Sch. 13, relating to sections 222(4), 225 and 733(3) repealed by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213(2), **Sch. 24**

F620 Sch. 13 Pt. 1: entries repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/2194, arts. 1(3)(a), **8**, Sch 2 Pt. 1

F621 Sch. 13 Pt. 1: entry repealed (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 64, 65, **Sch. 8**; S.I. 2004/3322, **art. 2(2)**, Sch. 2 (subject to arts. 3-13)

PART II

AMENDEMENT OF PART XXVI (INTERPRETATION)

In Part XXVI of the Companies Act, after section 735, insert the following section—

"**735A Relationship of this Act to Insolvency Act.**

(1) In this Act "the Insolvency Act" means the Insolvency Act 1986; and in the following provisions of this Act, namely, sections 375(1)(b), 425(6)(a), 440, 449(1)(a) and (d),

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460(2), 675, 676, 677, 699(1), 728 and Schedule 21, paragraph 6(1), the words "this Act" are to be read as including Part I to VII of that Act, sections 411, 413, 414, 416 and 417 in Part XV of that Act, and also the Company Directors Disqualification Act 1986.

(2) In sections 704(5), 706(1), 707(1), 708(1)(a) and (4), 710(5), 713(1), 729 and 732(3) references to the Companies Acts include Parts I to VII of the Insolvency Act, sections 411, 413, 414, 416 and 417 in Part XV of that Act, and also the Company Directors Disqualification Act 1986.

(3) Subsections (1) and (2) apply unless the contrary intention appears."

SCHEDULE 14

Section 439(2)

CONSEQUENTIAL AMENDMENTS OF OTHER ENACTMENTS

Enactment	**Amendment**
Deeds of Arrangement Act 1914 (c. 47):	
Section 3(1)	For "Part III of the Insolvency Act 1985" substitute "Parts VIII to XI of the Insolvency Act 1986".
Section 3(4)	The same amendment.
Section 11(1) and (2)	In each subsection, the same amendment.
Section 15(1)	For "section 207 of the Insolvency Act 1985" substitute "section 412 of the Insolvency Act 1986".
Section 16	The same amendment as of section 3(1).
Section 23	The same amendment.
Section 30(1)	For the definition of "property" substitute —""property' has the meaning given by section 436 of the Insolvency Act 1986".
Law of Property Act 1925 (c. 20):	
Section 52(2)(b)	For "section 91 or 161 of the Insolvency Act 1985" substitute "sections 178 to 180 or sections 315 to 319 of the Insolvency Act 1986".
F622	
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F622	**F622**
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F622	**F622**
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Third Parties (Rights against Insurers) Act 1930 (c. 25):	

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Section 1	In subsection (1)(b), for the words from "a composition" to "that Chapter" substitute "a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 being approved under that Part". In subsection (2), for "228 of the Insolvency Act 1985" substitute "421 of the Insolvency Act 1986". In subsection (3), the same amendment.
Section 2	In subsection (1), the same amendment as of section 1(2). In subsection (1A), for the words from "composition or scheme" to the end of the subsection substitute "voluntary arrangement proposed for the purposes of, and approved under Part I or Part VIII of the Insolvency Act 1986".
Section 4	In paragraph (b), the same amendment as of section 1(2).
F623	
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F623	**F623**
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F624	
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F624	**F624**
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Agricultural Marketing Act 1958 (c. 47):	
Schedule 2	For paragraph 4 substitute—"4.—(1) A scheme shall provide for the winding up of the board, and for that purpose may apply Part V of the Insolvency Act 1986 (winding up of unregistered companies), subject to the following modifications. (2) For the purpose of sections 221, 222 and 224 of the Act of 1986, the principal place of business of the board is deemed to be the office of the board the address of which is registered by the Minister under paragraph 3 above. (3) Section 223 does not apply. (4) Section 224 applies as if the words "or any member of it as such" were omitted. (5) A petition for winding up the board may be presented by the Minister as well as by any person authorised under Part IV of the Insolvency Act 1986 to present a petition for winding up a company".
Charities Act 1960 (c. 58):	

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Section 30(1)	For "Companies Act 1985" substitute "Insolvency Act 1986".
F625	
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F625	**F625**
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F625	**F625**
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Industrial and Provident Societies Act 1965 (c. 12):

Section 55	For "Companies Act 1985" substitute "Insolvency Act 1986".

Medicines Act 1968 (c. 67):

Section 72(4)	For the words from "composition or scheme" to the end of the subsection substitute "voluntary arrangement proposed for the purposes of, and approved under, Part VIII of the Insolvency Act 1986".
F626	
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F626	**F626**
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F626	**F626**
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Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35):

Schedule 3	In Standard Condition 9(2)(b), for "228 of the Insolvency Act 1985" substitute "421 of the Insolvency Act 1986".
F627	
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F627	**F627**
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Superannuation Act 1972 (c. 11):

Section 5(2)	For "156 of the Insolvency Act 1985" substitute "310 of the Insolvency Act 1986"; and for "the said section 156" substitute "the said section 310".
F628	
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F628	**F628**
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F629	

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Land Charges Act 1972 (c. 61):	
Section 16(2)	For "207 of the Insolvency Act 1985" substitute "412 of the Insolvency Act 1986"; and for "Part III" substitute "Parts VIII to XI".
Matrimonial Causes Act 1973 (c. 18):	
Section 39	For "section 174 of the Insolvency Act 1985" substitute "section 339 or 340 of the Insolvency Act 1986".
Powers of Criminal Courts Act 1973 (c. 62):	
Section 39(3)	In paragraph (d), for "174(10) of the Insolvency Act 1985" substitute "341(4) of the Insolvency Act 1986".
Friendly Societies Act 1974 (c. 46):	
Section 87(2)	For "Companies Act 1985" substitute "Insolvency Act 1986".

F630

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Recess Elections Act 1975 (c. 66):	
Section 1(2)	In the definition of "certificate of vacancy", for "214(6)(a) of the Insolvency Act 1985" substitute "427(6)(a) of the Insolvency Act 1986".
Policyholders Protection Act 1975 (c. 75):	
Section 5(1)(a)	For "Companies Act 1985" substitute "Insolvency Act 1986".
Section 15(1)	For "532 of the Companies Act 1985" substitute "Insolvency Act 1986".
Section 16(1)(b)	The same amendment as of section 5(1)(a).
Development Land Tax Act 1976 (c. 24):	
Section 33(1)	For "538 of the Companies Act 1985" substitute "145 of the Insolvency Act 1986".
Restrictive Trade Practices Act 1976 (c. 34):	
Schedule 1	For paragraph 9A (inserted by Insolvency Act 1985, section 217(4)) substitute—"9A. Insolvency services within the meaning of section 428 of the Insolvency Act 1986".

F631

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F631	**F631**
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F632	**F632**
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F631	**F631**
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F631	**F631**
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Credit Unions Act 1979 (c. 34):	
Section 6(1)	For “517(1)(e) of the Companies Act 1985” substitute “122(1)(e) of the Insolvency Act 1986”; and for “517(1)(e) of the Act of 1985” substitute “122(1)(e) of the Act of 1986”.
Banking Act 1979 (c. 37):	
Section 6(3)	In paragraph (b), for “Part XXI of the Companies Act 1985” substitute “Part V of the Insolvency Act 1986”.
Section 18	In subsection (1), for “Companies Act 1985” substitute “Insolvency Act 1986”; and in paragraph (a) of the subsection for “518” substitute “123”.
	In subsection (2), for “Companies Act 1985” substitute “Insolvency Act 1986”; and for “Part XXI” substitute “Part V”.
	In subsection (4)—in paragraph (a), for “Companies Act 1985” substitute “Insolvency Act 1986”;in paragraph (b), for “518 of the said Act of 1985” substitute “123 of the said Act 1986”; andin paragraph (c), for “Part XXI of the said Act of 1985” substitute “Part V of the said Act 1986”.

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Enactment	Amendment
Section 19	In subsection (2), for paragraph (ba) substitute— "(ba) in connection with any proceedings under any provision of— (i)Part XVIII or XX of the Companies Act 1985, or (ii)Parts I to VII of the Insolvancy Act 1986 (other than sections 236 and 237)".
	In subsection (8), for paragraphs (a) and (aa) substitute— "(a) for the references in subsection (2) to Part XVIII or XX of the Companies Act 1985 and Parts I to VII of the Insolvency Act 1986, there shall be substituted references to Parts V, VI and IX of the Companies Act (Northern Ireland) 1960 (the reference to sections 236 and 237 of the Act of 1986 being disregarded)".
Section 28	
	In subsection (3), in paragraph (c), for "83 of the Insolvency Act 1985" substitute "95 of the Insolvency Act 1986".
	In subsectuion (4), in paragraph (a), for "Part XXI of the Companies Act 1985" substitute "Part V of the Insolvency Act 1986".
	In subsection (6)(b), for sub-paragraphs (ii) to (iv) substitute— "(ii)to be a member of a liquidation committee established under Part IV or V of the Insolvency Act 1986; (iii)to be a member of a creditors committee appointed under section 301 of that Act; and (iv)to be a commissioner under section 30 or the Bankruptcy (Scotland) Act 1985"; (v)to be a member of a committee of inspection appointed for the purposes of Part V or Part IX of the Companies Act (Northern Ireland) 1960;
	and (in the passage following sub-paragraph (iv)) for "such a commitee as is mentioned in paragraph (b)(ii) or (iv) above" substitute "a liquidation committee, creditors' committee or committee of inspection".
	In subsection (7), in paragraph (b), for the words from "section 116(4)" to the end of the paragraph substitute "section 261(1) of the Insolvency Act 1986 to any person

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	in whom the property of the firm is vested under section 282(4) of that Act".
Section 31(7)	For paragraph (a) substitute - "(a) for England and Wales, under sections 411 and 412 of the Insolvency Act 1986"; and in paragraph (b) for "the said section 106" substitute "section 411 of that Act".
British Aerospace Act 1980 (c. 26):	
Section 9(1)	In paragraph (a), for "Companies Act 1985" substitute "Insolvency Act 1986".
Public Passenger Vehicles Act 1981 (c. 14):	
Section 19(3)	In paragraph (a), for "Chapter III of Part II of the Insolvency Act 1985" substitute "Part II of the Insolvency Act 1986".
F633	
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F633	**F633**
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Supreme Court Act 1981 (c. 54):	
Section 40A(2)	For "section 179 of the Insolvency Act 1985" substitute "section 346 of the Insolvency Act 1986"; and for "621 of the Companies Act 1985" substitute "183 of the Insolvency Act 1986".
Trustee Savings Banks Act 1981 (c. 65):	
Section 31	In paragraph (b), for "666 to 669 of the Companies Act 1985" substitute "221 to 224 of the Insolvency Act 1986".
Section 54(2)	For "666(6) of the Companies Act 1985" substitute "221(6) of the Insolvency Act 1986".
Iron and Steel Act 1982 (c. 25):	
Schedule 4	In paragraph 3(3) after "Companies Act 1985" insert "or the Insolvency Act 1986".
Civil Jurisdiction and Judgments Act 1982 (c. 27):	
Section 18(3)	In paragraph (ba), for "213 of the Insolvency Act 1985" substitute "426 of the Insolvency Act 1986".
Schedule 5	In paragraph (1), for "Companies Act 1985" substitute "Insolvency Act 1986".
Insurance Companies Act 1982 (c. 50):	

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Section 53	For "Companies Act" (the first time) substitute "Insolvency Act 1986"; and for "Companies Act" (the second time) substitute "that Act of 1986".
Section 54	In subsection (1), for "the Companies Act" (the first time) substitute "Part IV or V of the Insolvency Act 1986"; and in paragraph (a), for "518 or sections 667 to 669" substitute "123 or sections 222 to 224". In subsection (4) for "Companies Act" (the first time) substitute "Insolvency Act 1986".
Section 55	In subsection (5) for "subsection (3) of section 540 of the Companies Act" substitute "section 168(2) of the Insolvency Act 1986". In subsection (6), for "631 of the Companies Act" substitute "212 of the Insolvency Act 1986".
Section 56	In subsection (4), for "Section 90(5) of the Insolvency Act 1985" substitute "Section 177(5) of the Insolvency Act 1986"; and for "section 90 of the said Act of 1985" substitute "section 177 of the said Act of 1986". In subsection (7), for "section 539(1) of the Companies Act" substitute "section 167 of, and Schedule 4 to, the Insolvency Act 1986".
Section 59	In subsection (1), for "106 of the Insolvency Act 1985" substitute "411 of the Insolvency Act 1986". In subsection (2), for "106 of the Insolvency Act 1985" substitute "411 of the Insolvency Act 1986"; and for "section 89 of, and Schedule 4 to, the Insolvency Act 1985" substitute "sections 175 and 176 of, and Schedule 6 to, the Insolvency Act 1986".
Section 96(1)	In the definition of "insolvent", for "517 and 518 or section 666 of the Companies Act" substitute "122 and 123 or section 221 of the Insolvency Act 1986".

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F633 . . .	**F633** . . .

Telecommunications Act 1984 (c. 12):

Section 68(1)	In paragraph (a), for "Companies Act 1985" substitute "Insolvency Act 1986".

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County Courts Act 1984 (c. 28):	
Section 98	For subsection (3) substitute— "(3) The provisions of this section have effect subject to those of sections 183, 184 and 346 of the Insolvency Act 1986".
Section 102	For subsection (8) substitute— "(8) Nothing in this section affects section 346 of the Insolvency Act 1986".
Section 109(2)	For "179 of the Insolvency Act 1985" substitute "346 of the Insolvency Act 1986"
Finance Act 1985 (c. 54):	
Section 79	Omit the word "altogether"; and afer "Companies Act 1985" insert "sections 110 and 111 of the Insolvency Act 1986".
Housing Act 1985 (c. 68):	
Schedule 18	In paragraphs 3(4) and 5(3), for "228 of the Insolvency Act 1985" substitute "421 of the Insolvency Act 1986".

Textual Amendments

F622 Sch. 14: entries relating to Land Registration Act 1925 repealed (13.10.2003) by 2002 c. 9, ss. 135, 136, Sch. 13 (with s. 129, Sch. 12 para. 1); S.I. 2003/1725, **art. 2**

F623 Sch. 14 the entry relating to the Exchange Control Act 1947 repealed by Finance Act 1987 (c. 16, SIF 99:6), s. 72, **Sch. 16 Pt. XI**

F624 Sch. 14: the entries relating to the Arbitration Act 1950 repealed (31.1.1997) by 1996 c. 23, s. 107(2), **Sch. 4** (with s. 81(2)); S.I. 1996/3146, arts. 3, 4, **Sch. 2**

F625 Sch. 14: entries relating to Licensing Act 1964 repealed (24.11.2005) by Licensing Act 2003 (c. 17), ss. 199, 201, **Sch. 7** (with ss. 2(3), 15(2), 195); S.I. 2005/3056, arts. 1(2), **2(2)** (with saving in art. 4)

F626 Sch. 14 the entries relating to the Income and Corporation Taxes Act 1970 repealed by Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), s. 844, **Sch. 31**

F627 Sch. 14: the entry relating to the Tribunals and Inquiries Act 1971 repealed (1.10.1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(2), 19(2), **Sch. 4 Pt. I**

F628 Sch. 14 the entry relating to the Road Traffic Act 1972 repealed by Road Traffic (Consequential Provisions) Act 1988 (c. 54, SIF 107:1), ss. 3, 5, Sch. 1 Pt. I, Sch. 4 paras. 1, **2**

F629 Sch. 14 the entry relating to the Finance Act 1972 repealed by Income and Corporation Taxes Act 1988 (c. 1, SIF 63: 1), s. 844, **Sch. 31**

F630 Sch. 14: the entries relating to the Social Security Pensions Act 1975 repealed (7.2.1994) by 1993 c. 48, ss. 188, 193(2), **Sch. 5 Pt. I**; S.I. 1994/86, **art. 2**

F631 Sch. 14: the entries relating to the Employment Protection (Consolidation) Act 1998 repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

F632 Sch. 14 the entry relating to s.125(2) of the Employment Protection (Consolidation) Act 1978 repealed by Employment Act 1989 (c.38, SIF 43: 1), **s. 29(4) Sch.7 Pt.II**

F633 Sch. 14 the entries relating to the Finance Act 1981 and the Finance Act 1983 repealed by Income and Corporation Taxes Act 1988 (c. 1, SIF 63: 1), s. 844, **Sch. 31**

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