Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

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:—

Annotations:

Modifications etc. (not altering text)

C1 Act amended by Social Security Pensions Act 1975 (c. 60, SIF 113:1), s. 59D(3) (as inserted by Social Security Act 1990 (c. 27, SIF 113:1), 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 (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, SIF 39:1), s. 15(3)(7)
Act modified by [Companies Act 1989 (c. 40), s. 182(4), Sch. 22 para. 4(2); S.I. 1991/878, art. 2, Sch.]

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 modified (3.2.1995) by 1994 c. 37, ss. 32(4), 69(2), Sch. 2 para. 5 (with s. 66(2))

Act restricted (31.13.1996) 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. 5, Sch. 7 paras. 2(3), 3(3) (subject to transitional provisions and savings in Sch.)

Act excluded by Drug Trafficing Offences Act 1986 (c. 32, SIF 39:1), ss. 15(5)(a), 17(3)

Act excluded by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1)

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 (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))

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 (3.10.1994) 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 (3.13.1996) 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.) by 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))

Act modified by Financial Services Act 1986 (c. 60, SIF 69), 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. 60(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 (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) (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, SIF 10), s. 92(2)
Act extended (E.W.) by Water Act 1989 (c. 15, SIF 130), 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)
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)(ii)
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
The First Group of Parts – Company Insolvency: Companies Winding Up

Annotations:

Modifications etc. (not altering text)

C35 Pts. I-IV applied (with modifications) in part (2.1.2013) by The Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (S.I. 2012/3013), reg. 1, Sch. paras. 1(2)(a), (3)-(7)

C36 First Group of Parts amendment to earlier affecting provision S.I. 2006/3107, art. 3, Sch. (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 117

Commencement Information

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

THE FIRST GROUP OF PARTS

COMPANY INSOLVENCY; COMPANIES WINDING UP

Annotations:
PART I

COMPANY VOLUNTARY ARRANGEMENTS

Annotations:

Modifications etc. (not altering text)

C37 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

C38 Pts. I-VII (ss. 1-251) applied (with modifications) by S.I. 1989/1276, arts. 2, 3


C40 Pt. I: power to apply or incorporate conferred (6.4.2001) by 2000 c. 12, s. 14; S.I. 2000/3316, art. 2

C41 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.

C42 Pt. 1 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.

C43 Pt. 1 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

C44 Pt. 1 amendment to earlier affecting provision S.I. 1994/2421, Sch. 1 Pt. 1 (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 11(a)

C45 Pt. 1 amendment to earlier affecting provision by S.I. 2014/229, art. 2(1), Sch. 1 Pts. 1, 2 (1.8.2014) by The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) Order 2014 (S.I. 2014/1822), arts. 1(2), 5(a)(e)

C46 Pt. 1 power to apply (with or without modifications) (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 118(1)(2), 154 (with Sch. 5)

C47 Pt. 1 amendment to earlier affecting provision S.I. 1994/2421, Sch. 1 (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 12 (with art. 3)
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 [\(F2\)]... in relation to the voluntary arrangement.

(3) Such a proposal may also be made—
\[
\text{[}\(F3\)(a) where the company is in administration, by the administrator,]}
\[
\text{[}(b) where the company is being wound up, by the liquidator.]
\]

(4) In this Part “company” means—
\[
\text{[}\(F4\)(a) a company registered under the Companies Act 2006 in England and Wales or Scotland;]}
\[
\text{[}(b) a company incorporated in an EEA State other than the United Kingdom; or [}(c) a company not incorporated in an EEA State but having its centre of main interests in a member State other than Denmark.
\]

(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).]

Annotations:

Amendments (Textual)

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. 1 para. 2; S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)

F3 Words in s. 1(2) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 20(2)(a); S.I. 2015/1732, art. 2(c)(vi)

F4 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))

F5 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)

F6 S. 1(4)(a) substituted (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. 71(2)} (with art. 10, Sch. 1 para. 84)
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.

Annotations:

Amendments (Textual)
F7 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 F8 and 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) F9 whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
   (b) F10 whether, in his opinion, the proposal should be considered by a meeting of the company and by the company's creditors, and
   (c) if in his opinion it should, the date on which, and time and place at which, he proposes a meeting of the company 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.

(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
   (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 F11... in relation to the voluntary arrangement.
3.

(1) Where the nominee under section 1 is not the liquidator or administrator, and it has been report to the court \[F_{13}\] under section 2(2) that the proposal should be considered by a meeting of the company and by the company's creditors, the person making the report shall (unless the court otherwise \[F_{15}\] directs)—

(a) summon a meeting of the company to consider the proposal for the time, date and place proposed in the report, and

(b) seek a decision from the company's creditors as to whether they approve the proposal.

(2) Where the nominee is the liquidator or administrator, he \[F_{16}\] shall—

(a) summon a meeting of the company to consider the proposal for such time, date and place as he thinks fit, and

(b) seek a decision from the company's creditors as to whether they approve the proposal.

\[F_{17}\] A decision of the company's creditors as to whether they approve the proposal is to be made by a qualifying decision procedure.

(4) Notice of the qualifying decision procedure must be given to every creditor of the company of whose claim and address the person seeking the decision is aware.

Annotations:

Amendments (Textual)

F8 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)

F9 Words in s. 2(2)(a) and “(aa)” inserted (1.1.2003) by 2000 c. 39, s. 2, Sch. 2 Pt. 1 para. 3(a); S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)

F10 S. 2(2)(b)(c) substituted for s. 2(2)(aa)(b) (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 2; S.I. 2015/1329, reg. 3(d)

F11 S. 2(4) substituted (1.1.2003) by 2000 c. 39, s. 2, Sch. 2 Pt. 1 para. 3(b); S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)

F12 Words in s. 2(4) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 20(2)(b); S.I. 2015/1732, art. 2(e)(vi)

F13 S. 3 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 3(5); S.I. 2015/1329, reg. 3(d)

F14 Words in s. 3(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 3(2)(a); S.I. 2015/1329, reg. 3(d)

F15 Words in s. 3(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 3(2)(b); S.I. 2015/1329, reg. 3(d)

F16 Words in s. 3(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 3(3); S.I. 2015/1329, reg. 3(d)

F17 S. 3(3)(4) substituted for s. 3(3) (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 3(4); S.I. 2015/1329, reg. 3(d)
Consideration and implementation of proposal

4 Decisions of the company and its creditors.

(1) This section applies where, under section 3—
   (a) a meeting of the company is summoned to consider the proposed voluntary arrangement, and
   (b) the company's creditors are asked to decide whether to approve the proposed voluntary arrangement.

(1A) The company and its creditors may 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 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) Neither the company nor its creditors may 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, neither the company nor its creditors may 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,
   (aa) any ordinary preferential debt of the company is to be paid otherwise than in priority to any secondary preferential debts that it may have,
   (b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt by the amount that is to be paid in respect of that other debt, or
   (c) a preferential creditor of the company is to be paid an amount in respect of a secondary preferential debt that bears to that debt a smaller proportion than is borne to another secondary 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 may be approved with the concurrence of the preferential creditor concerned.

(5) Subject as above, the meeting of the company and the qualifying decision procedure shall be conducted in accordance with the rules.

(6) After the conclusion of the company 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.

(6A) After the company's creditors have decided whether to approve the proposed voluntary arrangement the person who sought the decision must—
   (a) report the creditors' decision to the court, and
   (b) immediately after reporting to the court, give notice of the creditors' decision to such persons as may be prescribed.
(7) References in this section to preferential debts [F34, ordinary preferential debts, secondary preferential debts] and preferential creditors are to be read in accordance with section 386 in Part XII of this Act.

Annotations:

Amendments (Textual)

F18 Words in s. 4 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 4(8); S.I. 2015/1329, reg. 3(d)

F19 S. 4(1)(1A) substituted for s. 4(1) (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 4(2); S.I. 2015/1329, reg. 3(d)

F20 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)

F21 Words in s. 4(2) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 20(2)(e); S.I. 2015/1732, art. 2(c)(vi)

F22 Words in s. 4(3) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 4(3); S.I. 2015/1329, reg. 3(d)

F23 Word in s. 4(4) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 4(4)(a); S.I. 2015/1329, reg. 3(d)

F24 Word in s. 4(4)(a) omitted (1.1.2015) by virtue of The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 4(2)(a) (with art. 3)

F25 S. 4(4)(aa) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 4(2)(b) (with art. 3)

F26 Words in s. 4(4)(b) substituted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 4(2)(b) (with art. 3)

F27 Words in s. 4(4)(b) substituted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 4(2)(c)(i) (with art. 3)

F28 S. 4(4)(c) and word inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 4(2)(c)(ii) (with art. 3)

F29 Words in s. 4(4) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 4(4)(b); S.I. 2015/1329, reg. 3(d)

F30 Words in s. 4(4) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 4(4)(c); S.I. 2015/1329, reg. 3(d)

F31 Words in s. 4(5) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 4(5); S.I. 2015/1329, reg. 3(d)

F32 Words in s. 4(6) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 4(6); S.I. 2015/1329, reg. 3(d)

F33 S. 4(6A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 4(7); S.I. 2015/1329, reg. 3(d)

F34 Words in s. 4(7) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 4(3) (with art. 3)

Modifications etc. (not altering text)

C48 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)

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

**F35A 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 the meeting of the company summoned under section 3 and by the company's creditors pursuant to that section, or
   (b) (subject to any order made under subsection (4)) it has been taken by the company's creditors pursuant to that section.

(3) If the decision taken by the company's creditors 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 company's creditors, 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 appropriate regulator is entitled to be heard on the application.

(5A) The appropriate regulator” means—
   (a) where the regulated company is a PRA-regulated company within the meaning of paragraph 44 of Schedule A1, the Financial Conduct Authority and the Prudential Regulation Authority, and
   (b) in any other case, the Financial Conduct Authority.

(6) On an application under subsection (3), the court may—
   (a) order the decision of the company meeting to have effect instead of the decision of the company's creditors, or
   (b) make such other order as it thinks fit.

Annotations:

Amendments (Textual)

F35  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)

F36  Words in s. 4A(2)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 5(2)(a); S.I. 2015/1329, reg. 3(d)

F37  Words in s. 4A(2)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 5(2)(b); S.I. 2015/1329, reg. 3(d)

F38  Words in s. 4A(3) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 5(3); S.I. 2015/1329, reg. 3(d)

F39  Words in s. 4A(4)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 5(3); S.I. 2015/1329, reg. 3(d)

F40  Words in s. 4A(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 52(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F41  S. 4A(5A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 52(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F42  Words in s. 4A(6)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 5(3); S.I. 2015/1329, reg. 3(d)
5 Effect of approval.

[F45](1) This section applies where a decision approving a voluntary arrangement has effect under section 4A.

(2) The F44 voluntary arrangement—

(a) takes effect as if made by the company at the [F46] time the creditors decided to approve the voluntary arrangement] , and

[F46](b) binds every person who in accordance with the rules—

(i) was entitled to vote [F47] in the qualifying decision procedure by which the creditors' decision to approve the voluntary arrangement was made] , 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 [F48] 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 [F48] 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 [F44 . . . 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) [F49] and (6A)] 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.

[F50](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.

Annotations:

Amendments (Textual)

F43 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)

F44 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)

F45 Words in s. 5(2)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 6(2)(a); S.I. 2015/1329, reg. 3(d)

F46 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)

F47 Words in s. 5(2)(b)(i) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 6(2)(b); S.I. 2015/1329, reg. 3(d)

F48 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))

F49 Words in s. 5(4)(a) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 6(3); S.I. 2015/1329, reg. 3(d)

F50 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)

C50 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)

C51 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 [F51 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 [F52 the meeting of the company, or in relation to the relevant qualifying decision procedure] .

[F53(1A)] In this section—

(a) the “relevant qualifying decision procedure” means the qualifying decision procedure in which the company's creditors decide whether to approve a voluntary arrangement;

(b) references to a decision made in the relevant qualifying decision procedure include any other decision made in that qualifying decision procedure.]

(2) The persons who may apply under [F54 subsection (1)] are—

(a) a person entitled, in accordance with the rules, to vote at [F55 the meeting of the company or in the relevant qualifying decision procedure] ;
[F56](aa) a person who would have been entitled, in accordance with the rules, to vote in the relevant qualifying decision procedure 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 is in administration, the liquidator or administrator.

[F59](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 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) and (6A) has been made to the court or
(b) in the case of a person who was not given notice of the relevant qualifying decision procedure, after the end of the period of 28 days beginning with the day on which he became aware that the relevant qualifying decision procedure 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) or, in the case of an application under subsection (2A), as to the ground mentioned in that subsection, it may do any of the following, namely—
(a) revoke or suspend any decision approving the voluntary arrangement which has effect under section 4A or, in a case falling within subsection (1) (b), any decision taken by the meeting of the company, or in the relevant qualifying decision procedure, which has effect under that section;
(b) give a direction to any person for the summoning of a further company meeting to consider any revised proposal the person who made the original proposal may make, or, in the case falling within subsection (1)(b) and relating to the company meeting, a further company meeting to reconsider the original proposal.

[F72](c) direct any person—
(i) to seek a decision from the company's creditors (using a qualifying decision procedure) as to whether they approve any revised proposal the person who made the original proposal may make, or
(ii) in a case falling within subsection (1)(b) and relating to the relevant qualifying decision procedure, to seek a decision from the company's creditors (using a qualifying decision procedure) as to whether they approve the original proposal.

(5) Where at any time after giving a direction under subsection (4)(b) 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 \[^{F74}\] 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 \[^{F75}\] or relevant qualifying decision procedure \[^{F76}\] —
   - (a) gives a direction under subsection (4)(b) \[^{F77}\] or (c) \[^{F78}\], 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 \[^{F79}\] under the voluntary arrangement since it took effect.

(7) Except in pursuance of the preceding provisions of this section,
   - \[^{F80}\](a) \[^{F81}\] a decision taken \[^{F82}\] at a \[^{F83}\] company \[^{F84}\] meeting summoned under section 3 is not invalidated by any irregularity at or in relation to the meeting. \[^{F85}\], and
   - (b) a decision of the company’s creditors made in the relevant qualifying decision procedure is not invalidated by any irregularity in relation to the relevant qualifying decision procedure.]

\[^{F86}\] 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.

Annotations:

Amendments (Textual)

F51 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)

F52 Words in s. 6(1)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 7(2); S.I. 2015/1329, reg. 3(d)

F53 S. 6(1A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 7(3); S.I. 2015/1329, reg. 3(d)

F54 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

F55 Words in s. 6(2)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 7(4)(a); S.I. 2015/1329, reg. 3(d)

F56 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)

F57 Words in s. 6(2)(aa) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 7(4)(b); S.I. 2015/1329, reg. 3(d)

F58 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))

F59 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

F60 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)

F61 Words in s. 6(3)(a) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 7(5); S.I. 2015/1329, reg. 3(d)

F62 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)

F63 Words in s. 6(3)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 7(6)(a); S.I. 2015/1329, reg. 3(d)
True 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.

(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.

Annotations:

Amendments (Textual)
F83 S. 6A inserted (1.1.2003) by 2000 c. 39, s. 2, Sch. 2 Pt. 1 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 [F84 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—
[F85 (a) on the nominee by virtue of the approval [F86 of the voluntary arrangement by the company or its creditors (or both) pursuant to] 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 [F87 ... 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.

Annotations:

Amendments (Textual)

F84 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)
F85 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)
F86 Words in s. 7(2)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 8; S.I. 2015/1329, reg. 3(d)
F87 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)
F88 Words in s. 7(5) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 20(2)(d); S.I. 2015/1732, art. 2(c)(vi)

Modifications etc. (not altering text)

C54 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)

[F897A 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 [F90 the Companies Act 1985] 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 [F91 the Companies Acts] 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, 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 1911 Perjury Act (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 1995 Criminal Law (Consolidation) (Scotland) Act (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.]

Annotations:

Amendments (Textual)
F89 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)
F90 Words in s. 7A(3) substituted (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. 71(3)(a)} (with art. 10, Sch. 1 para. 84)
F91 Words in s. 7A(4) substituted (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. 71(3)(b)} (with art. 10, Sch. 1 para. 84)

Modifications etc. (not altering text)
C55 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)
C56 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)
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.

Annotations:

Amendments (Textual)
F92 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)
Pt. II applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 6(1), Sch. 2 (as amended (3.7.2002) by S.I. 2002/1555, art. 36 and (1.7.2005) by S.I. 2005/1516, arts. 3, 7, Sch. 1 (with art. 2))
Pt. II 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 applied (with modifications) (31.5.2002) by S.I. 2002/1242, art. 3, Sch.
Pt. II restricted (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 24(b) (with ss. 58(7), 101(1), 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 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)
Pt. II: power to apply or incorporate conferred (6.4.2001) by 2000 c. 12, s. 14; S.I. 2000/3316, art. 2
Pt. II: 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
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))
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)
Pt. 2 amendment to earlier affecting provision S.I. 2010/3023, Sch. (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 195(c)
Pt. 2 amendment to earlier affecting provision by S.I. 2014/229, art. 2(2), Sch. 1 Pts. 1, 3, 4 (1.8.2014) by The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) Order 2014 (S.I. 2014/1822), arts. 1(2), 5(f)(m)
Pt. 2 power to apply (with or without modifications) (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 118(1)(2)154 (with Sch. 5)

8 Administration

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

^F94^ PART II

ADMINISTRATION ORDERS

Annotations:

Amendments (Textual)

^F94^ 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)

^C69^ 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)
^C70^ 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) (1.12.1994) by S.I. 1994/2421, art. 6(1), Sch. 2 (as amended (3.7.2002) by S.I. 2002/1555, art. 36)

Pt. II (ss. 8-27) applied (with modifications) (1.12.1997) by S.I. 1997/2668, art. 2, Sch. Pt. 1(i)

Pt. II (ss. 8-27) applied (with modifications) (31.5.2002) by S.I. 2002/1242, art. 3, Sch.

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

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)

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

Pt. 2 amendment to earlier affecting provision S.I. 1994/2421, Sch. 2 (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 13 (with art. 3)

Pt. 2 modified by 1991 c. 56, Sch. 3 (as amended (26.5.2015) by Deregulation Act 2015 (c. 20), s. 115(3)(b), Sch. 23 para. 28(4)(e))

Pt. 2 modified by Deregulation Act 2015 (c. 20) s. 115(3)(c), Sch. 6 para. 25

Making etc. of administration order

Administrators

Ascertainment and investigation of company’s affairs

Administrator’s proposals

Miscellaneous

PART III

RECEIVERSHIP

Annotations:

Modifications etc. (not altering text)

C139 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

C140 Pt. III (ss. 28-72) extended by S.I. 1989/638, regs. 19(1), 21
C141 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.

C142 Pt. III: power to apply or incorporate conferred (6.4.2001) by 2000 c. 12, s. 14; S.I. 2000/3316, art. 2

CHAPTER I
RECEIVERS AND MANAGERS (ENGLAND AND WALES)

Annotations:

Modifications etc. (not altering text)
C144 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. 1(i))

Preliminary and general provisions

[F10528 Extent of this Chapter.

(1) In this Chapter “company” means a company registered under the Companies Act 2006 in England and Wales or Scotland.

(2) This Chapter does not apply to receivers appointed under Chapter 2 of this Part (Scotland).]

Annotations:

Amendments (Textual)
F105 S. 28 substituted (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. 74(2)) (with art. 10, Sch. 1 para. 84)

29 Definitions.

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

(a) any reference in 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 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.

Annotations:

Amendments (Textual)

F106 Words in s. 29(1)(a)(b) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, [Sch. 1 para. 74(3)] (with art. 10, Sch. 1 para. 84)

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.

F108 31 Disqualification of bankrupt or person in respect of whom a debt relief order is made]

(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,

F109(aa) a moratorium period under a debt relief order applies in relation to him,[] or

(b) a bankruptcy restrictions order or a debt relief 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.

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

Annotations:

Amendments (Textual)

F107 S. 31: words in heading 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. 2(2); S.I. 2009/382, art. 2

F108 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))

F109 S. 31(1)(aa) 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. 2(1)(a); S.I. 2009/382, art. 2

F110 Words in s. 31(1)(b) 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. 2(1)(b); S.I. 2009/382, 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.

Annotations:

Modifications etc. (not altering text)
C145 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 paragraph (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,

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 administrative 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.

[F111(1) Where a receiver or manager of the property of a company has been appointed—

(a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company or the receiver or manager or the liquidator of the company; and

(b) all the company’s websites,

must 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.

Annotations:

Amendments (Textual)

F111 S. 39(1) substituted (1.10.2008) by The Companies (Trading Disclosures) (Insolvency) Regulations 2008 (S.I. 2008/1897), reg. 2(1)
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.

(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.

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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).
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) A 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.

(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.

Annotations:

Amendments (Textual)

F112 Words in s. 43(5) substituted (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. 74(4))
(with art. 10, Sch. 1 para. 84)

C150 S. 43 excluded (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, Sch. para. 2(1)

C151 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, 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.

(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.

(2D) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(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.

Annotations:

Amendments (Textual)

F113 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)

F114 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)

F115 S. 44(2D) omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(n), Sch. 6 para. 26

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 and, for continued contravention, to a daily default fine.
Information to be given by administrative receiver.

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

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 a statement of truth 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.

(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.

Annotations:

Amendments (Textual)

F117 Words in s. 47(2) substituted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 5(1)

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, other than opted-out 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 [F118, other than opted-out creditors.] 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,

[F120 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) [F121 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

(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.

Annotations:

Amendments (Textual)

F118 Words in s. 48(1) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 12(2); S.I. 2015/1329, reg. 3(d)

F119 Words in s. 48(2)(a) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 12(3)(a); S.I. 2015/1329, reg. 3(d)

F120 Words in s. 48(2) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 12(3)(b); S.I. 2015/1329, reg. 3(d)

F121 S. 48(3) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 12(4); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C152 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 an administrative receiver has sent or published a report as mentioned in section 48(2) the company’s unsecured creditors may, in accordance with the rules, 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.

Annotations:

Amendments (Textual)
F122 Words in s. 49(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 13; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C153 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.

Annotations:

Modifications etc. (not altering text)
C154 Ss. 50-52 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

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 registered under the Companies Act 2006 or not) which the Court of Session has jurisdiction to wind up; or

(b) where paragraph (a) does not apply, in respect of which a court of a member state other than the United Kingdom has under the EU Regulation jurisdiction to open insolvency proceedings,

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.
F125(2ZA) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

F126 (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 person subject to a bankruptcy restrictions order;
   (d) 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 or a person subject to a bankruptcy restrictions order who so acts is liable to imprisonment or a fine, or both.

(6) In this section, “receiver” includes joint receivers; and “bankruptcy restrictions order” means—
   (a) a bankruptcy restrictions order made under section 56A of the Bankruptcy (Scotland) Act 1985 (c. 66);
   (b) a bankruptcy restrictions order made under paragraph 1 of Schedule 4A to this Act; or
   (c) a bankruptcy restrictions undertaking entered into under paragraph 7 of that Schedule.

F127 “the EU Regulation” is the Regulation of the Council of the European Union published as Council Regulation (EC) No. 1346/2000 on insolvency proceedings;

F128 “court” is to be construed in accordance with Article 2(d) of the EU Regulation;

F129 “insolvency proceedings” is to be construed in accordance with Article 2(a) of the EU Regulation.

Annotations:

Amendments (Textual)
F123 Words in s. 51(1) substituted (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. 74(5)) (with art. 10, Sch. 1 para. 84)
F124 Words in s. 51(1) substituted (17.3.2011) by The Insolvency Act 1986 Amendment (Appointment of Receivers) (Scotland) Regulations 2011 (S.S.I. 2011/140), reg. 2(a)
F125 S. 51(2ZA) repealed (1.4.2016) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(2), 2 (with arts. 14, 15)
F126 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))
F127 S. 51(3)(ba) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 3(2), 227(3) (with s. 223); S.S.I. 2008/115, art. 3(1)(a) (with arts. 5, 6, 10); as amended by S.S.I. 2011/31, art. 5
F128 Words in s. 51(5) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 3(3), 227(3) (with s. 223); S.S.I. 2008/115, art. 3(1)(a) (with arts. 5, 6, 10); as amended by S.S.I. 2011/31, art. 5
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 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).

Annotations:

Modifications etc. (not altering text)
C156 Ss. 50-52 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
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 \[F^{134}\] and, for continued contravention, to a daily default fine.

\[F^{135}\]

(3) ... \[F^{136}\]

(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 \[F^{137}\] register.

(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.

**Annotations:**

**Amendments (Textual)**

F133 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))

F134 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

F135 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

F136 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))

F137 Word in s. 53(5) substituted (6.4.2013) by The Companies Act 2006 (Amendment of Part 25) Regulations 2013 (S.I. 2013/600), reg. 1, Sch. 2 para. 2(2) (with reg. 6)

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

C157 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


C159 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 \[F138\] 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 \[F139\] register.

(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.

Annotations:

Amendments (Textual)

F138 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

F139 Word in s. 54(4) substituted (6.4.2013) by The Companies Act 2006 (Amendment of Part 25) Regulations 2013 (S.I. 2013/600), reg. 1, Sch. 2 para. 2(2) (with reg. 6)

Modifications etc. (not altering text)


C161 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.

Annotations:

Modifications etc. (not altering text)
C162 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.

(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.

Annotations:

Modifications etc. (not altering text)

C163 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.

[F140](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 [F141], to the extent of any qualifying liability, on any contract of employment adopted by him in the carrying out of those functions.

[F142](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 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.

[F143](2D) ..............................................]

(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.

Annotations:

Amendments (Textual)

F140 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)
F141 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)
F142 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)
F143 S. 57(2D) repealed (1.4.2016) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(2), 3 (with arts. 14, 15)

 Modifications etc. (not altering text)

C164 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.

(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.
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.

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.

Annotations:

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—

(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.

[F144(1A) For the purposes of subsection (1) above, an inhibition which takes effect after the creation of the floating charge by virtue of which the receiver was appointed is not an effectual 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) 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, 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.

Annotations:

Amendments (Textual)

F144 S. 61(1A) inserted (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 155(2), 227(3) (with s. 223); S.S.I. 2009/67, art. 3(a) (with arts. 5, 6); as amended by S.S.I. 2011/31, art. 5

F145 Words in s. 61(6) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, [Sch. 1 para. 74(6)] (with art. 10, Sch. 1 para. 84)
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 [F146 register].

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 [F147 the company is in administration.] under Part II of this Act . . . .

Annotations:

**Amendments (Textual)**

F146 Word in s. 62(5) substituted (6.4.2013) by The Companies Act 2006 (Amendment of Part 25) Regulations 2013 (S.I. 2013/600), reg. 1, Sch. 2 para. 2(2) (with reg. 6)

F147 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)
F148 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)

Modifications etc. (not altering text)
C175 S. 62 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C176 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.

Annotations:

Modifications etc. (not altering text)
C177 S. 63 amended (1.12.2001) by 2000 c. 8, s. 363(2); S.I. 2001/3538, art. 2(1)
C178 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.

[F149(1) Where a receiver has been appointed—
   (a) every invoice, order for goods or services, business letter or order form
       (whether in hard copy, electronic or any other form) issued by or on behalf of
       the company or the receiver or the liquidator of the company; and
   (b) all the company's websites,
must 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.

Annotations:

Amendments (Textual)
F149 S. 64(1) substituted (1.10.2008) by The Companies (Trading Disclosures) (Insolvency) Regulations 2008 (S.I. 2008/1897), reg. 2(2)

Modifications etc. (not altering text)
C179 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—
   (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.

Annotations:

Modifications etc. (not altering text)
C180 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 [F150 contain a statutory declaration]
    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

(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.

Annotations:

Amendments (Textual)
F150 Words in s. 66(2) substituted (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 4 (with arts. 14, 15)

Modifications etc. (not altering text)
C181 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[^F152], other than opted-out creditors[^F152], 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,
[^F153]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)[^F154] 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
(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.

Annotations:

Amendments (Textual)
F151 Words in s. 67(1) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and
Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 14(2); S.I. 2015/1329, reg. 3(d)
F152 Words in s. 67(2)(a) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and
Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 14(3); S.I. 2015/1329, reg. 3(d)
F153 Words in s. 67(2) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and
Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 14(3); S.I. 2015/1329, reg. 3(d)
F154 S. 67(3) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and
Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 14(4); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C182 S. 67 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C183 S. 67(1) amended (1.7.1999) by 1998 c. 46, s. 125, Sch. 8 para. 23(2); 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 receiver has sent or published a report as mentioned in section 67(2) the company’s unsecured creditors may, in accordance with the rules, 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.

Annotations:

Amendments (Textual)

F155 Words in s. 68(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 15; S.I. 2015/1329, reg. 3(d)

C184 S. 68 amended (1.12.2001) by 2000 c. 8, s. 363(5)(b); S.I. 2001/3538, art. 2(1)

C185 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, 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).

Annotations:

Modifications etc. (not altering text)

C186 S. 69 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 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 [F156 a company registered under the Companies Act 2006]) 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;

“[F157 register]” means the register kept by the registrar of companies for the purposes of [F158 Chapter 2 of Part 25 of the Companies Act 2006];

“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.

(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.

Annotations:

Amendments (Textual)

F156 Words in s. 70(1) substituted (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. 74(7)) (with art. 10, Sch. 1 para. 84)

F157 Words in s. 70(1) substituted (6.4.2013) by The Companies Act 2006 (Amendment of Part 25) Regulations 2013 (S.I. 2013/600), reg. 1, Sch. 2 para. 2(3) (with reg. 6)

F158 Words in s. 70(1) substituted (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. 74(7)) (with art. 10, Sch. 1 para. 84)

Modifications etc. (not altering text)

C189 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.

Annotations:

Modifications etc. (not altering text)

C190 S. 71 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
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.

[F159 Chapter IV

Prohibition of Appointment of Administrative Receiver

Annotations:

Amendments (Textual)

F159 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.
(6) This section is subject to the exceptions specified in [F160sections 72B to 72GA].

Annotations:

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

Amendments (Textual)

F160 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.
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

(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.]
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Annotations:

Amendments (Textual)
F161 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: [F162 social landlords]
Section 72A does not prevent the appointment of an administrative receiver of a company which is [F163—
   (a) a private registered provider of social housing, or
   (b) registered as a social landlord under Part I of the Housing Act 1996 (c. 52) or under [F164]Part 2 of the Housing (Scotland) Act 2010 (asp 17)].

Annotations:

Amendments (Textual)
F162 Words in s. 72G heading substituted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866), art. 5, Sch. 2 para. 61(3) (with Sch. 3)
F163 Words in s. 72G inserted (1.4.2010) by The Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866), art. 5, Sch. 2 para. 61(2) (with Sch. 3)
F164 Words in s. 72G(b) substituted (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2012 (S.I. 2012/700), art. 1(3), Sch. para. 3
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.

Annotations:

Amendments (Textual)
F165 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(e); S.I. 2003/2093, art. 2(1), Sch. 1

F166 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.]
CHAPTER IV – PROHIBITION OF APPOINTMENT OF ADMINISTRATIVE RECEIVER

PART IV

WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

Annotations:

Modifications etc. (not altering text)
C191 Pt. IV (ss. 73-219) modified by Company Directors Disqualification Act 1986 (c. 46, SIF 27), ss. 21(2), 25
Pt. IV modified by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 30(6), 35(4), 47(4)(a)
Pt. IV modified by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 86(5), 123, Sch. 8 para. 16
Pt. IV 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
Pt. IV 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. IV modified (1.4.1996) by 1995 c. 43, ss. 44, 50(2), Sch. 2 para. 3(4)
Pt. IV 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))

C192 Pt. IV (ss. 73-219) extended (with modifications) by Building Societies Act 1986 (c 53, SIF 16), ss. 54(3)(a)(5)(a), 90, 126(3), Sch. 15

C193 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 (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)

C194 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 and (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 14 (with art. 3))


C196 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

C197 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.
CHAPTER I

PRELIMINARY

[F167 Introductory]

Annotations:

Amendments (Textual)

F167 S. 73 and cross-heading substituted (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. 75(2)} (with art. 10, Sch. 1 para. 84)

[F168 Scheme of this Part

(1) This Part applies to the winding up of a company registered under the Companies Act 2006 in England and Wales or Scotland.

(2) The winding up may be either—

(a) voluntary (see Chapters 2 to 5), or

(b) by the court (see Chapter 6).

(3) This Chapter and Chapters 7 to 10 relate to winding up generally, except where otherwise stated.]

Annotations:

Amendments (Textual)

F168 S. 73 and cross-heading substituted (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. 75(2)} (with art. 10, Sch. 1 para. 84)

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 \(^{F169}\) . . . ;

(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 \(^{F170}\) the Companies Acts 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.
(a) it has under [\[F172\]Chapter 5 of Part 18 of the Companies Act 2006 (acquisition by limited company of its own shares: redemption or purchase by private company out of capital)] 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 [\[F173\]statement] made in accordance with [\[F174\]section 714(1) to (3) of the Companies Act 2006] 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 [\[F173\]statement],

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) [\[F175\]Section 74 does not apply] in relation to liability accruing by virtue of this section.

(6) [\[F176\]... ... ... ... ...

Annotations:

Amendments (Textual)

F172 Words in s. 76(1)(a) substituted (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. 75(5)(a)} (with art. 10, Sch. 1 para. 84)


F174 Words in s. 76(2)(b) substituted (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. 75(5)(b)} (with art. 10, Sch. 1 para. 84)

F175 Words in s. 76(5) substituted (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. 75(5)(c)} (with art. 10, Sch. 1 para. 84)

F176 S. 76(6) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(5)(d)} (with art. 10, Sch. 1 para. 84)
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 [\textsuperscript{F177}re-registered as a limited company.]

(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 \textsuperscript{F178}.

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.

Annotations:

Amendments (Textual)

\textsuperscript{F177} Words in s. 77(1) substituted (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. 75(6)(a)} (with art. 10, Sch. 1 para. 84)

\textsuperscript{F178} Words in s. 77(3) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(6)(b)} (with art. 10, Sch. 1 para. 84)

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 \textsuperscript{F179}.

(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.

Annotations:

Amendments (Textual)

\textsuperscript{F179} Words in s. 78(1) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(7)} (with art. 10, Sch. 1 para. 84)
79 Meaning of “contributory”.

(1) In this Act the expression “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

(2) The reference in subsection (1) to persons liable to contribute to the assets does not include a person so liable by virtue of a declaration by the court under section 213 (imputed responsibility for company’s fraudulent trading) or section 214 (wrongful trading) in Chapter X of this Part.

(3) A reference in a company’s articles to a contributory does not (unless the context requires) include a person who is a contributory only by virtue of section 76.

Annotations:

Amendments (Textual)

F180 Words in s. 79(1) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(8)(a)} (with art. 10, Sch. 1 para. 84)

F181 Words in s. 79(3) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(8)(b)} (with art. 10, Sch. 1 para. 84)

80 Nature of contributory’s liability.

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

Annotations:

Amendments (Textual)

F182 Words in s. 80 text substituted (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. 75(9)} (with art. 10, Sch. 1 para. 84)

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.

83 [F183 Companies registered but not formed under the Companies Act 2006]

(1) The following applies in the event of a company being wound up which [F184 is registered but not formed under the Companies Act 2006].

(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.

Annotations:

Amendments (Textual)

F183 S. 83 heading substituted (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. 75(10)) (a) (with art. 10, Sch. 1 para. 84)

F184 Words in s. 83(1) substituted (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. 75(10)) (b) (with art. 10, Sch. 1 para. 84)
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) if the company resolves by special resolution that it be wound up voluntarily;

(2) In this Act the expression “a resolution for voluntary winding up” means a resolution passed under [F186]either of the paragraphs] of subsection (1).

[F187](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—
   (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.]

[F188](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).]

[F189](4) This section has effect subject to section 43 of the Commonhold and Leasehold Reform Act 2002.]

Annotations:

Amendments (Textual)

F185 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)

F186 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)

F187 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)

F188 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)
85 Notice of resolution to wind up.

(1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

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

86 Commencement of winding up.

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

Consequences of resolution to wind up

87

(1) In case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.

(2) However, the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until the company is dissolved.

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.
Declaration of solvency

89 Statutory declaration of solvency.

(1) Where it is proposed to wind up a company voluntarily, the directors (or, in the case of a company having more than two directors, the majority of them) may at a directors’ meeting make a statutory declaration to the effect that they have made a full inquiry into the company’s affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest at the official rate (as defined in section 251), within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.

(2) Such a declaration by the directors has no effect for purposes of this Act unless—
   (a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and
   (b) it embodies a statement of the company’s assets and liabilities as at the latest practicable date before the making of the declaration.

(3) The declaration shall be delivered to the registrar of companies before the expiration of 15 days immediately following the date on which the resolution for winding up is passed.

(4) A director making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within the period specified is liable to imprisonment or a fine, or both.

(5) If the company is wound up in pursuance of a resolution passed within 5 weeks after the making of the declaration, and its debts (together with interest at the official rate) are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.

(6) If a declaration required by subsection (3) to be delivered to the registrar is not so delivered within the time prescribed by that subsection, the company and every officer in default is liable to a fine and, for continued contravention, to a daily default fine.

Annotations:

Modifications etc. (not altering text)
C203 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”.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)
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.

Annotations:

Modifications etc. (not altering text)
C204 S. 91(1)(2) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3
Ss. 91-93 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4, Sch. 2

92 Power to fill vacancy in office of liquidator.

(1) If a vacancy occurs by death resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner provided by this Act or by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the court.

Annotations:

Modifications etc. (not altering text)
C205 Ss. 91-93 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4, Sch. 2

[F1992A Progress report to company [F191 ... [F192] (England and Wales)]

(1) Subject to [F193] section 96 [F194] where the company is registered in England and Wales] 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.]
General company meeting at each year’s end [F196 (Scotland)]

[F197] Subject to [F198] section 96, in the event of the winding up [F199] of a company registered in Scotland 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.]
94  [F200]Final account prior to dissolution]

[F200](1) As soon as the company's affairs are fully wound up the liquidator must make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of.

(2) The liquidator must send a copy of the account to the members of the company before the end of the period of 14 days beginning with the day on which the account is made up.

(3) The liquidator must send a copy of the account to the registrar of companies before the end of that period (but not before sending it to the members of the company).

(4) If the liquidator does not comply with subsection (2) the liquidator is liable to a fine.

(5) If the liquidator does not comply with subsection (3) the liquidator is liable to a fine and, for continued contravention, a daily default fine.

Annotations:

Amendments (Textual)

F200 S. 94 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 18; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C208 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)

C209 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

C210 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.

[F201](1A) The liquidator must before the end of the period of 7 days beginning with the day after the day on which the liquidator formed that opinion—

(a) make out a statement in the prescribed form as to the affairs of the company, and

(b) send it to the company's creditors.

(2) [F202][F203]In the case of the winding up of a company registered in Scotland, the liquidator] shall—

(a) summon a meeting of creditors for a day not later than the 28th day after the day on which he formed that opinion;

(b) send notices of the creditors' meeting to the creditors by post not less than 7 days before the day on which that meeting is to be held;

(c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in 2 newspapers circulating in the relevant locality (that is to
say the locality in which the company’s principal place of business in Great Britain was situated during the relevant period); and

(d) during the period before the day on which the creditors’ meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;]

and the notice of the creditors’ meeting shall state the duty imposed by paragraph (d) above.

[204(2A) In the case of the winding up of a company registered in England and Wales, the liquidator—

(a) shall summon a meeting of creditors for a day not later than the 28th day after the day on which he formed that opinion;

(b) shall 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) shall cause notice of the creditors' meeting to be advertised once in the Gazette;

(d) may cause notice of the meeting to be advertised in such other manner as he thinks fit; and

(e) shall during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;

and the notice of the creditors' meeting shall state the duty imposed by paragraph (e) above.]

(3) [202 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 [206 . . . 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.

[207(4A) The statement as to the affairs of the company shall be [208 verified by the liquidator]—

(a) in the case of a winding up of a company registered in England and Wales [206 be verified by the liquidator], by a statement of truth; and

(b) in the case of a winding up of a company registered in Scotland, [210 contain a statutory declaration by the liquidator].

[211(4B) The company's creditors may in accordance with the rules nominate a person to be liquidator.

(4C) The liquidator must in accordance with the rules seek such a nomination from the company's creditors.]

(5) [212 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.]
73

(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 subsections (1) to (4A), he is liable to a fine.

Annotations:

Amendments (Textual)
F201 S. 95(1A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 19(2); S.I. 2015/1329, reg. 3(d)
F202 S. 95(2)-(3) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 19(3); S.I. 2015/1329, reg. 3(d)
F203 Words in s. 95(2) substituted (6.4.2009) by The Legislative Reform (Insolvency) (Advertising Requirements) Order 2009 (S.I. 2009/864), art. 3(1)(a) (with art. 4)
F204 S. 95(2A) inserted (6.4.2009) by The Legislative Reform (Insolvency) (Advertising Requirements) Order 2009 (S.I. 2009/864), art. 3(1)(b) (with art. 4)
F205 Words in s. 95(2A)(b) omitted (E.W.) (6.4.2010) by virtue of The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 7 (with art. 12(3))
F206 Words in s. 95(4) omitted (6.4.2010) by virtue of The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 5(2)(a)
F207 S. 95(4A) inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 5(2)(b)
F208 Words in s. 95(4A) repealed (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 8(a) (with arts. 14, 15)
F209 Words in s. 95(4A)(a) inserted (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 8(b) (with arts. 14, 15)
F210 Words in s. 95(4A)(b) substituted (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 8(c) (with arts. 14, 15)
F211 S. 95(4B)(4C) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 19(4); S.I. 2015/1329, reg. 3(d)
F212 S. 95(5)-(7) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 19(3); S.I. 2015/1329, reg. 3(d)
F213 Words in s. 95(8) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 19(5); S.I. 2015/1329, reg. 3(d)

96 Conversion to creditors’ voluntary winding up.

(1) The winding up becomes a creditors’ voluntary winding up as from the day on which—
(a) the company’s creditors under section 95 nominate a person to be liquidator, or
(b) the procedure by which the company's creditors were to have made such a nomination concludes without a nomination having been made.

(2) As from that day this Act has effect as if the directors' declaration under section 89 had not been made.

(3) The liquidator in the creditors' voluntary winding up is to be the person nominated by the company's creditors under section 95 or, where no person has been so nominated, the existing liquidator.

(4) In the case of the creditors nominating a person other than the existing liquidator 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 existing liquidator is to 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.

[F215(5) The “existing liquidator” is the person who is liquidator immediately before the winding up becomes a creditors' voluntary winding up.]]

CHAPTER IV

CREDITORS’ VOLUNTARY WINDING UP

97 Application of this Chapter.

(1) Subject as follows, this Chapter applies in relation to a creditors’ voluntary winding up.

(2) Sections [F21699 and 100] do not apply where, under section 96 in Chapter III, a members’ voluntary winding up has become a creditors’ voluntary winding up.
98  Meeting of creditors.

(1) In the case of the winding up of a company registered in Scotland, the company shall—

(a) cause a meeting of its creditors to be summoned for a day not later than the 14th day after the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;

(b) cause the notices of the creditors’ meeting to be sent by post to the creditors not less than 7 days before the day on which that meeting is to be held; and

(c) cause notice of the creditors’ meeting to be advertised once in the Gazette and once at least in two newspapers circulating in the relevant locality (that is to say the locality in which the company’s principal place of business in Great Britain was situated during the relevant period).

(1A) In the case of the winding up of a company registered in England and Wales, the company—

(a) shall cause a meeting of its creditors to be summoned for a day not later than the 14th day after the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;

(b) shall 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;

(c) shall cause notice of the creditors’ meeting to be advertised once in the Gazette; and

(d) may cause notice of the meeting to be advertised in such other manner as the directors think fit.

(2) The notice of the creditors’ meeting shall state either—

(a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the company’s affairs as they may reasonably require; or

(b) a place in the relevant locality where, on the two business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company’s creditors will be available for inspection free of charge.

(3) Where the company’s principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duties imposed by subsections (1)(c) and (2)(b) above apply separately in relation to each of those localities.

(4) Where the company had no place of business in Great Britain during the relevant period, references in subsections (1)(c) and (3) to the company’s principal place of business in Great Britain are replaced by references to its registered office.

(5) In this section “the relevant period” means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

(6) If the company without reasonable excuse fails to comply with subsection (1) [or (1A)] 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 must, before the end of the period of 7 days beginning with the day after the day on which the company passes a resolution for voluntary winding up—

(a) make out a statement in the prescribed form as to the affairs of the company, and

(b) send the statement to the company’s creditors.

(2) The statement as to the affairs of the company 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.

(2A) The statement as to the affairs of the company shall be verified by some or all of the directors—

(a) in the case of a winding up of a company registered in England and Wales, by a statement of truth; and

(b) in the case of a winding up of a company registered in Scotland, contain a statutory declaration by some or all of the directors.

(3) If the directors without reasonable excuse fail to comply with subsection (1), (2) or (2A), they are guilty of an offence and liable to a fine.

Annotations:

Amendments (Textual)

F222 S. 99(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 23(2); S.I. 2015/1329, reg. 3(d)

F223 Words in s. 99(2) omitted (6.4.2010) by virtue of The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 5(3)(a)

F224 S. 99(2A) inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 5(3)(b)
100 Appointment of liquidator.

[F230](1) The company may nominate a person to be liquidator at the company meeting at which the resolution for voluntary winding up is passed.

(1A) The company's creditors may in accordance with the rules nominate a person to be liquidator.

(1B) The directors of the company must in accordance with the rules seek such a nomination from the company's creditors.

(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.

Annotations:

Amendments (Textual)

F230 S. 100(1)-(1B) substituted for s. 100(1) (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 23(3); S.I. 2015/1329, reg. 3(d)

101 Appointment of liquidation committee.

[F231] (1) The creditors may in accordance with the rules 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, decide 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 decide —
   (a) those persons 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 those persons.

(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.

Annotations:

Amendments (Textual)
F231 S. 101(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 25(2); S.I. 2015/1329, reg. 3(d)
F232 Word in s. 101(3) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 25(3)(a); S.I. 2015/1329, reg. 3(d)
F233 Words in s. 101(3) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 25(3)(b); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C215 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
C216 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.

[F234 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.]

Annotations:

Amendments (Textual)
F234 S. 102 omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 26; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C217 S. 102 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
103 Cesser of directors’ powers.

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

104 Vacancy in office of liquidator.

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

Annotations:

Modifications etc. (not altering text)

C218 S. 104 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

[F235] 104A Progress report to company and creditors [F236] ... [F237] (England and Wales)

(1) [F238] 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 [F240], other than opted-out 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.

Annotations:

Amendments (Textual)

F235 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))

F236 Word in s. 104A heading omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 136(3)(b), 164(3)(i)(v)

F237 Words in s. 104A heading omitted (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 6(1) (b) (with arts. 14, 15)

F238 Word in s. 104A(1) substituted (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 6(1) (a) (with arts. 14, 15)

F239 Words in s. 104A(1) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 136(3)(a), 164(3)(i)(v)

F240 Words in s. 104A(1)(b)(i) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 27; S.I. 2015/1329, reg. 3(d)
105 Meetings of company and creditors at each year’s end [F241(Scotland)].

[F242](1) If the winding up [F243]of a company registered in Scotland 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 [F244]liquidator sends a statement of affairs to the company’s creditors under section 95(1A)(b) 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.

Annotations:

Amendments (Textual)

F241 Word in s. 105 heading inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 6(4)(a) (with art. 12(2))

F242 S. 105 repealed (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 6(2) (with arts. 14, 15)

F243 Words in s. 105(1) inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 6(4)(b) (with art. 12(2))

F244 Words in s. 105(4) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 28; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C219 S. 105 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2


106 Final meeting prior to dissolution.

[F245](1) As soon as the company’s affairs are fully wound up the liquidator must make up an account of the winding up, showing how it has been conducted and the company’s property has been disposed of.

(2) The liquidator must, before the end of the period of 14 days beginning with the day on which the account is made up—

(a) send a copy of the account to the company's members,

(b) send a copy of the account to the company's creditors (other than opted-out creditors), and

(c) give the company's creditors (other than opted-out creditors) a notice explaining the effect of section 173(2)(e) and how they may object to the liquidator's release.

(3) The liquidator must during the relevant period send to the registrar of companies—

(a) a copy of the account, and
(b) a statement of whether any of the company's creditors objected to the liquidator's release.

(4) The relevant period is the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the liquidator's release.

(5) If the liquidator does not comply with subsection (2) the liquidator is liable to a fine.

(6) If the liquidator does not comply with subsection (3) the liquidator is liable to a fine and, for continued contravention, a daily default fine.

Annotations:

Amendments (Textual)
F245 S. 106 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 29; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C221 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)
C222 S. 106 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C224 S. 106(3)(5) amended (1.7.1999) by 1998 c. 46, s. 125, Sch. 8 para. 23(2)(3) (with s. 126(3)-(11)); S.I. 1998/3178, arts. 2, 3

CHAPTER V
PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP

107 Distribution of company’s property.

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

Annotations:

Modifications etc. (not altering text)
C225 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.

Annotations:

Modifications etc. (not altering text)
C226 S. 109 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C227 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

[F246(a)] to another company (“the transferee company”), whether or not the latter is a [F246]company registered under the Companies Act 2006[F246], 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[F247] 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.

(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[F248] 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.]
110  Acceptance of shares, etc., as consideration for sale of company property.

(1) This section applies, in the case of a company proposed to be, or being, wound up voluntarily, where the whole or part of the company’s business or property is proposed to be transferred or sold—

(a) to another company (“the transferee company”), whether or not the latter is a company registered under the Companies Act 2006, 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 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

(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 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.

Annotations:

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

Amendments (Textual)
F1553 Words in s. 110(1) inserted (6.4.2001) by S.S.I. 2001/128, reg. 5, Sch. 4 para. 1(2)
F1554 Words in s. 110(1)(a) substituted (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. 75(11)} (with art. 10, Sch. 1 para. 84)
F1555 Words in s. 110(2) substituted (6.4.2001) by S.S.I. 2001/128, reg. 5, Sch. 4 para. 1(3)
F1556 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)
C1126 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 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 Companies Clauses Consolidation Act 1845 or, in the case of a winding up in Scotland,
the **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).

**Annotations:**

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

C228 S. 111 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
S. 111 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3

**Marginal Citations**

M4 1845 c. 16.
M5 1845 c. 17.

**112 Reference of questions to court.**

(1) The liquidator or any contributory or creditor may apply to the court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court.

(2) The court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(3) A copy of an order made by virtue of this section staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall enter it in his records relating to the company.

**Annotations:**

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

C229 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
C230 S. 112(3) amended (1.7.1999) by 1998 c. 46, s. 125, Sch. 8 para. 23(2)(3) (with s. 126(3)-(11)); S.I. 1998/3178, arts. 2, 3

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

If the court, on the application of the liquidator in the winding up of a company registered in Scotland, so directs, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose.
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 [F250 98 (creditors’ meeting) and 99 (statement of affairs) ] [F251 and 100(1B) (nomination of liquidator by creditors)] , 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.

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.

116  Saving for certain rights.

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

CHAPTER VI
WINDING UP BY THE COURT

Jurisdiction (England and Wales)

117 High Court and county court jurisdiction.

(1) The High Court has jurisdiction to wind up any company registered in England and Wales.

(2) Where in the case of a company registered in England and Wales the amount of its share capital paid up or credited as paid up does not exceed £120,000, then (subject to this section) the county court... has concurrent jurisdiction with the High Court to wind up the company.

(2A) Despite subsection (2), proceedings for the exercise of the jurisdiction to wind up a company registered in England and Wales may be commenced only in the High Court if 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 is in the district that is the London insolvency district for the purposes of the second Group of Parts of this Act.

(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) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(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) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

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

(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.

Annotations:

Amendments (Textual)
F252 Words in s. 117(2) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 93(a)(i); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
F253 Words in s. 117(2) omitted (22.4.2014) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 93(a)(ii); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
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 [F259] in pursuance of section 4 of the Administration of Justice (Scotland) Act 1933].
(3) Where the amount of a company’s share capital paid up or credited as paid up does not exceed £120,000, the sheriff court of the sheriffdom in which the company’s registered office is situated has concurrent jurisdiction with the Court of Session to wind up the company; but—

(a) the Court of Session may, if it thinks expedient having regard to the amount of the company’s assets to do so—

(i) remit to a sheriff court any petition presented to the Court of Session for winding up such a company, or

(ii) require such a petition presented to a sheriff court to be remitted to the Court of Session; and

(b) the Court of Session may require any such petition as above mentioned presented to one sheriff court to be remitted to another sheriff court; and

(c) in a winding up in the sheriff court the sheriff may submit a stated case for the opinion of the Court of Session on any question of law arising in that winding up.

(4) For purposes of this section, the expression “registered office” means the place which has longest been the company’s registered office during the 6 months immediately preceding the presentation of the petition for winding up.

(5) The money sum for the time being specified in subsection (3) is subject to increase or reduction by order under section 416 in Part XV.

[F260 (6) This section is subject to Article 3 of the EC Regulation (jurisdiction under EC Regulation).]

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 trading certificate under section 761 of the Companies Act 2006 (requirement as to minimum share capital) and more than a year has expired since it was so registered,
   (c) it is an old public company, within the meaning of the Schedule 3 to the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009,
   (d) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
   (e) .................. .................. ..................
   (f) the company is unable to pay its debts,
   (f)(a) 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.

Annotations:

Modifications etc. (not altering text)
C237 S. 121 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3 reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

Annotations:

Amendments (Textual)
F261 Words in s. 122(1)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), Sch. 1 para. 102 (with arts. 6, 11, 12)
F262 Words in s. 122(1)(c) substituted (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. 75(12)} (with art. 10, Sch. 1 para. 84)

F264 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)
C238 S. 122 applied (with modifications) by S.I. 1994/2421, art. 8, Sch. 4 Pt. II para. 6(a)
C239 S. 122(1) modified (10.8.2005) by The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 (S.I. 2005/198), regs. 2(3), 25(3)
C240 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)
C241 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))
C242 S. 122(1)(f) modified (6.4.2010) by The Community Infrastructure Levy Regulations 2010 (S.I. 2010/948), reg. 105(2)
C243 S. 122(2) applied (with modifications) (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 62(1)-4, 154 (with s. 62(7), Sch. 5)

123 Definition of inability to pay debts.

(1) A company is deemed unable to pay its debts—
(a) if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company’s registered office, a written demand (in the prescribed form) requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or
(b) if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or
(c) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or
(d) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company, or
(e) if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.

(2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company’s assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(3) The money sum for the time being specified in subsection (1)(a) is subject to increase or reduction by order under section 416 in Part XV.

Annotations:

Modifications etc. (not altering text)
C244 S. 123 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8, Sch. 4 Pt. II para. 7(a)
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 \[F265\], 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)\[F266\] or by \[F267\] 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.

\[F268\] . . .

\[F269\] (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—
(a) if the ground of the petition is that in section 122(1)(b) or (c), or
\[F270\] (b) in a case falling within section 124A \[F271\] or 124B\[F272\] below.

\[F272\] (4AA) A winding up petition may be presented by the \[F273\] Financial Conduct Authority[ in a case falling within section 124C(1) or (2).]

\[F274\] (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.
124A Petition for winding up on grounds of public interest.

(1) Where it appears to the Secretary of State from—

(a) any report made or information obtained under Part XIV (except section 448A) of the M6 Companies Act 1985 (company investigations, &c.),

(b) any report made by inspectors under—

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

(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 M7 Criminal Justice Act 1987 or [F278] 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.

Annotations:

Amendments (Textual)
F275 S. 124A inserted by Companies Act 1989 (c. 40, SIF 27), ss. 60(3), 213(2)
F276 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)
F277 S. 124A(b)(bb) substituted for s. 124A(b) (1.12.2001) by S.I. 2001/3649, arts. 1, 305
F278 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)

Modifications etc. (not altering text)
C250 S. 124A applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

Marginal Citations
M6 1985 c. 6(27).
M7 1987 c.38(39:1).

[*F279*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.

Annotations:

Amendments (Textual)
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 [F281 Financial Conduct 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 [F282 Financial Conduct 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.

Annotations:

Amendments (Textual)


F281 Words in s. 124C(1)(b) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 11 para. 2(1), (2)(b) (with Sch. 12)

F282 Words in s. 124C(2)(b) substituted (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 11 para. 2(1), (2)(b) (with Sch. 12)
unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Annotations:

Modifications etc. (not altering text)

C251 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

C252 S. 125 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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 \[F283\] a company registered but not formed under the Companies Act 2006, 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.

\[F284\]

(3) Subsection (1) applies in relation to any action being taken in respect of the company under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts) as it applies in relation to any action or proceeding mentioned in paragraph (b) of that subsection.

Annotations:

Amendments (Textual)

F283 Words in s. 126(2) substituted (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. 75(14)} (with art. 10, Sch. 1 para. 84)

F284 S. 126(3) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 27

Modifications etc. (not altering text)

C253 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

C254 S. 126 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

C255 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.

(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.

(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.

Annotations:

Amendments (Textual)

F285  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)

C256  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.

C257  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)


C258  S. 127 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2


C259  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

C260  S. 127 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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.

(3) In subsection (1) “attachment” includes a hold notice or a deduction notice under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts) and, if subsection (1) has effect in relation to a deduction notice, it also has effect in relation to the hold notice to which the deduction notice relates (whenever the hold notice was given).
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.

[\(F^{287}\) (1A) Where the court makes a winding-up order by virtue of paragraph 13(1)(c) 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.

Annotations:

Amendments (Textual)

F287 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(I), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C265 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
C266 S. 129 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
C267 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(I), Sch. 1
C268 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 \[F288\] registered but not formed under the Companies Act 2006], 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.

\[F289\] (3A) In subsections (2) and (3), the reference to an action or proceeding includes action in respect of the company under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts).]

(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.

Annotations:

Amendments (Textual)

\[F288\] Words in s. 130(3) substituted (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. 75(15)) (with art. 10, Sch. 1 para. 84)

\[F289\] S. 130(3A) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 29

Modifications etc. (not altering text)

\[C269\] 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. .

\[C270\] 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. .

\[C271\] 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

\[C272\] S. 130 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3 reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

\[C273\] 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 \[F290\] . . . shall show—

(a) particulars of the company’s assets, debts and liabilities;
(b) the names and addresses of the company’s creditors;
(c) the securities held by them respectively;
(d) the dates when the securities were respectively given; and
(e) such further or other information as may be prescribed or as the official receiver may require

[291](2A) The statement shall [292] be verified by the persons required to submit it—

(a) in the case of an appointment of a provisional liquidator or a winding up by the court in England and Wales [293] be verified by the persons required to submit it, by a statement of truth; and

(b) in the case of an appointment of a provisional liquidator or a winding up by the court in Scotland, [294] contain a statutory declaration by the persons required to submit it.

(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.
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.

Annotations:

Modifications etc. (not altering text)

C277 S. 132 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3 reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
(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.

Annotations:

Modifications etc. (not altering text)
C278 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
C279 S. 133 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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.

Annotations:

Modifications etc. (not altering text)

C280 S. 134 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C281 S. 134 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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.

Annotations:

Modifications etc. (not altering text)

C282 S. 135 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C283 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
C284 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
C285 S. 135 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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 [F295] in accordance with the rules seek nominations from 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) [F296] 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 [F297] 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 [F298] seek nominations from the company’s creditors and contributories.

Annotations:

Amendments (Textual)

F295 Words in s. 136(4) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 31(2); S.I. 2015/1329, reg. 3(d)

F296 Words in s. 136(5)(a) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 31(3); S.I. 2015/1329, reg. 3(d)

F297 Words in s. 136(5)(c) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 31(3); S.I. 2015/1329, reg. 3(d)

F298 Words in s. 136(6) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 31(4); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)


C287 S. 136 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
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 nominations are sought from the company’s creditors and contributories in pursuance of a decision under section 136(5)(a), but no person is chosen to be liquidator as a result of those meetings, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.

(3) On an application under subsection (1), or a reference made in pursuance of a decision under subsection (2), the Secretary of State shall either make an appointment or decline to make one.

(4) Where a liquidator has been appointed by the Secretary of State under subsection (3), the liquidator shall give notice of his appointment to the company’s creditors or, if the court so allows, shall advertise his appointment in accordance with the directions of the court.

(5) In that notice or advertisement the liquidator must explain the procedure for establishing a liquidation committee under section 141.

 Annotations:

Amendments (Textual)
F299 Words in s. 137(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 32(2)(a); S.I. 2015/1329, reg. 3(d)
F300 Words in s. 137(2) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 32(2)(b); S.I. 2015/1329, reg. 3(d)
F301 Words in s. 137(5) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 32(3); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C288 S. 137 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 13
C289 S. 137 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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, in accordance with the rules seek nominations from 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 seek a nomination from the company's contributories under subsection (3), he may seek a nomination only from the company's creditors for the purpose mentioned in that subsection.

(5) If a nomination is sought from the company's creditors, or nominations are sought from the company's creditors and contributories, in pursuance of this section but no person is appointed or nominated as a result, 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.

Annotations:

Amendments (Textual)

F302 Words in s. 138(3) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 33(2); S.I. 2015/1329, reg. 3(d)

F303 Words in s. 138(4) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 33(3); S.I. 2015/1329, reg. 3(d)

F304 Words in s. 138(5) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 33(4)(a); S.I. 2015/1329, reg. 3(d)

F305 Words in s. 138(5) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 33(4)(b); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C290 S. 138 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

C291 S. 138 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

139 Choice of liquidator by creditors and contributories.

(1) This section applies where a company is being wound up by the court and nominations are sought from the company's creditors and contributories for the purpose of choosing a person to be liquidator of the company.

(2) The creditors and the contributories may in accordance with the rules 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.

Annotations:

Amendments (Textual)

F306 Words in s. 139 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 34(4); S.I. 2015/1329, reg. 3(d)
F307 Words in s. 139(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 34(2); S.I. 2015/1329, reg. 3(d)
F308 Words in s. 139(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 34(3); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C292 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
C293 S. 139 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3 reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

140 Appointment by the court following administration or voluntary arrangement.

[F309] (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 [F310] section 136(5) (a) and (b) does not apply.]

Annotations:

Amendments (Textual)

F309 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))
F310 Words in s. 140(3) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 35; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C294 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
Liquidation committees

141 Liquidation committee (England and Wales).

(1) This section applies where a winding up order has been made by the court in England and Wales.

(2) If both the company's creditors and the company's contributories decide that a liquidation committee should be established, a liquidation committee is to be established in accordance with the rules.

(3) If only the company's creditors, or only the company's contributories, decide that a liquidation committee should be established, a liquidation committee is to be established in accordance with the rules unless the court orders otherwise.

(3A) A “liquidation committee” is a committee having such functions as are conferred on it by or under this Act.

(3B) The liquidator must seek a decision from the company's creditors and contributories as to whether a liquidation committee should be established if requested, in accordance with the rules, to do so by one-tenth in value of the company's creditors.

(3C) Subsection (3B) does not apply where the liquidator is the official receiver.

(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.

Annotations:

Amendments (Textual)

F311 S. 141(1)-(3C) substituted for s. 141(1)-(3) (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 36; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C295 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)

C296 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

C297 S. 141 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

142 Liquidation committee (Scotland).

(1) This section applies where a winding up order has been made by the court in Scotland.

(2) If both the company's creditors and the company's contributories decide that a liquidation committee should be established, a liquidation committee is to be established in accordance with the rules.
(3) If only the company’s creditors, or only the company’s contributories, decide that a liquidation committee should be established, a liquidation committee is to be established in accordance with the rules unless the court orders otherwise.

(4) A liquidator appointed by the court other than under section 139(4)(a) must seek a decision from the company’s creditors and contributories as to whether a liquidation committee should be established if requested, in accordance with the rules, to do so by one-tenth in value of the company’s creditors.

(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) A “liquidation committee” is a committee having the powers and duties conferred and imposed on it by this Act, and such of the powers and duties of commissioners in a sequestration as may be conferred and imposed on such committees by the rules.

Annotations:

Amendments (Textual)

F312 S. 142(1)-(4) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 37(2); S.I. 2015/1329, reg. 3(d)

F313 Words in s. 142(6) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 37(3); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C298 S. 142 amended (1.12.2001) by 2000 c. 8, s. 371(4)(b); S.I. 2001/3538, art. 2(1)

C299 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

C300 S. 142 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

C301 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.
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.

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.
C310  S. 145 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3 reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

146  Duty to summon final meeting.

(1) This section applies where a company is being wound up by the court and the liquidator is not the official receiver.

(2) If it appears to the liquidator that the winding up of the company is for practical purposes complete the liquidator must make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of.

(3) The liquidator must—
   (a) send a copy of the account to the company's creditors (other than opted-out creditors), and
   (b) give the company's creditors (other than opted-out creditors) a notice explaining the effect of section 174(4)(d) and how they may object to the liquidator's release.

(4) The liquidator must during the relevant period send to the court and the registrar of companies—
   (a) a copy of the account, and
   (b) a statement of whether any of the company's creditors objected to the liquidator's release.

(5) The relevant period is the period of 7 days beginning with the day after the last day of the period prescribed by the rules as the period within which the creditors may object to the liquidator's release.

Annotations:

Amendments (Textual)
F314  S. 146 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 38; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C311  S. 146 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 18
C312  S. 146 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3 reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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.

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, 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.
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 F316 . . . .

(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.

Annotations:

Amendments (Textual)

F316 Words in s. 149(1) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(16)} (with art. 10, Sch. 1 para. 84)

Modifications etc. (not altering text)

C319 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.

Annotations:

Modifications etc. (not altering text)

C320 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
### F317 151 Payment into bank of money due to company.

<table>
<thead>
<tr>
<th>Amendments (Textual)</th>
</tr>
</thead>
<tbody>
<tr>
<td>F317 S. 151 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 9; S.I. 2015/1732, art. 2(c)(iii)</td>
</tr>
</tbody>
</table>

### 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.

### Annotations:

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

C321 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.

### Annotations:

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

C322 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

C323 S. 153 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

### 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.
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.

[F318(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.]
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.

Annotations:

Modifications etc. (not altering text)
C331 S. 156 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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.

Annotations:

Modifications etc. (not altering text)
C332 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
C333 S. 157 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

159 Powers of court to be cumulative.

Powers conferred[^319] on the court by this Act 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.

Annotations:

Amendments (Textual)
F319 Words in s. 159 substituted (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. 75(17)} (with art. 10, Sch. 1 para. 84)
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\(^{F320}\) . . . in respect of the following matters—

\[\begin{align*}
(\text{a}) & \text{the seeking of decisions on any matter from creditors and contributories,} \\
(\text{b}) & \text{the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,} \\
(\text{c}) & \text{the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator,} \\
(\text{d}) & \text{the making of calls,} \\
(\text{e}) & \text{the fixing of a time within which debts and claims must be proved,}
\end{align*}\]

... 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.

Annotations:

**Amendments (Textual)**

\(F320\) Words in s. 160(1) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, (Sch. 1 para. 75(18)) (with art. 10, Sch. 1 para. 84)

\(F321\) S. 160(1)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 39; S.I. 2015/1329, reg. 3(d)

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

\(C335\) S. 159 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

\(C336\) 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

\(C337\) S. 160 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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.

Annotations:

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 in pursuance of section 4 of the Administration of Justice (Scotland) Act 1933—

(a) none of the orders specified in Part I of Schedule 3 to this Act are subject to review, reduction, suspension or stay of execution, and

(b) every other order or judgment (except as mentioned below) may be submitted to review by the Inner House by reclaiming motion enrolled within 14 days from the date of the order or judgment.

(3) However, an order being one of those specified in Part II of that Schedule shall, from the date of the order and notwithstanding that it has been submitted to review as above, be carried out and receive effect until the Inner House have disposed of the matter.

(4) In regard to orders or judgments pronounced in Scotland by a Lord Ordinary before whom proceedings in a winding up are being taken, any such order or judgment may be submitted to review by the Inner House by reclaiming motion enrolled within 14 days from its date; but should it not be so submitted to review during session, the provisions of this section in regard to orders or judgments pronounced by the judge acting as vacation judge apply.

(5) Nothing in this section affects provisions of the Companies Acts 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.

Annotations:

Amendments (Textual)

F322 Words repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), Sch. 2

F323 Words in s. 162(5) substituted (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. 75(19)} (with art. 10, Sch. 1 para. 84)
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.

Annotations:

Modifications etc. (not altering text)
C342 S. 163 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C343 S. 163 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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.

Annotations:

Modifications etc. (not altering text)
C344 S. 164 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C345 S. 164 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
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 exercise any of the powers specified in Parts 1 to 3 of Schedule 4.

(4) The liquidator may—
   (a) exercise the court’s power of settling a list of contributories (which list is prima facie evidence of the liability of the persons named in it to be contributories),
   (b) exercise the court’s power of making calls,
   (c) summon general meetings of the company for the purpose of obtaining its sanction by [special 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.

Annotations:

Amendments (Textual)
F324 S. 165(2) substituted for s. 165(2)(3) (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 120(2), 164(3)(i)(i)
F325 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)
C346 S. 165 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

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.

(1A) The exercise by the liquidator of the power specified in paragraph 6 of Schedule 4 to this Act (power to sell any of the company’s property) shall not be challengeable on the ground of any prior inhibition.

(2) The powers conferred on the liquidator by section 165 shall not be exercised, except with the sanction of the court, [before—
   (a) the company's creditors under section 100 nominate a person to be liquidator,
(b) the procedure by which the company’s creditors were to have made such a nomination concludes without a nomination having been made.]

(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) \[F328\] 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) \[F329\] If the directors fail to comply with—

(a) section 99(1), (2) or (2A), or

(b) section 100(1B),\]

(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.

Annotations:

Amendments (Textual)

F326 S. 166(1A) inserted (S.) (22.4.2009) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 155(3), 227(3) (with s. 223); S.S.I. 2009/67, art. 3(a) (with arts. 5, 6); as amended by S.S.I. 2011/31, art. 5

F327 Words in s. 166(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 40(2); S.I. 2015/1329, reg. 3(d)

F328 S. 166(4) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 40(3); S.I. 2015/1329, reg. 3(d)

F329 Words in s. 166(5) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 40(4); S.I. 2015/1329, reg. 3(d)

F330 Words in s. 166(5)(a) inserted (6.4.2009) by The Legislative Reform (Insolvency) (Advertising Requirements) Order 2009 (S.I. 2009/864), art. 3(3) (with art. 4)

F331 Words in s. 166(5)(b) substituted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 5(5)

Modifications etc. (not altering text)

C348 S. 166 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

C349 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.

\[F332(1)\] Where a company is being wound up by the court, the liquidator may exercise any of the powers specified in Parts 1 to 3 of Schedule 4.]
(2) Where the liquidator (not being the official receiver), in exercise of the powers conferred on him by this Act,—
   (a) disposes of any property of the company to a person who is connected with the company (within the meaning of section 249 in Part VII) or
   (b) employs a solicitor to assist him in the carrying out of his functions,
he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

(3) The exercise by the liquidator in a winding up by the court of the powers conferred by this section is subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

Annotations:

Amendments (Textual)
F332 S. 167(1) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 120(3), 164(3)(i)

Modifications etc. (not altering text)
C350 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
C351 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
C352 S. 167 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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 seek a decision on any matter from the company's creditors or contributories; and must seek a decision on a matter—
   (a) from the company's creditors, if requested to do so by one-tenth in value of the creditors;
   (b) from the company's contributories, if requested to do so by one-tenth in value of the contributories.

(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.

(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 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.

[\[\text{F335 (5C)}\]] 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.

Annotations:

Amendments (Textual)

F333 S. 168(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 41; S.I. 2015/1329, reg. 3(d)
F334 S. 168(5A)(5B)(5C) inserted (1.12.1994) by S.I. 1994/2421, art. 14(1)
F335 S. 168(5C) substituted (3.7.2002) by S.I. 2002/1555, art. 15(1)

Modifications etc. (not altering text)

C353 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
C354 S. 168 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
C355 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
C356 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)
C357 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

M9 S.I. 1994/2421.

169 Supplementary powers (Scotland).

(1) F336 . . . . . . . . . . . . . . . . . .

(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.
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.
(2) Subject to the next subsection, the liquidator may be removed from office only by an order of the court or—
   (a) in the case of a members’ voluntary winding up, by a general meeting of the company summoned specially for that purpose, or
   (b) in the case of a creditors’ voluntary winding up, by a decision of the company's creditors made by a qualifying decision procedure instigated specially for that purpose in accordance with the rules.

[F338](3) Where the liquidator in a members’ voluntary winding up was appointed by the court under section 108, a meeting such as is mentioned in subsection (2)(a) shall be summoned only if—
   (a) the liquidator thinks fit,
   (b) the court so directs, or
   (c) the meeting is requested in accordance with the rules 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.

(3A) Where the liquidator in a creditors’ voluntary winding up was appointed by the court under section 108, a qualifying decision procedure such as is mentioned in subsection (2)(b) is to be instigated only if—
   (a) the liquidator thinks fit,
   (b) the court so directs, or
   (c) it is requested in accordance with the rules by not less than one-half in value of the company’s creditors.

(4) A liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(5) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the registrar of companies.

[F339](6) In the case of a members’ voluntary winding up where the liquidator has produced an account of the winding up under section 94 (final account), the liquidator vacates office as soon as the liquidator has complied with section 94(3) (requirement to send final account to registrar).

(7) In the case of a creditors’ voluntary winding up where the liquidator has produced an account of the winding up under section 106 (final account), the liquidator vacates office as soon as the liquidator has complied with section 106(3) (requirement to send final account etc. to registrar).
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 decision of the company’s creditors made by a qualifying decision procedure instigated 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 qualifying decision procedure such as is mentioned in subsection (2) shall be instigated only if the liquidator thinks fit, the court so directs, or it is requested, in accordance with the rules, by not less than one-quarter, in value, of the creditors.

(4) If appointed by the Secretary of State, the liquidator may be removed from office by a direction of the Secretary of State.

(5) A liquidator or provisional liquidator, not being the official receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(6) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the court.

(7) Where an order is made under section 204 (early dissolution in Scotland) for the dissolution of the company, the liquidator shall vacate office when the dissolution of the company takes effect in accordance with that section.

(8) Where the liquidator has produced an account of the winding up under section 146 (final account), the liquidator vacates office as soon as the liquidator has complied with section 146(4) (requirement to send account etc. to registrar and to court).
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 following cases, the time at which notice is given to the registrar of companies in accordance with the rules that the person has ceased to hold office—

(i) the person has been removed from office by a general meeting of the company,

(ii) the person has been removed from office by a decision of the company's creditors and the company's creditors have not decided against his release,

(iii) the person has died;

(b) in the following cases, such time as the Secretary of State may, on the application of the person, determine—

(i) the person has been removed from office by a decision of the company's creditors and the company's creditors have decided against his release,

(ii) the person has been removed from office by the court,

(iii) the person has vacated office under section 171(4);]

(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 [(F345) of section 171, the time at which he vacated office;

(e) in the case of a person who has vacated office under section 171(7)—

(i) if any of the company's creditors objected to the person's release before the end of the period for so objecting prescribed by the rules, such time as the Secretary of State may, on an application by that person, determine, and

(ii) otherwise, the time at which the person vacated office.]
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 [F348 the company's] 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.

Annotations:

Amendments (Textual)

F344  S. 173(2)(a)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 44(2); S.I. 2015/1329, reg. 3(d)

F345  Word in s. 173(2)(d) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 44(3); S.I. 2015/1329, reg. 3(d)

F346  S. 173(2)(e) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 44(4); S.I. 2015/1329, reg. 3(d)

F347  S. 173(2A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 44(5); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C371  S. 173(2)(a) 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

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
(3) If the official receiver while he is a liquidator gives notice to the Secretary of State that the winding up is for practical purposes complete, he has his release with effect from such time as the Secretary of State may determine.

(4) A person other than the official receiver who has ceased to be a liquidator has his release with effect from the following time, that is to say—

(a) in the following cases, the time at which notice is given to the court in accordance with the rules that the person has ceased to hold office—

(i) the person has been removed from office by a decision of the company's creditors and the company's creditors have not decided against his release,

(ii) the person has died;

(b) in the following cases, such time as the Secretary of State may, on the application of the person, determine—

(i) the person has been removed from office by a decision of the company's creditors and the company's creditors have decided against his release;

(ii) the person has been removed from office by the court or the Secretary of State;

(iii) the person has vacated office under section 172(5) or (7);

(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 any of the company's creditors objected to the person's release before the end of the period for so objecting prescribed by the rules, such time as the Secretary of State may, on an application by that person, determine, and

(ii) otherwise, the time at which the person vacated office.

(4A) Where a winding-up order made by the court in England and Wales is rescinded, the person (whether the official receiver or another person) who is the liquidator of the company at the time the order is rescinded has his release with effect from such time as the court may determine.

(4ZA) Where the person is removed from office by a decision of the company's creditors, any decision of the company's creditors as to whether the person should have his release must be made by a qualifying decision procedure.

(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...
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.

Annotations:

Amendments (Textual)

F348 Words in s. 174(2)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 45(2); S.I. 2015/1329, reg. 3(d)
F349 S. 174(4)(a) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 45(3); S.I. 2015/1329, reg. 3(d)
F350 S. 174(4)(d)(i) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 45(4); S.I. 2015/1329, reg. 3(d)
F351 S. 174(4A) inserted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 10; S.I. 2015/1732, art. 2(e)(iii)
F352 S. 174(4ZA) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 45(5); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C372 S. 174 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 22
C373 S. 174 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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 shall be paid in priority to all other debts.

[F353] Ordinary preferential debts 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.

(1B) Secondary preferential debts rank equally among themselves after the ordinary preferential debts and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.]

(2) Preferential debts—

(a) 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.
In this section “preferential debts”, “ordinary preferential debts” and “secondary preferential debts” each has the meaning given in section 386 in Part 12.

Annotations:

Amendments (Textual)
F353 Words in s. 175(1) omitted (1.1.2015) by virtue of The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 5(2) (with art. 3)
F354 S. 175(1A)(1B) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 5(3) (with art. 3)
F355 S. 175(2)(a) omitted (1.1.2015) by virtue of The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 5(4) (with art. 3)
F356 S. 175(3) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 5(5) (with art. 3)

Modifications etc. (not altering text)
C374 S. 175 excluded (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, Sch. para. 2(4)
C375 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)
C377 S. 175 excluded (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), reg. 20 (with reg. 3)
C378 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
C379 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 [F357, etc.].

(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.).

[F358(2) Subsection (2A) applies where—

(a) any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of the company, or

(b) Her Majesty's Revenue and Customs has been paid any amount from an account of the company under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts),

in the period of 3 months ending with the date of the winding-up order.

(2A) Where this subsection applies—

(a) in a case within subsection (2)(a), the goods or effects, or the proceeds of their sale, and
(b) in a case within subsection (2)(b), the amount in question, is 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 those debts.]

(3) Where by virtue of a charge under subsection [F359(2A)] 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.

Annotations:

Amendments (Textual)
F357 Word in s. 176 heading inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 30(4)
F358 S. 176(2)(2A) substituted for s. 176(2) (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 30(2)
F359 Word in s. 176(3) substituted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 30(3)

Modifications etc. (not altering text)
C380 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

[F360Property subject to floating charge]

Annotations:

Amendments (Textual)
F360 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))

[F361176ZA[F361Payment 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.

Annotations:

Amendments (Textual)

F361 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)

C381 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


C383 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))

Application of proceeds of office-holder claims

(1) This section applies where—
   (a) there is a floating charge (whether created before or after the coming into force of this section) which relates to property of a company which—
      (i) is in administration, or
      (ii) has gone into liquidation; and
   (b) the administrator or the liquidator (referred to in this section as “the office-holder”) has—
      (i) brought a claim under any provision mentioned in subsection (3), or
      (ii) made an assignment (or, in Scotland, assignation) in relation to a right of action under any such provision under section 246ZD.

(2) The proceeds of the claim or assignment (or, in Scotland, assignation) are not to be treated as part of the company's net property, that is to say the amount of its property which would be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.

(3) The provisions are—
   (a) section 213 or 246ZA (fraudulent trading);
   (b) section 214 or 246ZB (wrongful trading);
   (c) section 238 (transactions at an undervalue (England and Wales));
   (d) section 239 (preferences (England and Wales));
   (e) section 242 (gratuitous alienations (Scotland));
(f) section 243 (unfair preferences (Scotland));
(g) section 244 (extortionate credit transactions).

(4) Subsection (2) does 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 Part 26 of the Companies Act 2006 (arrangements and reconstructions).

Annotations:

Amendments (Textual)
F362 S. 176ZB inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 119, 164(1); S.I. 2015/1689, reg. 2(j) (with Sch. para. 17)

[176A]Share of assets for unsecured creditors

(1) This section applies where a floating charge relates to property of a company—
   (a) which has gone into liquidation,
   (b) which is in administration,
   (c) of which there is a provisional liquidator, or
   (d) of which there is a receiver.

(2) The liquidator, administrator or receiver—
   (a) shall make a prescribed part of the company’s net property available for the satisfaction of unsecured debts, and
   (b) shall not distribute that part to the proprietor of a floating charge except in so far as it exceeds the amount required for the satisfaction of unsecured debts.

(3) Subsection (2) shall not apply to a company if—
   (a) the company’s net property is less than the prescribed minimum, and
   (b) the liquidator, administrator or receiver thinks that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

(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 [Part 26 of the Companies Act 2006 (arrangements and reconstructions)].

(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.

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.

Annotations:

Modifications etc. (not altering text)

C391 S. 177 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C392 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
C393 S. 177(5) applied (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 24(4) (with ss. 7(5), 93(4); S.I. 1993/16, art. 2, Sch.3
S. 177(5) applied (1.12.2001) by 2000 c. 8, s. 376(7); S.I. 2001/3538, art. 2(1)

Disclaimer (England and Wales only)

178 Power to disclaim onerous property.

(1) This and the next two sections apply to a company that is being wound up in England and Wales.

(2) Subject as follows, the liquidator may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.

(3) The following is onerous property for the purposes of this section—

(a) any unprofitable contract, and
(b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

(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 disclaimer 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.

Annotations:

Modifications etc. (not altering text)

C394 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)

C395 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

C396 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

C397 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

C398 S. 178 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

C399 S. 178(2) excluded by 2009 c. 1, s. 66(3A) (as inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 74(5))

C400 S. 178(2) excluded by 2009 c. 1, s. 67(6) (as substituted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 75(3))

C401 S. 178(2) excluded by 2009 c. 1, s. 63(3A) (as inserted (1.1.2015) by The Bank Recovery and Resolution Order 2014 (S.I. 2014/3329), arts. 1(2), 71(4))

179 Disclaimer of leaseholds.

(1) The disclaimer under section 178 of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either—

(a) no application under section 181 below is made with respect to that property before the end of the period of 14 days beginning with the day on which the last notice served under this subsection was served; or

(b) where such an application has been made, the court directs that the disclaimer shall take effect.
(2) Where the court gives a direction under subsection (1)(b) it may also, instead of or in addition to any order it makes under section 181, make such orders with respect to fixtures, tenant’s improvements and other matters arising out of the lease as it thinks fit.

Annotations:

Modifications etc. (not altering text)

C402 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

C403 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

C404 S. 179 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

180 Land subject of rentcharge.

(1) The following applies where, in consequence of the disclaimer under section 178 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in the next subsection as “the proprietor”).

(2) The proprietor and the successors in title of the proprietor are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

Annotations:

Modifications etc. (not altering text)

C405 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

C406 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

C407 S. 180 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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 discharger.

(3) Subject as follows, the court may on the application make an order, on such terms as it thinks fit, for the vesting of the disclaimed property in, or for its delivery to—
(a) a person entitled to it or a trustee for such a person, or
(b) a person subject to such a liability as is mentioned in subsection (2)(b) or a trustee for such a person.

(4) The court shall not make an order under subsection (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of any order under this section shall be taken into account in assessing for the purpose of section 178(6) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(6) An order under this section vesting property in any person need not be completed by conveyance, assignment or transfer.

Annotations:

Modifications etc. (not altering text)
C408 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
C409 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
C410 S. 181 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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.

Annotations:

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

C411 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

C412 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

C413 S. 182 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

**Execution, attachment and the Scottish equivalents**

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

(1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to it, and the company is subsequently wound up, he is not entitled to retain the benefit of the execution or attachment against the liquidator 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 [F365 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 [M10 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 [F366 enforcement officer] means an individual who is authorised to act as an enforcement officer under the Courts Act2003].
For the purposes of this section, Her Majesty's Revenue and Customs is to be regarded as having attached a debt due to a company if it has taken action under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction for accounts) as a result of which an amount standing to the credit of an account held by the company is—

(a) subject to arrangements made under paragraph 6(3) of that Schedule, or

(b) the subject of a deduction notice under paragraph 13 of that Schedule.

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

Annotations:

Amendments (Textual)
F365 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)
F366 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)
F367 S. 183(4A) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 31

Modifications etc. (not altering text)
C414 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
M10 1979 c. 53.

184 Duties of officers 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 enforcement 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 enforcement 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 £500 a company’s goods are sold or money is paid in order to avoid sale, the enforcement 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 enforcement 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
[F372]enforcement 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 [F373]“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.

Annotations:

Amendments (Textual)
F368 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)
F369 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)
F370 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)
F371 "£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)
F372 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)
F373 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)
C415 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 Bankruptcy (Scotland) Act 1985—

(a) 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.

(2) 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 [F374permanent] 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.

Annotations:

Amendments (Textual)

F374 Word in s. 185(2)(d) repealed (S.) (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 226(2), 227(3), Sch. 6 (with s. 223); S.S.I. 2008/115, art. 3(2), Sch. 2 (subject to art. 3(3)) (with arts. 5, 6, 10) (as amended by S.S.I. 2011/31, art. 5)

Modifications etc. (not altering text)

C416 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

C417 S. 185 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

C418 S. 185(1)(a)(2) applied by Administration of Justice Act 1956 (c. 46), s. 47G(3) (as inserted (S.) (1.7.2010) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), ss. 213, 227(3), Sch. 4 para. 12 (with s. 223)); S.S.I. 2010/249, art. 2 (with art. 3)

Marginal Citations

M11 1985 c. 66.

Miscellaneous matters

186 Rescission of contracts by the court.

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

(2) Any damages payable under the order to such a person may be proved by him as a debt in the winding up.

Annotations:

Modifications etc. (not altering text)

C419 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)

C420 S. 186 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

C421 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 [F375 section 247 of the Companies Act 2006](power to provide for employees or former employees on cessation or transfer of business).

[F376(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 [F377 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).

Annotations:

**Amendments (Textual)**

F375 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)

F376 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)

F377 Words in s. 187(2)(c) substituted (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. 75(20)} (with art. 10, Sch. 1 para. 84)

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

C422 S. 186 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3 reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

C423 S. 187 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2


C424 S. 187 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 103, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 2
188 Notification that company is in liquidation.

(1) When a company is being wound up, whether by the court or voluntarily—

(a) every invoice, order for goods or services, 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, . . . 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.

Annotations:

Amendments (Textual)
F378 S. 188(1) substituted (1.1.2007) by The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), reg. 7(1)
F379 Words in s. 188(1)(a) inserted (1.10.2008) by The Companies (Trading Disclosures) (Insolvency) Regulations 2008 (S.I. 2008/1897), reg. 5(1)(a)
F380 Words in s. 188(1)(a) omitted (1.10.2008) by virtue of The Companies (Trading Disclosures) (Insolvency) Regulations 2008 (S.I. 2008/1897), reg. 5(1)(b)

Modifications etc. (not altering text)
C425 S. 188 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C426 S. 188 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
C427 S. 188 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
C428 S. 188 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

189 Interest on debts.

(1) In a winding up interest is payable in accordance with this section on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.

(2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation.

(3) All interest under this section ranks equally, whether or not the debts on which it is payable rank equally.

(4) The rate of interest payable under this section in respect of any debt (“the official rate” for the purposes of any provision of this Act in which that expression is used) is whichever is the greater of—
(a) the rate specified in section 17 of the 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.

Annotations:

Modifications etc. (not altering text)
C429 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
C430 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
C431 S. 189 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
C432 S. 189(4) applied (S.) (7.6.2013) by The Energy Supply Company Administration (Scotland) Rules 2013 (S.I. 2013/1047), rules 1.46(2)(b) (with rules 3, 46(7))

Marginal Citations
M12 1838 c. 110.

190 Documents exempt from stamp duty.

(1) In the case of a winding up by the court, or of a creditors’ voluntary winding up, the following has effect as regards exemption from duties chargeable under the enactments relating to stamp duties.

(2) If the company is registered in England and Wales, the following documents are exempt from stamp duty—

(a) every assurance relating solely to freehold or leasehold property, or to any estate, right or interest in, any real or personal property, which forms part of the company’s assets and which, after the execution of the assurance, either at law or in equity, is or remains part of those assets, and
(b) every writ, order, certificate, or other instrument or writing relating solely to the property of any company which is being wound up as mentioned in subsection (1), or to any proceeding under such a winding up.

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

(3) If the company is registered in Scotland, the following documents are exempt from stamp duty—

(a) every conveyance relating solely to property which forms part of the company’s assets and which, after the execution of the conveyance, is or remains the company’s property for the benefit of its creditors,
(b) any articles of roup of sale, submission and every other instrument and writing whatsoever relating solely to the company’s property, and
(c) every deed or writing forming part of the proceedings in the winding up.
“Conveyance” here includes assignation, instrument, discharge, writing and deed.

Annotations:

Modifications etc. (not altering text)

C433 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

C434 S. 190 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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.

Annotations:

Modifications etc. (not altering text)

C435 S. 191 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

C436 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, 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.

Annotations:

Modifications etc. (not altering text)

C437 S. 192 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

C438 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

C439 S. 192 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

C440 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 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 Acts) apply with any necessary modifications to sums lodged in a bank or institution under this section as they apply to sums deposited under section 57 of the Act first mentioned.

Annotations:

Amendments (Textual)

F381 Words in s. 193(3) substituted (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. 75(21)) (with art. 10, Sch. 1 para. 84)

Modifications etc. (not altering text)

C441 S. 193 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C442 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

M13 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.]

Annotations:

Amendments (Textual)

F382 S. 194 omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 46; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C443 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
C444 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
C445 S. 194 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
195  [F383 Court's powers] 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[F384]
       qualifying decision procedures to be instigated or the deemed consent
       procedure to be used in accordance with any directions given by the court,
       and appoint a person to report the result 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[F385] . . . .

Annotations:

Amendments (Textual)

F383  Word in s. 195 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise
       and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 47(3); S.I. 2015/1329, reg. 3(d)

F384  Words in s. 195(1)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and
       Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 47(2); S.I. 2015/1329, reg. 3(d)

F385  Words in s. 195(3) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential
       Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1
       para. 75(22)} (with art. 10, Sch. 1 para. 84)

Modifications etc. (not altering text)

C446  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

C447  S. 195 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities
       (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with
       reg. 24)

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 [F386 the 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 [F387 the Companies Acts], or any official copy of such a document.
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 the 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.
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 at the 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.

Annotations:

Modifications etc. (not altering text)
C451 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
C452 S. 197 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
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.

Annotations:

Modifications etc. (not altering text)
C455 S. 199 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C456 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
C457 S. 199 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3 reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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.

Annotations:

Modifications etc. (not altering text)
C458 S. 200 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C459 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
C460 S. 200 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3 reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
C461 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 [F389 and return]
under section 94 (members’ voluntary) or [\textsuperscript{F390}his final account and statement under] section 106 (creditors’ voluntary).

(2) The registrar on receiving the account [\textsuperscript{F391}, or the account and statement,] shall forthwith register [\textsuperscript{F392}it or] them; and on the expiration of 3 months from the registration of [\textsuperscript{F393}the account] 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 [\textsuperscript{F394}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.

Annotations:

Amendments (Textual)

\textsuperscript{F389} Words in s. 201(1) omitted (26.5.2015 for specified purposes) by virtue of \textit{Small Business, Enterprise and Employment Act 2015} (c. 26), s. 164(1), \textit{Sch. 9 para. 48(2)(a)}; S.I. 2015/1329, reg. 3(d)

\textsuperscript{F390} Words in s. 201(1) inserted (26.5.2015 for specified purposes) by \textit{Small Business, Enterprise and Employment Act 2015} (c. 26), s. 164(1), \textit{Sch. 9 para. 48(2)(b)}; S.I. 2015/1329, reg. 3(d)

\textsuperscript{F391} Words in s. 201(2) substituted (26.5.2015 for specified purposes) by \textit{Small Business, Enterprise and Employment Act 2015} (c. 26), s. 164(1), \textit{Sch. 9 para. 48(3)(a)}; S.I. 2015/1329, reg. 3(d)

\textsuperscript{F392} Words in s. 201(2) inserted (26.5.2015 for specified purposes) by \textit{Small Business, Enterprise and Employment Act 2015} (c. 26), s. 164(1), \textit{Sch. 9 para. 48(3)(b)}; S.I. 2015/1329, reg. 3(d)

\textsuperscript{F393} Words in s. 201(2) substituted (26.5.2015 for specified purposes) by \textit{Small Business, Enterprise and Employment Act 2015} (c. 26), s. 164(1), \textit{Sch. 9 para. 48(3)(c)}; S.I. 2015/1329, reg. 3(d)

\textsuperscript{F394} Words in s. 201(4) substituted (1.1.2007) by \textit{The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006} (S.I. 2006/3429), reg. 3(1)(d)

Modifications etc. (not altering text)

\textsuperscript{C462} Ss. 201, 205 applied by \textit{Building Societies Act 1986} (c. 53, SIF 16), ss. \textit{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 \[^{F395}\] 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.

Annotations:

Amendments (Textual)

F395 Words in s. 202(3) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 49; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C463 Ss. 202, 203, 205 excluded (1.11.1994) by S.I. 1994/2759, reg. 3, Sch. 3 para. 91A(2)

203 Consequence of notice under s. 202.

(1) Where a notice has been given under section 202(3), the official receiver or any creditor or contributory of the company, or the administrative receiver of the company (if there is one) may apply to the Secretary of State for directions under this section.

(2) The grounds on which that application may be made are—

(a) that the realisable assets of the company are sufficient to cover the expenses of the winding up;

(b) that the affairs of the company do require further investigation; or

(c) that for any other reason the early dissolution of the company is inappropriate.

(3) Directions under this section—

(a) are directions making such provision as the Secretary of State thinks fit for enabling the winding up of the company to proceed as if no notice had been given under section 202(3), and

(b) may, in the case of an application under section 202(5), include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Secretary of State thinks fit.

(4) An appeal to the court lies from any decision of the Secretary of State on an application for directions under this section.

(5) It is the duty of the person on whose application any directions are given under this section, or in whose favour an appeal with respect to an application for such directions is determined, within 7 days after the giving of the directions or the determination of
the appeal, to deliver to the registrar of companies for registration such a copy of the directions or determination as is prescribed.

(6) If a person without reasonable excuse fails to deliver a copy as required by subsection (5), he is liable to a fine and, for continued contravention, to a daily default fine.

Annotations:

Modifications etc. (not altering text)
C464 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 [F396]liquidator has been appointed[ 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, [F397]the liquidator may at any time apply[ to the court for an order that the company be dissolved.

(3) Where the liquidator makes that application, if the court is satisfied that the realisable assets of the company are insufficient to cover the expenses of the winding up and it appears to the court appropriate to do so, the court shall make an order that the company be dissolved in accordance with this section.

(4) A copy of the order shall within 14 days from its date be forwarded by the liquidator to the registrar of companies, who shall forthwith register it; and, at the end of the period of 3 months beginning with the day of the registration of the order, the company shall be dissolved.

(5) The court may, on an application by any person who appears to the court to have an interest, order that the date at which the dissolution of the company is to take effect shall be deferred for such period as the court thinks fit.

(6) It is the duty of the person on whose application an order is made under subsection (5), within 7 days after the making of the order, to deliver to the registrar of companies such a copy of the order as is prescribed.

(7) If the liquidator without reasonable excuse fails to comply with the requirements of subsection (4), he is liable to a fine and, for continued contravention, to a daily default fine.

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

Annotations:

Amendments (Textual)
F396 Words in s. 204(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 50; S.I. 2015/1329, reg. 3(d)
Dissolution otherwise than under ss. 202-204.

(1) This section applies where the registrar of companies receives—
(a) a final account and statement sent under section 146(4) (final account); 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 final account and statement or the notice, forthwith register them; 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.

Annotations:

Amendments (Textual)
F398 S. 205(1)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 51(2); S.I. 2015/1329, reg. 3(d)
F399 Words in s. 205(2) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 51(3)(a); S.I. 2015/1329, reg. 3(d)
F400 Words in s. 205(2) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 51(3)(b); S.I. 2015/1329, reg. 3(d)
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 £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 £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
(5) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(f), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in such circumstances, is guilty of an offence.

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

(7) The money sums specified in paragraphs (a) and (b) of subsection (1) are subject to increase or reduction by order under section 416 in Part XV.

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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.
Misconduct in course of winding up.

(1) When a company is being wound up, whether by the court or voluntarily, any person, being a past or present officer of the company, commits an offence if he—

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company’s property, and how and to whom and for what consideration and when the company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the company’s business), or

(b) does not deliver up to the liquidator (or as he directs) all such part of the company’s property as is in his custody or under his control, and which he is required by law to deliver up, or

(c) does not deliver up to the liquidator (or as he directs) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up, or

(d) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the liquidator as soon as practicable, or

(e) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the company’s property or affairs.

(2) Such a person commits an offence if after the commencement of the winding up he attempts to account for any part of the company’s property by fictitious losses or expenses; and he is deemed to have committed that offence if he has so attempted [F403 in connection with any qualifying decision procedure or deemed consent procedure] 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.
209  Falsification of company’s books.

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

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

Annotations:

Modifications etc. (not altering text)
C473  S. 208 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C474  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
C475  S. 208 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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.

Annotations:

Modifications etc. (not altering text)
C476  S. 209 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C477  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
C478  S. 209 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
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)

C483 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

C484 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

C485 S. 211 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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 F484 . . . 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 \(^{F405}\) . . . of the company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator \(^{F405}\) . . . 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 \(^{F406}\) . . . of the company is not exercisable, except with the leave of the court, after \(^{F407}\) 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.

Annotations:

**Amendments (Textual)**

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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.

Annotations:

Modifications etc. (not altering text)
C489 S. 213 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C490 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
C491 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
C492 S. 213 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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 ( [F408 on the assumption that he had knowledge of the matter mentioned in subsection (2)(b)]) 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.

[\textsuperscript{F409} (6A) For the purposes of this section a company enters insolvent administration if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration.]

(7) In this section “director” includes a shadow director.

(8) This section is without prejudice to section 213.

Annotations:

Amendments (Textual)
\textbf{F408} Words in s. 214(3) substituted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 117(3)(b), 164(1); S.I. 2015/1689, reg. 2(j) (with Sch. para. 15)

\textbf{F409} S. 214(6A) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 117(3)(c), 164(1); S.I. 2015/1689, reg. 2(j) (with Sch. para. 15)

Modifications etc. (not altering text)
\textbf{C493} 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)

\textbf{C494} 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)

\textbf{C495} 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)

\textbf{C496} S. 214 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

\textbf{C497} 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

\textbf{C498} 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

\textbf{C499} 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)

\textbf{C500} S. 214 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

\textbf{C501} S. 214 excluded (1.3.2016) by The NRAM plc (formerly Northern Rock plc) Consequential and Supplementary Provisions Order 2016 (S.I. 2016/114), arts. 3(1), 7(1)(3), Sch. para. 2(a)

\textbf{C502} S. 214(2) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3

Proceedings under ss. 213, 214.

(1) On the hearing of an application under section 213 or 214, the liquidator may himself give evidence or call witnesses.

(2) Where under either section the court makes a declaration, it may give such further directions as it thinks proper for giving effect to the declaration; and in particular, the court may—

(a) provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf; or any person claiming as assignee from or through the person liable or any person acting on his behalf, and

(b) from time to time make such further order as may be necessary for enforcing any charge imposed under this subsection.

(3) For the purposes of subsection (2), “assignee”—

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but

(b) does not include an assignee for valuable consideration (not including consideration by way of marriage [F410 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.

Annotations:

Amendments (Textual)

F410 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)

C504 S. 215 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C505 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
C506 S. 215 applied (with modifications) (S.) (25.2.2009) by The Bank Administration (Scotland) Rules 2009 (S.I. 2009/350), rule 38
C507 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
C508 S. 215 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
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
   (b) it is a name which is so similar to a name falling within paragraph (a) as to suggest an association with that company.

(3) Except with leave of the court or in such circumstances as may be prescribed, a person to whom this section applies shall not at any time in the period of 5 years beginning with the day on which the liquidating company went into liquidation—
   (a) be a director of any other company that is known by a prohibited name, or
   (b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company, or
   (c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.

(4) If a person acts in contravention of this section, he is liable to imprisonment or a fine, or both.

(5) In subsection (3) “the court” means any court having jurisdiction to wind up companies; and on an application for leave under that subsection, the Secretary of State or the official receiver may appear and call the attention of the court to any matters which seem to him to be relevant.

(6) References in this section, in relation to any time, to a name by which a company is known are to the name of the company at that time or to any name under which the company carries on business at that time.

(7) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(8) In this section “company” includes a company which may be wound up under Part V of this Act.

Annotations:

Modifications etc. (not altering text)

C510 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—

(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.

Annotations:

Modifications etc. (not altering text)

C511 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

F411(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]
(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 [F413] 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,

and shall furnish to the Secretary of State or (as the case may be) the Lord Advocate [F414] 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 [F414] the Secretary of State or (as the case may be) the Lord Advocate [F414] requires.

[F415](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 [F416] the Companies Act 1985[ 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 [F417] . . . 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).

Annotations:

Amendments (Textual)

F411 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)
F412 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)
F413 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)
F414 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)
F415 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)
F416 Words in s. 218(5) substituted (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. 75(24)} (with art. 10, Sch. 1 para. 84)
F417 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)
219  Obligations arising under s. 218.

(1) For the purpose of an investigation by the Secretary of State \[^{F418}\text{in consequence of a report made to him under section 218(4),}\] any obligation imposed on a person by any provision of \[^{F418}\text{the Companies Act 1985 to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in section 218(5)}\] is to be regarded as an obligation similarly to assist the Secretary of State in his investigation.

(2) An answer given by a person to a question put to him in exercise of the powers conferred by section 218(5) may be used in evidence against him.

\[^{F420}\text{(2A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—}\]

(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 \[^{M14}\text{Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath),}\]

(b) an offence under section 44(1) or (2) of the \[^{M15}\text{Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).}\]

(3) Where criminal proceedings are instituted by \[^{F421}\text{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 \[^{F421}\text{the Director of Public Prosecutions, the Lord Advocate or the Secretary of State (as the case may be) all assistance in connection with the prosecution which he is reasonably able to give.}\]}

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 \[^{F422}\text{Director of Public Prosecutions, the Lord Advocate or the Secretary of State (as the case may be) direct the person to comply}\]
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.
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 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 [F425, except in accordance with the EC Regulation].

(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 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 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.

Annotations:

Amendments (Textual)
F424 Words in s. 221(1) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 76(3)} (with art. 10, Sch. 1 para. 84)
F425 Words in s. 221(4) inserted (31.5.2002) by S.I. 2002/1240, reg. 9

Modifications etc. (not altering text)
C530 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
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.

Annotations:

Modifications etc. (not altering text)

CS36 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

CS37 S. 222 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

223 Inability to pay debts: debt remaining unsatisfied 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.

Annotations:

Modifications etc. (not altering text)
C538 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—
(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.

Annotations:

Modifications etc. (not altering text)
C539 S. 224 applied (with modifications) by S.I. 1994/2759, reg. 3, Sch. 3 para. 91A(6)
C540 S. 224 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
Company incorporated outside Great Britain may be wound up though dissolved.

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.

This section is subject to the EC Regulation.

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.

(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) Omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 76(5)} (with art. 10, Sch. 1 para. 84)
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.

228  **Actions stayed on winding-up order.**

Where an order has been made for winding up an unregistered company, no action or proceeding 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.

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 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 \[^{1}\text{registered under the Companies Act 2006 in England and Wales or Scotland}\].

(2) \[^{2}\]
PART VI

MISCELLANEOUS PROVISIONS APPLYING TO COMPANIES WHICH ARE INSOLVENT OR IN LIQUIDATION

Annotations:

Modifications etc. (not altering text)
C550  Pts. 1–VII (ss. 1–251) applied (with modifications) by S.I. 1989/1276, arts. 2, 3
Pt. VI (ss. 230-246) applied (with modifications) (1.2.1993) by Friendly Societies Act 1992 (c. 40), ss. 21(1), 22, 23, Sch. 10 Pt. 1 para. 1(a) (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, Sch.3
Pt. VI (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
C551  Pt. VI (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
C552  Pt. VI (ss. 230–246) modified by Company Directors Disqualification Act 1986 (c. 46, SIF 27), ss. 21(2), 25
Pt. VI (ss. 230-246) applied (1.12.1994) by S.I. 1994/2421, art. 6(3)(b)
Pt. VI (ss. 230-246) applied (1.12.1994) by S.I. 1994/2421, art. 10(2)(3)(6), Sch. 4 Pt. II
Pt. VI (ss. 230-246) applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(4)(5)(8)(9)
Pt. VI (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))
Pt. VI (ss. 230-246) amended (1.12.2001) by S.I. 2001/3538, art. 2(1)
C554  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.
C555  Pt. VI applied in part (with modifications) (2.1.2013) by The Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (S.I. 2012/3013), reg. 1, Sch. paras. 1(2)(b), (3)-(7)
C556  Pt. VI applied (with modifications) (6.4.2014) by The Industrial and Provident Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (S.I. 2014/229), arts. 1, 4(a), Sch. 3
Office-holders

230 Holders of office to be qualified insolvency practitioners.

(1) F431 Holders of office to be qualified insolvency practitioners.

(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.

Annotations:

Amendments (Textual)

F431 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)

C557 S. 230 applied (with modifications) (1.12.1994) by S.I. 1994/2421, reg. 8(3)(9), Sch. 4 Pt. II para. 26

C558 S. 230 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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 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 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.

Annotations:

Amendments (Textual)

F432 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)

C559 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
Validity of office-holder’s acts.

The acts of an individual as administrator, liquidator or provisional liquidator of a company are valid notwithstanding any defect in his appointment, nomination or qualifications.

Annotations:

Amendments (Textual)

F433 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)

C560 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

C561 S. 231 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

Management by administrators, liquidators, etc.

Supplies of gas, water, electricity, etc.

(1) This section applies in the case of a company where—

(a) the company enters administration,

(b) an administrative receiver is appointed, or

(ba) a moratorium under section 1A is in force, or

(c) a voluntary arrangement 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, 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—

(a) a supply of gas by a gas supplier within the meaning of Part I of the Gas Act 1986;]

(aa) a supply of gas by a person within paragraph 1 of Schedule 2A to the Gas Act 1986 (supply by landlords etc.);]

(b) a supply of electricity by an electricity supplier within the meaning of Part I of the Electricity Act 1989;]

(ba) a supply of electricity by a class of person within Class A (small suppliers) or Class B (resale) of Schedule 4 to the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (S.I. 2001/3270);]

(c) a supply of water by a water undertaker or, in Scotland, Scottish Water,]

(ca) a supply of water by a water supply licensee within the meaning of the Water Industry Act 1991;]

(cb) a supply of water by a water services provider within the meaning of the Water Services etc. (Scotland) Act 2005;]

(cc) a supply of water by a person who has an interest in the premises to which the supply is given;]

(d) a supply of communications services by a provider of a public electronic communications service.]

(e) a supply of goods or services mentioned in subsection (3A) by a person who carries on a business which includes giving such supplies;

(f) a supply of goods or services mentioned in subsection (3A) by a person who carries on a business which includes giving such supplies, where the supply is for the purpose of enabling or facilitating anything to be done by electronic means.]

(3A) The goods and services referred to in subsection (3)(f) are—

(a) point of sale terminals;

(b) computer hardware and software;

(c) information, advice and technical assistance in connection with the use of information technology;

(d) data storage and processing;

(e) website hosting.]

(4) “The effective date” for the purposes of this section is whichever is applicable of the following dates—

(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);

(ba) the date on which the moratorium came into force;

(c) the date on which the voluntary arrangement 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)—
“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).]
Further protection of essential supplies

(1) An insolvency-related term of a contract for the supply of essential goods or services to a company ceases to have effect if—
   (a) the company enters administration, or
   (b) a voluntary arrangement approved under Part 1 takes effect in relation to the company.

(2) An insolvency-related term of a contract does not cease to have effect by virtue of subsection (1) to the extent that—
   (a) it provides for the contract or the supply to terminate, or any other thing to take place, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement;
   (b) it entitles a supplier to terminate the contract or the supply, or do any other thing, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement; or
   (c) it entitles a supplier to terminate the contract or the supply because of an event that occurs, or may occur, after the company enters administration or the voluntary arrangement takes effect.

(3) Where an insolvency-related term of a contract ceases to have effect under this section the supplier may—
   (a) terminate the contract, if the condition in subsection (4) is met;
   (b) terminate the supply, if the condition in subsection (5) is met.

(4) The condition in this subsection is that—
   (a) the insolvency office-holder consents to the termination of the contract,
   (b) the court grants permission for the termination of the contract, or
   (c) any charges in respect of the supply that are incurred after the company entered administration or the voluntary arrangement took effect are not paid within the period of 28 days beginning with the day on which payment is due.
The court may grant permission under paragraph (b) only if satisfied that the continuation of the contract would cause the supplier hardship.

(5) The condition in this subsection is that—

(a) the supplier gives written notice to the insolvency office-holder that the supply will be terminated unless the office-holder personally guarantees the payment of any charges in respect of the continuation of the supply after the company entered administration or the voluntary arrangement took effect, and

(b) the insolvency office-holder does not give that guarantee within the period of 14 days beginning with the day the notice is received.

(6) For the purposes of securing that the interests of suppliers are protected, where—

(a) an insolvency-related term of a contract (the “original term”) ceases to have effect by virtue of subsection (1), and

(b) the company subsequently enters administration, or a voluntary arrangement subsequently has effect in relation to it,

the contract is treated for the purposes of subsections (1) to (5) as if, immediately before the subsequent administration is entered into or the subsequent voluntary arrangement takes effect, it included an insolvency-related term identical to the original term.

(7) A contract for the supply of essential goods or services is a contract for a supply mentioned in section 233(3).

(8) An insolvency-related term of a contract for the supply of essential goods or services to a company is a provision of the contract under which—

(a) the contract or the supply would terminate, or any other thing would take place, because the company enters administration or the voluntary arrangement takes effect,

(b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company enters administration or the voluntary arrangement takes effect, or

(c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the company enters administration or the voluntary arrangement takes effect.

(9) In this section “insolvency office-holder” means—

(a) in a case where a company enters administration, the administrator;

(b) in a case where a voluntary arrangement under Part 1 takes effect in relation to a company, the supervisor of the voluntary arrangement.

(10) Subsection (1) does not have effect in relation to a contract entered into before 1st October 2015.

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Annotations:

Amendments (Textual)

F455 S. 233A inserted (1.10.2015) by The Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989), arts. 1(1), 4
234 Getting in the company’s property.

(1) This section applies in the case of a company where—

- the company enters administration,
- an administrative receiver is appointed, or
- the company goes into liquidation, or
- 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.

Annotations:

Amendments (Textual)

F456 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)

C571 S. 234 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(3), Sch. 3 Pt. II para. 9

C572 S. 234 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 27


C574 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)(c) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 2

C575 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)(c) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 3

C576 S. 234 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
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—
   (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.

(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.

Annotations:

Amendments (Textual)

F457 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)


C577 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
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 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.

(3A) An account submitted to the court under subsection (3) must be contained in—
   (a) a witness statement verified by a statement of truth (in England and Wales), and
   (b) an affidavit (in Scotland).

(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.

(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.
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).
Transactions at an undervalue (England and Wales).

(1) This section applies in the case of a company where—

(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.
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)


C590 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)

C591 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

C592 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

C593 S. 238 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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.
“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,

(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—

(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.

Annotations:

Amendments (Textual)

F461 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))

F462 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))

F463 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)

C600 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]

C601 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

C602 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

C603 S. 240 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
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 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 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 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.

(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.]
(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.

(3A) Where section 238 or 239 applies by reason of a company’s entering administration, 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.

(3B) Where section 238 or 239 applies by reason of a company’s going into liquidation 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, or
(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.

(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.
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) 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 section 75 of the 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.

(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, 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.

Annotations:

Amendments (Textual)

F469 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))

F470 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))

Modifications etc. (not altering text)

C608 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.

C609 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 (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))

C610 S. 242 applied (with modifications) (S.) (6.4.2001) by 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)

C611 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

C612 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
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 [F471the 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.

(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) [F472where 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.

**Annotations:**

**Amendments (Textual)**

**F471** 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))

**F472** 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)**

**C614** 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.

**C615** 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 (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))

**C616** 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)

**C617** 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

**C618** 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

**C619** S. 243 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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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 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).

Annotations:

Amendments (Textual)
F473 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)
C620 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))
C621 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)
C622 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
C623 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

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—
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(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,
[...]

(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—
(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
(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.

Annotations:

Amendments (Textual)

F474 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))

F475 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))

F476 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)

C624 S. 245 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2


C626 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

C627 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


246 Unenforceability of liens on books, etc.

(1) This section applies in the case of a company where—

[F477](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.

(3) This does not apply to a lien on documents which give a title to property and are held as such.
246ZA  Fraudulent trading: administration

(1) If while a company is in administration 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 administrator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in subsection (1) are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.

246ZB  Wrongful trading: administration

(1) Subject to subsection (3), if while a company is in administration it appears that subsection (2) applies in relation to a person who is or has been a director of the company, the court, on the application of the administrator, 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 entered insolvent administration,

(b) at some time before the company entered administration, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid entering insolvent administration or going into insolvent liquidation, and

(c) the person was a director of the company at that time.
(3) The court must 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 the person, the person took every step with a view to minimising the potential loss to the company’s creditors as (on the assumption that the person had knowledge of the matter mentioned in subsection (2)(b)) the person 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 the director ought to reach and the steps which the director 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 the director does not carry out but which have been entrusted to the director.

(6) For the purposes of this section—

(a) a company enters insolvent administration if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration;

(b) 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 shadow director.

(8) This section is without prejudice to section 246ZA.

246ZC Proceedings under section 246ZA or 246ZB

Section 215 applies for the purposes of an application under section 246ZA or 246ZB as it applies for the purposes of an application under section 213 but as if the reference in subsection (1) of section 215 to the liquidator was a reference to the administrator.

Annotations:

Amendments (Textual)

F479 S. 246ZD and cross-heading inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 118, 164(1); S.I. 2015/1689, reg. 2(j) (with Sch. para. 16)

246ZD Power to assign

(1) This section applies in the case of a company where—

(a) the company enters administration, or

(b) the company goes into liquidation;
and “the office-holder” means the administrator or the liquidator, as the case may be.

(2) The office-holder may assign a right of action (including the proceeds of an action) arising under any of the following—

(a) section 213 or 246ZA (fraudulent trading);
(b) section 214 or 246ZB (wrongful trading);
(c) section 238 (transactions at an undervalue (England and Wales));
(d) section 239 (preferences (England and Wales));
(e) section 242 (gratuitous alienations (Scotland));
(f) section 243 (unfair preferences (Scotland));
(g) section 244 (extortionate credit transactions).

Decisions by creditors and contributories

Annotations:

Amendments (Textual)

F480 Ss. 246ZE-246ZG and cross-heading inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 122(2), 164(1); S.I. 2015/1329, reg. 3(d)

246ZE Decisions by creditors and contributories: general

(1) This section applies where, for the purposes of this Group of Parts, a person (“P”) seeks a decision about any matter from a company's creditors or contributories.

(2) The decision may be made by any qualifying decision procedure P thinks fit, except that it may not be made by a creditors' meeting or (as the case may be) a contributories' meeting unless subsection (3) applies.

(3) This subsection applies if at least the minimum number of creditors or (as the case may be) contributories make a request to P in writing that the decision be made by a creditors' meeting or (as the case may be) a contributories' meeting.

(4) If subsection (3) applies P must summon a creditors' meeting or (as the case may be) a contributories' meeting.

(5) Subsection (2) is subject to any provision of this Act, the rules or any other legislation, or any order of the court—

(a) requiring a decision to be made, or prohibiting a decision from being made, by a particular qualifying decision procedure (other than a creditors' meeting or a contributories' meeting);

(b) permitting or requiring a decision to be made by a creditors' meeting or a contributories' meeting.

(6) Section 246ZF provides that in certain cases the deemed consent procedure may be used instead of a qualifying decision procedure.

(7) For the purposes of subsection (3) the “minimum number” of creditors or contributories is any of the following—

(a) 10% in value of the creditors or contributories;
(b) 10% in number of the creditors or contributories;
(c) 10 creditors or contributories.

(8) The references in subsection (7) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.

(9) In this section references to a meeting are to a meeting where the creditors or (as the case may be) contributories are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place).

(10) Except as provided by subsection (8), references in this section to creditors include creditors of a particular class.

(11) In this Group of Parts “qualifying decision procedure” means a procedure prescribed or authorised under paragraph 8A of Schedule 8.

246ZF Deemed consent procedure

(1) The deemed consent procedure may be used instead of a qualifying decision procedure where a company's creditors or contributories are to make a decision about any matter, unless—

(a) a decision about the matter is required by virtue of this Act, the rules, or any other legislation to be made by a qualifying decision procedure, or

(b) the court orders that a decision about the matter is to be made by a qualifying decision procedure.

(2) If the rules provide for a company's creditors or contributories to make a decision about the remuneration of any person, they must provide that the decision is to be made by a qualifying decision procedure.

(3) The deemed consent procedure is that the relevant creditors (other than opted-out creditors) or (as the case may be) the relevant contributories are given notice of—

(a) the matter about which they are to make a decision,

(b) the decision that the person giving the notice proposes should be made (the “proposed decision”),

(c) the effect of subsections (4) and (5), and

(d) the procedure for objecting to the proposed decision.

(4) If less than the appropriate number of relevant creditors or (as the case may be) relevant contributories object to the proposed decision in accordance with the procedure set out in the notice, the creditors or (as the case may be) the contributories are to be treated as having made the proposed decision.

(5) Otherwise—

(a) the creditors or (as the case may be) the contributories are to be treated as not having made a decision about the matter in question, and

(b) if a decision about that matter is again sought from the creditors or (as the case may be) the contributories, it must be sought using a qualifying decision procedure.

(6) For the purposes of subsection (4) the “appropriate number” of relevant creditors or relevant contributories is 10% in value of those creditors or contributories.

(7) “Relevant creditors” means the creditors who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.
“Relevant contributories” means the contributories who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.

(9) In this section references to creditors include creditors of a particular class.

(10) The rules may make further provision about the deemed consent procedure.

246ZG  Power to amend sections 246ZE and 246ZF

(1) The Secretary of State may by regulations amend section 246ZE so as to change the definition of—
   (a) the minimum number of creditors;
   (b) the minimum number of contributories.

(2) The Secretary of State may by regulations amend section 246ZF so as to change the definition of—
   (a) the appropriate number of relevant creditors;
   (b) the appropriate number of relevant contributories.

(3) Regulations under this section may define the minimum number or the appropriate number by reference to any one or more of—
   (a) a proportion in value,
   (b) a proportion in number,
   (c) an absolute number,

   and the definition may include alternative, cumulative or relative requirements.

(4) Regulations under subsection (1) may define the minimum number of creditors or contributories by reference to all creditors or contributories, or by reference to creditors or contributories of a particular description.

(5) Regulations under this section may make provision that will result in section 246ZE or 246ZF having different definitions for different cases, including—
   (a) for creditors and for contributories,
   (b) for different kinds of decisions.

(6) Regulations under this section may make transitional provision.

(7) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument.

(8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

Annotations:

Amendments (Textual)

F481  Ss. 246A 246B and cross-headings inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 3(1)
246A Remote attendance at meetings

(1) Subject to subsection (2), this section applies to any meeting of the members of a company summoned by the office-holder under this Act or the rules, other than a meeting of the members of the company in a members' voluntary winding up.

(2) This section does not apply where—

(a) a company is being wound up in Scotland, or

(b) a receiver is appointed under section 51 in Chapter 2 of Part 3.

(3) Where the person summoning a meeting (“the convener”) considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(4) Where a meeting is conducted and held in the manner referred to in subsection (3), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(5) For the purposes of this section—

(a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(b) a person is able to exercise the right to vote at a meeting when—

(i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(6) The convener of a meeting which is to be conducted and held in the manner referred to in subsection (3) shall make whatever arrangements the convener considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak or vote, and

(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(7) Where in the reasonable opinion of the convener—

(a) a meeting will be attended by persons who will not be present together at the same place, and

(b) it is unnecessary or inexpedient to specify a place for the meeting, any requirement under this Act or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(8) In making the arrangements referred to in subsection (6) and in forming the opinion referred to in subsection (7)(b), the convener must have regard to the legitimate interests of the members and others attending the meeting in the efficient despatch of the business of the meeting.

(9) If—

(a) the notice of a meeting does not specify a place for the meeting,
(b) the convener is requested in accordance with the rules to specify a place for
the meeting, and
(c) that request is [F484 made] by members representing not less than ten percent of the
total voting rights of all the members having at the date of the request
a right to vote at the meeting,
it shall be the duty of the convener to specify a place for the meeting.

(10) In this section, “the office-holder”, in relation to a company, means—
(a) its liquidator, provisional liquidator, administrator, or administrative receiver,
or
(b) where a voluntary arrangement in relation to the company is proposed or
has taken effect under Part 1, the nominee or the supervisor of the voluntary
arrangement.

Annotations:

Amendments (Textual)
F482 Words in s. 246A(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 54(2); S.I. 2015/1329, reg. 3(d)
F483 Word in s. 246A(8) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 54(3); S.I. 2015/1329, reg. 3(d)
F484 Word in s. 246A(9)(c) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 54(4); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C632 S. 246A applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5
Table (with reg. 24)

[F485 GIVING OF NOTICES ETC BY OFFICE-HOLDERS]

Annotations:

Amendments (Textual)
F485 S. 246B cross-heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 124(2), 164(1); S.I. 2015/1329, reg. 3(d)

246B Use of websites

(1) Subject to subsection (2), where any provision of this Act or the rules requires the
office-holder to give, deliver, furnish or send a notice or other document or information
to any person, that requirement is satisfied by making the notice, document or
information available on a website—
(a) in accordance with the rules, and
(b) in such circumstances as may be prescribed.

(2) [F486 This section does not apply where—
(a) a company is being wound up in Scotland, or
(b) a receiver is appointed under section 51 in Chapter 2 of Part 3.]
(3) In this section, “the office-holder” means—

(a) the liquidator, provisional liquidator, administrator, \[^{F487}\] receiver (appointed under section 51), or administrative receiver of a company, or

(b) where a voluntary arrangement in relation to a company is proposed or has taken effect under Part 1, the nominee or the supervisor of the voluntary arrangement.

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**Annotations:**

**Amendments (Textual)**

**F486** S. 246B(2) repealed (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 12(a) (with arts. 14, 15)

**F487** Words in s. 246B(3)(a) inserted (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 12(b) (with arts. 14, 15)

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

**C633** S. 246B applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

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[^F488]: Creditors' ability to opt out of receiving certain notices

(1) Any provision of the rules which requires an office-holder of a company to give a notice to creditors of the company does not apply, in circumstances prescribed by the rules, in relation to opted-out creditors.

(2) Subsection (1)—

(a) does not apply in relation to a notice of a distribution or proposed distribution to creditors;

(b) is subject to any order of the court requiring a notice to be given to all creditors (or all creditors of a particular category).

(3) Except as provided by the rules, a creditor may participate and vote in a qualifying decision procedure or a deemed consent procedure even though, by virtue of being an opted-out creditor, the creditor does not receive notice of it.

(4) In this section—

“give” includes deliver, furnish or send;

“notice” includes any document or information in any other form;

“office-holder”, in relation to a company, means—

(a) a liquidator, provisional liquidator, administrator or administrative receiver of the company,

(b) a receiver appointed under section 51 in relation to any property of the company, or

(c) the supervisor of a voluntary arrangement which has taken effect under Part 1 in relation to the company.
“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, [489 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 or into administration as defined in the Insolvency Act 1986.
up is made by the court at a time when it has not already gone into liquidation by passing such a resolution.

[F490](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.]

Annotations:

**Amendments (Textual)**

F489 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))

F490 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)**

C642 S. 247 applied by Company Directors Disqualification Act 1986 (c. 46, SIF 27), ss. 22(3), 25

C643 S. 247 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

248 “Secured creditor”, etc.

In this Group of Parts, except in so far as the context otherwise requires—

(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).

Annotations:

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

C644 S. 248 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

[F491] 248A“Opted-out creditor”

(1) For the purposes of this Group of Parts “opted-out creditor”, in relation to an office-holder of a company, means a person who—

(a) is a creditor of the company, and
(b) in accordance with the rules has elected (or is deemed to have elected) to be (and not to cease to be) an opted-out creditor in relation to the office-holder.

(2) In this section, “office-holder”, in relation to a company, means—

(a) a liquidator, provisional liquidator, administrator or administrative receiver of the company,

(b) a receiver appointed under section 51 in relation to any property of the company, or

(c) the supervisor of a voluntary arrangement which has taken effect under Part 1 in relation to the company.

Annotations:

Amendments (Textual)

F491 S. 248A inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 124(4), 164(1); S.I. 2015/1329, reg. 3(d)

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.

Annotations:

Modifications etc. (not altering text)

C645 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. 1 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. 1 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))

C646 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))


C648 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)

C649 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)

C650 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)
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—

“administrative 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;

“agent” does not include a person’s counsel acting as such;

“books and papers” and “books or papers” includes accounts, deeds, writing and documents;

“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;

“the court”, in relation to a company, means a court having jurisdiction to wind up the company;

“deemed consent procedure ” means the deemed consent procedure provided for by section 246ZF;

“director” includes any person occupying the position of director, by whatever name called;

“document” includes summons, notice, order and other legal process, and registers;

“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);

“the Gazette” means—

(a) as respects companies registered in England and Wales, the London Gazette;
(b) as respects companies registered in Scotland, the Edinburgh Gazette;
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

“officer”, in relation to a body corporate, includes a director, manager or secretary;

“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—

(a) on advice given by that person in a professional capacity;
(b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under an enactment (within the meaning given by section 1293 of the Companies Act 2006);
(c) in accordance with guidance or advice given by that person in that person’s capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).
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.

(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—
(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—

(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; and

(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
   (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.

(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.

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
      (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.

(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)—
   (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—
   (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—
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(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.

(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—

(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.

(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.

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);
“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;
“the 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

Annotations:

Modifications etc. (not altering text)
C656 Pt. VIII (ss. 252-263) applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 5
C657 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
C658 Pt. VIII (ss. 252–263) applied with modifications by S.I. 1986/2142, arts. 1(2), 11, 13(3), 15
C659 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)

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,
   
   [F504(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 [F505 and no distress may be levied] against the debtor or his property except with leave of the court.

Annotations:

Amendments (Textual)
F504 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)
F505 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 [F506 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 [F507] 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 [F508] the proposal to the official receiver and, if there is one, the trustee of his estate.

F509

254 Effect of application.

(1) At any time when an application under section 253 for an interim order is pending [F510](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 [F511] 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.
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 [F512 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 [F513 make a bankruptcy application];
(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 [F514 . . . 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.

(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.
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) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented, and
   (aa) whether, in his opinion, the debtor's creditors should consider the debtor's 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.

(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, 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 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 the debtor's creditors to consider the debtor’s proposal.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Annotations:

Amendments (Textual)
F515 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)
F516 Word in s. 256(1)(a) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 61(2); S.I. 2015/1329, reg. 3(d)
F517 Words in s. 256(1)(aa) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 61(3)(a); S.I. 2015/1329, reg. 3(d)
F518 Word in s. 256(1)(aa) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 61(3)(b); S.I. 2015/1329, reg. 3(d)
F519 S. 256(1)(b) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 61(4); S.I. 2015/1329, reg. 3(d)
F520 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)
F521 Words in s. 256(5) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 61(5); S.I. 2015/1329, reg. 3(d)
F522 Words in s. 256(6) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 61(6); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C661 Ss. 256–263 applied with modifications by S.I. 1986/1999, art. 3, Sch. I Pt. III

fS523 Procedure where no interim order madef

Annotations:

Amendments (Textual)
F523 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)

fS524256ADebtor’s proposal and nominee’s report.f

(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

(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,

F525 ...

(2) For the purpose of enabling the nominee to prepare a report [fS526 under subsection (3)], 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 [F527 make a bankruptcy application], 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 [F528 report to the debtor's creditors] stating—

(a) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented, [F529 and]

(b) whether, in his opinion, [F530 the debtor's creditors should] consider the debtor’s proposal[F531, and]

(c) [F532 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.]
257  [F535] Consideration of debtor's proposal by creditors]

[F536] (1) This section applies where it has been reported to the court under section 256 or to the debtor's creditors under section 256A that the debtor's creditors should consider the debtor's proposal.

(2) The nominee (or the nominee's replacement under section 256(3) or 256A(4)) must seek a decision from the debtor's creditors as to whether they approve the proposed voluntary arrangement (unless, in the case of a report to which section 256 applies, the court otherwise directs).

(2A) The decision is to be made by a creditors' decision procedure.

(2B) Notice of the creditors' decision procedure must be given to every creditor of the debtor of whose claim and address the nominee (or the nominee's replacement) 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 [F538] creditors' decision procedure] is given.
Consideration and implementation of debtor’s proposal

258 Approval of debtor’s proposal

(1) This section applies where under section 257 the debtor’s creditors are asked to decide whether to approve the proposed voluntary arrangement.

(2) The creditors may approve the proposed voluntary arrangement with or without modifications, but shall not approve it with modifications 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 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 under this Part.

(4) The creditors 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 creditors 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,...

(aa) any ordinary preferential debt of the debtor is to be paid otherwise than in priority to any secondary preferential debts that the debtor may have,

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

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

However, the creditors 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”, “ordinary preferential debt” and “secondary preferential debt” each has the meaning given by section 386 in Part XII; and “preferential creditor” is to be construed accordingly.

Annotations:

Amendments (Textual)

F539 S. 258 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 65(6); S.I. 2015/1329, reg. 3(d)

F540 S. 258(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 65(2); S.I. 2015/1329, reg. 3(d)
259 Report of decisions to court.

[F541] (1) When pursuant to section 257 the debtor's creditors have decided whether to approve the debtor's proposal (with or without modifications), the nominee (or the nominee's replacement under section 256(3) or 256A(4)) must—

(a) give notice of the creditors' decision to such persons as may be prescribed, and

(b) where the creditors considered the debtor's proposal pursuant to a report to the court under section 256(1)(aa), report the creditors' decision to the court.

(2) If the report is that the [F557 creditors have] declined (with or without modifications) to approve the [F558 voluntary arrangement proposed under section 256], the court may discharge any interim order which is in force in relation to the debtor.

Annotations:

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)
260 Effect of approval.

(1) This section has effect where [F559 pursuant to section 257 the debtor's creditors decide to approve] the proposed voluntary arrangement (with or without modifications).

(2) The approved arrangement—

(a) takes effect as if made by the debtor [F560 at the time the creditors decided to approve the proposal], and

(b) [F561 binds every person who in accordance with the rules—

(i) [F562 was entitled to vote in the creditors' decision procedure by which the decision to approve the proposal was made], 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—

(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.

[F563 .................................]

(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' [F564 decision] 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.
Additional effect on undischarged bankrupt

(1) This section applies where—
   (a) pursuant to section 257 the debtor's creditors decide to approve 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 creditors' decision 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.

(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.
262 Challenge of \([F568]\) creditors’ 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 \([F569]\) a decision of the debtor's creditors pursuant to \([F570]\) section 257 unfairly prejudices the interests of a creditor of the debtor;
   (b) that there has been some material irregularity \([F571]\) in relation to a creditors' decision procedure instigated under that section.

(2) The persons who may apply under this section are—
   (a) the debtor;
   (b) a person who—
      (i) was entitled, in accordance with the rules, to vote \([F572]\) in the creditors' decision procedure, or
      (ii) would have been so entitled if he had had notice of it;
   (c) the nominee (or his replacement under section \([F573, 256(3), 256A(4)]\) or \([F574, 258(3)]\)); 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
   (a) after the end of the period of 28 days beginning with the day on which \([F575]\) the creditors decided whether to approve the proposed voluntary arrangement or, where a report was required to be made to the court under section 259(1)(b), the day on which the report was made,
   (b) in the case of a person who was not given notice of the creditors' decision procedure, after the end of the period of 28 days beginning with the day on which he became aware that a decision as to whether to approve the proposed voluntary arrangement had been made,
   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 \([F576]\) a decision of the debtor's creditors;
   (b) direct any person to seek a decision from the debtor's creditors (using a creditors' decision procedure) as to whether they approve—
      (i) any revised proposal the debtor may make, or
      (ii) in a case falling within subsection (1)(b), the debtor's original proposal.

(5) Where at any time after giving a direction under subsection (4)(b) \([F577]\) in relation to 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 \([F578]\) previously given by the debtor's creditors.
(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’ decision, 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 decision under any voluntary arrangement approved by the meeting, and

(b) such things done since the decision 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, the approval of a voluntary arrangement by a decision of the debtor's creditors pursuant to section 257 is not invalidated by any irregularity in relation to the creditors' decision procedure by which the decision was made.

### Annotations:

#### Amendments (Textual)

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<th>Description</th>
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<td>Word in s. 262 heading heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 69(11); S.I. 2015/1329, reg. 3(d)</td>
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<tr>
<td>F569</td>
<td>Words in s. 262(1)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 69(2); S.I. 2015/1329, reg. 3(d)</td>
</tr>
<tr>
<td>F570</td>
<td>Words in s. 262(1)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 69(3); S.I. 2015/1329, reg. 3(d)</td>
</tr>
<tr>
<td>F571</td>
<td>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)</td>
</tr>
<tr>
<td>F572</td>
<td>Words in s. 262(2)(b)(i) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 69(4); S.I. 2015/1329, reg. 3(d)</td>
</tr>
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<td>F573</td>
<td>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)</td>
</tr>
<tr>
<td>F574</td>
<td>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)</td>
</tr>
<tr>
<td>F575</td>
<td>Words in s. 262(3)(a) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 134, 164(3)(i)(iv)</td>
</tr>
<tr>
<td>F576</td>
<td>Words in s. 262(3)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 69(5)(a); S.I. 2015/1329, reg. 3(d)</td>
</tr>
<tr>
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<td>Words in s. 262(3)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 69(5)(b); S.I. 2015/1329, reg. 3(d)</td>
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<td>Words in s. 262(4)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 69(6); S.I. 2015/1329, reg. 3(d)</td>
</tr>
<tr>
<td>F579</td>
<td>S. 262(4)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 69(7); S.I. 2015/1329, reg. 3(d)</td>
</tr>
<tr>
<td>F580</td>
<td>Words in s. 262(5) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 69(8)(a); S.I. 2015/1329, reg. 3(d)</td>
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<tr>
<td>F581</td>
<td>Words in s. 262(5) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 69(8)(b); S.I. 2015/1329, reg. 3(d)</td>
</tr>
<tr>
<td>F582</td>
<td>Word in s. 262(7) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 69(9); S.I. 2015/1329, reg. 3(d)</td>
</tr>
</tbody>
</table>
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.

Annotations:

Amendments (Textual)

FS84 S. 262A inserted (1.1.2003) by 2000 c. 39, s. 39, Sch. 3 para. 12; S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)

FS85 Prosecution of delinquent debtors.

(1) This section applies where a voluntary arrangement approved by a [[FS86]decision of the debtor's creditors pursuant to] 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.
262C Arrangements coming to an end prematurely.

For the purposes of this Part, a voluntary arrangement approved by a decision of the debtor’s creditors pursuant to 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).

263 Implementation and supervision of approved voluntary arrangement.

(1) This section applies where a voluntary arrangement approved by a decision of the debtor’s creditors pursuant to 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 256(3), 256A(4) or 258(3)) shall be known as the supervisor of the voluntary arrangement.

(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 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 the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

263F

Revocation

263C

Offences

PART IX

BANKRUPTCY

Annotations:

Modifications etc. (not altering text)

C671 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

C672 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)

C673 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)


C675 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. 2001/161, 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))

C676 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

C677 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)
CHAPTER A1 – Adjudicators: bankruptcy applications by debtors and bankruptcy orders

Annotations:

Amendments (Textual)

F594 Pt. 9 Ch. A1 inserted (25.4.2013 for specified purposes, 6.4.2016 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(1)(i)(3), Sch. 18; S.I. 2016/191, art. 2

263H Bankruptcy applications to an adjudicator

(1) An individual may make an application to an adjudicator in accordance with this Chapter for a bankruptcy order to be made against him or her.

(2) An individual may make a bankruptcy application only on the ground that the individual is unable to pay his or her debts.

263I Debtors against whom an adjudicator may make a bankruptcy order

(1) An adjudicator has jurisdiction to determine a bankruptcy application only if—
   (a) the centre of the debtor's main interests is in England and Wales, or
   (b) the centre of the debtor's main interests is not in a member state of the European Union which has adopted the EC Regulation, but the test in subsection (2) is met.

(2) The test is that—
   (a) the debtor is domiciled in England and Wales, or
   (b) at any time in the period of three years ending with the day on which the application is made to the adjudicator, the debtor—
      (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.

(3) The reference in subsection (2) to the debtor carrying on business includes—
   (a) the carrying on of business by a firm or partnership of which the debtor is a member, and
   (b) the carrying on of business by an agent or manager for the debtor or for such a firm or partnership.

(4) In this section, references to the centre of the debtor's main interests have the same meaning as in Article 3 of the EC Regulation.

263J Conditions applying to bankruptcy application

(1) A bankruptcy application must include—
   (a) such particulars of the debtor's creditors, debts and other liabilities, and assets, as may be prescribed, and
   (b) such other information as may be prescribed.
(2) A bankruptcy application is not to be regarded as having been made unless any fee or deposit required in connection with the application by an order under section 415 has been paid to such person, and within such period, as may be prescribed.

(3) A bankruptcy application may not be withdrawn.

(4) A debtor must notify the adjudicator if, at any time before a bankruptcy order is made against the debtor or the adjudicator refuses to make such an order—
   (a) the debtor becomes able to pay his or her debts, or
   (b) a bankruptcy petition has been presented to the court in relation to the debtor.

263K Determination of bankruptcy application

(1) After receiving a bankruptcy application, an adjudicator must determine whether the following requirements are met—
   (a) the adjudicator had jurisdiction under section 263I to determine the application on the date the application was made,
   (b) the debtor is unable to pay his or her debts at the date of the determination,
   (c) no bankruptcy petition is pending in relation to the debtor at the date of the determination, and
   (d) no bankruptcy order has been made in respect of any of the debts which are the subject of the application at the date of the determination.

(2) If the adjudicator is satisfied that each of the requirements in subsection (1) are met, the adjudicator must make a bankruptcy order against the debtor.

(3) If the adjudicator is not so satisfied, the adjudicator must refuse to make a bankruptcy order against the debtor.

(4) The adjudicator must make a bankruptcy order against the debtor or refuse to make such an order before the end of the prescribed period (“the determination period”).

263L Adjudicator's requests for further information

(1) An adjudicator may at any time during the determination period request from the debtor information that the adjudicator considers necessary for the purpose of determining whether a bankruptcy order must be made.

(2) The adjudicator may specify a date before which information requested under subsection (1) must be provided; but that date must not be after the end of the determination period.

(3) If the rules so prescribe, a request under subsection (1) may include a request for information to be given orally.

(4) The rules may make provision enabling or requiring an adjudicator to request information from persons of a prescribed description in prescribed circumstances.

263M Making of bankruptcy order

(1) This section applies where an adjudicator makes a bankruptcy order as a result of a bankruptcy application.

(2) The order must be made in the prescribed form.
(3) The adjudicator must—
   (a) give a copy of the order to the debtor, and
   (b) give notice of the order to persons of such description as may be prescribed.

263N Refusal to make a bankruptcy order: review and appeal etc.

(1) Where an adjudicator refuses to make a bankruptcy order on a bankruptcy application, the adjudicator must give notice to the debtor—
   (a) giving the reasons for the refusal, and
   (b) explaining the effect of subsections (2) to (5).

(2) If requested by the debtor before the end of the prescribed period, the adjudicator must review the information which was available to the adjudicator when the determination that resulted in the refusal was made.

(3) Following a review under subsection (2) the adjudicator must—
   (a) confirm the refusal to make a bankruptcy order, or
   (b) make a bankruptcy order against the debtor.

(4) Where the adjudicator confirms a refusal under subsection (3), the adjudicator must give notice to the debtor—
   (a) giving the reasons for the confirmation, and
   (b) explaining the effect of subsection (5).

(5) If the refusal is confirmed under subsection (3), the debtor may appeal against the refusal to the court before the end of the prescribed period.

263O False representations and omissions

(1) It is an offence knowingly or recklessly to make any false representation or omission in—
   (a) making a bankruptcy application to an adjudicator, or
   (b) providing any information to an adjudicator in connection with a bankruptcy application.

(2) It is an offence knowingly or recklessly to fail to notify an adjudicator of a matter in accordance with a requirement imposed by or under this Part.

(3) It is immaterial for the purposes of an offence under this section whether or not a bankruptcy order is made as a result of the application.

(4) It is not a defence in proceedings for an offence under this section that anything relied on, in whole or in part, as constituting the offence was done outside England and Wales.

(5) Proceedings for an offence under this section may only be instituted—
   (a) by the Secretary of State, or
   (b) by or with the consent of the Director of Public Prosecutions.]
CHAPTER I

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 a temporary administrator (within the meaning of Article 38 of the EC Regulation),

(ba) 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 Powers of Criminal Courts Act 1973.

(2) Subject to those provisions, the court may make a bankruptcy order on any such petition.
Creditors' petition: debtors against whom the court may make a bankruptcy order.

(1) A bankruptcy petition may be presented to the court under section 264(1)(a) only if—
   (a) the centre of the debtor's main interests is in England and Wales, or
   (b) the centre of the debtor's main interests is not in a member state of the European Union which has adopted the EC Regulation, but the test in subsection (2) is met.

(2) The test is that—
   (a) the debtor is domiciled in England and Wales, or
   (b) at any time in the period of three years ending with the day on which the petition is presented, the debtor—
      (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.

(3) The reference in subsection (2) to the debtor carrying on business includes—
   (a) the carrying on of business by a firm or partnership of which the debtor is a member, and
   (b) the carrying on of business by an agent or manager for the debtor or for such a firm or partnership.

(4) In this section, references to the centre of the debtor's main interests have the same meaning as in Article 3 of the EC Regulation.

Annotations:

Amendments (Textual)
F598 S. 265 substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 7; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)
C682 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
C683 S. 265 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), Sch. 7 para. 3

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.

(4) Without prejudice to subsection (3), where a petition under section 264(1)(a) ... 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.

Annotations:

Amendments (Textual)
F599 Word in s. 266(4) omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24),
s. 103(3), Sch. 19 para. 8; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)
C684 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))
C685 S. 266 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), Sch. 7 para. 4

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.

[F660] (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 [F661 £5,000] 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.
Annotations:

Amendments (Textual)
F600  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
F601  Word in s. 267(4) substituted (1.10.2015) by The Insolvency Act 1986 (Amendment) Order 2015 (S.I. 2015/922), arts. 1, 2 (with art. 3)

Modifications etc. (not altering text)
C686  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))
C687  S. 267 modified by S.I. 1989/1058, reg. 18(1)
C688  S. 267 modified by S.I. 1989/438, reg. 43(1)
C689  S. 267 power to amend conferred by Local Government Finance Act 1988 (c. 41, SIF 81:1), s. 22, Sch. 4 para. 9(1)
C690  S. 267 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 6(b)
C691  S. 267 modified (6.4.2010) by The Community Infrastructure Levy Regulations 2010 (S.I. 2010/948), reg. 105(1)

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.
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.

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.
Summary administration.

Annotations:

Amendments (Textual)

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

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 [F604: 'in connection with a creditors’ decision procedure instigated'] 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.

Annotations:

Amendments (Textual)

Words in s. 276(1)(b)(ii) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 73; S.I. 2015/1329, reg. 3(d)

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.

Annotations:

Amendments (Textual)

S.276(2) applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
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 [F606 Supreme Court] is pending within the meaning of [F607 subsection (4)].

(4) For the purposes of subsection (3)(b) an appeal to the Supreme Court shall be treated as pending until any application for leave to appeal is disposed of and, if leave to appeal is granted, until the appeal is disposed of; and for the purposes of this subsection an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it may be made, if it is not made within that time.[]
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) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(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 made 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.
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 section 279(6) may be made by the bankrupt at any time after the end of the period of 5 years beginning with the 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.

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 released.

(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.

\[ F615 \] (4A) In subsection (4) the reference to a fine \[ F616 \] imposed for an offence includes a reference to \[ F617 \]

(a) a charge ordered to be paid under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge), whether on conviction or otherwise;

(b) 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, \[ F618 \] 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 \[ F619 \] or under a \[ F620 \] 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.

(8) In this section—

\[ F621 \] “family proceedings” means—

(a) \[ F622 \] proceedings in the family court; and

(b) family proceedings within the meaning of Part V of the \[ M20 \] 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.

Annotations:

Amendments (Textual)

F615 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)

F616 Words in s. 281(4A) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), Sch. 12 para. 6(a); S.I. 2015/778, art. 3, Sch. 1 para. 78

F617 Words in s. 281(4A) inserted (13.4.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), Sch. 12 para. 6(b); S.I. 2015/778, art. 3, Sch. 1 para. 78

F618 Words substituted by Consumer Protection Act 1987 (c. 43, SIF 109:1), ss. 41(2), 47(1)(2), 48, Sch. 4 para. 12

F619 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

F620 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.
F621 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)

F622 Words in s. 281(8) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 10 para. 74; S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Modifications etc. (not altering text)

C702 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)

C703 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
C704 S. 281(4) amended by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), SS. 45(4), 47(4)(a).

Marginal Citations
M20 1984 c.42(49:3).

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) or (c) of section 264(1) or on a bankruptcy application if it at any time appears to the court, on an application by the Official Petitioner—
(a) that the petition was pending or the application was ongoing 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 F627... 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) F628

Annotations:

Amendments (Textual)

F624 Word in s. 282(2) omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 13(a); S.I. 2016/191, art. 2 (with art. 3)
F625 Words in s. 282(2) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 13(b); S.I. 2016/191, art. 2 (with art. 3)
F626 Words in s. 282(2)(a) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 13(c); S.I. 2016/191, art. 2 (with art. 3)
F627 Words in s. 282(4) omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 135(2)(a), 164(3)(i)(iv) (with s. 135(4))
F628 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))

Modifications etc. (not altering text)

C705 S. 282(1) applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
C706 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.

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 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 Housing Act 1985, 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 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 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 the trustee of that estate has vacated office under section 298(8), 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—
(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.

Annotations:

Amendments (Textual)

F629 S. 283(3A) inserted (E.W.) by Housing Act 1988 (c. 50, SIF 75:1), s. 117(1)
F630 Words in s. 283(4)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 74; S.I. 2015/1329, reg. 3(d)
F631 Word in s. 283(5)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 14; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C707 S. 283 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
C708 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
C709 S. 283 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), Sch. 7 para. 7

Marginal Citations

M21 1977 c.42(75:3).
M22 1976 c.80(75:3)
M23 1985 c.68(61).

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 [F633 or civil partner], or

(c) a former spouse [F634 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

(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.]

Annotations:

Amendments (Textual)

F632 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))

F633 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))

F634 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))
Restrictions on dispositions of property.

(1) Where a person is \[F635\] made 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 \[F636\] making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition 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 \[F637\] bankruptcy application had been made or (as the case may be) that the bankruptcy 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.

Annotations:

Amendments (Textual)

F635 Word in s. 284(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 15(2); S.I. 2016/191, art. 2 (with art. 3)

F636 Words in s. 284(3) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 15(3); S.I. 2016/191, art. 2 (with art. 3)
Restriction on proceedings and remedies.

(1) At any time when proceedings on a bankruptcy application are ongoing or proceedings on a bankruptcy petition are pending or an individual has been made 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 application has been made or 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.

Annotations:

Amendments (Textual)
F638 Words in s. 285(1) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 16(2)(a); S.I. 2016/191, art. 2 (with art. 3)
F639 Word in s. 285(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 16(2)(b); S.I. 2016/191, art. 2 (with art. 3)
F640 Words in s. 285(2) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 16(3); S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)
C718 S. 285 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
C719 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. .
C720 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) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(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 made bankrupt.
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 (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 seek a decision on a matter from 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.
288 Statement of affairs.

(1) Where a bankruptcy order has been made otherwise than on a bankruptcy application, 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.

(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).

Annotations:

Amendments (Textual)
F643 Words in s. 287(3)(c) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 75; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C722 S.287 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

Amendments (Textual)
F644 Words in s. 288(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 18; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)
C723 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)
C724 S. 288 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, Sch. 2 para. 2(8)(b))
C725 S. 288 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 10
C726 S. 288(1)(2) modified by S.I. 1986/1999, art. 5, Sch. 2
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.

Annotations:

Amendments (Textual)
F645 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)
C727 S.289 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

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 [F646 made] 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.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(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).

Annotations:

Amendments (Textual)
F646 Word in s. 290(4)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 19; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)
C728 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.

(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).

Annotations:

Amendments (Textual)
F647 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))
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) ... 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.
293 **Summoning of meeting to appoint first trustee.**

(1) Where a bankruptcy order has been made \[F649\] 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 \[F650\] prescribed person 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 \[F650\] prescribed person of a notice under subsection (2), the official receiver is the trustee of the bankrupt’s estate.

Annotations:

**Amendments (Textual)**

- **F649** 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))
- **F650** Words in s. 293(2)(3) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 20; S.I. 2016/191, art. 2 (with art. 3)

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

- **C733** S. 293 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, Sch. 2 para. 2(7)(e))
- **C734** S. 293 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 12
- **C735** 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, \[F651\] . . .

(b) \[F651\] any creditor of the bankrupt may request the official receiver to summon such a meeting for that purpose.

(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).

Annotations:

Amendments (Textual)

F651 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)

C736 S. 294 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, Sch. 2 para. 2(7)(e))

C737 S. 294 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 12

C738 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 [prescribed person].

(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.

Annotations:

Amendments (Textual)

F652 Words in s. 295(3) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 21; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C739 S. 295 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, Sch. 2 para. 2(7)(e))

C740 S. 295 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 13
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 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—
[F653 explain the procedure for establishing a creditors' committee under section 301.]

Annotations:

Amendments (Textual)

F653 Words in s. 296(5) substituted for s. 296(5)(a)(b) (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 76; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)


C742 S. 296 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, Sch. 2 para. 2(7)(c))

C743 S. 296 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 12

C744 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) .................................................................

(3) .................................................................

(4) .................................................................

(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 \(297(5)\) 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—
(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.

Annotations:

Amendments (Textual)

F654 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))
F655 S. 297(4) omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s.
103(3), Sch. 19 para. 22(2); S.I. 2016/191, art. 2 (with art. 3)
F656 Words in s. 297(6) omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24),
s. 103(3), Sch. 19 para. 22(3); S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C745 S. 297 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), Sch. 7 para. 14
C746 S. 297(1)-(3)(5)-(8) applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II (as amended
(6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments)
(Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential
Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, Sch. 2 para. 2(7)(c))

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 creditors' decision procedure instigated] 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) \[F658 \]

(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 creditors' decision procedure may be instigated) for the purpose of
removing 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 so requests, with the concurrence of not less than one-quarter, in value, of the creditors (including the creditor making the request).

(4A) Where the bankrupt's creditors decide to remove a trustee, they may in accordance with the rules appoint another person as trustee in his place.

(4B) Where the decision to remove a trustee is made under subsection (4), the decision does not take effect until the bankrupt's creditors appoint another person as trustee in his place.

(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 prescribed person.

(8) The trustee shall vacate office on giving notice to the prescribed person that the trustee has given notice under section 331(2).

(8A) A notice under subsection (8)—

(a) must not be given before the end of the period prescribed by the rules as the period within which the bankrupt's creditors may object to the trustee's release, and

(b) must state whether any of the bankrupt's creditors objected to the trustee's release.

(9) The trustee shall vacate office if the bankruptcy order is annulled.

Annotations:

Amendments (Textual)

F657 Words in s. 298(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 77(2); S.I. 2015/1329, reg. 3(d)

F658 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, Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F659 Words in s. 298(4) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 77(3)(a); S.I. 2015/1329, reg. 3(d)

F660 Word in s. 298(4) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 77(3)(b); S.I. 2015/1329, reg. 3(d)

F661 Words in s. 298(4)(c) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 77(3)(c)(i); S.I. 2015/1329, reg. 3(d)

F662 Words in s. 298(4)(c) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 77(3)(c)(ii); S.I. 2015/1329, reg. 3(d)

F663 S. 298(4A)(4B) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 77(4); S.I. 2015/1329, reg. 3(d)

F664 Words in s. 298(7)(8) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 23; S.I. 2016/191, art. 2 (with art. 3)

F665 Words in s. 298(8) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 77(5); S.I. 2015/1329, reg. 3(d)
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 [F667] a general meeting of the bankrupt’s creditors or by the Secretary of State, the time at which the official receiver gives notice [F666] under this paragraph to the prescribed person 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 [F669] following cases] , the time at which notice is given to the [F670] prescribed person] in accordance with the rules that that person has ceased to hold office [F671] —
      (i) the person has been removed from office by a decision of the bankrupt's creditors and the creditors have not decided against his release,
      (ii) the person has died;
   [F672](b) in the following cases, such time as the Secretary of State may, on an application by the person, determine—
      (i) the person has been removed from office by a decision of the bankrupt's creditors and the creditors have decided against his release,
      (ii) the person has been removed from office by the court or by the Secretary of State,
      (iii) the person has vacated office under section 298(6);]
   (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) —
      [F673](i) if any of the bankrupt's creditors objected to the person's release before the end of the period for so objecting prescribed by the rules, such time as the Secretary of State may, on an application by that person, determine, and
      (ii) otherwise, the time at which the person vacated office.]
[F674](3A) Where the person is removed from office by a decision of the bankrupt's creditors, any decision of the bankrupt's creditors as to whether the person should have his release must be made by a creditors' decision procedure.

(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 official receiver or the trustee has his release under this section, he shall, with effect from the time specified in the preceding provisions of this section, 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.

Annotations:

Amendments (Textual)

F667 Words in s. 299(1)(a) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 78(2); S.I. 2015/1329, reg. 3(d)

F668 Words in s. 299(1)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 24(2); S.I. 2016/191, art. 2 (with art. 3)

F669 Words in s. 299(3)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 78(3)(a); S.I. 2015/1329, reg. 3(d)

F670 Words in s. 299(3)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 24(3); S.I. 2016/191, art. 2 (with art. 3)

F671 Words in s. 299(3)(a) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 78(3)(b); S.I. 2015/1329, reg. 3(d)

F672 S. 299(3)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 78(3)(b); S.I. 2015/1329, reg. 3(d)

F673 S. 299(3)(d)(i)(ii) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 78(5); S.I. 2015/1329, reg. 3(d)

F674 S. 299(3A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 78(6); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C749 Ss. 298–307 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, Sch. 2 para. 2(7)(c))

C750 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

C751 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.
[F675](3) The official receiver may ask the bankrupt's creditors to appoint a person as trustee, and must do so if so requested by not less than one tenth in value of the bankrupt's creditors.

(3A) If the official receiver makes such a request the bankrupt's creditors may in accordance with the rules appoint a person as trustee.

(4) If at the end of the period of 28 days beginning with the day on which the vacancy first came to the official receiver's attention he has not asked, and is not proposing to ask, the bankrupt's creditors to appoint a person as trustee, he shall refer the need for an appointment to the Secretary of State.

(5) F677

(6) On a reference to the Secretary of State under subsection (4) F678 the Secretary of State shall either make an appointment or decline to make one.

(7) If on a reference under subsection (4) F678 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 vacation of office by the trustee under section 298(8) or the giving by the official receiver of notice under section 299(2).

Annotations:

Amendments (Textual)

F675  S. 300(3)(3A) substituted for s. 300(3) (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 79(2); S.I. 2015/1329, reg. 3(d)

F676  Words in s. 300(4) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 79(3); S.I. 2015/1329, reg. 3(d)

F677  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))

F678  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))

F679  Words in s. 300(8) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 79(4); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C752  Ss. 298-307 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, Sch. 2 para. 2(7)(c))

C753  S. 300 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 12

C754  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 [[F680]bankrupt's creditors] 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) [[F681]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 [F682]the appointment] of a person to be trustee instead of the official receiver.

Annotations:

Modifications etc. (not altering text)
C755 Ss. 298–307 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, Sch. 2 para. 2(7)(c))

C756 S. 301 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 16

C757 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.

Annotations:

Modifications etc. (not altering text)
C758 Ss. 298–307 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, Sch. 2 para. 2(7)(c))
C759  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.

(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.

Annotations:

Amendments (Textual)
F683  S. 303(2A)-(2C) inserted (1.12.1994) by S.I. 1994/2421, art. 14(2)

Modifications etc. (not altering text)
C760  Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
C761  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.
(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 bankrupt's estate, and

(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.

Annotations:

Modifications etc. (not altering text)

C762 Ss. 298-307 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

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 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 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.

Annotations:

Modifications etc. (not altering text)
C763 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)
C764 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
C765 S. 305 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 17
C766 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.

Annotations:

Modifications etc. (not altering text)
C767 Ss. 298–307 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

[F684306AProperty 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 [F685 section 50, 67A, 128, 131A, 198 or 215A] of that Act has
not been made in respect of the property, [...]

(c) the restraint order is discharged [F686], and

(d) immediately after the discharge of the restraint order the property is not
detained under or by virtue of section 44A, 47J, 122A, 127J, 193A or 195J
of that Act.]

[...]

(F685)(2) 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).]
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),
   (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.

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)
       (c) 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.
Annotations:

Amendments (Textual)
F690 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)
F691 Words in s. 306B(1)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), Sch. 7 para. 56; S.I. 2015/983, arts. 2(2)(e), 3(h)

[F692 306B 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.]

Annotations:

Amendments (Textual)
F692 S. 306BA inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), Sch. 7 para. 57; S.I. 2015/983, arts. 2(2)(e), 3(h)

F693 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 [F694 excluded from bankrupt's estate] ),
(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.

[F695 (2) Any such property vests in the trustee as part of the bankrupt's estate if it is in the hands of—
(a) a receiver appointed under Part 2 or 4 of that Act,
(b) an administrator appointed under Part 3 of that Act,
(c) an appropriate officer (within the meaning of section 41A, 120A or 190A of that Act).]

(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).
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,

(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 subsections (4) and (4A), 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, the trustee is not in respect of that property entitled by virtue of this section to any remedy against that person, or any person whose title to any property derives from that person.

(4A) Where a banker enters into a transaction before service on the banker of a notice under this section (and whether before or after service on the bankrupt of a notice under this section) the trustee is not in respect of that transaction entitled by virtue of this section to any remedy against the banker.

This subsection applies whether or not the banker has notice of the bankruptcy.

(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.
Vesting in trustee of certain items of excess value.

(1) Subject to [*F703 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.
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.

Annotations:

Amendments (Textual)
F703 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)
C771 S. 308 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

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 [F706 or section 308A], after the end of the period of 42 days beginning with the day on which the property [F706 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 successor 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.

Annotations:

Amendments (Textual)
F705 Words inserted by Housing Act 1988 (c. 50, SIF 75:1), s. 117(3)(a)
F706 Words inserted by Housing Act 1988 (c. 50, SIF 75:1), s. 117(3)(b)
Income payments orders.

(1) The court may... 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.

(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.

(2) The court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt... 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.

(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... 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;... 

(b) ........................................................

(9) In this section, “guaranteed minimum pension”... the same meaning as in the Pension Schemes Act 1993.
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
(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).]

Annotations:

Amendments (Textual)
F715  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).

Annotations:

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.

(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 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).

Annotations:

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 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 \(^{(2)}\), 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.

\(^{(2A)}\) 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.

(4) \(^{(5)}\) Subsection (1), (2), (4), (5) and (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.

\(^{(5)}\) But an order under section 3(5) of that Act may not vary a charged value.

Annotations:

Amendments (Textual)

\(^{F716}\) 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))

\(^{F717}\) 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))

\(^{F718}\) 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))

\(^{F719}\) Words in s. 313(4) substituted (1.10.2012) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 93(5)(6)148; S.I. 2012/1312, art. 3

\(^{F720}\) 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)

\(^{C779}\) S. 313 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

\(^{F721}\) 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 \(^{(2)}\) or civil partner], or
  - (iii) a former spouse \(^{(2)}\) 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).

314 Powers of trustee.

(1) The trustee may exercise any of the powers specified in Parts 1 and 2 of Schedule 5.

(2) ... 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) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(4) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(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 seek a decision on a matter from the bankrupt’s creditors.

Subject to the preceding provisions in this Group of Parts, he shall seek a decision on a matter if he is requested to do so by a creditor of the bankrupt and the request is made 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.

Annotations:

**Amendments (Textual)**

- **F724** S. 314(1) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 121(2)(a), 164(3)(i)(i)
- **F725** Words in s. 314(2) omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 121(2)(b), 164(3)(i)(i)
- **F726** S. 314(3)(4) omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 121(2)(c), 164(3)(i)(i)
- **F727** Words in s. 314(7) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 81(a); S.I. 2015/1329, reg. 3(d)
- **F728** Words in s. 314(7) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 81(b); S.I. 2015/1329, reg. 3(d)

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

- **C781** S. 314 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
- **C782** 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) 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.

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.

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.

Annotations:

Modifications etc. (not altering text)
C787 S.317 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
C788 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 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.

Annotations:

Modifications etc. (not altering text)
C789 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.
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 disclainer, or
   (c) where the disclaimed property is property in a dwelling house, any person who at the time when the [F730] bankruptcy application was made or (as the case may be) 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 [F731] bankruptcy application was made or (as the case may be) the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(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.
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 application was made or (as the case may be) 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.

Annotations:

Amendments (Textual)
F732 Words in s. 321(1)(a) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 26; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)
C792 S. 321 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

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.

Annotations:

**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 proceedings on a bankruptcy application relating to the bankrupt were ongoing or 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.

Annotations:

**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, 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.

Annotations:

Modifications etc. (not altering text)
C796 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 M24 Judgments Act 1838, from the time it was withheld, and
(b) the costs of the proceedings in which the order to pay is made.

Annotations:

Modifications etc. (not altering text)
C797 s. 325 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

Marginal Citations
M24 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 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.

Annotations:

Modifications etc. (not altering text)
C798 S. 326 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

[F734] 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.

Annotations:

Amendments (Textual)
F734 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)
C799 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 ... shall be paid
in priority to other debts.

[F736] (1A) Ordinary preferential debts rank equally among themselves after the expenses of the
bankruptcy and shall be paid in full, unless the bankrupt’s estate is insufficient to meet
them, in which case they abate in equal proportions between themselves.

(1B) Secondary preferential debts rank equally among themselves after the ordinary
preferential debts and shall be paid in full, unless the bankrupt’s estate is insufficient
to meet them, in which case they abate in equal proportions between themselves.

[F737] (2) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(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 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 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.

[7 In this section “preferential debts”, “ordinary preferential debts” and “secondary preferential debts” each has the meaning given in section 386 in Part 12.]

Annotations:

Amendments (Textual)

F735 Words in s. 328(1) omitted (1.1.2015) by virtue of The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 7(2) (with art. 3)

F736 S. 328(1A)(1B) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 7(3) (with art. 3)

F737 S. 328(2) omitted (1.1.2015) by virtue of The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 7(4) (with art. 3)

F738 S. 328(7) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 7(5) (with art. 3)

Modifications etc. (not altering text)

C800 S. 328 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

C801 S. 328 modified (1.12.1994) by S.I. 1994/2421, art. 11(2)(3), Sch. 7 para. 21


C803 S. 328(1)-(3)(6) modified (1.12.1994) by S.I. 1994/2421, art. 8, Sch. 4 Pt. II para. 23


C805 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

M25 1838 c. 110.
(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.

Annotations:

Amendments (Textual)
F739 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)
C806 S. 329 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. I Pt. II

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.

[\(^{\text{F740}}\) (1A) A notice under subsection (1)(b) need not be given to opted-out creditors.]

(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.

[\(^{\text{F741}}\) (6) Subsection (5) is subject to Article 35 of the EC Regulation (surplus in secondary proceedings to be transferred to main proceedings).]

Annotations:

Amendments (Textual)
F740 S. 330(1A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 82; S.I. 2015/1329, reg. 3(d)
331 Final report.

(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 must give the bankrupt’s creditors (other than opted-out creditors) notice that it appears to the trustee that the administration of the bankrupt’s estate is for practical purposes complete.

(2A) The notice must—
(a) be accompanied by a report of the trustee’s administration of the bankrupt’s estate;
(b) explain the effect of section 299(3)(d) and how the creditors may object to the trustee’s release.

(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 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.

Annotations:

Amendments (Textual)
F742 Word in s. 331 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 83(4); S.I. 2015/1329, reg. 3(d)
F743 S. 331(2)(2A) substituted for s. 331(2) (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 83(2); S.I. 2015/1329, reg. 3(d)
F744 S. 331(3)(4) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 83(3); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C809 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
C810 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 [F745 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 [F746 give notice under section 331(2)] 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.

Annotations:

Amendments (Textual)
F745 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))
F746 Word in s. 332(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 84; S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C811 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.

(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).
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 making of the application or (as the case may be) 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.

335 Adjustment between earlier and later bankruptcy estates.

(1) With effect from the commencement of the later bankruptcy anything 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) 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.

Annotations:

Amendments (Textual)
F748 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)
C814 S. 335 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
CHAPTER V

EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS TRANSACTIONS, ETC.

F749 Rights under trusts of land

Annotations:

Amendments (Textual)

F749 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

F750 S. 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 [F751 bankrupt’s spouse or civil partner or former spouse or former civil partner]—

(i) the conduct of the [F751 bankrupt’s spouse, civil partner, former spouse or former civil partner], so far as contributing to the bankruptcy,

(ii) the needs and financial resources of the [F751 bankrupt’s 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.

Annotations:

Amendments (Textual)

F750 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

F751 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))

F752 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))
Rights of occupation etc. of bankrupt’s spouse [F753 or civil partner].

(1) Nothing occurring in the initial period of the bankruptcy (that is to say, the period beginning with the day of the [F754 making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition] and ending with the vesting of the bankrupt’s estate in a trustee) is to be taken as having given rise to any [F755 home rights] under Part IV of the Family Law Act 1996 in relation to a dwelling house comprised in the bankrupt’s estate.

(2) Where [F757 a spouse’s or civil partner’s home rights][F758 under the Act of 1996] are a charge on the estate or interest of the other spouse [F759 or civil partner], or of trustees for the other spouse [F759 or civil partner], and the other spouse [F759 or civil partner] is [F760 made] bankrupt—

(a) the charge continues to subsist notwithstanding the bankruptcy and, subject to the provisions of that Act, binds the trustee of the bankrupt’s estate and persons deriving title under the trustee, and

(b) any application for an order [F761 under section 33 of that Act] shall be made to the court having jurisdiction in relation to the bankruptcy.

(3) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(4) On such an application as is mentioned in subsection (2) [F763 . . . the court shall make such order under [F764 section 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 [F765 or 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 [F765 or 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.

Annotations:

Amendments (Textual)
F753 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
F754 Words in s. 336(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 29(2); S.I. 2016/191, art. 2 (with art. 3)
F755 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)
F756 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
F757 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
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 [F766 made] 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 [F767 bankruptcy application was made or (as the case may be) the bankruptcy petition was presented and at the commencement of the bankruptcy.

(2) Whether or not the bankrupt’s [F768 spouse or civil partner (if any) has home rights][F769 under Part IV of the Family Law Act 1996]—

(a) the bankrupt has the following 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.

(3) The Act of 1996 has effect, with the necessary modifications, as if—

(a) the rights conferred by paragraph (a) of subsection (2) were [F771 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 [F775 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 [F773 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 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, the court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt’s creditors outweigh all other considerations.

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 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 [F775 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.

Annotations:

Amendments (Textual)
F774 Word in s. 339(1) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 31; S.I. 2016/191, art. 2 (with art. 3)
F775 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)
C815 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)
C816 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 (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))
C817 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.
C818 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 [F776 made] 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.

(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.

Annotations:

Amendments (Textual)

F776 Word in s. 340(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 32; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C819 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)

C820 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.

C821 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 (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 [F777 making of the bankruptcy application as a result of which, or (as the case may be) the presentation of the bankruptcy petition on which, the individual is made] 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—

(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.

(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.

(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.

Annotations:

Amendments (Textual)

F777 Words in s. 341(1)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 33; S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C822 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)

C823 S. 341 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II (as amended (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, Sch. 2 para. 2(7)(d))
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 made 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 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 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 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 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.

(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.

(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 bankruptcy application as a result of which, or (as the case may be) the bankruptcy petition on which, the individual in question is made bankrupt has been made or presented; or
   (b) of the fact that the individual in question has been 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.

Annotations:

Amendments (Textual)

F778 Word in s. 342(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 34(2); S.I. 2016/191, art. 2 (with art. 3)

F779 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)

F780 S. 342(2A) inserted (26.7.1994) by 1994 c. 12, ss. 2(2), 5, 6(2) (with ss. 5, 6(3))

F781 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))

F782 S. 342(5)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 34(3)(a); S.I. 2016/191, art. 2 (with art. 3)

F783 Word in s. 342(5)(b) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 34(3)(b); S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C824 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}

Recovery of excessive pension contributions.

(1) Where an individual who is 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

(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.]
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).

(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.]

Annotations:

Amendments (Textual)
F787 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
F788 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)

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
(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
(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.]

Annotations:
Amendments (Textual)
F789 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
F790 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)
F791 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)]

[342IRecovery of excessive contributions in pension-sharing cases.

(1) For the purposes of sections 339, 341 and 342, a pension-sharing transaction shall be taken—
(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);
   “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.]
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.

(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.

Annotations:

Amendments (Textual)

Modifications etc. (not altering text)
C827 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}

F794 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 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 Pension Schemes Act 1993 or section 91
of the 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
(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
(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.

Annotations:

Amendments (Textual)


F795 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)

C828 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

M26 1993 c. 48.

343 Extortionate credit transactions.

(1) This section applies where a person is [F796 made] 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—

(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) 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.

Annotations:

Amendments (Textual)

F796 Word in s. 343(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 36; S.I. 2016/191, art. 2 (with art. 3)
F797 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)

C829 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 [made] bankrupt.

(2) The assignment is void against the trustee of the bankrupt’s estate as regards book debts which were not paid before the [making of the bankruptcy application or (as the case may be the] presentation of the bankruptcy petition, unless the assignment has been registered under the 3[ 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.

(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.
345 Contracts to which bankrupt is a party.

(1) The following applies where a contract has been made with a person who is subsequently made bankrupt.

(2) The court may, on the application of any other party 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.

Annotations:

Amendments (Textual)

F798 Word in s. 344(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 37(2); S.I. 2016/191, art. 2 (with art. 3)

F799 Words in s. 344(2) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 37(3); S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C830 Ss. 342–345 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

Marginal Citations

M28 1878 c. 31.

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 made 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 receiver 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.

(1A) For the purposes of this section, Her Majesty’s Revenue and Customs is to be regarded
as having attached a debt due to a person if it has taken action under Part 1 of
Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts)
as a result of which an amount standing to the credit of an account held by that person
is—
(a) subject to arrangements made under paragraph 6(3) of that Schedule, or
(b) the subject of a deduction notice under paragraph 13 of that Schedule.

(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
enforcement officer or other officer charged with the execution that that person has been
bankrupt—
(a) the 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 enforcement officer or other officer charged with the
execution is given notice that a bankruptcy application has been made or
a bankruptcy petition has been presented in relation to that person, and
(c) a bankruptcy order is or has been made as a result of that application or
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 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 proceedings on a bankruptcy
application are ongoing or (as the case may be) 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 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 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 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 enforcement officer or other officer charged with the execution.

(9) In this section “enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003.

Anchors:

Amendments (Textual)

F801 Word in s. 346(1)(2) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 39(2); S.I. 2016/191, art. 2 (with art. 3)

F802 S. 346(1A) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 32

F803 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)

F804 Words in s. 346(3)(b) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 39(3)(a); S.I. 2016/191, art. 2 (with art. 3)

F805 Words in s. 346(3)(c) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 39(3)(b); S.I. 2016/191, art. 2 (with art. 3)

F806 Words in s. 346(4)(a) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 39(4); S.I. 2016/191, art. 2 (with art. 3)

F807 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)

F808 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

M29 1979 c. 53.
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) \[^F811\] Where CRAR has been exercised to recover rent from an individual to whom a bankruptcy application or a bankruptcy petition relates and a bankruptcy order is subsequently made as a result of that application or on that petition, any amount recovered by way of CRAR 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 goods were taken control of under CRAR,

shall be held for the bankrupt as apart of his estate.

\[^F816\] (3) Subsection (3A) applies where—

- (a) any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual who is made bankrupt before the end of the period of 3 months beginning with the distraint, or
- (b) Her Majesty’s Revenue and Customs has been paid any amount from an account of an individual under Part 1 of Schedule 8 to the Finance (No. 2) Act 2015 (enforcement by deduction from accounts) and the individual is adjudged bankrupt before the end of the period of 3 months beginning with the payment.

(3A) Where this subsection applies—

- (a) in a case within subsection (3)(a), the goods or effects, or the proceeds of their sale, and
- (b) in a case within subsection (3)(b), the amount in question, is 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 them.

(4) Where by virtue of any charge under subsection (3A) 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 as is available for the payment of preferential creditors by virtue of the surrender or payment.

(5) \[^F819\] CRAR is not exercisable at any time after the discharge of a bankrupt against any goods or effects comprised in the bankrupt’s estate.

\[^F820\] (6) ... ... ... ... 

\[^F821\] (7) ... ... ... ... 

(8) \[^F822\] 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 exercisable without restriction against property comprised in a bankrupt’s estate, even if that right is expressed by any enactment to be exercisable in like manner as a right to distrain for rent.

(9) Any right to distrain against property comprised in a bankrupt’s estate is exercisable notwithstanding that the property has vested in the trustee.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(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.

F823 (11) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Annotations:

Amendments (Textual)
F809 Words in s. 347(1) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 14 para. 44(2) (with s. 89); S.I. 2014/768, art. 2(1)(b)
F810 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)
F811 Words in s. 347(2) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 14 para. 44(3)(a) (with s. 89); S.I. 2014/768, art. 2(1)(b)
F812 Words in s. 347(2) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 40(2)(a); S.I. 2016/191, art. 2 (with art. 3)
F813 Words in s. 347(2) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 40(2)(b); S.I. 2016/191, art. 2 (with art. 3)
F814 Word in s. 347(2) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 14 para. 44(3)(b) (with s. 89); S.I. 2014/768, art. 2(1)(b)
F815 Words in s. 347(2)(c) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 14 para. 44(3)(c) (with s. 89); S.I. 2014/768, art. 2(1)(b)
F816 S. 347(3)(3A) substituted for s. 347(3) (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 33(1)(a)
F817 Word in s. 347(3) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 40(3); S.I. 2016/191, art. 2 (with art. 3)
F818 Word in s. 347(4) substituted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), Sch. 8 para. 33(1)(b)
F819 Words in s. 347(5) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 14 para. 44(4) (with s. 89); S.I. 2014/768, art. 2(1)(b)
F820 S. 347(6) repealed (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 14 para. 44(5), Sch. 23 Pt. 4 (with s. 89); S.I. 2014/768, art. 2(1)(b)
F821 S. 347(7) repealed (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 14 para. 44(5), Sch. 23 Pt. 4 (with s. 89); S.I. 2014/768, art. 2(1)(b)
F822 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)
F823 S. 347(11) repealed (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 14 para. 44(6), Sch. 23 Pt. 4 (with s. 89); S.I. 2014/768, art. 2(1)(b)

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 [F824 application for the order was made or (as the case may be) the petition for the order] was presented, and

(b) the bankrupt or the apprentice or clerk gives notice to the trustee terminating the apprenticeship or articles.

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.

Annotations:

Amendments (Textual)

F824 Words in s. 348(1)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 41; S.I. 2016/191, art. 2 (with art. 3)

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.

Annotations:

Modifications etc. (not altering text)

C833 Ss. 349, 350(1)(2)(4)–(6) applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

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.

Annotations:

Amendments (Textual)

F825 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—
   (a) where an adjudicator has made a bankruptcy order as a result of a bankruptcy application, or
   (b) 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 discharge; but nothing in this Group of Parts prevents the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.

(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.

Annotations:

**Amendments (Textual)**

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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) \[\text{F828} \] section 308] (personal property and effects of bankrupt having more than replacement value) \[\text{F829} \] or section 308A (vesting in trustee of certain tenancies);\[\text{F830}\]

(b) “the initial period” means the period between the \[\text{F831} \] making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition and the commencement of the bankruptcy;\[\text{F832}\] ...

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Annotations:

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<td>F830</td>
<td>Words in s. 351(b) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 43(2); S.I. 2016/191, art. 2 (with art. 3)</td>
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<td>S. 351(c) and word omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 43(3); S.I. 2016/191, art. 2 (with art. 3)</td>
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<td>C835</td>
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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 the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy 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, the trustee or the court—
   (a) to account for the loss of any substantial part of his property incurred in the 12 months before the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition or in the initial period, or
   (b) to give a satisfactory explanation of the manner in which such a loss was incurred.
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;

(d) in the 12 months before the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy 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 the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy 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.

(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.

Annotations:

Amendments (Textual)

F835 Words in s. 355(2)(d) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 45(2); S.I. 2016/191, art. 2 (with art. 3)

F836 Words in s. 355(3)(b) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 45(3); S.I. 2016/191, art. 2 (with art. 3)

F837 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) in connection with any creditors' decision procedure or deemed consent procedure in the 12 months before the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition or (whether or not in connection with such a procedure) at any time in the initial 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.

Annotations:

Amendments (Textual)

F838 Words in s. 356(2)(c) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 85(a); S.I. 2015/1329, reg. 3(d)

F839 Words in s. 356(2)(c) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 46; S.I. 2016/191, art. 2 (with art. 3)

F840 Words in s. 356(2)(c) substituted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 85(b); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C836 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.

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 which is 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 the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy 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.

Annotations:

Amendments (Textual)

F841 Words in s. 358(b) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 47; S.I. 2016/191, art. 2 (with art. 3)

359 Fraudulent dealing with property obtained on credit.

(1) The bankrupt is guilty of an offence if, in the 12 months before the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy 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 the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy 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.

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 made bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.

(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.

(F845)(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.]

**Annotations:**

- **Amendments (Textual)**
  - F844 Word in s. 360(1)(b) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 49; S.I. 2016/191, art. 2 (with art. 3)
  - F845 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.**

(F846)

**Annotations:**

- **Amendments (Textual)**
  - F846 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.**

(F847)

**Annotations:**

- **Amendments (Textual)**
  - F847 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))

**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).

Annotations:

- Modifications etc. (not altering text)
  - C838 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 application or 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 making of the bankruptcy application or 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

   (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  Seize 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.

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 or 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.

   The court may require any such person as is mentioned in paragraph (b) or (c) to submit a witness statement verified by a statement of truth 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.

Annotations:

Amendments (Textual)
F850 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))
F851 Words in s. 366(1) substituted (6.4.2010) by virtue of The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 5(7)

Modifications etc. (not altering text)
C840 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.

(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.

Annotations:

Modifications etc. (not altering text)
C841 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.

Annotations:

Modifications etc. (not altering text)
C842 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.

(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).

Annotations:

Modifications etc. (not altering text)
C843 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 the 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.
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 a postal operator (within the meaning of Part 3 of the Postal Services Act 2011) to re-direct and send or deliver to the official receiver or trustee or otherwise any postal packet (within the meaning of that Act) which would otherwise be sent or delivered by 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.

Annotations:

Modifications etc. (not altering text)

C844 S. 370 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

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, \[F854\]...

\[F854\]

(c) ........................................  
and in this section “the office-holder” means the official receiver, the trustee in bankruptcy, the interim receiver \[F855\] or the supervisor of the voluntary 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—

(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—

\[F856\]

(a) a supply of gas by a gas supplier within the meaning of Part I of the Gas Act 1986;]

\[F857\]

(aa) a supply of gas by a person within paragraph 1 of Schedule 2A to the Gas Act 1986 (supply by landlords etc.);]

\[F858\]

(b) a supply of electricity by an electricity supplier within the meaning of Part I of the Electricity Act 1989;]

\[F859\]

(ba) a supply of electricity by a class of person within Class A (small suppliers) or Class B (resale) of Schedule 4 to the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (S.I. 2001/3270);]

\[F860\]

(c) a supply of water by \[F861\]a water undertaker],

\[F861\]

(ca) a supply of water by a water supply licensee within the meaning of the Water Industry Act 1991;

\[F861\]

(cb) a supply of water by a person who has an interest in the premises to which the supply is given;

\[F862\]

(d) a supply of communications services by a provider of a public electronic communications service.]

\[F863\]

(e) a supply of communications services by a person who carries on a business which includes giving such supplies;

\[F864\]

(f) a supply of goods or services mentioned in subsection (4A) by a person who carries on a business which includes giving such supplies, where the supply is for the purpose of enabling or facilitating anything to be done by electronic means.]

\[F864\]

(4A) The goods and services referred to in subsection (4) are—

(a) point of sale terminals;

(b) computer hardware and software;

(c) information, advice and technical assistance in connection with the use of information technology;
(d) data storage and processing;
(e) website hosting.

(5) The following applies to expressions used in subsection (4)—

F865
(a) ........................................
F866
(b) ........................................
F867
(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).

Annotations:

Amendments (Textual)

F854 S. 372(1)(c) and word omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 2(11)(d)(i) (with Sch. 6 para. 3); S.I. 2015/1732, art. 2(e)(i)

F855 Words in s. 372(1) substituted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 2(11)(d)(ii) (with Sch. 6 para. 3); S.I. 2015/1732, art. 2(e)(i)

F856 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

F857 S. 372(4)(aa) inserted (1.10.2015) by The Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989), arts. 1(1), 3(2)(a)

F858 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)

F859 S. 372(4)(ba) inserted (1.10.2015) by The Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989), arts. 1(1), 3(2)(b)

F860 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)

F861 S. 372(4)(ca)(cb) inserted (1.10.2015) by The Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989), arts. 1(1), 3(2)(c) (with art. 3(4))

F862 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)

F863 S. 372(4)(e)(f) inserted (1.10.2015) by The Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989), arts. 1(1), 3(2)(d)

F864 S. 372(4A) inserted (1.10.2015) by The Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989), arts. 1(1), 3(3)

F865 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

F866 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)

F867 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)

C847 S. 372, applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

C848 S. 372: power to amend conferred (25.4.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 92(2), 103(1)(g)
Further protection of essential supplies

(1) An insolvency-related term of a contract for the supply of essential goods or services to an individual ceases to have effect if—

(a) a voluntary arrangement proposed by the individual is approved under Part 8, and

(b) the supply is for the purpose of a 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.

(2) An insolvency-related term of a contract does not cease to have effect by virtue of subsection (1) to the extent that—

(a) it provides for the contract or the supply to terminate, or any other thing to take place, because the individual becomes subject to an insolvency procedure other than a voluntary arrangement;

(b) it entitles a supplier to terminate the contract or the supply, or do any other thing, because the individual becomes subject to an insolvency procedure other than a voluntary arrangement; or

(c) it entitles a supplier to terminate the contract or the supply because of an event that occurs, or may occur, after the voluntary arrangement proposed by the individual is approved.

(3) Where an insolvency-related term of a contract ceases to have effect under this section the supplier may—

(a) terminate the contract, if the condition in subsection (4) is met;

(b) terminate the supply, if the condition in subsection (5) is met.

(4) The condition in this subsection is that—

(a) the supervisor of the voluntary arrangement consents to the termination of the contract,

(b) the court grants permission for the termination of the contract, or

(c) any charges in respect of the supply that are incurred after the voluntary arrangement is approved are not paid within the period of 28 days beginning with the day on which payment is due.

The court may grant permission under paragraph (b) only if satisfied that the continuation of the contract would cause the supplier hardship.

(5) The condition in this subsection is that—

(a) the supplier gives written notice to the supervisor of the voluntary arrangement that the supply will be terminated unless the supervisor personally guarantees the payment of any charges in respect of the continuation of the supply after the arrangement was approved, and

(b) the supervisor does not give that guarantee within the period of 14 days beginning with the day the notice is received.

(6) For the purposes of securing that the interests of suppliers are protected, where—

(a) an insolvency-related term of a contract (the “original term”) ceases to have effect by virtue of subsection (1), and

(b) a subsequent voluntary arrangement proposed by the individual is approved,
the contract is treated for the purposes of subsections (1) to (5) as if, immediately before the subsequent voluntary arrangement proposed by the individual is approved, it included an insolvency-related term identical to the original term.

(7) A contract for the supply of essential goods or services is a contract for a supply mentioned in section 372(4).

(8) An insolvency-related term of a contract for the supply of essential goods or services to an individual is a provision of the contract under which—
   (a) the contract or the supply would terminate, or any other thing would take place, because the voluntary arrangement proposed by the individual is approved,
   (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the voluntary arrangement proposed by the individual is approved, or
   (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the voluntary arrangement proposed by the individual is approved.

(9) Subsection (1) does not have effect in relation to a contract entered into before 1st October 2015.

Annotations:

Amendments (Textual)

F868 S. 372A inserted (1.10.2015) by The Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989), arts. 1(1), 5

373 Jurisdiction in relation to insolvent individuals.

(1) The High Court and the [F869 county court] have jurisdiction throughout England and Wales for the purposes of the Parts in this Group.

(2) For the purposes of those Parts, [F870 the 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 [F871 or the [F872 county court]] in relation to the proceedings, which, in accordance with the rules, are allocated to the London insolvency district, and
   (b) by [F873 the] county court in relation to the proceedings which are so allocated to [F874 any other insolvency district].

(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.
Insolvency Act 1986 (c. 45)
Part X – Individual Insolvency: General Provisions
Chapter VII – Powers of Court In Bankruptcy

Annotations:

Amendments (Textual)
F869 Words in s. 373(1) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 93(d); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
F870 Words in s. 373(2) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 52; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
F871 Words in s. 373(3)(a) inserted (6.4.2011) by The London Insolvency District (Central London County Court) Order 2011 (S.I. 2011/761), art. 5 (with art. 9)
F872 Words in s. 373(3)(a) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 93(e); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
F873 Word in s. 373(3)(b) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 93(f)(i); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
F874 Words in s. 373(3)(b) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 93(f)(ii); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Modifications etc. (not altering text)
C849 s.373 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

374 Insolvency districts.

(1) The Lord Chancellor may [F875, 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 [F876, or districts, of the county court.]

(2) An order under this section may contain such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor [F877 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.

[F878(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.]
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 the 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 to the Court of Appeal.

(3) The 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.

376  Time-limits.

Where by any provision in this Group of Parts or by the rules the time for doing anything (including anything in relation to a bankruptcy application) is limited, the court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.
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.

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.

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....

Annotations:

Amendments (Textual)

F882 Words in s. 379 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 2(II)(e) (with Sch. 6 para. 3); S.I. 2015/1732, art. 2(e)(i)

Modifications etc. (not altering text)

C854 S. 379 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

Annotations:

Modifications etc. (not altering text)

C853 S. 377 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

Annotations:

Modifications etc. (not altering text)

C852 S. 376 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

Annotations:

Amendments (Textual)

F881 Words in s. 376 inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 51; S.I. 2016/191, art. 2 (with art. 3)
379ZA  Creditors' decisions: general

(1) This section applies where, for the purposes of this Group of Parts, a person (“P”) seeks a decision from an individual's creditors about any matter.

(2) The decision may be made by any creditors' decision procedure P thinks fit, except that it may not be made by a creditors' meeting unless subsection (3) applies.

(3) This subsection applies if at least the minimum number of creditors request in writing that the decision be made by a creditors' meeting.

(4) If subsection (3) applies, P must summon a creditors' meeting.

(5) Subsection (2) is subject to any provision of this Act, the rules or any other legislation, or any order of the court—

(a) requiring a decision to be made, or prohibiting a decision from being made, by a particular creditors' decision procedure (other than a creditors’ meeting);

(b) permitting or requiring a decision to be made by a creditors' meeting.

(6) Section 379ZB provides that in certain cases the deemed consent procedure may be used instead of a creditors' decision procedure.

(7) For the purposes of subsection (3) the “minimum number” of creditors is any of the following—

(a) 10% in value of the creditors;

(b) 10% in number of the creditors;

(c) 10 creditors.

(8) The references in subsection (7) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.

(9) In this section references to a meeting are to a meeting where the creditors are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place).

(10) Except as provided by subsection (8), references in this section to creditors include creditors of a particular class.

(11) In this Group of Parts “creditors' decision procedure” means a procedure prescribed or authorised under paragraph 11A of Schedule 9.
379ZB Deemed consent procedure

(1) The deemed consent procedure may be used instead of a creditors' decision procedure where an individual's creditors are to make a decision about any matter, unless—
   (a) a decision about the matter is required by virtue of this Act, the rules or any other legislation to be made by a creditors' decision procedure, or
   (b) the court orders that a decision about the matter is to be made by a creditors' decision procedure.

(2) If the rules provide for an individual's creditors to make a decision about the remuneration of any person, they must provide that the decision is to be made by a creditors' decision procedure.

(3) The deemed consent procedure is that the relevant creditors (other than opted-out creditors) are given notice of—
   (a) the matter about which the creditors are to make a decision,
   (b) the decision the person giving the notice proposes should be made (the “proposed decision”),
   (c) the effect of subsections (4) and (5), and
   (d) the procedure for objecting to the proposed decision.

(4) If less than the appropriate number of relevant creditors object to the proposed decision in accordance with the procedure set out in the notice, the creditors are to be treated as having made the proposed decision.

(5) Otherwise—
   (a) the creditors are to be treated as not having made a decision about the matter in question, and
   (b) if a decision about that matter is again sought from the creditors, it must be sought using a creditors' decision procedure.

(6) For the purposes of subsection (4) the “appropriate number” of relevant creditors is 10% in value of those creditors.

(7) “Relevant creditors” means the creditors who, if the decision were to be made by a creditors' decision procedure, would be entitled to vote in the procedure.

(8) In this section references to creditors include creditors of a particular class.

(9) The rules may make further provision about the deemed consent procedure.

379ZC Power to amend sections 379ZA and 379ZB

(1) The Secretary of State may by regulations amend section 379ZA so as to change the definition of the minimum number of creditors.

(2) The Secretary of State may by regulations amend section 379ZB so as to change the definition of the appropriate number of relevant creditors.

(3) Regulations under this section may define the minimum number or the appropriate number by reference to any one or more of—
   (a) a proportion in value,
   (b) a proportion in number,
   (c) an absolute number,
and the definition may include alternative, cumulative or relative requirements.

(4) Regulations under subsection (1) may define the minimum number of creditors by reference to all creditors, or by reference to creditors of a particular description.

(5) Regulations under this section may make provision that will result in section 379ZA or 379ZB having different definitions for different cases, including for different kinds of decisions.

(6) Regulations under this section may make transitional provision.

(7) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument.

(8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

Annotations:

Amendments (Textual)
F884 Ss. 379A 379B and cross-headings inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 3(2)

379A Remote attendance at meetings

(1) Where—

(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 in relation to an individual is proposed or is approved under Part 8,

this section applies to any meeting of the individual’s creditors summoned under this Act or the rules.

(2) Where the person summoning a meeting (“the convener”) considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.

(3) Where a meeting is conducted and held in the manner referred to in subsection (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.

(4) For the purposes of this section—

(a) a person exercises the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and

(b) a person exercises the right to vote at a meeting when—

(i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
(ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(5) The convener of a meeting which is to be conducted and held in the manner referred to in subsection (2) may make whatever arrangements the convener considers appropriate to—
(a) enable those attending the meeting to exercise their rights to speak or vote, and
(b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.

(6) Where in the reasonable opinion of the convener—
(a) a meeting will be attended by persons who will not be present together at the same place, and
(b) it is unnecessary or inexpedient to specify a place for the meeting,
any requirement under this Act or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in subsection (5) and in forming the opinion referred to in subsection (6)(b), the convener must have regard to the legitimate interests of the creditors and others attending the meeting in the efficient despatch of the business of the meeting.

(8) If—
(a) the notice of a meeting does not specify a place for the meeting,
(b) the convener is requested in accordance with the rules to specify a place for the meeting, and
(c) that request is made by not less than ten percent in value of the creditors,
it shall be the duty of the convener to specify a place for the meeting.

379B Use of websites
(1) This section applies where—
(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 in relation to an individual is proposed or is approved under Part 8,

and “the office-holder” means the official receiver, the trustee in bankruptcy, the interim receiver, the nominee or the supervisor of the voluntary arrangement, as the case may be.

(2) Where any provision of this Act or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—

(a) in accordance with the rules, and

(b) in such circumstances as may be prescribed.]

F887379CCreditors' ability to opt out of receiving certain notices

(1) Any provision of the rules which requires an office-holder to give a notice to creditors of an individual does not apply, in circumstances prescribed by the rules, in relation to opted-out creditors.

(2) Subsection (1)—

(a) does not apply in relation to a notice of a distribution or proposed distribution to creditors;

(b) is subject to any order of the court requiring a notice to be given to all creditors (or all creditors of a particular category).

(3) Except as provided by the rules, a creditor may participate and vote in a creditors’ decision procedure or a deemed consent procedure even though, by virtue of being an opted-out creditor, the creditor does not receive notice of it.

(4) In this section—

“give” includes deliver, furnish or send;

“notice” includes any document or information in any other form;

“office-holder”, in relation to an individual, means—

(a) where a bankruptcy order is made against the individual, the official receiver or the trustee in bankruptcy;

(b) where an interim receiver of the individual’s property is appointed, the interim receiver;

(c) the supervisor of a voluntary arrangement approved under Part 8 in relation to the individual.]

Annotations:

Amendments (Textual)

F887 S. 379C inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 125(3), 164(1); S.I. 2015/1329, reg. 3(d)
PART XI

INTERPRETATION FOR SECOND GROUP OF PARTS

Annotations:

Modifications etc. (not altering text)

C856 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)

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.

Annotations:

Modifications etc. (not altering text)

C857 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 [F888 made] bankrupt and, in relation to a bankruptcy order, it means the individual [F888 made] bankrupt by that order.

[F889 (1A) Bankruptcy application” means an application to an adjudicator for a bankruptcy order.

(2) “Bankruptcy order” means an order [F890 making] an individual bankrupt.

(3) “Bankruptcy petition” means a petition to the court for a bankruptcy order.

Annotations:

Amendments (Textual)

F888 Word in s. 381(1) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 52(2); S.I. 2016/191, art. 2 (with art. 3)
F889 S. 381(1A) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 52(3); S.I. 2016/191, art. 2 (with art. 3)
F890 Word in s. 381(2) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 52(4); S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C858 S. 381 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
382 “Bankruptcy debt[^891, “liability”]”

(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,

[^892](c) any amount specified in pursuance of section 39(3)(c) of the [Powers of Criminal Courts Act 1973[^31]] 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.

(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.

[^893](5) Liability under the Child Support Act 1991 to pay child support maintenance to any person is not a debt or liability for the purposes of Part 8.]

Annotations:

Amendments (Textual)

[^891] Words in s. 382 heading substituted (8.5.2012) by Welfare Reform Act 2012 (c. 5), ss. 142(2), 150(2)

[^892] 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

[^893] S. 382(5) inserted (8.5.2012) by Welfare Reform Act 2012 (c. 5), ss. 142(1), 150(2)(i)

Modifications etc. (not altering text)

[^859] S. 382 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

Marginal Citations


383 “Creditor”, “security”, etc.

(1) “Creditor”—
(a) in relation to a bankrupt, means a person to whom any of the bankruptcy debts is owed (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 application or bankruptcy petition relates, means a person who would be a creditor in the bankruptcy if a bankruptcy order were made on that application or 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.

Annotations:

Amendments (Textual)

F894 Words in s. 383(1)(b) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 53(a); S.I. 2016/191, art. 2 (with art. 3)

F895 Words in s. 383(1)(b) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 53(b); S.I. 2016/191, art. 2 (with art. 3)

Modifications etc. (not altering text)

C860 S. 383 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

[383A Opted-out creditor’]

(1) For the purposes of this Group of Parts “opted-out creditor” in relation to an office-holder for an individual means a person who—

(a) is a creditor of the individual, and

(b) in accordance with the rules has elected (or is deemed to have elected) to be (and not to cease to be) an opted-out creditor in relation to the office-holder.

(2) In this section, “office-holder”, in relation to an individual, means—

(a) where a bankruptcy order is made against the individual, the official receiver or the trustee in bankruptcy;

(b) where an interim receiver of the individual’s property is appointed, the interim receiver;

(c) the supervisor of a voluntary arrangement approved under Part 8 in relation to the individual.]
384 “Prescribed” and “the rules”.

(1) Subject to the next subsection [F897 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—

[F899] section 251S(4);]

[F899] ...

[F900] section 313A;
section 346(3);
section 354(1) and (2);
section 358;
section 360(1);
section 361(2); [F901] . . .
section 364(2)(d),
[F902] paragraphs 6 to 8 of Schedule 4ZA,

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.

Annotations:

Amendments (Textual)

F896 S. 383A inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 125(4), 164(1); S.I. 2015/1329, reg. 3(d)

384 “Prescribed” and “the rules”.

(1) Subject to the next subsection [F897 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—

[F899] section 251S(4);]

[F899] ...

[F900] section 313A;
section 346(3);
section 354(1) and (2);
section 358;
section 360(1);
section 361(2); [F901] . . .
section 364(2)(d),
[F902] paragraphs 6 to 8 of Schedule 4ZA,

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.

Annotations:

Amendments (Textual)

F897 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

F898 Words in s. 384(2) 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. 4(a); S.I. 2009/382, art. 2

F899 Words in s. 384(1) omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 54; S.I. 2016/191, art. 2 (with art. 3)

F900 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))

F901 Word in s. 384(2) omitted (24.2.2009 for certain purposes otherwise 6.4.2009) by virtue of Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 108(3), 148(5), Sch. 20 para. 4(b); S.I. 2009/382 {art. 2}

F902 Words in s. 384(2) 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. 4(c); S.I. 2009/382, art. 2

Modifications etc. (not altering text)

C861 S. 384 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
Miscellaneous definitions.

(1) The following definitions have effect—

[F903] "adjudicator" means a person appointed by the Secretary of State under section 398A;]

[“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;]

[F904] "creditors' decision procedure” has the meaning given by section 379ZA(11);]

[“creditor’s petition” means a bankruptcy petition under section 264(1)(a);]

[F905] “criminal bankruptcy order” means an order under section 39(1) of the Powers of Criminal Courts Act 1973;]

[“debt” is to be construed in accordance with section 382(3);]

[“the debtor”—]

(a) [in relation to a debt relief order or an application for such an order, has the same meaning as in Part 7A,]

(b) in relation to a bankruptcy application or a bankruptcy petition, means the individual to whom the application or petition relates;]

[F908] “debt relief order” means an order made by the official receiver under Part 7A;]

[F909] “deemed consent procedure” means the deemed consent procedure provided for by section 379ZB;]

[F910] “determination period” has the meaning given in section 263K(4);]

[“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;]

[F911] “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;]

[F912] “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.]
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Annotations:

Amendments (Textual)

F903 Words in s. 385(1) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 55(a); S.I. 2016/191, art. 2 (with art. 3)

F904 Words in s. 385(1) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 123(4)(a), 164(1); S.I. 2015/1329, reg. 3(d)

F905 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.

F906 S. 385(1): para. (za) in definition of "the debtor" 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. 5(2); S.I. 2009/382, {art, 2}

F907 Words in s. 385(1) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 55(b)(i); S.I. 2016/191, art. 2 (with art. 3)

F908 Words in s. 385(1) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 55(b)(ii); S.I. 2016/191, art. 2 (with art. 3)

F909 Words in s. 385(1) omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 55(c); S.I. 2016/191, art. 2 (with art. 3)

F910 S. 385(1): definition of "debt relief order" 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. 5(3); S.I. 2009/382, art. 2

F911 Words in s. 385(1) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 123(4)(b), 164(1); S.I. 2015/1329, reg. 3(d)

F912 Words in s. 385(1) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 55(d); S.I. 2016/191, art. 2 (with art. 3)

F913 Definitions added by S.I. 1986/1999, arts. 2, 6

Modifications etc. (not altering text)

C862 S. 385 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

Marginal Citations

M32 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

Annotations:

Modifications etc. (not altering text)

C863 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
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


C865 Pts. XII-XIX applied (with modifications) (6.4.2014) by The Industrial and Provident Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (S.I. 2014/229), arts. 1, 4(c), Sch. 3

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 [\textsuperscript{F914}](contributions to occupational pension schemes; remuneration, &c. of employees; levies on coal and steel production [\textsuperscript{F915}]; debts owed to the Financial Services Compensation Scheme [\textsuperscript{F916}]; deposits covered by Financial Services Compensation Scheme [\textsuperscript{F917}]; other deposits[]); and references to preferential creditors are to be read accordingly.

[\textsuperscript{F918}](1A) A reference in this Act to the “ordinary preferential debts” of a company or an individual is to the preferential debts listed in any of paragraphs 8 to 15B of Schedule 6 to this Act.

(1B) A reference in this Act to the “secondary preferential debts” of a company or an individual is to the preferential debts listed in paragraph 15BA or 15BB of Schedule 6 to this Act.

(2) In [\textsuperscript{F919}]Schedule 6] “the debtor” means the company or the individual concerned.

(3) Schedule 6 is to be read with [\textsuperscript{F920}]Schedule 4 to the Pension Schemes Act 1993] (occupational pension scheme contributions).

Annotations:

Amendments (Textual)

F914 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))

F915 Words in s. 386(1) inserted (26.3.2015) by The Deposit Guarantee Scheme Regulations 2015 (S.I. 2015/486), reg. 1(2), 14(2)

F916 Words in s. 386(1) inserted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 13(2), 148(5); S.I. 2014/3160, art. 2(1)(a)

F917 Words in s. 386(1) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 8(2) (with art. 3)

F918 S. 386(1A)(1B) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 8(3) (with art. 3)

F919 Words in s. 386(2) substituted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 8(4) (with art. 3)

F920 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
"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 (consideration of company voluntary arrangement), the relevant date in relation to a company which is not being wound up is—

(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.

(2A) For the purposes of paragraph 31 of Schedule A1 (consideration of 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 the date on which the company entered administration;

(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 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 the date on which the company entered administration;

(b) if the case does not fall within paragraph (a) or (aa) 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;

(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 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.
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
   (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—
   (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 making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition;
   (b) otherwise, the relevant date is the date of the making of the bankruptcy order.

Annotations:

Amendments (Textual)

F921 Words in s. 387(2)(2A) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 55; S.I. 2015/1329, reg. 3(d)

F922 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))

F923 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)

F924 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))

F925 S. 387(3)(aa)(ab) inserted (31.5.2002) by S.I. 2002/1240, reg. 16(a)

F926 Words in s. 387(3)(b) inserted (31.5.2002) by S.I. 2002/1240, reg. 16(b)

F927 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))

F928 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))

F929 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))

F930 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)

F931 Words in s. 387(6)(a) inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 56; S.I. 2016/191, art. 2 (with art. 3)
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
   (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 ..., in Scotland, a trust deed for his creditor; or
   (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.

(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

(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.]

(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 to any debtor within the meaning of the Bankruptcy (Scotland) Act 1985.

(4) In this section—

“administrative receiver” has the meaning given by section 251 in Part VII;

“company” means—

(a) a company registered under the Companies Act 2006 in England and Wales or Scotland, or

(b) a company that may be wound up under Part 5 of this Act (unregistered companies).

“interim trustee” and “permanent trustee” mean the same as in the Bankruptcy (Scotland) Act 1985.

(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).]

(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.]
F939 S. 388(4): definition substituted (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. 78(2)] (with art. 10, Sch. 1 para. 84)

F940 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)

F941 S. 388(6) inserted (31.5.2002) by S.I. 2002/1240, reg. 17

Modifications etc. (not altering text)

C876 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))

C877 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)

C878 S. 388 excluded (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 8

C879 S. 388 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3 reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

Marginal Citations
M33 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.

F942 (1A) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(2) This section does not apply to the official receiver [F943 or the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985)].

Annotations:

Amendments (Textual)

F942 S. 389(1A) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 18; S.I. 2015/1732, art. 2(e)(vi)
F943 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)
389A Authorisation of nominees and supervisors.

(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.

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 the person is appropriately authorised under section 390A.

(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 [F947 made] bankrupt [F948 under this Act or the Insolvency (Northern Ireland) Order 1989] or sequestration of his estate has been awarded and (in either case) he has not been discharged,

[F949(aa) a moratorium period under a debt relief order [F950 under this Act or the Insolvency (Northern Ireland) Order 1989] applies in relation of him.]

[F951(b) he is subject to a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002.]

(c) he is a patient within the meaning of [F952 . . . [F953 section 329(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003][F954 or has had a guardian appointed to him under the Adults with Incapacity (Scotland) Act 2000 (asp 4).][F955, or

(d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as an insolvency practitioner.]

[F956(5) A person is not qualified to act as an insolvency practitioner while there is in force in respect of that person—

(a) a bankruptcy restrictions order under this Act, the Bankruptcy (Scotland) Act 1985 or the Insolvency (Northern Ireland) Order 1989, or

(b) a debt relief restrictions order under this Act or that Order.]
(1) In this Part—

“partial authorisation” means authorisation to act as an insolvency practitioner—

(a) only in relation to companies, or

(b) only in relation to individuals;

“full authorisation” means authorisation to act as an insolvency practitioner in relation to companies, individuals and insolvent partnerships;

“partially authorised” and “fully authorised” are to be construed accordingly.

(2) A person is fully authorised under this section to act as an insolvency practitioner—

(a) by virtue of being a member of a professional body recognised under section 391(1) and being permitted to act as an insolvency practitioner for all purposes by or under the rules of that body, or

(b) by holding an authorisation granted by the Department of Enterprise, Trade and Investment in Northern Ireland under Article 352 of the Insolvency (Northern Ireland) Order 1989.

(3) A person is partially authorised under this section to act as an insolvency practitioner—

(a) by virtue of being a member of a professional body recognised under section 391(1) and being permitted to act as an insolvency practitioner in relation only to companies or only to individuals by or under the rules of that body, or

(b) by virtue of being a member of a professional body recognised under section 391(2) and being permitted to act as an insolvency practitioner by or under the rules of that body.

Annotations:

Amendments (Textual)

Ss. 390A, 390B inserted (1.10.2015) by Deregulation Act 2015 (c. 20), ss. 17(3), 115(7); S.I. 2015/1732, art. 2(c)
390B Partial authorisation: acting in relation to partnerships

(1) A person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not accept an appointment to act in relation to a company if at the time of the appointment the person is aware that the company—
   (a) is or was a member of a partnership, and
   (b) has outstanding liabilities in relation to the partnership.

(2) A person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not accept an appointment to act in relation to an individual if at the time of the appointment the person is aware that the individual—
   (a) is or was a member of a partnership other than a Scottish partnership, and
   (b) has outstanding liabilities in relation to the partnership.

(3) Subject to subsection (9), a person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not continue to act in relation to a company if the person becomes aware that the company—
   (a) is or was a member of a partnership, and
   (b) has outstanding liabilities in relation to the partnership,
   unless the person is granted permission to continue to act by the court.

(4) Subject to subsection (9), a person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not continue to act in relation to an individual if the person becomes aware that the individual—
   (a) is or was a member of a partnership other than a Scottish partnership, and
   (b) has outstanding liabilities in relation to the partnership,
   unless the person is granted permission to continue to act by the court.

(5) The court may grant a person permission to continue to act for the purposes of subsection (3) or (4) if it is satisfied that the person is competent to do so.

(6) A person who is partially authorised and becomes aware as mentioned in section 168(5B) (member of insolvent partnership: England and Wales).

(7) A person who acts as an insolvency practitioner in contravention of any of subsections (1) to (4) is guilty of an offence under section 389 (acting without qualification).

(8) A person does not contravene subsection (3) or (4) by continuing to act as an insolvency practitioner during the permitted period if, within the period of 7 business days beginning with the day after the day on which the person becomes aware as mentioned in the subsection, the person—
   (a) applies to the court for permission to continue to act, or
   (b) applies to the court for a replacement order.
(10) For the purposes of subsection (9)—

“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;

“permitted period” means the period beginning with the day on which the person became aware as mentioned in subsection (3) or (4) and ending on the earlier of—

(a) the expiry of the period of 6 weeks beginning with the day on which the person applies to the court as mentioned in subsection (9)(a) or (b), and

(b) the day on which the court disposes of the application (by granting or refusing it);

“replacement order” has the meaning given by subsection (6).]

Annotations:

Amendments (Textual)

F957 Ss. 390A, 390B inserted (1.10.2015) by Deregulation Act 2015 (c. 20), ss. 17(3), 115(7); S.I. 2015/1732, art. 2(c)

391 Recognised professional bodies

(1) The Secretary of State may by order, if satisfied that a body meets the requirements of subsection (4), declare the body to be a recognised professional body which is capable of providing its insolvency specialist members with full authorisation or partial authorisation.

(2) The Secretary of State may by order, if satisfied that a body meets the requirements of subsection (4), declare the body to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (as to which, see section 390A(1)).

(3) Section 391A makes provision about the making by a body of an application to the Secretary of State for an order under this section.

(4) The requirements are that—

(a) the body regulates (or is going to regulate) the practice of a profession,

(b) the body has rules which it is going to maintain and enforce for securing that its insolvency specialist members—

(i) are fit and proper persons to act as insolvency practitioners, and

(ii) meet acceptable requirements as to education and practical training and experience, and

(c) the body’s rules and practices for or in connection with authorising persons to act as insolvency practitioners, and its rules and practices for or in connection with regulating persons acting as such, are designed to ensure that the regulatory objectives are met (as to which, see section 391C).

(5) An order of the Secretary of State under this section has effect from such date as is specified in the order.

(6) An order under this section may be revoked by an order under section 391L or 391N (and see section 415A(1)(b)).
(7) In this Part—
   (a) 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;
   (b) references to insolvency specialist members of a professional body are to members who are permitted by or under the rules of the body to act as insolvency practitioners.

(8) A reference in this Part to a recognised professional body is to a body recognised under this section (and see sections 391L(6) and 391N(5)).

391A  Application for recognition as recognised professional body

(1) An application for an order under section 391(1) or (2) must—
   (a) be made to the Secretary of State in such form and manner as the Secretary of State may require,
   (b) be accompanied by such information as the Secretary of State may require, and
   (c) be supplemented by such additional information as the Secretary of State may require at any time between receiving the application and determining it.

(2) The requirements which may be imposed under subsection (1) may differ as between different applications.

(3) The Secretary of State may require information provided under this section to be in such form, and verified in such manner, as the Secretary of State may specify.

(4) An application for an order under section 391(1) or (2) must be accompanied by—
   (a) a copy of the applicant's rules,
   (b) a copy of the applicant's policies and practices, and
   (c) a copy of any guidance issued by the applicant in writing.

(5) The reference in subsection (4)(c) to guidance issued by the applicant is a reference to guidance or recommendations which are—
   (a) issued or made by it which will apply to its insolvency specialist members or to persons seeking to become such members,
   (b) relevant for the purposes of this Part, and
   (c) intended to have continuing effect, including guidance or recommendations relating to the admission or expulsion of members.

(6) The Secretary of State may refuse an application for an order under section 391(1) or (2) if the Secretary of State considers that recognition of the body concerned is
unnecessary having regard to the existence of one or more other bodies which have been or are likely to be recognised under section 391.

(7) Subsection (8) applies where the Secretary of State refuses an application for an order under section 391(1) or (2); and it applies regardless of whether the application is refused on the ground mentioned in subsection (6), because the Secretary of State is not satisfied as mentioned in section 391(1) or (2) or because a fee has not been paid (see section 415A(1)(b)).

(8) The Secretary of State must give the applicant a written notice of the Secretary of State's decision; and the notice must set out the reasons for refusing the application.

Annotations:

Amendments (Textual)
F958 Ss 391, 391A substituted for s. 391 (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 137(1), 164(1) (with s. 137(2)); S.I. 2015/1689, reg. 3(a)

391B Application of regulatory objectives

(1) In discharging regulatory functions, a recognised professional body must, so far as is reasonably practicable, act in a way—
   (a) which is compatible with the regulatory objectives, and
   (b) which the body considers most appropriate for the purpose of meeting those objectives.

(2) In discharging functions under this Part, the Secretary of State must have regard to the regulatory objectives.

391C Meaning of “regulatory functions” and “regulatory objectives”

(1) This section has effect for the purposes of this Part.

(2) “Regulatory functions”, in relation to a recognised professional body, means any functions the body has—
   (a) under or in relation to its arrangements for or in connection with—
       (i) authorising persons to act as insolvency practitioners, or
       (ii) regulating persons acting as insolvency practitioners, or
   (b) in connection with the making or alteration of those arrangements.

(3) “Regulatory objectives” means the objectives of—
(a) having a system of regulating persons acting as insolvency practitioners that—
   (i) secures fair treatment for persons affected by their acts and omissions,
   (ii) reflects the regulatory principles, and
   (iii) ensures consistent outcomes,
(b) encouraging an independent and competitive insolvency-practitioner profession whose members—
   (i) provide high quality services at a cost to the recipient which is fair and reasonable,
   (ii) act transparently and with integrity, and
   (iii) consider the interests of all creditors in any particular case,
(c) promoting the maximisation of the value of returns to creditors and promptness in making those returns, and
(d) protecting and promoting the public interest.

(4) In subsection (3)(a), “regulatory principles” means—
   (a) the principles that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
   (b) any other principle appearing to the body concerned (in the case of the duty under section 391B(1)), or to the Secretary of State (in the case of the duty under section 391B(2)), to lead to best regulatory practice.

\[^{F960}\text{Oversight of recognised professional bodies}\]

Annotations:

Amendments (Textual)

F960 Ss. 391D-391K and cross-heading inserted (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 139(1), 164(1); S.I. 2015/1689, reg. 3(a)

391D Directions

(1) This section applies if the Secretary of State is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.

(2) The Secretary of State may, if in all the circumstances of the case satisfied that it is appropriate to do so, direct the body to take such steps as the Secretary of State considers will counter the adverse impact, mitigate its effect or prevent its occurrence or recurrence.

(3) A direction under this section may require a recognised professional body—
   (a) to take only such steps as it has power to take under its regulatory arrangements;
   (b) to take steps with a view to the modification of any part of its regulatory arrangements.

(4) A direction under this section may require a recognised professional body—
(a) to take steps with a view to the institution of, or otherwise in respect of, specific regulatory proceedings;
(b) to take steps in respect of all, or a specified class of, such proceedings.

(5) For the purposes of this section, a direction to take steps includes a direction which requires a recognised professional body to refrain from taking a particular course of action.

(6) In this section “regulatory arrangements”, in relation to a recognised professional body, means the arrangements that the body has for or in connection with—
(a) authorising persons to act as insolvency practitioners, or
(b) regulating persons acting as insolvency practitioners.

391E Directions: procedure

(1) Before giving a recognised professional body a direction under section 391D, the Secretary of State must give the body a notice accompanied by a draft of the proposed direction.

(2) The notice under subsection (1) must—
(a) state that the Secretary of State proposes to give the body a direction in the form of the accompanying draft,
(b) specify why the Secretary of State has reached the conclusions mentioned in section 391D(1) and (2), and
(c) specify a period within which the body may make written representations with respect to the proposal.

(3) The period specified under subsection (2)(c)—
(a) must begin with the date on which the notice is given to the body, and
(b) must not be less than 28 days.

(4) On the expiry of that period, the Secretary of State must decide whether to give the body the proposed direction.

(5) The Secretary of State must give notice of that decision to the body.

(6) Where the Secretary of State decides to give the proposed direction, the notice under subsection (5) must—
(a) contain the direction,
(b) state the time at which the direction is to take effect, and
(c) specify the Secretary of State's reasons for the decision to give the direction.

(7) Where the Secretary of State decides to give the proposed direction, the Secretary of State must publish the notice under subsection (5); but this subsection does not apply to a direction to take any step with a view to the institution of, or otherwise in respect of, regulatory proceedings against an individual.

(8) The Secretary of State may revoke a direction under section 391D; and, where doing so, the Secretary of State—
(a) must give the body to which the direction was given notice of the revocation, and
(b) must publish the notice and, if the notice under subsection (5) was published under subsection (7), must do so (if possible) in the same manner as that in which that notice was published.

391F Financial penalty

(1) This section applies if the Secretary of State is satisfied—
(a) that a recognised professional body has failed to comply with a requirement to which this section applies, and
(b) that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the body.

(2) This section applies to a requirement imposed on the recognised professional body—
(a) by a direction given under section 391D, or
(b) by a provision of this Act or of subordinate legislation under this Act.

(3) The Secretary of State may impose a financial penalty, in respect of the failure, of such amount as the Secretary of State considers appropriate.

(4) In deciding what amount is appropriate, the Secretary of State—
(a) must have regard to the nature of the requirement which has not been complied with, and
(b) must not take into account the Secretary of State's costs in discharging functions under this Part.

(5) A financial penalty under this section is payable to the Secretary of State; and sums received by the Secretary of State in respect of a financial penalty under this section (including by way of interest) are to be paid into the Consolidated Fund.

(6) In sections 391G to 391I, “penalty” means a financial penalty under this section.

391G Financial penalty: procedure

(1) Before imposing a penalty on a recognised professional body, the Secretary of State must give notice to the body—
(a) stating that the Secretary of State proposes to impose a penalty and the amount of the proposed penalty,
(b) specifying the requirement in question,
(c) stating why the Secretary of State is satisfied as mentioned in section 391F(1), and
(d) specifying a period within which the body may make written representations with respect to the proposal.

(2) The period specified under subsection (1)(d)—
(a) must begin with the date on which the notice is given to the body, and
(b) must not be less than 28 days.

(3) On the expiry of that period, the Secretary of State must decide—
(a) whether to impose a penalty, and
(b) whether the penalty should be the amount stated in the notice or a reduced amount.

(4) The Secretary of State must give notice of the decision to the body.
(5) Where the Secretary of State decides to impose a penalty, the notice under subsection (4) must—
   (a) state that the Secretary of State has imposed a penalty on the body and its amount,
   (b) specify the requirement in question and state—
          (i) why it appears to the Secretary of State that the requirement has not been complied with, or
          (ii) where, by that time, the requirement has been complied with, why it appeared to the Secretary of State when giving the notice under subsection (1) that the requirement had not been complied with, and
   (c) specify a time by which the penalty is required to be paid.

(6) The time specified under subsection (5)(c) must be at least three months after the date on which the notice under subsection (4) is given to the body.

(7) Where the Secretary of State decides to impose a penalty, the Secretary of State must publish the notice under subsection (4).

(8) The Secretary of State may rescind or reduce a penalty imposed on a recognised professional body; and, where doing so, the Secretary of State—
   (a) must give the body notice that the penalty has been rescinded or reduced to the amount stated in the notice, and
   (b) must publish the notice; and it must (if possible) be published in the same manner as that in which the notice under subsection (4) was published.

391H Appeal against financial penalty

(1) A recognised professional body on which a penalty is imposed may appeal to the court on one or more of the appeal grounds.

(2) The appeal grounds are—
   (a) that the imposition of the penalty was not within the Secretary of State's power under section 391F;
   (b) that the requirement in respect of which the penalty was imposed had been complied with before the notice under section 391G(1) was given;
   (c) that the requirements of section 391G have not been complied with in relation to the imposition of the penalty and the interests of the body have been substantially prejudiced as a result;
   (d) that the amount of the penalty is unreasonable;
   (e) that it was unreasonable of the Secretary of State to require the penalty imposed to be paid by the time specified in the notice under section 391G(5)(c).

(3) An appeal under this section must be made within the period of three months beginning with the day on which the notice under section 391G(4) in respect of the penalty is given to the body.

(4) On an appeal under this section the court may—
   (a) quash the penalty,
   (b) substitute a penalty of such lesser amount as the court considers appropriate, or
(c) in the case of the appeal ground in subsection (2)(e), substitute for the time imposed by the Secretary of State a different time.

(5) Where the court substitutes a penalty of a lesser amount, it may require the payment of interest on the substituted penalty from such time, and at such rate, as it considers just and equitable.

(6) Where the court substitutes a later time for the time specified in the notice under section 391G(5)(c), it may require the payment of interest on the penalty from the substituted time at such rate as it considers just and equitable.

(7) Where the court dismisses the appeal, it may require the payment of interest on the penalty from the time specified in the notice under section 391G(5)(c) at such rate as it considers just and equitable.

(8) In this section, “the court” means the High Court or, in Scotland, the Court of Session.

### 391I Recovery of financial penalties

(1) If the whole or part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (but this is subject to any requirement imposed by the court under section 391H(5), (6) or (7)).

(2) If an appeal is made under section 391H in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn.

(3) Subsection (4) applies where the whole or part of a penalty has not been paid by the time it is required to be paid and—

(a) no appeal relating to the penalty has been made under section 391H during the period within which an appeal may be made under that section, or

(b) an appeal has been made under that section and determined or withdrawn.

(4) The Secretary of State may recover from the recognised professional body in question, as a debt due to the Secretary of State, any of the penalty and any interest which has not been paid.

### 391J Reprimand

(1) This section applies if the Secretary of State is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.

(2) The Secretary of State may, if in all the circumstances of the case satisfied that it is appropriate to do so, publish a statement reprimanding the body for the act or omission (or series of acts or omissions).

### 391K Reprimand: procedure

(1) If the Secretary of State proposes to publish a statement under section 391J in respect of a recognised professional body, it must give the body a notice—

(a) stating that the Secretary of State proposes to publish such a statement and setting out the terms of the proposed statement,
(b) specifying the acts or omissions to which the proposed statement relates, and
(c) specifying a period within which the body may make written representations
with respect to the proposal.

(2) The period specified under subsection (1)(c)—
   (a) must begin with the date on which the notice is given to the body, and
   (b) must not be less than 28 days.

(3) On the expiry of that period, the Secretary of State must decide whether to publish
the statement.

(4) The Secretary of State may vary the proposed statement; but before doing so, the
Secretary of State must give the body notice—
   (a) setting out the proposed variation and the reasons for it, and
   (b) specifying a period within which the body may make written representations
with respect to the proposed variation.

(5) The period specified under subsection (4)(b)—
   (a) must begin with the date on which the notice is given to the body, and
   (b) must not be less than 28 days.

(6) On the expiry of that period, the Secretary of State must decide whether to publish
the statement as varied.

Revocation etc of recognition

Annotions:

Amendments (Textual)
F961 Ss. 391L-391N and cross-heading inserted (1.10.2015 immediately after 2015 c. 20, s. 17 comes
into force) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 140(1), 164(1); S.I.
2015/1689, reg. 3(a)

391L Revocation of recognition at instigation of Secretary of State

(1) An order under section 391(1) or (2) in relation to a recognised professional body may
be revoked by the Secretary of State by order if the Secretary of State is satisfied that—
   (a) an act or omission of the body (or a series of such acts or omissions) in
discharging one or more of its regulatory functions has had, or is likely to
have, an adverse impact on the achievement of one or more of the regulatory
objectives, and
   (b) it is appropriate in all the circumstances of the case to revoke the body's
recognition under section 391.

(2) If the condition set out in subsection (3) is met, an order under section 391(1) in
relation to a recognised professional body may be revoked by the Secretary of State
by an order which also declares the body concerned to be a recognised professional
body which is capable of providing its insolvency specialist members with partial
authorisation only of the kind specified in the order (see section 390A(1)).

(3) The condition is that the Secretary of State is satisfied—
   (a) as mentioned in subsection (1)(a), and
that it is appropriate in all the circumstances of the case for the body to be
declared to be a recognised professional body which is capable of providing
its insolvency specialist members with partial authorisation only of the kind
specified in the order.

(4) In this Part—

(a) an order under subsection (1) is referred to as a “revocation order”;
(b) an order under subsection (2) is referred to as a “partial revocation order”.

(5) A revocation order or partial revocation order—

(a) has effect from such date as is specified in the order, and
(b) may make provision for members of the body in question to continue to be
treated as fully or partially authorised (as the case may be) to act as insolvency
practitioners for a specified period after the order takes effect.

(6) A partial revocation order has effect as if it were an order made under section 391(2).

391M Orders under section 391L: procedure

(1) Before making a revocation order or partial revocation order in relation to a recognised
professional body, the Secretary of State must give notice to the body—

(a) stating that the Secretary of State proposes to make the order and the terms
of the proposed order,
(b) specifying the Secretary of State's reasons for proposing to make the order, and
(c) specifying a period within which the body, members of the body or other
persons likely to be affected by the proposal may make written representations
with respect to it.

(2) Where the Secretary of State gives a notice under subsection (1), the Secretary of State
must publish the notice on the same day.

(3) The period specified under subsection (1)(c)—

(a) must begin with the date on which the notice is given to the body, and
(b) must not be less than 28 days.

(4) On the expiry of that period, the Secretary of State must decide whether to make the
revocation order or (as the case may be) partial revocation order in relation to the body.

(5) The Secretary of State must give notice of the decision to the body.

(6) Where the Secretary of State decides to make the order, the notice under subsection (5)
must specify—

(a) when the order is to take effect, and
(b) the Secretary of State's reasons for making the order.

(7) A notice under subsection (5) must be published; and it must (if possible) be published
in the same manner as that in which the notice under subsection (1) was published.

391N Revocation of recognition at request of body

(1) An order under section 391(1) or (2) in relation to a recognised professional body may
be revoked by the Secretary of State by order if—
(a) the body has requested that an order be made under this subsection, and
(b) the Secretary of State is satisfied that it is appropriate in all the circumstances of
the case to revoke the body's recognition under section 391.

(2) An order under section 391(1) in relation to a recognised professional body may be
revoked by the Secretary of State by an order which also declares the body concerned
to be a recognised professional body which is capable of providing its insolvency
specialist members with partial authorisation only of the kind specified in the order
(see section 390A(1)) if—
(a) the body has requested that an order be made under this subsection, and
(b) the Secretary of State is satisfied that it is appropriate in all the circumstances
of the case for the body to be declared to be a recognised professional body
which is capable of providing its insolvency specialist members with partial
authorisation only of the kind specified in the order.

(3) Where the Secretary of State decides to make an order under this section the Secretary
of State must publish a notice specifying—
(a) when the order is to take effect, and
(b) the Secretary of State's reasons for making the order.

(4) An order under this section—
(a) has effect from such date as is specified in the order, and
(b) may make provision for members of the body in question to continue to be
treated as fully or partially authorised (as the case may be) to act as insolvency
practitioners for a specified period after the order takes effect.

(5) An order under subsection (2) has effect as if it were an order made under
section 391(2).

Annotations:

Amendments (Textual)
F962 Ss. 391O-391R and cross-heading inserted (1.10.2015 immediately after 2015 c. 20, s. 17 comes
into force) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 141, 164(1); S.I.
2015/1689, reg. 3(a) (with Sch. para. 18)

391O Direct sanctions orders

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

(2) Where the court makes a direct sanctions order, the relevant recognised professional body must take all necessary steps to give effect to the order.

(3) A direct sanctions order must not be made against a person whose authorisation to act as an insolvency practitioner was granted by the Department of Enterprise, Trade and Investment in Northern Ireland (see section 390A(2)(b)).

(4) A direct sanctions order must not specify a contribution as mentioned in subsection (1) (e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.

(5) In this section and section 391P—
  “the court” means the High Court or, in Scotland, the Court of Session;
  “relevant recognised professional body”, in relation to a person who is acting as an insolvency practitioner, means the recognised professional body by virtue of which the person is authorised so to act.

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

(1) The Secretary of State may apply to the court for a direct sanctions order to be made against a person if it appears to the Secretary of State that it would be in the public interest for the order to be made.

(2) The Secretary of State must send a copy of the application to the relevant recognised professional body.

(3) The court may make a direct sanctions order against a person where, on an application under this section, the court is satisfied that condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person.

(4) The conditions are set out in section 391Q.

(5) In deciding whether to make a direct sanctions order against a person the court must have regard to the extent to which—
  (a) the relevant recognised professional body has taken action against the person in respect of the failure mentioned in condition 1, and
  (b) that action is sufficient to address the failure.

391Q Direct sanctions order: conditions

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

(2) Condition 2 is that the person—
(a) is not a fit and proper person to act as an insolvency practitioner;
(b) is a fit and proper person to act as an insolvency practitioner only in relation to companies, but the person's authorisation is not so limited; or
(c) is a fit and proper person to act as an insolvency practitioner only in relation to individuals, but the person's authorisation is not so limited.

(3) Condition 3 is that it is appropriate for the person's authorisation to act as an insolvency practitioner to be suspended for a period or until one or more requirements are complied with.

(4) Condition 4 is that it is appropriate to impose other restrictions on the person acting as an insolvency practitioner.

(5) Condition 5 is that loss has been suffered as a result of the failure mentioned in condition 1 by one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

(6) In this section “relevant recognised professional body” has the same meaning as in section 391O.

### 391R Direct sanctions direction instead of order

(1) The Secretary of State may give a direction (a “direct sanctions direction”) in relation to a person acting as an insolvency practitioner to the relevant recognised professional body (instead of applying, or continuing with an application, for a direct sanctions order against the person) if the Secretary of State is satisfied that—
   (a) condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person (see section 391Q), and
   (b) it is in the public interest for the direction to be given.

(2) But the Secretary of State may not give a direct sanctions direction in relation to a person without that person's consent.

(3) A direct sanctions direction may require the relevant recognised professional body to take all necessary steps to secure that—
   (a) the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;
   (b) the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the direction;
   (c) the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the direction or until such time as the requirements so specified are complied with;
   (d) the person must comply with such other requirements as may be specified in the direction while acting as an insolvency practitioner;
   (e) the person makes such contribution as may be specified in the direction to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

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

(6) In this section “relevant recognised professional body” has the same meaning as in section 391O.

General

Amendments (Textual)

F963 S. 391S and cross-heading inserted (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 142, 164(1); S.I. 2015/1689, reg. 3(a)

391S Power for Secretary of State to obtain information

(1) A person mentioned in subsection (2) must give the Secretary of State such information as the Secretary of State may by notice in writing require for the exercise of the Secretary of State’s functions under this Part.

(2) Those persons are—
(a) a recognised professional body;
(b) any individual who is or has been authorised under section 390A to act as an insolvency practitioner;
(c) any person who is connected to such an individual.

(3) A person is connected to an individual who is or has been authorised to act as an insolvency practitioner if, at any time during the authorisation—
(a) the person was an employee of the individual;
(b) the person acted on behalf of the individual in any other way;
(c) the person employed the individual;
(d) the person was a fellow employee of the individual’s employer;
(e) in a case where the individual was employed by a firm, partnership or company, the person was a member of the firm or partnership or (as the case may be) a director of the company.

(4) In imposing a requirement under subsection (1) the Secretary of State may specify—
(a) the time period within which the information in question is to be given, and
(b) the manner in which it is to be verified.

391T Compliance orders

(1) If at any time it appears to the Secretary of State that—
(a) a recognised professional body has failed to comply with a requirement imposed on it by or by virtue of this Part, or
(b) any other person has failed to comply with a requirement imposed on the person by virtue of section 391S,
the Secretary of State may make an application to the court.
(2) If, on an application under this section, the court decides that the body or other person has failed to comply with the requirement in question, it may order the body or person to take such steps as the court considers will secure that the requirement is complied with.

(3) In this section, “the court” means the High Court or, in Scotland, the Court of Session.

Annotations:

Amendments (Textual)
F964 S. 391T inserted (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 143, 164(1); S.I. 2015/1689, reg. 3(a)

The requisite qualification, and the means of obtaining it

F965 392 Authorisation by competent authority.

Annotations:

Amendments (Textual)
F965 Ss. 392-398 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 21 (with Sch. 6 para. 23); S.I. 2015/1732, art. 2(e)(vi)

F965 393 Grant, refusal and withdrawal of authorisation.

Annotations:

Amendments (Textual)
F965 Ss. 392-398 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 21 (with Sch. 6 para. 23); S.I. 2015/1732, art. 2(e)(vi)

F965 394 Notices.

Annotations:

Amendments (Textual)
F965 Ss. 392-398 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 21 (with Sch. 6 para. 23); S.I. 2015/1732, art. 2(e)(vi)

F965 395 Right to make representations.
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Annotations:

Amendments (Textual)
F965 Ss. 392-398 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 21 (with Sch. 6 para. 23); S.I. 2015/1732, art. 2(e)(vi)

F965 396 Reference to Tribunal.

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Annotations:

Amendments (Textual)
F965 Ss. 392-398 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 21 (with Sch. 6 para. 23); S.I. 2015/1732, art. 2(e)(vi)

F965 397 Action of Tribunal on reference.

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Annotations:

Amendments (Textual)
F965 Ss. 392-398 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 21 (with Sch. 6 para. 23); S.I. 2015/1732, art. 2(e)(vi)

F965 398 Refusal or withdrawal without reference to Tribunal.

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Annotations:

Amendments (Textual)
F965 Ss. 392-398 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 21 (with Sch. 6 para. 23); S.I. 2015/1732, art. 2(e)(vi)

PART XIV

PUBLIC ADMINISTRATION (ENGLAND AND WALES)

Annotations:

Modifications etc. (not altering text)
C888 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
398A Appointment etc. of adjudicators and assistants

(1) The Secretary of State may appoint persons to the office of adjudicator.

(2) A person appointed under subsection (1)—
   (a) is to be paid out of money provided by Parliament such salary as the Secretary of State may direct,
   (b) holds office on such other terms and conditions as the Secretary of State may direct, and
   (c) may be removed from office by a direction of the Secretary of State.

(3) A person who is authorised to act as an official receiver may not be appointed under subsection (1).

(4) The Secretary of State may appoint officers of the Secretary of State's department to assist adjudicators in the carrying out of their functions.

Official receivers

399 Appointment, etc. of official receivers.

(1) For the purposes of this Act the official receiver, in relation to any bankruptcy, winding up, individual voluntary arrangement, debt relief order or application for such an order, 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, winding up, individual voluntary arrangement, debt relief order or application for such an order.

(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 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 the county court.
(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, winding up, individual voluntary arrangement, debt relief order or application for such an order 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 the county court; but he may attach the same official receiver to both 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 the other court;

(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 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.

Annotations:

Amendments (Textual)
F967 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. 3-5 (as amended by S.I. 2003/2332, art. 2))
F968 Words in s. 399(1) substituted (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. 7(2); S.I. 2009/382, art. 2
F969 Words in s. 399(3) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 93(h); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
F970 Words in s. 399(4) substituted (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. 7(3); S.I. 2009/382, art. 2
F971 Words in s. 399(5) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 93(i)(i); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
F972 Word in s. 399(5) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 93(i)(ii); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
F973 Words in s. 399(6)(a) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 93(j); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Modifications etc. (not altering text)
C890 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
M34 1914 c. 59.
M35 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.

Annotations:

Modifications etc. (not altering text)
C891 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.

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.

Annotations:

Modifications etc. (not altering text)
C892 S. 401 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

The 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 Powers of Criminal Courts Act 1973.]

Annotations:

Amendments (Textual)

F974 S. 402 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)

C893 S. 402 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

Marginal Citations

M36 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 Secretary 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.

Annotations:

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

C894 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 M37 Trustee Investments Act 1961.

Annotations:

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

C895 S. 404 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

Marginal Citations

M37 1961 c. 62.

405 Application of income in Investment Account; adjustment of balances.

Annotations:

**Amendments (Textual)**

F975 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 Interest 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) or 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.

Annotations:

Amendments (Textual)

F976 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)

F977 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 the Commissioners may direct the sale of such securities standing to the credit of the Investment Account as may be necessary for that purpose.

Annotations:

Modifications etc. (not altering text)

C896 S. 407 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

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.

**Annotations:**

**Amendments (Textual)**

F978  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.

**Annotations:**

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

C897  S. 409 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

**Supplementary**

410 **Extent of this Part.**

This part of this Act extends to England and Wales only.

**Annotations:**

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

C898  S. 410 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
PART XV

SUBORDINATE LEGISLATION

Annotations:

Modifications etc. (not altering text)


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 [F979] 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 [F980] or the EC Regulation].

[F981](1A) Rules may also be made for the purpose of giving effect to Part 2 of the Banking Act 2009 (bank insolvency orders); and rules for that purpose shall be made—

(a) in relation to England and Wales, by the Lord Chancellor with the concurrence of—

(i) the Treasury, and

(ii) in the case of rules that affect court procedure, the Lord Chief Justice, or

(b) in relation to Scotland, by the Treasury.]

[F982](1B) Rules may also be made for the purpose of giving effect to Part 3 of the Banking Act 2009 (bank administration); and rules for that purpose shall be made—

(a) in relation to England and Wales, by the Lord Chancellor with the concurrence of—

(i) the Treasury, and

(ii) in the case of rules that affect court procedure, the Lord Chief Justice, or

(b) in relation to Scotland, by the Treasury.]

(2) Without prejudice to the generality of subsection (1), [F983][F984] or (1B)] 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 [M38]Insolvency Act 1985 in rules made, or having effect as if made, under section 663(1) or (2) of the [F985]the Companies Act 1985](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 or the Treasury necessary or expedient.

(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).

(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.

(2C) 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 Part 2 of the Banking Act 2009.

(2D) 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 Part 3 of the Banking Act 2009.

(3) In Schedule 8 to this Act “liquidator” includes a provisional liquidator or bank liquidator; and references above in this section to Parts I to VII of this Act or Part 2 or 3 of the Banking Act 2009 are to be read as including the Companies Acts so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

(3A) In this section references to Part 2 or 3 of the Banking Act 2009 include references to those Parts as applied to building societies (see section 90C of the Building Societies Act 1986).

(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 or the Treasury 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.

(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.

Annotations:

Amendments (Textual)

F979 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

F980 Words in s. 411(1) inserted (3.5.2002) by S.I. 2002/1037, reg. 3(1)

F981 S. 411(1A) inserted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 125(2), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F982 S. 411(1B) inserted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 160(2), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F983 Words in s. 411(2) inserted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 125(3)(a), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.
F984 Words in s. 411(2) inserted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 160(3), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F985 Words in s. 411(2)(a) substituted (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. 79) (with art. 10, Sch. 1 para. 84)

F986 Words in s. 411(2) inserted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 125(3)(b), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F987 S. 411(2A)(2B) inserted (3.5.2002) by S.I. 2002/1037, reg. 3(2)

F988 S. 411(2C) inserted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 125(4), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F989 S. 411(2D) inserted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 160(4), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F990 Words in s. 411(3) inserted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 125(5)(a), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F991 Words in s. 411(3) inserted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 160(5)(a), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F992 S. 411(3) text amended (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 125(5)(b), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F993 Words in s. 411(3) inserted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 160(5)(b), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F994 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)

F995 S. 411(3A) inserted (29.3.2009) by The Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805), art. 13

F996 Words in s. 411(5) inserted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 125(6), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F997 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)

C901 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
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

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. 1 (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)
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 11.10.2007) 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)
412 Individual insolvency rules (England and Wales).

(1) The Lord Chancellor may, with the concurrence of the Secretary of State 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 7A to 11 of this Act 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 Bankruptcy Act 1914; and

(b) such incidental, supplemental and transitional provisions as may appear to the Lord Chancellor necessary or expedient.

(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.

(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.
413 **Insolvency Rules Committee.**

(1) The committee established under section 10 of the 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 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 any of sections 23 to 26 of the Water Industry Act 1991 or Schedule 3 to that Act 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) a district judge;
(e) a practising barrister;
(f) a practising solicitor; and
(g) a practising accountant;

and the appointment of any person as a member of the committee shall be made in accordance with subsection (3A) or (3B).

(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.

(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.
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.

(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 [F1010]the Companies Acts so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

[F1011](8A) This section applies in relation to Part 2 of the Banking Act 2009 (bank insolvency) as in relation to Parts I to VII of this Act.

[F1012](8B) This section applies in relation to Part 3 of the Banking Act 2009 (bank administration) as in relation to Parts I to VII of this Act.

[F1013](8C) In subsections (8A) and (8B) the reference to Parts 2 and 3 of the Banking Act 2009 include references to those Parts as applied to building societies (see section 90C of the Building Societies Act 1986).

(9) [F1014]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 [M41]Courts of Law Fees (Scotland) Act 1895.

Annotations:

Amendments (Textual)

F1010 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)

F1011 S. 414(8A) inserted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 126, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1012 S. 414(8B) inserted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 161, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch.

F1013 S. 414(8C) inserted (29.3.2009) by The Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805), art. 14

F1014 S. 414(9) repealed (S.) (1.4.2015) by The Courts Reform (Scotland) Act 2014 (Consequential Provisions) Order 2015 (S.S.I. 2015/150), art. 1, sch. para. 4

Modifications etc. (not altering text)

C914 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)

C915 S. 414 extended by Company Directors Disqualification Act 1986 (c. 46, SIF 27), ss. 21(2), 25

C916 S. 414 extended (1.2.1993) by Friendly Societies Act, s. 23, Sch. 10 Pt. IV para. 69(2) (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, Sch.3

415 Fees orders (individual insolvency proceedings in England and Wales).

(1) There shall be paid in respect of—

[F1015](za) the costs of persons acting as approved intermediaries under Part 7A,

(a) proceedings under [F1016] Parts 7A to 11] of this Act, [F1017]...

(b) the performance by the official receiver or the Secretary of State of functions under those Parts, [F1018] and

(c) the performance by an adjudicator of functions under Part 9 of this Act,

such fees as the Lord Chancellor may with the sanction of the Treasury by order direct.

[F1019](1A) An order under subsection (1) may make different provision for different purposes, including by reference to the manner or form in which proceedings are commenced.

(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—

(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.

Annotations:

Amendments (Textual)

F1015S. 415(1)(za) 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. 9(2); S.I. 2009/382, art. 2

F1016Words in s. 415(1)(a) substituted (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. 9(3); S.I. 2009/382, art. 2

F1017Word in s. 415(1)(a) omitted (25.4.2013 for specified purposes, 6.4.2016 in so far as not already in force) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(1)(i)(3), Sch. 19 para. 59(2)(a); S.I. 2016/191, art. 2 (with art. 3)
F1018 S. 415(1)(c) and word inserted (25.4.2013 for specified purposes, 6.4.2016 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(1)(i)(3), Sch. 19 para. 59(2)(b); S.I. 2016/191, art. 2 (with art. 3)
F1019 S. 415(1A) inserted (25.4.2013 for specified purposes, 6.4.2016 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(1)(i)(3), Sch. 19 para. 59(3); S.I. 2016/191, art. 2 (with art. 3)

Fees orders (general)

(A1) The Secretary of State—

(a) may by order require a person or body to pay a fee in connection with the grant or maintenance of a designation of that person or body as a competent authority under section 251U, and

(b) may refuse to grant, or may withdraw, any such designation where a fee is not paid.

(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) or (2) by a further order, where a fee is not paid.

(1A) Fees under subsection (1) may vary according to whether the body is recognised under section 391(1) (body providing full and partial authorisation) or under section 391(2) (body providing partial authorisation).

(1B) In setting under subsection (1) the amount of a fee in connection with maintenance of recognition, the matters to which the Secretary of State may have regard include, in particular, the costs of the Secretary of State in connection with any functions under sections 391D, 391E, 391J, 391K and 391N.

(2) 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).

(5) Section 391M applies for the purposes of an order under subsection (1)(b) as it applies for the purposes of a revocation order made under section 391L.
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.
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.

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).

(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.

Annotations:

Amendments (Textual)

F1027 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 251S(4) (maximum amount of credit which a person in respect of whom a debt relief order is made may obtain without disclosure of his status);
section 273 (minimum value of debtor’s estate determining whether immediate bankruptcy order should be made; small bankruptcies level);
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);
paragraphs 6 to 8 of Schedule 4ZA (maximum amount of a person’s debts, monthly surplus income and property for purposes of obtaining a debt relief order);
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.

 Annotations:

 Amendments (Textual)

F1028 Words in s. 418(1) 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. 11(a); S.I. 2009/382, art. 2
F1029 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))
F1030 Words in s. 418(1) 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. 11(b); S.I. 2009/382, art. 2

 Modifications etc. (not altering text)

C924 S. 418 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

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 requirements 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;
(c) 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.

[\text{F1031}(5) In making regulations under this section, the Secretary of State must have regard to the regulatory objectives (as defined by section 391C(3)).]

**Annotations:**

- **Amendments (Textual)**
  - F1031S. 419(5) inserted (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 138(2), 164(1); S.I. 2015/1689, reg. 3(a)

- **Modifications etc. (not altering text)**
  - C925 S. 419 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
  - C926 S. 419 applied (1.12.1994) by S.I. 1994/2421, arts. 4(3)(e), 6(3)(c)

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### Other order-making powers

#### 420 Insolvent partnerships.

(1) The Lord Chancellor may, by order made with the concurrence of the Secretary of State [F1032 and the Lord Chief Justice], provide that such provisions of this Act as may be specified in the order shall apply in relation to insolvent partnerships with such modifications as may be so specified.

[F1033] (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 [F1034 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.
(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.

Annotations:

Amendments (Textual)

F1032 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
F1033S. 420(1A)(1B) inserted (3.5.2002) by S.I. 2002/1037, reg. 3(5)
F1034 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
F1035S. 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)

C927 S. 420 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
C928 S. 420 extended by Company Directors Disqualification Act 1986 (c. 46, SIF 27), ss. 21(2), 25
C929 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)
C930 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 [F1036 and the Lord Chief Justice], provide that such provisions of this Act as
may be specified in the order shall apply [F1037 in relation] to the administration of the
insolvent estates of deceased persons with such modifications as may be so specified.

[F1038 (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 [F1039 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.

(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.

[F1040 (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.]
Insolvency Act 1986 (c. 45)

Part XV – Subordinate Legislation

Chapter VII – Powers of Court In Bankruptcy

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Annotations:

Amendments (Textual)
F1036 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
F1037 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)
F1038 S. 421(1A)(1B) inserted (3.5.2002) by S.I. 2002/1037, reg. 3(6)
F1039 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
F1040 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)
C931 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)

421 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.

(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 \[^{F1042}\text{made bankrupt immediately before his death.}\]

Annotations:

Amendments (Textual)

F1041 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)
F1042 Word in s. 421A(9) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 60; S.I. 2016/191, art. 2 (with art. 3)

422 \[^{F1043}\text{Formerly authorised banks}.\]

\[^{F1044}\text{(1) The Secretary of State may by order made with the concurrence of the Treasury and after consultation with the Financial Conduct Authority and the Prudential Regulation Authority provide that specified provisions in the first Group of Parts shall apply with specified modifications in relation to any person who—}\]
   (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 \[^{F1046}\text{Part 4A} of the Financial Services and Markets Act 2000 (c. 8) (regulated activities) to accept deposits.}\]

\[^{F1047}\text{(1A Subsection (1)(b) shall be construed in accordance with—}\]
   (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).}\]

\[^{F1047}\text{(1A) }\]

\[^{F1047}\text{(2) An order under this section may make different provision for different cases and may contain such incidental, supplemental and transitional provisions as may appear to the Secretary of State necessary or expedient.}\]

\[^{F1047}\text{(3) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.}\]

Annotations:

Amendments (Textual)

F1043 S. 422 cross-heading substituted (3.7.2002) by S.I. 2002/1555, art. 16(2)
PART XVI

PROVISONS AGAINST DEBT AVOIDANCE (ENGLAND AND WALES ONLY)

Annotations:

Modifications etc. (not altering text)
Pt. XVI (ss. 423-425) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(4)(5)(8)(9), 10(2)(5)(6), Sch. 4 Pt. II, Sch. 7

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 [F1048 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
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—

(b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

(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”.

Annotations:

Amendments (Textual)

F1048 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))
Insolvency Act 1986 (c. 45)
Part XVI – Provisions Against Debt Avoidance (England and Wales only)
Chapter VII – Powers of Court In Bankruptcy

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(a) in a case where the debtor has been made bankrupt or is a body corporate which is being wound up or is in administration, by the official receiver, by the trustee of the bankrupt’s estate or the liquidator or administrator 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.

Annotations:

Amendments (Textual)
F1049 Word in s. 424(1)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 61; S.I. 2016/191, art. 2 (with art. 3)
F1050 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)
C942 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}
C943 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
C944 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—
   (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.
(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 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 discretion 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 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 extending to England and Wales and] made by or under this Act or sections 6 to 10, 12 to 15, 19(c) and 20 (with Schedule 1) of the Company Directors Disqualification Act 1986;
in relation to Scotland, provision extending to Scotland and made by or under this Act, sections 6 to 10, 12 to 15, 19(c) and 20 (with Schedule 1) of the Company Directors Disqualification Act 1986 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 Bankruptcy (Scotland) Act 1985;

c) in relation to Northern Ireland, provision made by or under the Insolvency (Northern Ireland) Order 1989 or the Company Directors Disqualification (Northern Ireland) Order 2002;

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.

(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.”

(13) Section 129 of the Banking Act 2009 provides for provisions of that Act about bank insolvency to be “insolvency law” for the purposes of this section.

(14) Section 165 of the Banking Act 2009 provides for provisions of that Act about bank administration to be “insolvency law” for the purposes of this section.
A person in respect of whom a bankruptcy restrictions order or a debt relief 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, or a debt relief restrictions order or an interim debt relief restrictions 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 or a debt relief 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.
[F1065](7) If the Department of Enterprise, Trade and Investment for Northern Ireland accepts a bankruptcy restrictions undertaking made by a member of the House of Commons or the House of Lords under Schedule 2A to the Insolvency (Northern Ireland) Order 1989, the Department shall notify the Speaker of that House.

(8) In this section a reference to a bankruptcy restrictions order or an interim order includes a reference to a bankruptcy restrictions order or an interim order made under Schedule 2A to the Insolvency (Northern Ireland) Order 1989.]

Annotations:

Amendments (Textual)
F1060 Words in s. 426A substituted (14.6.2012) by The Insolvency Act 1986 (Disqualification from Parliament) Order 2012 (S.I. 2012/1544), arts. 1, 3(a)
F1061 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))
F1062 Words in s. 426A(1) 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. 12(2); S.I. 2009/382, art. 2
F1063 Words in s. 426A(5) 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. 12(3); S.I. 2009/382, art. 2
F1064 Words in s. 426A(6) 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. 12(4); S.I. 2009/382, art. 2
F1065 S. 426A(7)(8) inserted (14.6.2012) by The Insolvency Act 1986 (Disqualification from Parliament) Order 2012 (S.I. 2012/1544), arts. 1, 3(b)

F1066 426B Devolution

(1) If a court [F1067] in England and Wales] 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, [F1068] or makes a debt relief restrictions order or interim debt relief restrictions order in respect of such a member[,] the court shall notify the presiding officer of that body.

[F1069](1A) If the High Court in Northern Ireland makes a bankruptcy restrictions order or interim order under Schedule 2A to the Insolvency (Northern Ireland) Order 1989 in respect of a member of the Scottish Parliament 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 [F1070] or a debt relief 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.

[F1071](3) If the Department of Enterprise, Trade and Investment for Northern Ireland accepts a bankruptcy restrictions undertaking made by a member of the Scottish Parliament or the National Assembly for Wales under Schedule 2A to the Insolvency (Northern Ireland) Order 1989, the Department shall notify the presiding officer of that body.]
Annotations:

Amendments (Textual)

F1066 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))

F1067 Words in s. 426B(1) inserted (14.6.2012) by The Insolvency Act 1986 (Disqualification from Parliament) Order 2012 (S.I. 2012/1544), arts. 1, 4(a)

F1068 Words in s. 426B(1) 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. 13(2); S.I. 2009/382, art. 2

F1069 S. 426B(1A) inserted (14.6.2012) by The Insolvency Act 1986 (Disqualification from Parliament) Order 2012 (S.I. 2012/1544), arts. 1, 4(b)

F1070 Words in s. 426B(2) 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. 13(3); S.I. 2009/382, art. 2

F1071 S. 426B(3) inserted (14.6.2012) by The Insolvency Act 1986 (Disqualification from Parliament) Order 2012 (S.I. 2012/1544), arts. 1, 4(c)

Modifications etc. (not altering text)

C958 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))

426 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.

Annotations:

Amendments (Textual)

F1072 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 Disqualification from Parliament (Scotland...)

(1) Where... a court in Scotland awards sequestran 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 award is recalled] or reduced without the individual having been first discharged, on the discharge of the individual, and

(b) in the excepted case, on the... 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 award, his seat shall be vacated at the end of that period.

(5) A court which makes an award such as is mentioned in subsection (1) in relation to any lord of Parliament or member of the House of Commons shall forthwith certify the 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 award to the Speaker of the House of Commons under subsection (5), then immediately after it becomes apparent which of 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 award has expired without the award having been recalled or reduced, or

(b) that the award has been recalled or reduced before the end of that period.

(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 ”.

(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 section 16(2) of the Government of Wales Act 2006 by virtue of this section ”.

(6C) Subsections (4) to (6) have effect in relation to a member of the Northern Ireland Assembly 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 section 36(4) of the Northern Ireland Act 1998 by virtue of this section ”.

(7)
428 Exemptions from Restrictive Trade Practices Act.

F1088 (1) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

F1088 (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 F1088. . .

Annotations:

Amendments (Textual)
F1088S. 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)
C960 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 1984 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 Company Directors Disqualification Act 1986 shall apply to the person for such period, 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.

Annotations:

Amendments (Textual)
F1089 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))

Marginal Citations
M45 1984 c. 28.
M46 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 subsequent 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 Schedule).

(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.

Annotations:

Modifications etc. (not altering text)

C961 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), 9(4)); S.I. 1993/16, art. 2, Sch.3

C962 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), 9(4)); S.I. 1993/16, art. 2, Sch.3

C963 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

C964 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

C965 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

C966 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

C967 S. 430 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
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.

Annotations:

Amendments (Textual)
F1090 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)
C968 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))
C969 S. 431 extended by S.I. 1986/1915, rule 7.29.(3)
S. 431 extended (S.) (6.4.2006) by The Energy Administration (Scotland) Rules 2006 (S.I. 2006/772), rules 3, 76
C970 S. 431 applied (30.11.2007) by The PPP Administration Order Rules 2007 (S.I. 2007/3141), rules 3, 114
C971 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
C972 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
C973 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)
C975 S. 431 applied (S.) (14.11.2011) by The Investment Bank Special Administration (Scotland) Rules 2011 (S.I. 2011/2262), rule 163(2)
C976 S. 431 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
C977 S. 431 applied (S.) (7.6.2013) by The Energy Supply Company Administration (Scotland) Rules 2013 (S.I. 2013/1047), rules 1 93 (with rule 3)
C981 S. 431 applied (S.) (6.4.2016) by The Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 2016 (S.I. 2016/185), rules 1(2), 8(2)

Marginal Citations
M47 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 [F1091] and those under paragraphs 16(2), 17(3)(a), 18(3)(a), 19(3)(a), 22(1) and 23(1)(a) of Schedule A1.

433 Admissibility in evidence of statements of affairs, etc.

[F1092](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 1985 Insolvency Act 1985,

[F1093](aa) a statement made in pursuance of a requirement imposed by or under Part 2 of the Banking Act 2009 (bank insolvency),
[F1094](ab) a statement made in pursuance of a requirement imposed by or under Part 3 of that Act (bank administration),] and
(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.

[F1095](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), [F1096]98(8), [F1097]99(3)(1), 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) 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 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.]
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Modifications etc. (not altering text)
C988 S. 433 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
C989 S. 433 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
C990 S. 433 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
M48 1985 c. 65.
M49 1911 c. 6.

434  Crown application.

For the avoidance of doubt it is hereby declared that provisions of this Act which derive from the Insolvency Act 1985 bind the Crown so far as affecting or relating to the following matters, namely—
(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.

Annotations:

Modifications etc. (not altering text)
C991 S. 434 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
C992 S. 434 applied by Company Directors Disqualification Act 1986 (c. 46, SIF 27), ss. 21(2), 25
C993 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. 1(i)

Marginal Citations
M50 1985 c. 65.

[F1098PART 17A
SUPPLEMENTARY PROVISIONS

Annotations:

Amendments (Textual)
F1098Pt. 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)

434A  Introductory

The provisions of this Part have effect for the purposes of—
(a) the First Group of Parts, and
Representation of corporations in decision procedures and 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) in a qualifying decision procedure, held in pursuance of this Act or of rules made under it, by which a decision is sought from the creditors of a company, 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.

(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.

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).
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.

(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.

Annotations:

Amendments (Textual)
F1101 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)

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.]

Annotations:

Amendments (Textual)
F1101 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

Annotations:

Modifications etc. (not altering text)


Pt. XVIII (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))


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).

(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 [\[^{F104}\] or civil partner] 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 \[^{MSI}\]Bankruptcy (Scotland) Act 1985, or
   (b) a pension scheme or an employees’ share scheme \[^{F104}\] . . . , 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 [F1105 and references to a civil partner include a former civil partner] [F1106 and a reputed civil partner].

(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.

Annotations:

Amendments (Textual)

F1102S. 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))

F1103Words 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))

F1104Words in s. 435(5)(b) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, [Sch. 1 para. 82(2)] (with art. 10, Sch. 1 para. 84)

F1105Words 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))

F1106Words 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
436 Expressions used generally.

(1) In this Act, except in so far as the context otherwise requires (and subject to Parts VII and XI)—

  [F1H0k]“agricultural charge” has the same meaning as in the [M52] 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;
  [F1H0h]“body corporate” includes a body incorporated outside Great Britain, but does not include—
    (a) a corporation sole, or
    (b) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;
  “business” includes a trade or profession;
  [F1H0]“the Companies Act” means the Companies Act 1985;
  [F1H1]“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 [M53] Consumer Credit Act 1974;
  [F1H0k]“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;
  [F1H2]“distress” includes use of the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007, and references to levying distress, seizing goods and related expressions shall be construed accordingly;
  [F1H3]“the EC Regulation” means Council Regulation (EC) No. 1346/2000;
[F1114]“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;

[F1115]“employees’ share scheme” means a scheme for encouraging or facilitating the holding of shares in or debentures of a company by or for the benefit of—

(a) the bona fide employees or former employees of—

(i) the company,

(ii) any subsidiary of the company, or

(iii) the company’s holding company or any subsidiary of the company’s holding company, or

(b) the spouses, civil partners, surviving spouses, surviving civil partners, or minor children or step-children of such employees or former employees.

[F1108]“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 [MS4]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 [MS5]Limited Partnerships Act 1907;

“member” means a member of a partnership and any person who is liable as a partner within the meaning of section 14 of the [MS6]Partnership Act 1890;

“modifications” includes additions, alterations and omissions and cognate expressions shall be construed accordingly;

[F1108]“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;
F1108“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 Interpretation Act 1978; and
“transaction” includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.
F1108“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.]
F1108(2) The following expressions have the same meaning in this Act as in the Companies Acts—
“articles”, in relation to a company (see section 18 of the Companies Act 2006);
“debenture” (see section 738 of that Act);
“holding company” (see sections 1159 and 1160 of, and Schedule 6 to, that Act);
“the Joint Stock Companies Acts” (see section 1171 of that Act);
“overseas company” (see section 1044 of that Act);
“paid up” (see section 583 of that Act);
“private company” and “public company” (see section 4 of that Act);
“registrar of companies” (see section 1060 of that Act);
“share” (see section 540 of that Act);
“subsidiary” (see sections 1159 and 1160 of, and Schedule 6 to, that Act).]
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

F1109 S. 436(1): definition inserted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 82(3)(b)} (with art. 10, Sch. 1 para. 84)

F1110 By virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 82(3)(c)} (with art. 10, Sch. 1 para. 84) it is provided that the definition of "the Companies Act" is omitted

F1111 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)

F1112 Words in s. 436(1) inserted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 13 para. 85 (with s. 89); S.I. 2014/768, art. 2(1)(b)

F1113 Words in s. 436 inserted (3.5.2002) by S.I. 2002/1037, reg. 4

F1114 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)

F1115 Words in s. 436(1) 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. 82(3)(d)} (with art. 10, Sch. 1 para. 84)

F1116 S. 436(2) 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. 82(3)(e)} (with art. 10, Sch. 1 para. 84)

Modifications etc. (not altering text)

C999 S. 436 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

C1000S. 436 applied (with modifications) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

C1001S. 436 modified (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3

C1002S. 436 amendment to earlier affecting provision 2007 c. 15, Sch. 13 para. 85 (6.4.2014) by Crime and Courts Act 2013 (c. 22), ss. 25(9)(c), 61(3); S.I. 2014/830, art. 2

Marginal Citations

M52 1928 c.43.
M55 1907 c.24.
M56 1890 c.39.
M57 1978 c. 30.

[F1117 436. 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.]

Annotations:

Amendments (Textual)
F1117 S. 436A inserted (31.5.2002) by S.I. 2002/1240, reg. 18

[F1118 436 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) [F1119 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) [F1119 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).

Annotations:

Amendments (Textual)
F1118 S. 436B inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 4(1)
F1119 S. 436B(2)(b)(e) repealed (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 13 (with arts. 14, 15)

PART XIX

FINAL PROVISIONS

Annotations:

Modifications etc. (not altering text)

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 [M58]Company Directors Disqualification Act 1986 of provisions of [F1120the Companies Act 1985], the greater part of the [M59]Insolvency Act 1985 and other enactments.

Annotations:

Amendments (Textual)

F1120 Words in s. 437 substituted (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. 83} (with art. 10, Sch. 1 para. 84)

Modifications etc. (not altering text)

C1005 S. 437 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

Marginal Citations

M58 1986 c. 46.
M59 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 by this Act or the Company Directors Disqualification 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 [M60]Bankruptcy Act 1914;
(b) any reference in that subordinate legislation to any enactment repealed by Part III or IV or Schedule 10 to the [M61]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.
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) in the second Group of Parts;

(c) in the third Group of Parts—
   sections 399 to 402,
   sections 412, 413, 415, [F1121 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.

441 Extent (Northern Ireland).

(1) The following provisions of this Act extend to Northern Ireland—

(a) sections 197, 426, [F1122 426A, 426B,] 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 Insolvency Act 1985, shall extend to any of the Channel Islands or any colony with such modifications as may be so specified.

Annotations:

Marginal Citations
M62 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.

Annotations:

Subordinate Legislation Made

444 Citation.

This Act may be cited as the Insolvency Act 1986.
SCHEDULES

SCHEDULE A1

MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT

Annotations:

Amendments (Textual)
F1123 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)
C1006 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)

PART I

INTRODUCTORY

Interpretation

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 Companies Act 1989,

“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,

“the settlement finality regulations” means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999,
“system-charge” has the meaning given by the Financial Markets and Insolvency Regulations 1996.

**Eligible companies**

1. A company is eligible for a moratorium if it meets the requirements of paragraph 3, unless—
   - it is excluded from being eligible by virtue of paragraph 4, or
   - it falls within sub-paragraph (2).

2. A company falls within this sub-paragraph if—
   - 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,
   - it has permission under Part IV of that Act to accept deposits,
   - 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),
   - it is a party to a market contract or any of its property is subject to a market charge or a system-charge, or
   - 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).

3. Paragraphs (a), (b) and (bb) of sub-paragraph (2) must be read with—
   - section 22 of the Financial Services and Markets Act 2000;
   - any relevant order under that section; and
   - Schedule 2 to that Act.
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 382(3) of the Companies Act 2006, and
(b) a company’s financial year is to be determined in accordance with that Act.

(3) Section 382(4), (5) and (6) of that Act apply for the purposes of this paragraph as they apply for the purposes of that section.

(4) A company does not meet the requirements of this paragraph if it is a parent company of a group of companies which does not qualify as a small group or a medium-sized group in relation to the financial year of the company which ended last before the date of filing.

(5) For the purposes of sub-paragraph (4)—
(a) “group” has the same meaning as in Part 15 of the Companies Act 2006 (see section 474(1) of that Act); and
(b) a group qualifies as small in relation to a financial year if it so qualifies under section 383(2) to (7) of that Act, and qualifies as medium-sized in relation to a financial year if it so qualifies under section 466(2) to (7) of that Act.

(6) Expressions used in this paragraph that are defined expressions in Part 15 of the Companies Act 2006 (accounts and reports) have the same meaning in this paragraph as in that Part.
(1) A company is excluded from being eligible for a moratorium if, on the date of filing—

(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

(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,

(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.
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.

(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.

(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).

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

(c) is necessary for the purposes of implementing the arrangement.

Annotations:

Amendments (Textual)

SCHEDULE 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.)

For the purposes of paragraphs 4A and 4D, an investment is a capital market investment if—

(a) it is within article 77 or 77A 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 (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).]

Annotations:

Amendments (Textual)
F1145 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.)
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).]

Annotations:

Amendments (Textual)
F1149 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.)

(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
(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.]

Annotations:

Amendments (Textual)
F1150 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.)

(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.

Annotations:

Amendments (Textual)
F1151 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.)

[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.

Annotations:

Amendments (Textual)
F1152 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.)

[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.

Annotations:

Amendments (Textual)
F1153 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.)
The Secretary of State may by regulations modify the qualifications for eligibility of a company for a moratorium.

Annotations:

Amendments (Textual)
F1154 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

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
   (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) the proposed voluntary arrangement should be considered by a meeting of the company and by the company’s creditors.

(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.

Annotations:

Amendments (Textual)
F1155 Sch. A1 para. 6(2)(c) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(2); S.I. 2015/1329, reg. 3(d)
Documents to be submitted to court

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) the proposed voluntary arrangement should be considered by a meeting of the company and by the company's creditors.

(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.

(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.

Annotations:

Amendments (Textual)
F1156 Sch. A1 para. 7(1)(e)(iii) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(3); S.I. 2015/1329, reg. 3(d)

Duration of moratorium

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 with the later of—
    (a) the day on which the company meeting summoned under paragraph 29 is first held, and
    (b) the day on which the company's creditors decide whether to approve the proposed voluntary arrangement, unless it is extended under paragraph 32; but this is subject to the rest of this paragraph.

(3) In this paragraph the “initial period” means the period of 28 days beginning with the day on which the moratorium comes into force.
(3A) If the company meeting has not first met before the end of the initial period the moratorium ends at the end of that period, unless before the end of that period it is extended under paragraph 32.

(3B) If the company's creditors have not decided whether to approve the proposed voluntary arrangement before the end of the initial period the moratorium ends at the end of that period,

(a) the moratorium is extended under paragraph 32, or

(b) a meeting of the company's creditors is summoned in accordance with section 246ZE.

(3C) Where sub-paragraph (3B)(b) applies, the moratorium ends with the day on which the meeting of the company's creditors is first held, unless it is extended under paragraph 32.

(4) The moratorium ends at the end of the initial period if the nominee has not before the end of that period—

(a) summoned a meeting of the company, and

(b) sought a decision from the company's creditors, as required by paragraph 29(1).

(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

[F1158(c) a decision of one or both of—

(i) the meeting of the company summoned under paragraph 29, or

(ii) the company's creditors.]

(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).

Annotations:

Amendments (Textual)

F1157 Sch. A1 para. 8(2)-(4) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(4); S.I. 2015/1329, reg. 3(d)

F1158 Sch. A1 para. 8(6)(c) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(5); S.I. 2015/1329, reg. 3(d)

Notification of beginning of moratorium

F1159 (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.

Annotations:

Amendments (Textual)
F1159 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)

F1160(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.

Annotations:

Amendments (Textual)
F1160 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)

F1161(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.

Annotations:

Amendments (Textual)
F1161 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 III

EFFECTS OF MORATORIUM

Annotations:

Amendments (Textual)

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.

(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,
(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 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,
(f) 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.

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).

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.

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.
(5) For the purposes of this paragraph, “excepted petition” means a petition under—

(a) section 124A [F1165] or 124B of this Act,

(b) section 72 of the M66Financial Services Act 1986 on the ground mentioned in subsection (1)(b) of that section, or

(c) section 92 of the M67Banking Act 1987 on the ground mentioned in subsection (1)(b) of that section.

[F1166(d)] section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.]
(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.

(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.

Annotations:

Modifications etc. (not altering text)

C1010 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)

F1167 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.

Annotations:

Amendments (Textual)

F1167 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

F1168 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.

Annotations:

Amendments (Textual)

F1168 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.

F1169 16 (1) Every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company, and all the company's websites, must 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.

(3) An officer of the company is only liable under sub-paragraph (2) if, without
reasonable excuse, he authorises or permits the default.

Annotations:

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk
editorial team to Insolvency Act 1986. Any changes that have already been made by the team
appear in the content and are referenced with annotations. (See end of Document for details)

Obtaining credit during moratorium

F1171 (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.

Annotations:

Disposals and payments

F1172 (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
   (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.

Annotations:

Amendments (Textual)
F1172 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)

F1173(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.

Annotations:

Amendments (Textual)
F1173 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.

F1174(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.

(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 a 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.

Annotations:

Amendments (Textual)

F1174 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)

(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.

(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.

(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.
Market contracts, etc.

(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,
   (b) gives a transfer order,
   (c) grants a market charge 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.

(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, 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.

Annotations:

Amendments (Textual)
F1178 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 IV

NOMINEES

Monitoring of company’s activities

(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.

**Annotations:**

**Amendments (Textual)**

F1180 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)

**Withdrawal of consent to act**

F1181 (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.
Challenge of nominee’s actions, etc.

(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.
(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.

Annotations:

Amendments (Textual)
F1183 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

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, direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, F1184... 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.

Annotations:

Amendments (Textual)
F1184 Words in Sch. A1 para. 28(1) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 20(2)(e)(i); S.I. 2015/1732, art. 2(e)(vi)

PART V

CONSIDERATION AND IMPLEMENTATION OF VOLUNTARY ARRANGEMENT

F1185 Duty to summon company meeting and seek creditors' decision

Annotations:

Amendments (Textual)
F1185 Words in Sch. A1 para. 29 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(6); S.I. 2015/1329, reg. 3(d)

29 (1) Where a moratorium is in force, the nominee F1186 shall—
(a) summon a meeting of the company to consider the proposed voluntary arrangement for such a time, date (within the period of time for the time being specified in paragraph 8(3)) and place as he thinks fit, and
(b) seek a decision from the company’s creditors as to whether they approve the proposed voluntary arrangement.]  

[F1187](2) The decision of the company's creditors is to be made by a qualifying decision procedure.

(3) Notice of the qualifying decision procedure must be given to every creditor of the company of whose claim the nominee is aware.]  

Annotations:

Amendments (Textual)

F1186 Words in Sch. A1 para. 29(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(7); S.I. 2015/1329, reg. 3(d)
F1187 Sch. A1 para. 29(2)(3) substituted for Sch. A1 para. 29(2) (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(8); S.I. 2015/1329, reg. 3(d)

30 (1) Subject to the provisions of paragraphs 31 to 35, the [F1189]company meeting summoned under paragraph 29 and the qualifying decision procedure instigated under that paragraph shall be conducted in accordance with the rules.

(2) [F1190]The company meeting summoned under paragraph 29 may resolve that it be adjourned (or further adjourned).

(3) After the conclusion of [F1191]the company 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.

[F1192](4) After the company’s creditors have decided whether to approve the proposed voluntary arrangement the nominee must—
(a) report the decision to the court, and
(b) immediately after reporting to the court, give notice of the decision to such persons as may be prescribed.]
### Approval of voluntary arrangement

3

(1) This paragraph applies where under paragraph 29—

(a) a meeting of the company is summoned to consider the proposed voluntary arrangement, and

(b) the nominee seeks a decision from the company's creditors as to whether they approve the proposed voluntary arrangement.

(1A) The company and its creditors may 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 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) Neither the company nor its creditors may 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), neither the company nor its creditors may 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,

(FF1198(aa) any ordinary preferential debt of the company is to be paid otherwise than in priority to any secondary preferential debts that it may have,

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

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

(6) Such a proposal or modification may be approved with the concurrence of the preferential creditor concerned.
(7) The directors of the company may, before the beginning of the relevant period, give notice to the nominee of any modifications of the proposal for which the directors intend to seek the approval of the company and its creditors.

(7A) The “relevant period” is—

(a) in relation to the company, the period of seven days ending with the company meeting summoned under paragraph 29 being held;

(b) in relation to the company's creditors, the period of 14 days ending with the end of the period mentioned in paragraph 8(3).

(7B) Where under sub-paragraph (7) the nominee is given notice of proposed modifications, the nominee must seek a decision from the company's creditors (using a qualifying decision procedure) as to whether the proposed voluntary arrangement should be approved with those modifications.

(8) References in this paragraph to preferential debts, ordinary preferential debts, secondary preferential debts and preferential creditors are to be read in accordance with section 386 in Part XII of this Act.
Section A1  Moratorium where directors propose voluntary arrangement

Extension of moratorium

32 (1) Subject to sub-paragraph (2), a 

F1207company 

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.

F1208(1A) Subject to sub-paragraph (2) the company's creditors may, by a qualifying decision procedure, decide to extend (or further extend) the moratorium, with or without conditions.

F1209(2) The moratorium may not be extended (or further extended) to a day later than the end of the period of two months beginning with the day after the last day of the period mentioned in paragraph 8(3).]

(3) F1210Where 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 

F1211of the company or (as the case may be) inform the company's creditors —

(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 

F1212of the company or informs the company's creditors, the meeting shall resolve 

F1213, or (as the case may be) the creditors by a qualifyng decision procedure shall decide, 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 

F1214of the company may resolve, and the creditors by a qualifying decision procedure may decide, 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).

Annotations:

Amendments (Textual)

F1207Word in Sch. A1 para. 32(1) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(20); S.I. 2015/1329, reg. 3(d)

F1208Sch. A1 para. 32(1A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(21); S.I. 2015/1329, reg. 3(d)

F1209Sch. A1 para. 32(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(22); S.I. 2015/1329, reg. 3(d)

F1210Word in Sch. A1 para. 32(3) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(23)(a); S.I. 2015/1329, reg. 3(d)

F1211Words in Sch. A1 para. 32(3) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(23)(b); S.I. 2015/1329, reg. 3(d)
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 in relation to the voluntary arrangement.

A person may only be appointed as a replacement nominee by virtue of subparagraph (1) if he submits to the court a statement indicating his consent to act.

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.

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 a 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.
Moratorium committee

35F1219(1) This paragraph applies where in accordance with paragraph 32 a meeting of the company resolves, or the company's creditors decide, that the moratorium be extended (or further extended).

(1A) The meeting may resolve, and the company's creditors may by a qualifying decision procedure decide, that a committee be established to exercise the functions conferred on it by the meeting or (as the case may be) by the company's creditors.

(2) The meeting may resolve that such a committee be established only if—
   (a) the nominee consents, and
   (b) the meeting approves an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.

(2A) A decision of the company's creditors that such a committee be established is to be taken as made only if—
   (a) the nominee consents, and
   (b) the creditors by a qualifying decision procedure approve 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.

Effectiveness of decisions

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 the meeting of the company summoned under paragraph 29 and by the company's creditors, or
   (b) (subject to any order made under sub-paragraph (5)) it has been taken by the company's creditors.

(3) If a decision taken by the company's creditors 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 \[F1223\] company's creditors, 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 \[F1224\] company's creditors, or
   (b) make such other order as it thinks fit.

Annotations:

Amendments (Textual)

F1220 Words in Sch. A1 para. 36(2)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(28)(a); S.I. 2015/1329, reg. 3(d)
F1221 Words in Sch. A1 para. 36(2)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(28)(b); S.I. 2015/1329, reg. 3(d)
F1222 Words in Sch. A1 para. 36(3) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(29); S.I. 2015/1329, reg. 3(d)
F1223 Words in Sch. A1 para. 36(4)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(29); S.I. 2015/1329, reg. 3(d)
F1224 Words in Sch. A1 para. 36(5)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(29); S.I. 2015/1329, reg. 3(d)

Effect of approval of voluntary arrangement

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 \[F1225\] time the creditors decided to approve the voluntary arrangement, and
   (b) binds every person who in accordance with the rules—
      (i) was entitled to vote \[F1226\] in the qualifying decision procedure by which the creditors' decision to approve the voluntary arrangement was made, 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 \[F1227\] of the meetings required by paragraph 30(3) \[F1228\] has been made to the court, or

(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.

Annotations:

Amendments (Textual)

F1225 Words in Sch. A1 para. 37(2)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(30)(a); S.I. 2015/1329, reg. 3(d)

F1226 Words in Sch. A1 para. 37(2)(b)(i) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(30)(b); S.I. 2015/1329, reg. 3(d)

F1227 Words in Sch. A1 para. 37(5)(a) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(31)(a); S.I. 2015/1329, reg. 3(d)

F1228 Words in Sch. A1 para. 37(5)(a) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(31)(b); S.I. 2015/1329, reg. 3(d)

Challenge of decisions

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 \[F1229\] which has taken effect under paragraph 37 unhappily 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 \[F1230\] the meeting of the company summoned under paragraph 29, or in relation to the relevant qualifying decision procedure .

[F1231(1A) In this paragraph—

(a) the “relevant qualifying decision procedure” means the qualifying decision procedure in which the creditors decided whether to approve the voluntary arrangement;

(b) references to a decision made in the relevant qualifying decision procedure include any other decision made in that qualifying decision procedure.]

(2) The persons who may apply under this paragraph are—

(a) a person entitled, in accordance with the rules, to vote at \[F1232\] the meeting of the company or in the relevant qualifying decision procedure ,

(b) a person who would have been entitled, in accordance with the rules, to vote \[F1233\] in the relevant qualifying decision procedure 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) and (4) has been made to the court, or
   (b) in the case of a person who was not given notice of the relevant qualifying decision procedure, after the end of the period of 28 days beginning with the day on which he became aware that the relevant qualifying decision procedure 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 of the company, or in the relevant qualifying decision procedure, which has effect under that paragraph,
   (b) give a direction to any person—
      (i) for the summoning of a further company meeting to consider any revised proposal for a voluntary arrangement which the directors may make, or
      (ii) in a case falling within sub-paragraph (1)(b) relating to the company meeting, for the summoning of a further company or creditors’ meeting to reconsider the original proposal.
   (c) direct any person—
      (i) to seek a decision from the company’s creditors (using a qualifying decision procedure) as to whether they approve any revised proposal for a voluntary arrangement which the directors may make, or
      (ii) in a case falling within sub-paragraph (1)(b) relating to the relevant qualifying decision procedure, to seek a decision from the company’s creditors (using a qualifying decision procedure) as to whether they approve the original proposal.

(5) Where at any time after giving a direction under sub-paragraph (4)(b)(i) or (c) 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) or (c), 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 (c), 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 [F1244 company] meeting summoned under paragraph 29 is not invalidated by any irregularity at or in relation to the meetings, and, a decision of the company's creditors made in the relevant qualifying decision procedure is not invalidated by any irregularity in relation to the relevant qualifying decision procedure.}

Annotations:

Amendments (Textual)
F1229 Words in Sch. A1 para. 38(1)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(32)(a); S.I. 2015/1329, reg. 3(d)
F1230 Words in Sch. A1 para. 38(1)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(32)(b); S.I. 2015/1329, reg. 3(d)
F1231 Sch. A1 para. 38(1A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(33); S.I. 2015/1329, reg. 3(d)
F1232 Words in Sch. A1 para. 38(2)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(34)(a); S.I. 2015/1329, reg. 3(d)
F1233 Words in Sch. A1 para. 38(2)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(34)(b); S.I. 2015/1329, reg. 3(d)
F1234 Words in Sch. A1 para. 38(3)(a) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(35); S.I. 2015/1329, reg. 3(d)
F1235 Words in Sch. A1 para. 38(3)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(36)(a); S.I. 2015/1329, reg. 3(d)
F1236 Words in Sch. A1 para. 38(3)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(36)(b); S.I. 2015/1329, reg. 3(d)
F1237 Words in Sch. A1 para. 38(4)(a)(ii) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(37); S.I. 2015/1329, reg. 3(d)
F1238 Words in Sch. A1 para. 38(4)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(38)(a); S.I. 2015/1329, reg. 3(d)
F1239 Words in Sch. A1 para. 38(4)(b) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(38)(b); S.I. 2015/1329, reg. 3(d)
F1240 Words in Sch. A1 para. 38(4)(b) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(39); S.I. 2015/1329, reg. 3(d)
F1241 Sch. A1 para. 38(4)(c) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(39); S.I. 2015/1329, reg. 3(d)
F1242 Words in Sch. A1 para. 38(5) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(40); S.I. 2015/1329, reg. 3(d)
F1243 Words in Sch. A1 para. 38(6) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(41); S.I. 2015/1329, reg. 3(d)
F1244 Words in Sch. A1 para. 38(7)(a) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(41); S.I. 2015/1329, reg. 3(d)
F1245 Words in Sch. A1 para. 38(9) renumbered as Sch. A1 para. 38(9)(a) (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(42)(a); S.I. 2015/1329, reg. 3(d)
Implementation of voluntary arrangement

39 (1) This paragraph applies where a voluntary arrangement [F1246 has taken effect under paragraph 37.]

(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.

(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 F1249 ... 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.

Annotations:

Amendments (Textual)
F1246 Words in Sch. A1 para. 38(9)(a) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(42)(b); S.I. 2015/1329, reg. 3(d)
F1247 Sch. A1 para. 38(9)(b) and word inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(42)(c); S.I. 2015/1329, reg. 3(d)
PART VI

MISCELLANEOUS

Challenge of directors’ actions

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
   (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 [F1250] creditors or [F1251] members for the purpose of considering such matters as the court may direct,
   (ca) require a decision of the company's creditors to be sought (using a qualifying decision procedure) on 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.

(F1252) (7) Sub-paragraph (8) applies where—
    [F1253](a) 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.

Annotations:

Amendments (Textual)

F1250 Words in Sch. A1 para. 40(5)(c) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(44)(a); S.I. 2015/1329, reg. 3(d)

F1251 Sch. A1 para. 40(5)(ca) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 9(44)(b); S.I. 2015/1329, reg. 3(d)

F1252 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))


Offences

F1254 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,

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.
Void provisions in floating charge documents

(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.

Annotations:

Amendments (Textual)

F1256Sch. 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 F1257Financial Conduct Authority and Prudential Regulation Authority

Annotations:

Amendments (Textual)

F1257Words in Sch. A1 para. 44 cross-heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 54(16) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

(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 F1258appropriate regulator.

(3) The F1258appropriate regulator 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 F1258appropriate regulator.

(5) If a person other than F1259a regulator applies to the court under that paragraph, F1260the appropriate regulator 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 F1261appropriate regulator.

(7) If a person other than F1262a regulator applies to the court under that paragraph, F1263the appropriate regulator is entitled to be heard on the application.

(8) The appropriate regulator must be given notice of any qualifying decision procedure by which a decision of the company’s creditors is sought for the purposes of this Schedule.
(8A) The appropriate regulator, or a person appointed by the appropriate regulator, may in the way provided for by the rules participate in (but not vote in) any qualifying decision procedure by which a decision of the company's creditors is sought for the purposes of this Schedule.

(9) A person appointed for the purpose by the [F1265appropriate regulator] is entitled to attend and participate in (but not to vote at)—

(a) [F1266any creditors' meeting summoned under that paragraph,]

(b) any meeting of a committee established under paragraph 35 (moratorium committee).

(10) The [F1265appropriate regulator] 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 [F1265appropriate regulator].

(12) If a person other than [F1267the appropriate regulator] applies to the court under that paragraph, [F1268the appropriate regulator] 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 [F1265appropriate regulator].

(14) If a person other than [F1270the appropriate regulator] applies to the court under that paragraph, [F1271the appropriate regulator] 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 [F1277appropriate regulator].

(16) If a person other than [F1273the appropriate regulator] applies to the court under that paragraph, [F1274the appropriate regulator] is entitled to be heard on the application.

[F1275(16A) If either regulator makes an application to the court under any of the provisions mentioned in sub-paragraphs (5), (7), (12), (14) or (16) in relation to a PRA-regulated company, the other regulator is entitled to be heard on the application.]

(17) This paragraph does not prejudice any right the [F1276appropriate regulator] has (apart from this paragraph) as a creditor of a regulated company.

[F1277(17A) The appropriate regulator” means—

(a) for the purposes of sub-paragraphs (2) to (8) and (10) to (17)—

(i) where the regulated company is a PRA-regulated company, each of the Financial Conduct Authority and the Prudential Regulation Authority, and

(ii) in any other case, the Financial Conduct Authority;

(b) for the purposes of [F1278sub-paragraphs (8A) and (9)—

(i) where the regulated company is a PRA-regulated company, the Financial Conduct Authority or the Prudential Regulation Authority, and

(ii) in any other case, the Financial Conduct Authority.]
“PRA-authorised person” has the meaning given by section 2B(5) of the Financial Services and Markets Act 2000;

“PRA-regulated company” means a regulated company which—

(a) is, or has been, a PRA-authorised person,

(b) is, or has been, an appointed representative within the meaning given by section 39 of the the Financial Services and Markets Act 2000, whose principal (or one of whose principals) is, or was, a PRA-authorised person, or

(c) is carrying on, or has carried on, a PRA-regulated activity in contravention of the general prohibition;]

“regulated company” means a company which—

(a) is, or has been, an authorised person within the meaning given by section 31 of the 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

(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.

“regulator” means the Financial Conduct Authority or the Prudential Regulation Authority;]
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 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.]

Marginal Citations

M68 2000 c. 8.

Subordinate legislation

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 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.]

Annotations:

Amendments (Textual)

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

M69 1986 c. 46.

| SCHEDULE B1 |

ADMINISTRATION

Annotations:

Amendments (Textual)

F1282 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)

C1013 Sch. B1: specified provisions applied (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

C1014 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))

C1015 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)

C1016 Sch. B1 amendment to earlier affecting provision S.I. 1994/2421, Sch. 2 (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), Sch. 2 para. 11(b)

ARRANGEMENT OF SCHEDULE

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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,
   (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.

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.

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 [F1283 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.

[F1284 (5) Sub-paragraph (1) is without prejudice to section 7(4)(b).]

Annotations:

Amendments (Textual)

F1283 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)


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.

(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.

Annotations:

Modifications etc. (not altering text)
C1017 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.
Restrictions on power to appoint

15  (1) A person may not appoint an administrator under paragraph 14 unless—
   (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.

(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.
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.

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.

\[F1285 25\] Paragraph 25(a) does not prevent the appointment of an administrator of a company if the petition for the winding up of the company was presented after the person proposing to make the appointment filed the notice of intention to appoint with the court under paragraph 27.

(2) But sub-paragraph (1) does not apply if the petition was presented under a provision mentioned in paragraph 42(4).\]

Annotations:

Amendments (Textual)
F1285 Sch. B1 para. 25A inserted (26.5.2015) by Deregulation Act 2015 (c. 20), s. 115(3)(n), Sch. 6 para. 5

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 [F1286 gives notice of intention to appoint under sub-paragraph (1)] 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.

Annotations:

Amendments (Textual)

F1286 Words in Sch. B1 para. 26(2) substituted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 6; S.I. 2015/1732, art. 2(e)(ii)

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.

(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.

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

The appointment of an administrator under paragraph 22 takes effect when the requirements of paragraph 29 are satisfied.

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).

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.

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,
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.

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 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

[\[^{1287}(aa)\] section 124B (SEs),]
(b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Conduct Authority or Prudential Regulation 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.

Annotations:

Amendments (Textual)
F1288 Words in Sch. B1 para. 40(2)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 55(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)
C1020 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
C1021 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.

(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.

Annotations:

Modifications etc. (not altering text)
C1022 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
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
   (aa) section 124B (SEs),]
   (b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition
       by [F1289Financial Conduct Authority or Prudential Regulation 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.

Annotations:

Amendments (Textual)

F1289Sch. 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)

F1290Words in Sch. B1 para. 42(4)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3),
   Sch. 18 para. 55(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C1024Sch. 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

C1025Sch. 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.

[F1291(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.

Annotations:

Amendments (Textual)

Modifications etc. (not altering text)
C1026Sch. 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

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.

Annotations:

Modifications etc. (not altering text)
C1028 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
C1029 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)
C1030 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)
C1031 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
C1032 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

Publicity

(1) While a company is in administration, every business document issued by or on behalf of the company or the administrator, and all the company's websites, must state—
   (a) the name of the administrator, and
   (b) that the affairs, business and property of the company are being managed by the administrator.

(2) Any of the following persons commits an offence if without reasonable excuse the person 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,
   (c) a business letter, and
   (d) an order form,
whether in hard copy, electronic or any other form.]

Annotations:

Amendments (Textual)
F1292 Sch. B1 para. 45 substituted (1.10.2008) by The Companies (Trading Disclosures) (Insolvency) Regulations 2008 (S.I. 2008/1897), reg. 4(1)

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.

(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.
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).
(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).

Annotations:

Modifications etc. (not altering text)
C1035 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 Part 26 of the Companies Act 2006 (arrangements and reconstructions).

   (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, other than an opted-out creditor, 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).

   (8) A period specified in this paragraph may be varied in accordance with paragraph 107.
Annotations:

Amendments (Textual)

F1293 Words in Sch. B1 para. 49(3)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), Sch. 1 para. 100(a) (with arts. 6, 11, 12)

F1294 Words in Sch. B1 para. 49(4)(b) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(2); S.I. 2015/1329, reg. 3(d)

 Modifications etc. (not altering text)

C1036 Sch. B1 para. 49 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


50 Creditors’ meeting

(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.

Annotations:

Amendments (Textual)

F1295 Sch. B1 para. 50 and heading omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(3); S.I. 2015/1329, reg. 3(d)

 Modifications etc. (not altering text)

C1038 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

51 Consideration of administrator’s proposals by creditors

(1) The administrator must seek a decision from the company’s creditors as to whether they approve the proposals set out in the statement made under paragraph 49(1).

(2) The initial decision date for that decision must be within the period of 10 weeks beginning with the day on which the company enters administration.

(3) The “initial decision date” for that decision—

(a) if the decision is initially sought using the deemed consent procedure, is the date on which a decision will be made if the creditors by that procedure approve the proposals, and

(b) if the decision is initially sought using a qualifying decision procedure, is the date on or before which a decision will be made if it is made by that
(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.

Annotations:

Amendments (Textual)

F1296 Sch. B1 para. 51 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(4); S.I. 2015/1329, reg. 3(d)

F1297 Sch. B1 para. 51(1)-(3) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(5); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C1039 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

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,

(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 [F1298 seek a decision from the company's creditors as to whether they approve the proposals set out in the statement made under paragraph 49(1) if requested to do so] —

(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.

[F1299 (3) Where a decision is sought by virtue of sub-paragraph (2) the initial decision date (as defined in paragraph 51(3)) must be within the prescribed period.]

(4) The period prescribed under sub-paragraph (3) may be varied in accordance with paragraph 107.

Annotations:

Amendments (Textual)

F1298 Words in Sch. B1 para. 52(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(6); S.I. 2015/1329, reg. 3(d)

F1299 Sch. B1 para. 52(3) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(7); S.I. 2015/1329, reg. 3(d)
53

(1) The company's creditors may approve the administrator's proposals—

(a) without modification, or

(b) with modification to which the administrator consents.

(2) [F1302] The administrator shall as soon as is reasonably practicable report any decision taken [F1302] by the company's creditors 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).

Annotations:

Amendments (Textual)

F1300 Sch. B1 para. 53 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(8); S.I. 2015/1329, reg. 3(d)

F1301 Sch. B1 para. 53(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(9); S.I. 2015/1329, reg. 3(d)

F1302 Word in Sch. B1 para. 53(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(10)(a); S.I. 2015/1329, reg. 3(d)

F1303 Words in Sch. B1 para. 53(2) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(10)(b); S.I. 2015/1329, reg. 3(d)

Revisions of administrator's proposals

54 (1) This paragraph applies where—

(a) an administrator’s proposals have been approved (with or without modification) [F1304] by the company's creditors,

(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) [F1305] summon a creditors’ meeting,

(b) send a statement in the prescribed form of the proposed revision [F1306] with the notice of the meeting sent to each creditor [F1307] who is not an opted-out 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) seek a decision from the company's creditors as to whether they approve the proposed revision.

(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) The company's creditors may approve the proposed revision—

(a) without modification, or

(b) with modification to which the administrator consents.

(6) The administrator shall as soon as is reasonably practicable report any decision taken by the company's creditors 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).

Annotations:

Amendments (Textual)

F1304 Words in Sch. B1 para. 54(1)(a) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(11); S.I. 2015/1329, reg. 3(d)

F1305 Sch. B1 para. 54(2)(a) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(12); S.I. 2015/1329, reg. 3(d)

F1306 Words in Sch. B1 para. 54(2)(b) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(13)(a); S.I. 2015/1329, reg. 3(d)

F1307 Words in Sch. B1 para. 54(2)(b) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(13)(b); S.I. 2015/1329, reg. 3(d)

F1308 Sch. B1 para. 54(2)(d) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(14); S.I. 2015/1329, reg. 3(d)

F1309 Sch. B1 para. 54(5) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(15); S.I. 2015/1329, reg. 3(d)

F1310 Word in Sch. B1 para. 54(6) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(16)(a); S.I. 2015/1329, reg. 3(d)

F1311 Word in Sch. B1 para. 54(6) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(16)(b); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)

C1042 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
Failure to obtain approval of administrator's proposals

55\textsuperscript{F1312}(1) This paragraph applies where an administrator—

(a) reports to the court under paragraph 53 that a company's creditors have failed to approve the administrator's proposals, or

(b) reports to the court under paragraph 54 that a company's creditors have failed to approve a revision of the administrator's proposals.

(2) The court may—

(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.

Annotations:

Amendments (Textual)

F1312 Sch. B1 para. 55(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10\textsuperscript{(17)}; S.I. 2015/1329, reg. 3(d)

Further creditors' decisions

56 (1) The administrator of a company shall\textsuperscript{F1314} seek a decision from the company's creditors on a matter\textsuperscript{F1315} 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\textsuperscript{F1316} do so.

(2) An administrator commits an offence if he fails without reasonable excuse to\textsuperscript{F1316} seek a decision from the company's creditors on a matter as required by this paragraph.

Annotations:

Amendments (Textual)

F1313 Word in Sch. B1 para. 56 heading substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10\textsuperscript{(18)}; S.I. 2015/1329, reg. 3(d)

F1314 Words in Sch. B1 para. 56(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10\textsuperscript{(19)(a)}; S.I. 2015/1329, reg. 3(d)

F1315 Words in Sch. B1 para. 56(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10\textsuperscript{(19)(b)}; S.I. 2015/1329, reg. 3(d)

F1316 Words in Sch. B1 para. 56(2) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10\textsuperscript{(20)}; S.I. 2015/1329, reg. 3(d)
Creditors’ committee

57 (1) The company's creditors may, in accordance with the rules, 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.

Annotations:

Amendments (Textual)

F1317 Words in Sch. B1 para. 57(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(21); S.I. 2015/1329, reg. 3(d)

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 subparagraph (1).

(3) A requirement to hold a creditors’ meeting is satisfied by conducting correspondence in accordance with this paragraph.

Annotations:

Amendments (Textual)

F1318 Sch. B1 para. 58 and heading omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(22); S.I. 2015/1329, reg. 3(d)
FUNCTIONS OF ADMINISTRATOR

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.

Annotations:

Modifications etc. (not altering text)
C1046 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

60[ F1319(1)] The administrator of a company has the powers specified in Schedule 1 to this Act.

[ F1320(2) But the power to sell, hire out or otherwise dispose of property is subject to any regulations that may be made under paragraph 60A.]

Annotations:

Amendments (Textual)
F1320 Sch. B1 para. 60(2) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 129(3), 164(3)(i)(ii)

Modifications etc. (not altering text)
C1048 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

[F1321 60(1) The Secretary of State may by regulations make provision for—

(a) prohibiting, or
(b) imposing requirements or conditions in relation to,
the disposal, hiring out or sale of property of a company by the administrator to a connected person in circumstances specified in the regulations.

(2) Regulations under this paragraph may in particular require the approval of, or provide for the imposition of requirements or conditions by—

(a) creditors of the company,
(b) the court, or
(c) a person of a description specified in the regulations.]
(3) In sub-paragraph (1), “connected person”, in relation to a company, means—
(a) a relevant person in relation to the company, or
(b) a company connected with the company.

(4) For the purposes of sub-paragraph (3)—
(a) “relevant person”, in relation to a company, means—
   (i) a director or other officer, or shadow director, of the company;
   (ii) a non-employee associate of such a person;
   (iii) a non-employee associate of the company;
(b) a company is connected with another if any relevant person of one is or has been a relevant person of the other.

(5) In sub-paragraph (4), “non-employee associate” of a person means a person who is an associate of that person otherwise than by virtue of employing or being employed by that person.

(6) Subsection (10) of section 435 (extended definition of company) applies for the purposes of sub-paragraphs (3) to (5) as it applies for the purposes of that section.

(7) Regulations under this paragraph may—
(a) make different provision for different purposes;
(b) make incidental, consequential, supplemental and transitional provision.

(8) Regulations under this paragraph are to be made by statutory instrument.

(9) Regulations under this paragraph may not be made unless a draft of the statutory instrument containing the regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

(10) This paragraph expires at the end of the period of 5 years beginning with the day on which it comes into force unless the power conferred by it is exercised during that period.

Annotations:

Amendments (Textual)
F1321 Sch. B1 para. 60A inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 129(4), 164(3)(i)(ii)

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).

Annotations:

Modifications etc. (not altering text)
C1049 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 [F1322] may—
(a) call a meeting of members of the company;
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Insolvency Act 1986 (c. 45)
SCHEDULE B1 – ADMINISTRATION
Document Generated: 2019-06-10

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(b) seek a decision on any matter from the company's creditors.]

Annotations:

Amendments (Textual)
F1322 Words in Sch. B1 para. 62 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(23); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C1050 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

63 The administrator of a company may apply to the court for directions in connection with his functions.

Annotations:

Modifications etc. (not altering text)
C1051 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.

Annotations:

Modifications etc. (not altering text)
C1052 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—
(a) the distribution is made by virtue of section 176A(2)(a), or

Annotations:
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.

Annotations:

Modifications etc. (not altering text)
C1057 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.

Annotations:

Modifications etc. (not altering text)
C1058 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
(d) the court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under paragraph 53 or 54.

Annotations:

Modifications etc. (not altering text)
C1059 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.

Annotations:

Modifications etc. (not altering text)
C1060 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.

Annotations:

Modifications etc. (not altering text)
C1062 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
(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.

Annotations:

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


*C1064* 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

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**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).

Annotations:

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, \[F1324\]... 

\[F1325\](bb) would result in an ordinary preferential debt of the company being paid otherwise than in priority to any secondary preferential debts that it may have,]

(c) would result in one preferential creditor of the company being paid a smaller proportion of \[F1326\]an ordinary preferential debt \[F1327\], or

(d) would result in one preferential creditor of the company being paid a smaller proportion of a secondary preferential 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)), \[F1328\]...

(c) a proposal for a compromise or arrangement to be sanctioned under \[F1329\]Part 26 of the Companies Act 2006 (arrangements and reconstructions)\[F1330\] or

(d) a proposal for a cross-border merger within the meaning of regulation 2 of the Companies (Cross-Border Mergers) Regulations 2007.]

(3) The reference to a statement of proposals in sub-paragraph (1) includes a reference to a statement as revised or modified.

Annotations:

Amendments (Textual)

\[F1324\]Word in Sch. B1 para. 73(1)(b) omitted (1.1.2015) by virtue of The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 10(2) (with art. 3)

\[F1325\]Sch. B1 para. 73(1)(bb) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 10(3) (with art. 3)

\[F1326\]Words in Sch. B1 para. 73(1)(c) substituted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 10(4) (with art. 3)

\[F1327\]Sch. B1 para. 73(1)(d) and word inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 10(5) (with art. 3)

\[F1328\]Word in Sch. B1 para. 73(2)(b) repealed (15.12.2007) by The Companies (Cross-Border Mergers) Regulations 2007 (S.I. 2007/2974), reg. 65(2)
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;

*F1331*(c) require a decision of the company’s creditors to be sought on a matter;]*

(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;

(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 *F1332*Part 26 of the Companies Act 2006 (arrangements and reconstructions) [*F1333*

*F1334*(ba) a cross-border merger within the meaning of regulation 2 of the Companies (Cross-Border Mergers) Regulations 2007, 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.

Annotations:

Amendments (Textual)
F1331 Sch. B1 para. 74(4)(c) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(24); S.I. 2015/1329, reg. 3(d)
F1332 Words in Sch. B1 para. 74(6)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), Sch. 1 para. 100(b) (with arts. 6, 11, 12)

Modifications etc. (not altering text)
C1067 Sch. B1 para. 74 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

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.
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 one year [F1335] by consent.

Annotations:

Modifications etc. (not altering text)

C1068Sch. 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

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.

Annotations:

Amendments (Textual)


78 (1) In paragraph 76(2)(b) “consent” means consent of—
   (a) each secured creditor of the company, and
   [F1336](b) if the company has unsecured debts, the unsecured creditors of the company.]

(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
      [F1337](ii) the preferential creditors of the company.]

[F1338(2A) Whether the company's unsecured creditors or preferential creditors consent is to be determined by the administrator seeking a decision from those creditors as to whether they 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.

(6) An administrator who fails without reasonable excuse to comply with sub-paragraph (5) commits an offence.

Annotations:

Amendments (Textual)
F1336 Sch. B1 para. 78(1)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(25); S.I. 2015/1329, reg. 3(d)
F1337 Sch. B1 para. 78(2)(b)(iii) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(26); S.I. 2015/1329, reg. 3(d)
F1338 Sch. B1 para. 78(2A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(27); S.I. 2015/1329, reg. 3(d)
F1339 Sch. B1 para. 78(3) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(28); S.I. 2015/1329, reg. 3(d)

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) the company’s creditors decide that he must 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).

Annotations:

Amendments (Textual)
F1340 Words in Sch. B1 para. 79(2)(c) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(29); S.I. 2015/1329, reg. 3(d)

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 [F1341, other than an opted-out creditor,] 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.

Annotations:

Amendments (Textual)
F1341 Words in Sch. B1 para. 80(4) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(30); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C1069 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
(b) section 124B (SEs),
(c) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Conduct Authority or Prudential Regulation 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.

Annotations:

Amendments (Textual)

F1343 Words in Sch. B1 para. 82(1)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 55(4) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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) \[F1344\text{which is not a distribution by virtue of section 176A(2)(a)}\] .

(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) \[F1345\text{which is not a distribution by virtue of section 176A(2)(a)}\] .

(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 \[F1346\text{, other than an opted-out creditor,}\] 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 \[F1347\text{98,] 99 and 100 shall not apply,}\n   (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
   (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).
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

(b) the administrator was appointed by administration order.

(2) The court shall discharge the administration order.

Annotations:

Modifications etc. (not altering text)

C1071 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.

Annotations:

Modifications etc. (not altering text)

C1072 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 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.
Removal of administrator from office

88 The court may by order remove an administrator from office.

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 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.
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.

Annotations:

Modifications etc. (not altering text)
C1076 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

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.

Annotations:

Modifications etc. (not altering text)
C1077 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.

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.

Substitution of administrator: competing floating charge-holder

(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), ").
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 who has not made a statement under paragraph 52(1)(b), at a time appointed by resolution of the creditors’ committee or, if there is no committee, by decision of the creditors,
   (c) in any case, at a time specified by the court.

(3) For the purposes of sub-paragraph (2)(ba), the “relevant creditors” of a company are—
   (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) the preferential creditors of the company.

(3A) In a case where the administrator is removed from office, a decision of the creditors for the purposes of sub-paragraph (2)(b), or of the preferential creditors for the purposes of sub-paragraph (2)(ba), must be made by a qualifying decision procedure.

(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.
F1354 Word in Sch. B1 para. 98(2)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(36); S.I. 2015/1329, reg. 3(d)
F1355 Sch. B1 para. 98(2)(ba) inserted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 7(3); S.I. 2015/1732, art. 2(e)(ii)
F1356 Words in Sch. B1 para. 98(3) substituted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 7(4)(a); S.I. 2015/1732, art. 2(e)(ii)
F1357 Sch. B1 para. 98(3)(b)(ii) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(37); S.I. 2015/1329, reg. 3(d)
F1358 Words in Sch. B1 para. 98(3)(b)(ii) substituted (1.10.2015) by Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 7(4)(b); S.I. 2015/1732, art. 2(e)(ii)
F1359 Sch. B1 para. 98(3A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(38); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C1079 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

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,

(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) ......................................................, and
(e) a contribution to an occupational pension scheme.

Annotations:

Amendments (Textual)
F1360 Sch. B1 para. 99(6)(d) omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(n), Sch. 6 para. 27

Modifications etc. (not altering text)
C1080 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

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.

Annotations:

Modifications etc. (not altering text)
C1082 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
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.

Annotations:

Modifications etc. (not altering text)

C1083 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).

Annotations:

Modifications etc. (not altering text)

C1084 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.

(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.

Annotations:

Modifications etc. (not altering text)
C1085 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.

Annotations:

Modifications etc. (not altering text)
C1086 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)—

(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.

Annotations:

Modifications etc. (not altering text)

C1087 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

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.

Annotations:

Modifications etc. (not altering text)

C1088 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
108 (1) A period specified in paragraph 49(5) or 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
   [F1362 (b) if the company has unsecured debts, the unsecured creditors of the company.]

(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
      [F1363 (ii) the preferential creditors of the company.]
   (b) if the company has unsecured debts, the unsecured creditors of the company.

[F1364(3A) Whether the company's unsecured creditors or preferential creditors consent is to be determined by the administrator seeking a decision from those creditors as to whether they consent.]

(4) [F1365 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.

Annotations:

Amendments (Textual)
F1361 Word in Sch. B1 para. 108(1) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(39); S.I. 2015/1329, reg. 3(d)
F1362 Sch. B1 para. 108(2)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(40); S.I. 2015/1329, reg. 3(d)
F1363 Sch. B1 para. 108(3)(b)(ii) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(41); S.I. 2015/1329, reg. 3(d)
F1364 Sch. B1 para. 108(3A) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(42); S.I. 2015/1329, reg. 3(d)
F1365 Sch. B1 para. 108(4) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(43); S.I. 2015/1329, reg. 3(d)

Modifications etc. (not altering text)
C1089 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

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.
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.

       (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.

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,
       “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.
(1A) In this Schedule, “company” means—

(a) a company registered under the Companies Act 2006 in England and Wales or Scotland,

(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) In this Schedule a reference to action includes a reference to inaction.

Annotations:

Amendments (Textual)

F1366 In Sch. B1 para. 111 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)

F1367 Words in Sch. B1 para. 111 omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 10(44); S.I. 2015/1329, reg. 3(d)


F1369 Sch. B1 para. 111(1A)(a) substituted (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. 72} (with art. 10, Sch. 1 para. 84)

F1370 Sch. B1 para. 111(2) repealed (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 4(2)

Modifications etc. (not altering text)

C1092 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

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).

Annotations:

Amendments (Textual)


Scotland

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.

Annotations:

Modifications etc. (not altering text)
C1093 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.

Annotations:

Modifications etc. (not altering text)
C1093 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.

Annotations:

Modifications etc. (not altering text)
C1093 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.

[1137] (1A) In Scotland, sub-paragraph (1B) applies in connection with the giving by the court of permission as provided for in paragraph 65(3)(b).

(1B) On the giving by the court of such permission, any floating charge granted by the company shall, unless it has already so attached, attach to the property which is 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
(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.

(4) Attachment of a floating charge under sub-paragraph (1B) or (3) has effect as if the charge is a fixed security over the property to which it has attached.

Annotations:

Amendments (Textual)
F1372 Sch. B1 para. 115(1A)(1B) inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 130(2), 164(3)(i)(ii)
F1373 Words in Sch. B1 para. 115(3) omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 130(3), 164(3)(i)(ii)

Modifications etc. (not altering text)
C1096 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,

(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.

Annotations:

Modifications etc. (not altering text)
C1097 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

### POWERS OF ADMINISTRATOR OR ADMINISTRATIVE RECEIVER

<table>
<thead>
<tr>
<th>1</th>
<th>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.</th>
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<td>2</td>
<td>Power to sell or otherwise dispose of the property of the company by public auction or private contract or, in Scotland, to sell, hire out or otherwise dispose of the property of the company by public roup or private bargain.</td>
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<td>3</td>
<td>Power to raise or borrow money and grant security therefor over the property of the company.</td>
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<tr>
<td>4</td>
<td>Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.</td>
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<tr>
<td>5</td>
<td>Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.</td>
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<td>6</td>
<td>Power to refer to arbitration any question affecting the company.</td>
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<td>7</td>
<td>Power to effect and maintain insurances in respect of the business and property of the company.</td>
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<td>8</td>
<td>Power to use the company’s seal.</td>
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<td>9</td>
<td>Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.</td>
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<tr>
<td>10</td>
<td>Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.</td>
</tr>
<tr>
<td>11</td>
<td>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.</td>
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<td>12</td>
<td>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.</td>
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<td>13</td>
<td>Power to make any payment which is necessary or incidental to the performance of his functions.</td>
</tr>
<tr>
<td>14</td>
<td>Power to carry on the business of the company.</td>
</tr>
</tbody>
</table>

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**Annotations:**

### Modifications etc. (not altering text)

- **C1098** Sch. 1 modified (15.7.2003) by 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)
- **C1099** 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

### Amendments (Textual)

- **F1375** 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

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**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)
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

POWERS OF A SCOTTISH RECEIVER (ADDITIONAL TO THOSE CONFERRED ON HIM BY THE INSTRUMENT OF CHARGE)

Annotations:

Modifications etc. (not altering text)
C1100 Sch. 2 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
C1101 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, hire out or otherwise dispose of the property by public roup or private bargain and with or without advertisement.

Annotations:

Amendments (Textual)
F1376 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 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.
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.

Annotations:

Modifications etc. (not altering text)
C1102 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.
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.
EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER: SUPPLEMENTARY PROVISIONS

Annotations:

Amendments (Textual)
F1377 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)
C1103 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

(F1378) (aa) it involves a grant of security to—

(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[F1379], and

(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.

Annotations:

Amendments (Textual)
F1378 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
F1379 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 [F1380 or 77A] 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).

Annotations:

Amendments (Textual)
F1380 Words in Sch. 2A para. 2(1)(a) inserted (24.2.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010 (S.I. 2010/86), art. 4, Sch. para. 2(a)
(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,

(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 [F1381, and includes any instrument falling within article 77A of that Order] (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)(c) 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).

Annotations:

Amendments (Textual)

F1381Words in Sch. 2A para. 3(2) inserted (24.2.2010) by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2010 (S.I. 2010/86), arts. 1(2), 4, Sch.

"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.

(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—
SCHEDULE 2A – EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER: SUPPLEMENTARY PROVISIONS

(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.

Regulated business

10 (1) For the purposes of section 72D a business is regulated if it is carried on—

(a) 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 7A or 7B of the Gas Act 1986 (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 granted by virtue of section 7 of the Electricity Act 1989 (supply of electricity),

(e) by a water undertaker,

(f) by a sewerage undertaker,

(g) by a universal service provider within the meaning of Part 3 of the Postal Services Act 2011,

(h) by a Post Office company within the meaning of Part 1 of that Act,

(i) in reliance on a licence under section 8 of the Railways Act 1993 (railway services),

(j) in reliance on a licence under section 8 of that Act (subject to sub-paragraph (2) below),

(k) by the operator of a system of transport which is deemed to be a railway for a purpose of Part I of that Act (tramways, &c.),

(l) by the operator of a vehicle carried on flanged wheels along a system within paragraph (l) or


(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.
[F1389](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 public electronic communications service.]

[F1390](2B) In sub-paragraph (1)(n), an “EEA State” means a member State, Norway, Iceland or Liechtenstein.

Annotations:

Modifications etc. (not altering text)

C1104Sch. 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.

Annotations:

Amendments (Textual)

F1391 Words in Sch. 3 Pt. II omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 120(5), 164(3)(i)(i)

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

Annotations:

Modifications etc. (not altering text)

C1105 Sch. 4 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 7(3), 8(3)(9), Sch. 3 Pt. II, Sch. 4 Pt. II
 C1106 Sch. 4 excluded (1.12.2001) by 2000 c. 8, s. 376(12); S.I. 2001/3538, art. 2
 C1107 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
 C1108 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
 C1109 Sch. 4 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)
PART I

Annotations:

Amendments (Textual)
F1392 Sch. 4 Pt. I heading omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 120(6)(c), 164(3)(i)(i)

Modifications etc. (not altering text)
C1110 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 F1393 ... 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.

Annotations:

Amendments (Textual)
F1393 Words in Sch. 4 para. 3 omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 120(6)(a), 164(3)(i)(i)

[F1394 3A Power to bring legal proceedings under section 213, 214, 238, 239, 242, 243 or 423.]
PART II

Annotations:

Amendments (Textual)
F1395 Sch. 4 Pt. II heading omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 120(6)(c), 164(3)(i)(i)

Modifications etc. (not altering text)
C1111 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 and 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

Annotations:

Amendments (Textual)
F1396 Sch. 4 Pt. III heading omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 120(6)(c), 164(3)(i)(i)

Modifications etc. (not altering text)
C1112 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.

F13976A 

Annotations:

Amendments (Textual)
F1397 Sch. 4 para. 6A omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 120(6)(b), 164(3)(i)(i)

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.

Annotations:

Modifications etc. (not altering text)
C1113 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

PART 1

CONDITIONS WHICH MUST BE MET

Connection with England and Wales

1 (1) The debtor—
   (a) is domiciled in England and Wales on the application date; or
   (b) at any time during the period of three years ending with that date—
(i) was ordinarily resident, or had a place of residence, in England and Wales; or
(ii) carried on business in England and Wales.

(2) The reference in sub-paragraph (1)(b)(ii) to the debtor carrying on business includes

(a) the carrying on of business by a firm or partnership of which he is a member;
(b) the carrying on of business by an agent or manager for him or for such a firm or partnership.

**Debtor's previous insolvency history**

2 The debtor is not, on the determination date—

(a) an undischarged bankrupt;
(b) subject to an interim order or voluntary arrangement under Part 8; or
(c) subject to a bankruptcy restrictions order or a debt relief restrictions order.

[F1399 A bankruptcy application under Part 9—

(a) has not been made before the determination date; or
(b) has been so made, but proceedings on the application have been finally disposed of before that date.]

Annotations:

Amendments (Textual)

F1399 Sch. 4ZA para. 3 substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 62; S.I. 2016/191, art. 2 (with art. 3)

4 A creditor's petition for the debtor's bankruptcy under Part 9—

(a) has not been presented against the debtor at any time before the determination date;
(b) has been so presented, but proceedings on the petition have been finally disposed of before that date; or
(c) has been so presented and proceedings in relation to the petition remain before the court at that date, but the person who presented the petition has consented to the making of an application for a debt relief order.

5 A debt relief order has not been made in relation to the debtor in the period of six years ending with the determination date.

**Limit on debtor's overall indebtedness**

6 (1) The total amount of the debtor's debts on the determination date, other than unliquidated debts and excluded debts, does not exceed the prescribed amount.

(2) For this purpose an unliquidated debt is a debt that is not for a liquidated sum payable to a creditor either immediately or at some future certain time.

**Limit on debtor's monthly surplus income**

7 (1) The debtor's monthly surplus income (if any) on the determination date does not exceed the prescribed amount.
(2) For this purpose “monthly surplus income” is the amount by which a person's monthly income exceeds the amount necessary for the reasonable domestic needs of himself and his family.

(3) The rules may—
   (a) make provision as to how the debtor's monthly surplus income is to be determined;
   (b) provide that particular descriptions of income are to be excluded for the purposes of this paragraph.

Limit on value of debtor's property

8 (1) The total value of the debtor's property on the determination date does not exceed the prescribed amount.

(2) The rules may—
   (a) make provision as to how the value of a person's property is to be determined;
   (b) provide that particular descriptions of property are to be excluded for the purposes of this paragraph.

PART 2
OTHER CONDITIONS

9 (1) The debtor has not entered into a transaction with any person at an undervalue during the period between—
   (a) the start of the period of two years ending with the application date; and
   (b) the determination date.

(2) For this purpose a debtor 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 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.

10 (1) The debtor has not given a preference to any person during the period between—
   (a) the start of the period of two years ending with the application date; and
   (b) the determination date.

(2) For this purpose a debtor gives a preference to a person if—
   (a) that person is one of the debtor's creditors to whom a qualifying debt is owed or is a surety or guarantor for any such debt, and
   (b) the debtor 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 that a debt relief order is made in relation to the debtor, will be better than the position he would have been in if that thing had not been done.]
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;

(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

(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;
(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.]

F1401 SCHEDULE 4A

Annotations:

Amendments (Textual)

F1401 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

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 the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy petition and ending with the date of the application for the bankruptcy restrictions order; the making of the bankruptcy restrictions order;

(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;
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

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(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 F1403 the making of the bankruptcy application or (as the case may be) the presentation of the bankruptcy 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)—

F1404 “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.

Annotations:

Amendments (Textual)

F1402 Words in Sch. 4A para. 2(2)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 63(2)(a); S.I. 2016/191, art. 2 (with art. 3)

F1403 Words in Sch. 4A para. 2(2)(j) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 63(2)(b); S.I. 2016/191, art. 2 (with art. 3)

F1404 Words in Sch. 4A para. 2(4) omitted (6.4.2016) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 63(3); S.I. 2016/191, art. 2 (with art. 3)

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
    (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
(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... 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.

Annotations:

Amendments (Textual)
F1405Word in Sch. 4A para. 11 omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 135(2)(b), 164(3)(i)(iv) (with s. 135(4))

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.]
SCHEDULE 5

POWERS OF TRUSTEE IN BANKRUPTCY

PART I

Annotations:

Amendments (Textual)
F1406 Sch. 5 Pt. I heading omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 121(3), 164(3)(i)(i)

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.

[F14072A Power to bring legal proceedings under section 339, 340 or 423.]

Annotations:

Amendments (Textual)
F1407 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 [F1408 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.]

Annotations:

Amendments (Textual)
F1408 Sch. 5 para. 6 omitted (E.W.) (6.4.2010) by virtue of The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 11(1)(a) (with art. 12(5))
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 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 on the trustee by any person[^1409] or by the trustee on any person.

Annotations:

Amendments (Textual)

[^1409] Words in Sch. 5 para. 8 omitted (E.W.) (6.4.2010) by virtue of The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 11(1)(b) (with art. 12(5))

PART II

[^1410] ...
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**

Annotations:

Amendments (Textual)

F1412 Sch. 5 Pt. III heading omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 121(3), 164(3)(i)(i)

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,
(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

Annotations:

Modifications etc. (not altering text)

C1114 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

C1115 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

\[ F1413 \] Sums due at the relevant date from the debtor on account of deductions of income tax from \[ F1414 \] 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 \[ F1415 \] PAYE regulations, less the amount of the repayments of income tax which the debtor was liable to make during that period.

Annotations:

Amendments (Textual)

F1413 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))

F1414 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)

F1415 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

\[ F1416 \] 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 \[ F1417 \] 559 of the Income and Corporation Taxes Act 1988 (sub-contractors in the construction industry).

Annotations:

Amendments (Textual)

F1416 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))

F1417 Words substituted 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

\[ F1418 \] 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 Value Added Tax Act [F14191994].

Annotations:

Amendments (Textual)

F1418 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))

F1419 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

M70 1983 c. 55.

[F1420][F1421] 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.]

Annotations:

Amendments (Textual)

F1420 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))

F1421 Sch. 6 para. 3A inserted (3.5.1994) by 1994 c. 9, s. 64, Sch. 7 Pt. III para. 7(2)

[F1422][F1423] 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.]]

Annotations:

Amendments (Textual)
F1422 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))
F1423 Sch. 6 para. 3B inserted (29.4.1996) by 1996 c. 8, s. 60, Sch. 5 Pt. III para. 12(1)

[\[\\[F1424 F1425\] 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.]]

Annotations:

Amendments (Textual)
F1424 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))
F1425 Sch. 6 para. 3C inserted (28.7.2000) by 2000 c. 17, s. 30, Sch. 7 para. 3(1)(b)(2)

[\[\[F1426 F1427 \] 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
(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.]]
SCHEDULE 6 – The Categories of Preferential Debts

4
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.

5
Any amount which is due—
(a) by way of general betting duty, bingo duty or gaming duty,
(b) under section 12(1) of the Betting and Gaming Duties Act 1981 (general betting duty and pool betting duty recoverable from agent collecting stakes),
(c) from the debtor at the relevant date and which became due within the period of 12 months next before that date.

Marginal Citations
M71 1981 c. 63.
Annotations:

Amendments (Textual)
F1432 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))
F1433 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

F1434 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))
F1435 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)

F1436 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))
F1437 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 All sums which on the relevant date are due from the debtor on account of Class 1 or Class 2 contributions under the Social Security Contributions and Benefits Act 1992 or the Social Security (Northern Ireland) Act 1975 and which became due from the debtor in the 12 months next before the relevant date.

Annotations:

Amendments (Textual)
F1438 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))
F1439 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
7. 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.

8. Any sum which is owed by the debtor and is a sum to which Schedule 4 to the Pension Schemes Act 1993 applies (contributions to occupational pension schemes and state scheme premiums).

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 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.

Interpretation 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.

[^F1442^] (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).

Annotations:

Amendments (Textual)

F1442Sch. 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 made 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 754 of the Companies Act 2006.

(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.

(3) The reference in sub-paragraph (2) to any enactment includes an order or direction made under an enactment.

Annotations:

Amendments (Textual)
F1443 Word in Sch. 6 para. 14(1) substituted (E.W.) (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 64; S.I. 2016/191, art. 2 (with art. 3)
F1444 Words in Sch. 6 para. 14(1)(c) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 3(1), Sch. 1 para. 104 (with arts. 6, 11, 12)

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.

Annotations:

Amendments (Textual)
F1445 Sch. 6 para. 15(b) and word omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3) (n), Sch. 6 para. 28

[F1446 Category 6: Levies on coal and steel production]

Annotations:

Amendments (Textual)
F1446 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.]
Category 6A: Debts owed to the Financial Services Compensation Scheme

Annotations:

Amendments (Textual)
F1447 Sch. 6 para. 15AA and cross-heading inserted (26.3.2015) by The Deposit Guarantee Scheme Regulations 2015 (S.I. 2015/486), regs. 1(2), 14(3)(a)

15AA. Any debt owed by the debtor to the scheme manager of the Financial Services Compensation Scheme under section 215(2A) of the Financial Services and Markets Act 2000.

Category 7: Deposits covered by Financial Services Compensation Scheme

Annotations:

Amendments (Textual)
F1448 Sch. 6 paras. 15B, 15C and cross-headings inserted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), ss. 13(1), 148(5); S.I. 2014/3160, art. 2(1)(a)

15B So much of any amount owed at the relevant date by the debtor in respect of an eligible deposit as does not exceed the compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to the person or persons to whom the amount is owed.

Category 8: Other deposits

Annotations:

Amendments (Textual)
F1449 Sch. 6 paras. 15BA, 15BB and cross-heading inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 11(2) (with art. 3)

15BA So much of any amount owed at the relevant date by the debtor to one or more eligible persons in respect of an eligible deposit as exceeds any compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to that person or those persons.

15BB An amount owed at the relevant date by the debtor to one or more eligible persons in respect of a deposit that—
(a) was made through a non-EEA branch of a credit institution authorised by the competent authority of an EEA state, and
(b) would have been an eligible deposit if it had been made through an EEA branch of that credit institution.
[F1450] Interpretation for \([F1450]\) categories 6A, 7 and 8.

Annotations:

Amendments (Textual)

F1450 Words in Sch. 6 para. 15C heading substituted (26.3.2015) by The Deposit Guarantee Scheme Regulations 2015 (S.I. 2015/486), regs. 1(2), 14(3)(b)

[F1450](A1) In paragraph 15AA “the scheme manager” has the meaning given in section 212(1) of the Financial Services and Markets Act 2000.

(1) In \([F1450]\) paragraphs 15B to 15BB “eligible deposit” means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme.

(2) For \([F1450]\) the purposes of those paragraphs and this paragraph a “deposit” means rights of the kind described in—

(a) paragraph 22 of Schedule 2 to the Financial Services and Markets Act 2000 (deposits), or

(b) section 1(2)(b) of the Dormant Bank and Building Society Accounts Act 2008 (balances transferred under that Act to authorised reclaim fund).

[F1454](3) In paragraphs 15BA and 15BB, “eligible person” means—

(a) an individual, or

(b) a micro-enterprise, a small enterprise or a medium-sized enterprise, each of those terms having the meaning given in Article 2.1(107) of Directive 2014/59/EU of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

(4) In paragraph 15BB—

(a) “credit institution” has the meaning given in Article 4.1(1) of the capital requirements regulation;

(b) “EEA branch” means a branch, as defined in Article 4.1(17) of the capital requirements regulation, which is established in an EEA state;

(c) “non-EEA branch” means a branch, as so defined, which is established in a country which is not an EEA state;


Annotations:

Amendments (Textual)

F1451 Sch. 6 para. 15C(A1) inserted (26.3.2015) by The Deposit Guarantee Scheme Regulations 2015 (S.I. 2015/486), regs. 1(2), 14(3)(c)

F1452 Words in Sch. 6 para. 15C(1) substituted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 11(4)(a) (with art. 3)

F1453 Words in Sch. 6 para. 15C(2) substituted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 11(4)(b) (with art. 3)
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.

Annotations:

Amendments (Textual)

F1454 Sch. 6 para. 15C(3)(4) and words inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 11(4)(e) (with art. 3)

SCHEDULE 8

Section 411.

PROVISIONS CAPABLE OF INCLUSION IN COMPANY INSOLVENCY RULES

Annotations:

Modifications etc. (not altering text)

C1116 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 [F1456 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.

[F1457 (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.]
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.

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.

Provision specifying the persons to whom any notice is to be given.

Provision for enabling a creditor of a company to elect to be, or to cease to be, an opted-out creditor in relation to an office-holder of the company (within the meaning of section 248A), including, in particular, provision—

(a) for requiring an office-holder to provide information to creditors about how they may elect to be, or cease to be, opted-out creditors;

(b) for deeming an election to be, or cease to be, an opted-out creditor in relation to a particular office-holder of a company to be such an election also in relation to any other office-holder of the company.

Provision for the registration of voluntary arrangements approved under Part I of this Act, including provision for the keeping and inspection of a register.

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.

\[\text{F1459} 8\text{A}\]
(1) provision about the making of decisions by creditors and contributories, including provision—
(a) prescribing particular procedures by which creditors and contributories may make decisions;
(b) authorising the use of other procedures for creditors and contributories to make decisions, if those procedures comply with prescribed requirements.

(2) provision under sub-paragraph (1) may in particular include provision about—
(a) how creditors and contributories may request that a creditors’ meeting or a contributories’ meeting be held,
(b) the rights of creditors, contributories and others to be given notice of, and participate in, procedures,
(c) creditors' and contributories’ rights to vote in procedures,
(d) the period within which any right to participate or vote is to be exercised,
(e) the proportion of creditors or contributories that must vote for a proposal for it to be approved,
(f) how the value of any debt or contribution should be determined,
(g) the time at which decisions taken by a procedure are to be treated as having been made.

Annotations:

Amendments (Textual)

F1459 Sch. 8 para. 8A inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 122(3), 164(1); S.I. 2015/1329, reg. 3(d)

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.
Provision about how a company’s creditors may nominate a person to be liquidator, including in the case of a voluntary winding up provision conferring functions on the directors of the company.

Amendments (Textual)

F1460 Sch. 8 para. 9A inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 58; S.I. 2015/1329, reg. 3(d)

10 (1) Provision as to the establishment, functions, membership and proceedings of a committee provided for by 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 its contributories or members;

(b) provision authorising the establishment of the committee without seeking a decision from 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.

Amendments (Textual)

F1461 Word in Sch. 8 para. 10(1) inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 59(2)(a); S.I. 2015/1329, reg. 3(d)

F1462 Words in Sch. 8 para. 10(1) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 59(2)(b); S.I. 2015/1329, reg. 3(d)

F1463 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))

F1464 Words in Sch. 8 para. 10(2)(a) omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 59(3)(a); S.I. 2015/1329, reg. 3(d)

F1465 Words in Sch. 8 para. 10(2)(b) substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 59(3)(b); S.I. 2015/1329, reg. 3(d)

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.
Provision for a creditor who has not proved a small debt to be treated as having done so for purposes relating to the distribution of a company's property (and for provisions of, or contained in legislation made under, this Act to apply accordingly).

Amendments (Textual)
F1466 Sch. 8 para. 13A inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 131, 164(3)(i)(iii)

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 Bankruptcy (Scotland) Act 1985.

Annotations:
Marginal Citations
M74 1985 c. 66.

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.

Annotations:
Amendments (Textual)
F1467 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(I), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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.

Annotations:
Financial provisions

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.

[F146916A Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.]

Annotations:

Amendments (Textual)

F1469S. 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.

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 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.

Annotations:

Marginal Citations
M75 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 [F14707A] of the Company Directors Disqualification Act 1986 (including, in particular, requirements with respect to the making of periodic returns).

Annotations:

Amendments (Textual)
F1470Word in Sch. 8 para. 26 substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), regs. 1, 3

Marginal Citations
M76 1986 c. 46.

General

27 Provision conferring power on the Secretary of State [F1471or the Treasury] 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.
Annotations:

Amendments (Textual)
F1471 Words in Sch. 8 para. 27 substituted (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 125(7), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 2

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 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.

Annotations:

Amendments (Textual)
F1472 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 7A to 11 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.

Annotations:

Amendments (Textual)
F1473 Words in Sch. 9 para. 1 substituted (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(2); S.I. 2009/382, art. 2

2 Provision for enabling a registrar in bankruptcy of the High Court to exercise such of the jurisdiction conferred for those purposes on the High 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.

Annotations:

Amendments (Textual)

F1474 Words in Sch. 9 para. 2 omitted (22.4.2014) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 93(l)(i); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F1475 Words in Sch. 9 para. 2 omitted (22.4.2014) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 93(l)(ii); S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

4A Provision for regulating the practice and procedure of adjudicators in the discharge of functions for the purposes of Part 9 of this Act.

4B Provision about the form and content of a bankruptcy application (including an application for a review of an adjudicator's determination).]

Annotations:

Amendments (Textual)

F1476 Sch. 9 para. 4A 4B and crossheading inserted (25.4.2013 for specified purposes, 6.4.2016 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(1)(i)(3), Sch. 19 para. 65(2); S.I. 2016/191, art. 2 (with art. 3)

4C Provision about the making and determining of appeals to the court against a determination by an adjudicator, including provision—

(a) enabling the court to make a bankruptcy order on such an appeal, and

(b) about where such appeals lie.]

Annotations:

Amendments (Textual)

F1477 Sch. 9 para. 4C and crossheading inserted (25.4.2013 for specified purposes, 6.4.2016 in so far as not already in force) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(1)(i)(3), Sch. 19 para. 65(3); S.I. 2016/191, art. 2 (with art. 3)

5 Provision requiring notice of any proceedings under [\(^{1478}\)Parts 7A to 11] 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 7A to 11 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.

7A Provision for enabling a creditor of an individual to elect to be, or to cease to be, an opted-out creditor in relation to an office-holder for the individual (within the meaning of section 383A), including, in particular, provision—

(a) for requiring an office-holder to provide information to creditors about how they may elect to be, or cease to be, opted-out creditors;

(b) for deeming an election to be, or cease to be, an opted-out creditor in relation to a particular office-holder for an individual to be such an election also in relation to any other office-holder for the individual.

Debt relief orders

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 Provisin 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.

Debt relief restrictions orders and undertakings

7D Provision about debt relief restrictions orders, interim orders and undertakings,
including provision about evidence.

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.

[F14828A 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.]

Annotations:

Amendments (Textual)
F1482Sch. 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.

[Par. 11A] Provision about the making of decisions by creditors, including provision—

(a) prescribing particular procedures by which creditors may make decisions;
(b) authorising the use of other procedures for creditors to make decisions, if those procedures comply with prescribed requirements.

(2) Provision under sub-paragraph (1) may in particular include provision about—

(a) how creditors may request that a creditors’ meeting be held,
(b) the rights of creditors and others to be given notice of, and participate in, procedures,
(c) creditors’ rights to vote in procedures,
(d) the period within which any right to participate or vote is to be exercised,
(e) the proportion of creditors that must vote for a proposal for it to be approved,
(f) how the value of any debt should be determined,
(g) the time at which decisions taken by a procedure are to be treated as having been made.

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.

[Par. 12A] Provision about how a bankrupt's creditors may appoint a person as trustee.
<table>
<thead>
<tr>
<th>Provision</th>
<th>Annotations:</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 Provision as to the establishment, functions, membership and proceedings of a creditors’ committee provided for by section 301.</td>
<td>Amendments (Textual)</td>
</tr>
<tr>
<td></td>
<td>F1485 Word in Sch. 9 para. 13 inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 87(a); S.I. 2015/1329, reg. 3(d)</td>
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<td></td>
<td>F1486 Words in Sch. 9 para. 13 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 87(b); S.I. 2015/1329, reg. 3(d)</td>
</tr>
<tr>
<td>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.</td>
<td>Amendments (Textual)</td>
</tr>
<tr>
<td></td>
<td>F1487 Sch. 9 para. 1A inserted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 132, 164(3)(i)(ii)</td>
</tr>
<tr>
<td>19 Provision modifying the application of Parts VIII to XI of this Act in relation to a debtor or bankrupt who has died.</td>
<td></td>
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<tr>
<td>Financial provisions</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>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 invested or otherwise handled and with respect to the payment of interest on</td>
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</table>
sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Services Account].

Annotations:

Amendments (Textual)
F1488 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)

[F148921A Provision enabling the Secretary of State to set the rate of interest paid on sums which have been paid into the Insolvency Services Account.]

Annotations:

Amendments (Textual)
F1489 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
   (b) to make returns to the Secretary of State of the business of those courts.

Annotations:

Amendments (Textual)
F1490 Words in Sch. 9 para. 24(a) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 2(11)(g) (with Sch. 6 para. 3); S.I. 2015/1732, art. 2(e)(i)

[F149124A Provision requiring adjudicators—
   (a) to keep files and other records relating to bankruptcy applications and bankruptcies resulting from bankruptcy applications,
   (b) to make files and records available for inspection by persons of a prescribed description, and
   (c) to provide files and records, or copies of them, to persons of a prescribed description.
24B  Provision requiring an adjudicator to make returns to the Secretary of State of the adjudicator's business under Part 9 of this Act.

24C  Provision requiring official receivers—
   (a) to keep files and other records relating to bankruptcy applications and bankruptcies resulting from bankruptcy applications, and
   (b) to make files and records available for inspection by persons of a prescribed description.

24D  Provision requiring a person to whom notice is given under section 293(2), 295(3), 298(7) or (8) or section 299(1)(a) or (3)(a)—
   (a) to keep files and other records of notices given under the section in question, and
   (b) to make files and records available for inspection by persons of a prescribed description.

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.

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.

[†F149229A
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.]

Annotations:

Amendments (Textual)
F1492Sch. 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

PUNISHMENT OF OFFENCES UNDER THIS ACT

Annotations:

<table>
<thead>
<tr>
<th>Modifications etc. (not altering text)</th>
</tr>
</thead>
</table>
| C1117 Sch. 10 modified by Building Societies Act 1986 (c. 53, SIF 16), ss. 54(3)(a)(5)(a), 90, 126(3), Sch. 15 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 C1118Sch. 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. 1) 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 C1119Sch. 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 C1120Sch. 10 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 145 table 1), 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 3 C1121Sch. 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 C1122Sch. 10 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

Note:

<table>
<thead>
<tr>
<th>Section of Act creating offence</th>
<th>General nature of offence</th>
<th>Mode of prosecution</th>
<th>Punishment</th>
<th>Daily default fine (where applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6A(1).</td>
<td>False representation or fraud for purpose of obtaining members’ or creditors’ approval of proposed voluntary arrangement.</td>
<td>1. On indictment. 2. Summary. 7 years or a fine, or both.</td>
<td>6 months or the statutory maximum, or both.</td>
<td></td>
</tr>
</tbody>
</table>

...
SCHEDULE 10 – Punishment of Offences under this Act

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)


30 Body corporate acting as receiver.

1. On indictment A fine. 2. Summary, statutory maximum.

31 Bankrupt or person in respect of whom a debt relief order is made. 1. On indictment 2 years or a fine, or both. 2. Summary, 6 months or the statutory maximum, or both.

38(5) Receiver failing to deliver accounts to registrar.

Receiver 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.

Company Summary One-fifth of the statutory maximum.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Summary</th>
<th>Offence</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>43(6)</td>
<td>Administrative receiver failing to file copy of order permitting disposal of charged property.</td>
<td>Summary.</td>
<td>One-fifth of the statutory maximum.</td>
<td>One-fiftieth of the statutory maximum.</td>
</tr>
<tr>
<td>45(5)</td>
<td>Administrative receiver failing to file notice of vacation of office.</td>
<td>Summary.</td>
<td>One-fifth of the statutory maximum.</td>
<td>One-fiftieth of the statutory maximum.</td>
</tr>
<tr>
<td>46(4)</td>
<td>Administrative receiver failing to give notice of his appointment.</td>
<td>Summary.</td>
<td>One-fifth of the statutory maximum.</td>
<td>One-fiftieth of the statutory maximum.</td>
</tr>
<tr>
<td>47(6)</td>
<td>Failure to comply with provisions relating to statement of affairs, where administrative receiver appointed.</td>
<td>1. On indictment one-tenth of the statutory maximum.</td>
<td>Summary. maximum.</td>
<td></td>
</tr>
<tr>
<td>48(8)</td>
<td>Administrative receiver failing to comply with requirements as to his report.</td>
<td>Summary.</td>
<td>One-fifth of the statutory maximum.</td>
<td>One-fiftieth of the statutory maximum.</td>
</tr>
<tr>
<td>51(4)</td>
<td>Body corporate or Scottish firm</td>
<td>1. On indictment one-tenth of the statutory maximum.</td>
<td>Summary. maximum.</td>
<td></td>
</tr>
</tbody>
</table>
acting as receiver.

51(5) Undischarged bankrupt acting as receiver (Scotland).

2. Summary. 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 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

Summary. One-fifth of the statutory maximum.
state on correspondence etc. that receiver appointed.

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, where receiver appointed. 1. On indictment A fine. One-tenth of the statutory maximum. 2. Summary maximum. One-fifth of the statutory maximum.

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 1. On indictment 2 years or a fine, or both. 2. Summary 6 months or the statutory maximum.
for his opinion.

89(6) Declaration under section 89 not delivered to registrar within prescribed time.

One-fifth of the statutory maximum.

92A(2) Liquidator failing to send progress report to members

Level 3 on the standard scale

93(3) Liquidator failing to summon general meeting of company at each year’s end.

One-fifth of the statutory maximum.

94(4) Liquidator failing to send to company members a copy of account of winding up

Level 3 on the standard scale

94(5) Liquidator failing to send to registrar a copy of account of winding up

One-tenth of level 3 on the standard scale
95(8) Liquidator Summary. The statutory maximum. failing to comply with [F1503 s. 95(1) to (4A)] where company insolvent.

[F1504 98(6)] [F1504 Company Summary. A fine. failing to comply with s. 98 in respect of summoning and giving notice of creditors’ meeting.]

1. On indictment
2. Summary. maximum.

99(3) Directors Summary. A fine. failing to send statement in prescribed form to creditors.

1. On indictment
2. Summary. maximum.

[F1506 104A(2)] Liquidator Summary. Level 3 on the standard scale failing to send progress report to members and creditors.

[F1508 105(3)] Liquidator Summary. One-fifth of the statutory maximum. failing to summon company general meeting and creditors’ meeting.
at each
year’s
end.]
Insolvency Act 1986 (c. 45)

SCHEDULE 10 – Punishment of Offences under this Act

Amendments (Textual)

Annotations:

F1493 Note in Sch. 10 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. XIV Group 2

F1494 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)

F1495 Entries in Sch. 10 repealed (15.9.2003) by 2002 c. 40, ss. 249(3), 278, 279, Sch. 17 para. 39(3)(a)-(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))

F1496 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))

F1497 Words in Table in Sch. 10 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. 15(2) (with Sch. 20 para. 15(4)); S.I. 2009/382, art. 2

F1498 Words in Sch. 10 substituted (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. 80) (with art. 10, Sch. 1 para. 84)

F1499 Entry in Sch. 10 inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 6(5)(a)

F1500 Words in Sch. 10 omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 136(4)(a), 164(3)(i)(v)

F1501 Words in Sch. 10 repealed (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 5(3) (with arts. 14, 15)

F1502 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 53(2); S.I. 2015/1329, reg. 3(d)

F1503 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 53(3); S.I. 2015/1329, reg. 3(d)

F1504 Words in Sch. 10 omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 53(4); S.I. 2015/1329, reg. 3(d)

F1505 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 53(5); S.I. 2015/1329, reg. 3(d)

F1506 Entry in Sch. 10 inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 6(5)(b)

F1507 Words in Sch. 10 omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 136(4)(b), 164(3)(i)(v)

F1508 Words in Sch. 10 repealed (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 6(3) (with arts. 14, 15)

F1509 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 53(6); S.I. 2015/1329, reg. 3(d)

F1510 Entries in Sch. 10 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. 15(3) (with Sch. 20 para. 15(4)); S.I. 2009/382, art. 2

F1511 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)

F1512 Words in Sch. 10 inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 66 (with Sch. 19 para. 66(2)); S.I. 2016/191, art. 2 (with art. 3)

F1513 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))
F1514 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)

F1515 Entries in Sch. 10 inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 39(2) (with ss. 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))

F1516 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 11(2); S.I. 2015/1329, reg. 3(d)

F1517 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 11(3); S.I. 2015/1329, reg. 3(d)

F1518 Words in Sch. 10 inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 11(4); S.I. 2015/1329, reg. 3(d)

F1519 Words in Sch. 10 inserted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 11(5); S.I. 2015/1329, reg. 3(d)

F1520 Words in Sch. 10 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 22(5)(b); S.I. 2015/1732, art. 2(e)(vi) (with art. 7)

Modifications etc. (not altering text)
C1123 Sch. 10: entry relating to s. 93(3) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3
C1124 Sch. 10: entry relating to s. 105(3) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3
C1125 Sch. 10: entry relating to s. 106(6) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3

Annotations:

Amendments (Textual)
F1493 Note in Sch. 10 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. XIV Group 2
F1494 Entry in Sch. 10 inserted (1.1.2003) by 2000 c. 39, s. 2, Sch. 2 Pt. 1 para. 12; S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)
F1495 Entries in Sch. 10 repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 39(3)(a)-(h), Sch. 26 (with ss. 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))
F1496 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 ss. 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))
F1497 Words in Table in Sch. 10 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. 15(2) (with Sch. 20 para. 15(4)); S.I. 2009/382, art. 2
F1498 Words in Sch. 10 substituted (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. 80) (with art. 10, Sch. 1 para. 84)
F1499 Entry in Sch. 10 inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 6(5)(a)
F1500 Words in Sch. 10 omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 136(4)(a), 164(3)(iv)
F1501 Words in Sch. 10 repealed (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 5(3) (with arts. 14, 15)
F1502 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 53(2); S.I. 2015/1329, reg. 3(d)
F1503 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 53(3); S.I. 2015/1329, reg. 3(d)
F1504 Words in Sch. 10 omitted (26.5.2015 for specified purposes) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 53(4); S.I. 2015/1329, reg. 3(d)
F1505 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 53(5); S.I. 2015/1329, reg. 3(d)

F1506 Entry in Sch. 10 inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), art. 6(5)(b)

F1507 Words in Sch. 10 omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 136(4)(b), 164(3)(ii)(v)

F1508 Words in Sch. 10 repealed (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), art. 6(3) (with arts. 14, 15)

F1509 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 53(6); S.I. 2015/1329, reg. 3(d)

F1510 Entries in Sch. 10 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. 15(3) (with Sch. 20 para. 15(4)); S.I. 2009/382, art. 2

F1511 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)

F1512 Words in Sch. 10 inserted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 66 (with Sch. 19 para. 66(2)); S.I. 2016/191, art. 2 (with art. 3)

F1513 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))

F1514 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)

F1515 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))

F1516 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 11(2); S.I. 2015/1329, reg. 3(d)

F1517 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 11(3); S.I. 2015/1329, reg. 3(d)

F1518 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 11(4); S.I. 2015/1329, reg. 3(d)

F1519 Words in Sch. 10 substituted (26.5.2015 for specified purposes) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), Sch. 9 para. 11(5); S.I. 2015/1329, reg. 3(d)

F1520 Words in Sch. 10 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 22(5)(b); S.I. 2015/1732, art. 2(e)(vi) (with art. 7)

Modifications etc. (not altering text)

C1123 Sch. 10: entry relating to s. 93(3) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3

C1124 Sch. 10: entry relating to s. 105(3) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3

C1125 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 [F1521 the Companies Act 1985] 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 M77 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.

(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.

Annotations:

Amendments (Textual)

F1521 Words in Sch. 11 para. 2(2) substituted (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. 83} (with art. 10, Sch. 1 para. 84)

Marginal Citations

M77 1985 c. 65.

Receivers (Scotland)

3 (1) In relation to any receiver appointed under section 467 of the Companies 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 [F1522the Companies Act 1985] 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.

Annotations:

Amendments (Textual)

F1522Words in Sch. 11 para. 3(2) substituted (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. 83} (with art. 10, Sch. 1 para. 84)

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 [F1523the Companies Act 1985](without the amendments in paragraphs 23 to 52 of Schedule 6 to the Insolvency Act 1985, or the associated repeals made by the Act).

Annotations:

Amendments (Textual)

F1523Words in Sch. 11 para. 4(2) substituted (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. 83} (with art. 10, Sch. 1 para. 84)

Marginal Citations

M78 1985 c. 65.

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 [F1524the Companies Act 1985](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.

Annotations:

Amendments (Textual)

F1524 Words in Sch. 11 para. 5(1) substituted (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. 83} (with art. 10, Sch. 1 para. 84)

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 [F1525 the Companies Act 1985] (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 [F1525 the Companies Act 1985].

(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.

Annotations:

Amendments (Textual)

F1525 Words in Sch. 11 para. 6(3) substituted (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. 83} (with art. 10, Sch. 1 para. 84)
Winding up under supervision of the court

7  The repeals in Part II of Schedule 10 the Insolvency Act 1985 of references (in the Companies Act 1985 and elsewhere) to a winding up under the supervision of the court do not affect the operation of the enactments in which the references are contained in relation to any case in which an order under section 606 of the Companies Act 1985 (power to order winding up under supervision) was made before the appointed day.

Annotations:

Amendments (Textual)

F1526 Words in Sch. 11 para. 6(4) substituted (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. 83} (with art. 10, Sch. 1 para. 84)

Marginal Citations

M79 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 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).

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 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.

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 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 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.

Annotations:

Marginal Citations
M82 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 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.
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 Insolvency Act 1985 of the 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.

Annotations:

Marginal Citations
M84 1985 c. 65.
M85 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 bankruptcy notwithstanding that it arose from a petition presented before either the coming into force 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 1985\[^{F1528}\] as is repealed and replaced by this Act, the Insolvency Act 1985 and the other enactments repealed by this Act.

**Annotations:**

**Amendments (Textual)**

\[^{F1528}\] Words in Sch. 11 para. 22 substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, \[^{M86}\] Sch. 1 para. 83 (with art. 10, Sch. 1 para. 84)

**Marginal Citations**

\[^{M86}\] 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 was provided has been committed 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 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 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 Company Directors Disqualification Act 1986.

Annotations:

Marginal Citations

M87 1978 c. 30.
M88 1985 c. 65.
M89 1986 c. 46.

SCHEDULE 12

ENACTMENTS REPEALED

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Short title</th>
<th>Extent of repeal</th>
</tr>
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<tbody>
<tr>
<td>1976 c. 60</td>
<td>The Insolvency Act 1976.</td>
<td>Section 3.</td>
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<tr>
<td>1985 c. 6.</td>
<td>The Companies Act 1985.</td>
<td>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.</td>
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<tr>
<td>Act</td>
<td>Amendment</td>
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<td>1985 c. 65.</td>
<td><strong>The Insolvency Act 1985.</strong> 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).</td>
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<td>1985 c. 66.</td>
<td><strong>The Bankruptcy (Scotland) Act 1985.</strong> In Schedule 7, paragraphs 19 to 22.</td>
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<tr>
<td>1986 c. 44.</td>
<td><strong>The Gas Act 1986.</strong> In Schedule 7, paragraph 31.</td>
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## SCHEDULE 13

### CONSEQUENTIAL AMENDMENTS OF COMPANIES ACT 1985

### PART I

**INTERNAL AND OTHER SECTION REFERENCES AMENDED OR RE-AMENDED**

<table>
<thead>
<tr>
<th>Section of Act</th>
<th>Consequential amendment or re-amendment</th>
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<tr>
<td>F1529</td>
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**Section 153(3)**

In paragraph (f), for “section 582” substitute “section 110 of the Insolvency Act”.

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 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 principal 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.”

Section 441(1) For “section 13 of the Insolvency Act 1985” substitute “section 8 of the Company Directors Disqualification Act 1986”.

Section 462(5) After “this Part” insert “and Part III of the Insolvency Act 1986”.

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 711(2) In paragraph (b), for “section 600” substitute “section 109 of the Insolvency Act”.

Section 733 In subsection (1), omit “295(7)”. 
PART II

AMENDMENT 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), 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

CONSEQUENTIAL AMENDMENTS OF OTHER ENACTMENTS

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>F1454</td>
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<td>. . .</td>
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<tr>
<td>Section 3(1)</td>
<td>For “Part III of the Insolvency Act 1985” substitute “Parts VIII to XI of the Insolvency Act 1986”.</td>
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<tr>
<td>Section 3(4)</td>
<td>The same amendment.</td>
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<tr>
<td>Section 11(1) and (2)</td>
<td>In each subsection, the same amendment.</td>
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<tr>
<td>Section 16</td>
<td>The same amendment as of section 3(1).</td>
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<tr>
<td>Section 23</td>
<td>The same amendment.</td>
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<tr>
<td>Section 30(1)</td>
<td>For the definition of “property” substitute —“‘property’ has the meaning given by section 436 of the Insolvency Act 1986”.</td>
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<tr>
<td>Law of Property Act 1925 (c. 20):</td>
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<tr>
<td>Section 52(2)(b)</td>
<td>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”.</td>
</tr>
</tbody>
</table>
Third Parties (Rights against Insurers) Act 1930 (c. 25):

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).

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):
Section 30(1) For “Companies Act 1985” substitute “Insolvency Act 1986”.

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”.

Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35):

Superannuation Act 1972 (c. 11):
Section 5(2) For “156 of the Insolvency Act 1985” substitute “310 of the Insolvency Act 1986”;
Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

and for “the said section 156” substitute “the said section 310”.

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”.

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).
Section 33(1)  


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”.

Credit Unions Act 1979 (c. 34):  

Section 6(1)  


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”; and in paragraph (c), for “Part XXI of the said Act of 1985” substitute “Part V of the said Act 1986”.

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 Insolvency 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 subsection (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 committee 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 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”.

Supreme Court Act 1981 (c. 54):

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):

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”.


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”.

Telecommunications Act 1984 (c. 12):  
Section 68(1)  
In paragraph (a), for “Companies Act 1985” substitute “Insolvency Act 1986”.

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)  

Finance Act 1985 (c. 54):  
Section 79  
Omit the word “altogether”; and after “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”.

Annotations:

Amendments (Textual)
F1540 Words in Sch. 14 omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 2(11)(h) (with Sch. 6 para. 3); S.I. 2015/1732, art. 2(c)(i)

F1541 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

F1542 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

F1543 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

F1544 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)

F1545 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
F1546 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

F1547 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

F1548 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

F1549 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


F1551 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

F1552 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
Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Insolvency Act 1986. Any changes that have already been made by the team appear in the content and are referenced with annotations.

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- s. 412(2A) words substituted by S.I. 2017/702 Sch. para. 24
- s. 412(2B) words substituted by S.I. 2017/702 Sch. para. 24
- s. 412(2B) words substituted by S.I. 2019/146 Sch. para. 38
- s. 413(2) excluded by 2016 c. 22 s. 102(6)
- s. 413(2) excluded by 2017 c. 19 s. 32(2)
- s. 413(3)(c) words substituted by S.I. 2018/130 Sch. para. 7(b)
- s. 420(1A) words substituted by S.I. 2017/702 Sch. para. 26
- s. 420(1B) words substituted by S.I. 2017/702 Sch. para. 26
- s. 420(1B) words substituted by S.I. 2019/146 Sch. para. 39
- s. 421(1A) words substituted by S.I. 2017/702 Sch. para. 27
- s. 421(1B) words substituted by S.I. 2017/702 Sch. para. 27
- s. 421(1B) words substituted by S.I. 2019/146 Sch. para. 40
- s. 426(10)(b) word substituted by S.I. 2016/1034 Sch. 1 para. 4(9)
- s. 430 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- s. 431 applied by S.I. 2016/900 rule 94
- s. 432 modified by S.I. 2019/138 reg. 24
- s. 435(5)(a) word substituted by S.I. 2016/1034 Sch. 1 para. 4(10)
- s. 436 words inserted by S.I. 2019/146 Sch. para. 42
- s. 436(1) words inserted by S.I. 2017/702 Sch. para. 28(b)
- s. 436(1) words omitted by S.I. 2017/702 Sch. para. 28(a)
- s. 436A omitted by S.I. 2019/146 Sch. para. 43
- s. 436A heading words substituted by S.I. 2017/702 Sch. para. 29
- Sch. A1 amendment to earlier affecting provision SI 1994/2421 Sch. 1 Pt. 2 by S.I. 2017/540 Sch. 2 para. 5
- Sch. A1 applied (with modifications) by 2009 c. 1, s. 154(3A) (as inserted) by S.I. 2018/208 reg. 5(6)(c)
- Sch. A1 modified by S.I. 2019/138 reg. 25
- Sch. A1 para. 31(5)(b) word omitted by S.I. 2018/1244 art. 12(2)(a)
- Sch. A1 para. 31(6) word omitted by S.I. 2018/1244 art. 12(3)
- Sch. B1 Sch. B1: specified provisions applied (with modifications) by S.I. 2012/3013, Sch. 2 Pt. 1 (as inserted) by S.I. 2018/728 reg. 3(6)Sch. 2
- Sch. B1 para. 49 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 50-58 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 62 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 74 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 98 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 106 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 107-109 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
- Sch. B1 para. 111 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208 reg. 5(5)
– Sch. B1 para. 112-116 amendment to earlier affecting provision 2009 c. 1, s. 145
  Table 1 by S.I. 2017/400 reg. 5(9)
– Sch. B1 para. 84 amendment to earlier affecting provision 2009 c. 1, ss. 145, 154 by S.I. 2018/208 reg. 5(6)(a)
– Sch. B1 amendment to earlier affecting provision 2011 c. 5 Sch. 10 Pts. 1 2 by S.I. 2017/540 Sch. 1 para. 6(2)
– Sch. B1 amendment to earlier affecting provision S.I. 1994/2421 Sch. 2 by S.I. 2017/540 Sch. 2 para. 6
– Sch. B1 para. 12 applied by 2016 c. 22 s. 106(8)
– Sch. B1 para. 13 excluded by 2016 c. 22 s. 106(3)
– Sch. B1 para. 44 excluded by 2017 c. 19 s. 9(4)
– Sch. B1 para. 1 modified by 2016 c. 22 Sch. 5 Pt. 12
– Sch. B1 para. 14 modified by 2016 c. 22 s. 107
– Sch. B1 para. 22 modified by 2016 c. 22 s. 107
– Sch. B1 para. 40-49 modified by 2016 c. 22 Sch. 5 Pt. 12
– Sch. B1 para. 54 modified by 2016 c. 22 Sch. 5 Pt. 12
– Sch. B1 para. 59-68 modified by 2016 c. 22 Sch. 5 Pts. 12
– Sch. B1 para. 70-79 modified by 2016 c. 22 Sch. 5 Pt. 12
– Sch. B1 para. 98-107 modified by 2016 c. 22 Sch. 5 Pt. 12
– Sch. B1 para. 109-111 modified by 2016 c. 22 Sch. 5 Pt. 12
– Sch. B1 para. 112-116 modified by 2016 c. 22 Sch. 5 Pt. 12
– Sch. B1 para. 46(4) modified by S.I. 2019/138 reg. 26
– Sch. B1 para. 49(4) modified by S.I. 2019/138 reg. 27
– Sch. B1 para. 53(2) modified by S.I. 2019/138 reg. 28
– Sch. B1 para. 54(6) modified by S.I. 2019/138 reg. 29
– Sch. B1 para. 83(5) modified by S.I. 2019/138 reg. 31
– Sch. B1 para. 84(5) modified by S.I. 2019/138 reg. 32
– Sch. B1 para. 50 modified (temp.) by 2016 c. 22 Sch. 5 Pt. 12
– Sch. B1 para. 73(2)(d) and word omitted by S.I. 2019/348 Sch. 3 para. 1
– Sch. B1 para. 74(6)(ba) omitted by S.I. 2019/348 Sch. 3 para. 1
– Sch. B1 para. 13 restricted by 2017 c. 19 s. 9(3)
– Sch. B1 specified provisions applied (with modifications) by 2013 c. 33 Sch. 6 para. 5
– Sch. B1 specified provisions applied (with modifications) by 2017 c. 19 Sch. 3
– Sch. B1 specified provisions applied (with modifications) by 2017 c. 19 Sch. 4
– Sch. B1 specified provisions applied (with modifications) by S.I. 2018/728 reg. 2(2)Sch. 1 Pt. 1
– Sch. B1 para. 73(1)(c) word omitted by S.I. 2018/1244 art. 13(3)(b)
– Sch. B1 para. 73 heading word substituted by S.I. 2018/1244 art. 13(3)(a)
– Sch. B1 para. 84(3) words inserted by S.I. 2017/702 Sch. para. 30(2)(b)(i)
– Sch. B1 para. 84(3) words inserted by S.I. 2017/702 Sch. para. 30(2)(b)(ii)
– Sch. B1 para. 84(6) words inserted by S.I. 2017/702 Sch. para. 30(3)
– Sch. B1 para. 84(7)(a) words inserted by S.I. 2017/702 Sch. para. 30(5)
– Sch. B1 para. 84(7)(c) words inserted by S.I. 2017/702 Sch. para. 30(5)
– Sch. B1 para. 84(3) words omitted by S.I. 2019/146 Sch. para. 44(a)(ii)
– Sch. B1 para. 84(6) words omitted by S.I. 2019/146 Sch. para. 44(a)(iii)
– Sch. B1 para. 84(7)(a) words omitted by S.I. 2019/146 Sch. para. 44(a)(v)
– Sch. B1 para. 84(7)(c) words omitted by S.I. 2019/146 Sch. para. 44(a)(v)
– Sch. B1 para. 111(1A)(b) words omitted by S.I. 2019/146 Sch. para. 44(b)(i)
– Sch. B1 para. 111(1B) words substituted by S.I. 2017/702 Sch. para. 31
– Sch. B1 para. 65(2) words substituted by S.I. 2018/1244 art. 13(2)(a)
– Sch. B1 para. 65(2) words substituted by S.I. 2018/1244 art. 13(2)(b)
– Sch. B1 para. 111(1A)(c) words substituted by S.I. 2019/146 Sch. para. 44(b)(ii)
– Sch. 1 amendment to earlier affecting provision SI 1994/2421 Sch. 8 by S.I.
  2017/540 Sch. 2 para. 11
– Sch. 2A modified by S.I. 2019/700 reg. 41
– Sch. 2A para. 10(2B) omitted by S.I. 2019/700 reg. 21(b)
– Sch. 2A para. 10(1)(n) substituted by S.I. 2016/645 Sch. 1 para. 2
– Sch. 2A para. 10(1)(n) substituted by S.I. 2019/700 reg. 21(a)
– Sch. 4 amendment to earlier affecting SI 1994/2421 Sch. 3 para. 10 by S.I. 2017/540
  Sch. 2 para. 7(3)(4)
– Sch. 6 para. 15C(3)(b) substituted by S.I. 2018/1394 Sch. 2 para. 3(a)
– Sch. 6 para. 15C(4)(b)(c) substituted by S.I. 2018/1394 Sch. 2 para. 3(b)(i)
– Sch. 6 para. 15C(4) words inserted by S.I. 2018/1394 Sch. 2 para. 3(b)(ii)
– Sch. 8 para. 14 word substituted by S.I. 2016/1034 Sch. 1 para. 4(11)
– Sch. 9 para. 10 omitted by 2015 c. 26 Sch. 10 para. 10
– Sch. 9 para. 30 words omitted by 2015 c. 26 Sch. 10 para. 11
– Sch. 9 para. 2 words substituted by S.I. 2018/130 Sch. para. 7(c)
– Sch. 10 amendment to earlier affecting provision 1986 c. 53, Sch. 15 by S.I.
  2018/208 reg. 2(2)
– Sch. 10 amendment to earlier affecting provision 2009 c. 1, s. 145 by S.I. 2018/208
  reg. 5(5)
– Sch. 10 entries repealed by 1989 c. 40 Sch. 24
– Sch. 14 entries repealed by 2010 c. 10 Sch. 4
– First Group of Parts amendment to earlier affecting provision S.I. 2006/3107, art. 3,
  Sch. by S.I. 2018/208 reg. 11

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
– Act Amendment to earlier affecting provision SI 2011/245, reg. 15 by S.I. 2017/1064
  Sch. para. 36(4)
– Act amendment to earlier affecting provision S.I. 1986/1999, art. 3, Sch. 1 Pt. 2 by
  S.I. 2017/1119 Sch. 3 para. 1
– Act amendment to earlier affecting provision S.I. 2001/1090, Sch. 3 by S.I.
  2017/1119 Sch. 1 para. 37-53
– Act amendment to earlier affecting provision S.I. 2011/245, regs. 8(7), 9, 15, 16-21,
– Act amendment to earlier affecting provision S.I. 2011/245. reg. 8(7), 9, 15, 16-21,
  24, 25, Schs. 1-4 by S.I. 2017/400 reg. 10
– Act amendment to earlier affecting provision S.I. 2013/1388, Sch. 2 by S.I. 2017/400
  reg. 11(2)
– Act amendment to earlier affecting provision S.I. 2013/1388, Sch. 2 by S.I. 2018/208
  reg. 14
– Act amendment to earlier affecting provision SI 1994/2421 Sch. 4 by S.I. 2017/540
  Sch. 2 para. 8
– Act amendment to earlier affecting provision SI 1994/2421 Sch. 7 by S.I. 2017/540
  Sch. 2 para. 9
– Act applied (with modifications) by S.I. 2017/1212 reg. 166(2)167(2)Sch. 23
– Act applied in part (with modifications) by 2017 c. 19 s. 6(2)(b)s. 6(3)9-12
– Act excluded by S.I. 2018/1135 rule 4.10(2)
– Act modified by 1986 c. 46 s. 22H(4)(g) (as inserted) by S.I. 2017/1212 Sch. 4 para.
  3
– Act modified by S.I. 2012/3013, Sch. 2 para. 34 (as inserted) by S.I. 2018/728 reg.
  3(6)Sch. 2
– Act modified in part by 2016 c. 22 Sch. 5 para. 39
– Act modified in part by S.I. 2019/138 reg. 4-6
– Act power to modify conferred by 2016 c. 22 Sch. 5 para. 45(2)
– Act power to modify or exclude conferred by 2017 c. 19 s. 6(2)(a)(3)(4)
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 12-19 amendment to earlier affecting provision S.I. 2001/1090, reg. 5, Schs. 3, 4 by S.I. 2017/1119 Sch. 1 Pt. 23
- Pt. 2 amendment to earlier affecting provision S.I. 2010/3023, art. 2, Sch. by S.I. 2017/400 reg. 9
- Pt. 2 amendment to earlier affecting provision S.I. 2010/3023, art. 2, Sch. by S.I. 2018/208 reg. 12
- Pt. 2 amendment to earlier affecting provision S.I. 2014/229, art. 2(2) Sch. 1 Pts. 1, 3, 4 by S.I. 2018/208 reg. 15(3)(b)
- Pt. 2 amendment to earlier affecting provision SI 1994/2421 Sch. 2 by S.I. 2017/540 Sch. 2 para. 6
- Pt. 2 words substituted by S.I. 2019/146 Sch. para. 45(2) (This amendment is to 1986 c. 45, Pt. 2 as that Part had effect immediately before the coming into force of 2002 c. 40, s. 248 and in so far as it continues to have effect)
- s. 4(4)(d) and word inserted by S.I. 2018/1244 art. 5(b)
- s. 5A applied (with modifications) by S.I. 1994/2421, art. 16, Sch. 8 (as amended) by S.I. 2017/1119 Sch. 2 para. 4
- s. 12C applied (with modifications) by S.I. 1994/2421, art. 16, Sch. 8 (as amended) by S.I. 2017/1119 Sch. 2 para. 4
- s. 13-15C applied (with modifications) by S.I. 1994/2421, art. 16, Sch. 8 (as amended) by S.I. 2017/1119 Sch. 2 para. 4
- s. 41HB(2) words substituted by 2018 c. 14 s. 1(3)(b)
- s. 51(6)(a) words substituted by S.I. 2016/1034 Sch. 1 para. 4(2)
- s. 106(4A)(4B) amendment by S.I. 2017/702, Sch. 3 extended to Scotland by S.I. 2019/816 reg. 6(2)
- s. 106(4A)(4B) inserted by S.I. 2017/702 Sch. para. 3
- s. 106(4A)(4B) omitted by S.I. 2019/146 Sch. para. 18
- s. 106(7)(8) inserted by S.I. 2017/702 Sch. para. 56
- s. 106(7)(8) omitted by S.I. 2019/146 Sch. para. 134
- s. 142(3A) inserted by S.S.I. 2017/209 Sch. para. 4(a)
- s. 146(6)(7) amendment by S.I. 2017/702, Sch. para. 7 extended to Scotland by S.I. 2019/816 reg. 6(2)
- s. 146(6)(7) inserted by S.I. 2017/702 Sch. para. 7
- s. 146(6)(7) omitted by S.I. 2019/146 Sch. para. 22
- s. 146A inserted by S.I. 2017/702 Sch. para. 8
- s. 146A omitted by S.I. 2019/146 Sch. para. 23
- s. 170(8) amendment to earlier affecting provision 1998 c. 46, Sch. 8 para. 23(2)-(3) by S.I. 2016/679 art. 6
- s. 172(9)(10) inserted by S.I. 2017/702 Sch. para. 57
- s. 172(9)(10) omitted by S.I. 2019/146 Sch. para. 135
- s. 176AZA applied (with modifications) by 2009 (c. 1), s. 103 Table (as amended) by S.I. 2018/1244 art. 14(1)
- s. 176AZA applied (with modifications) by S.I. 1994/2421, art. 4(3)(za) (as inserted) by S.I. 2018/1244 art. 16
- s. 176AZA applied (with modifications) by S.I. 1994/2421, art. 6(5)(za) (as inserted) by S.I. 2018/1244 art. 17
- s. 176AZA and cross-heading inserted by S.I. 2018/1244 art. 6
- s. 201(2)(2A)(2B) amendments by S.I. 2017/702, Sch. para. 9 extended to Scotland by S.I. 2019/816 reg. 6(2)
- s. 201(2A)(2B) inserted by S.I. 2017/702 Sch. para. 9(3)
- s. 201(2A)(2B) inserted by S.I. 2017/702 Sch. para. 58(2)
- s. 201(2A)(2B) omitted by S.I. 2019/146 Sch. para. 136(b)
- s. 202(2A)(2B) inserted by S.I. 2017/702 Sch. para. 10(2)
- s. 202(2A)(2B) omitted by S.I. 2019/146 Sch. para. 25(2)
- s. 202(6)(7) inserted by S.I. 2017/702 Sch. para. 10(5)(b)
– s. 202(6)(7) omitted by S.I. 2019/146 Sch. para. 25(5)
– s. 202(8) words omitted by S.I. 2019/146 Sch. para. 25(6)
– s. 202(8) words renumbered by S.I. 2017/702 Sch. para. 10(6)
– s. 204(4A)-(4E) inserted by S.I. 2017/702 Sch. para. 59
– s. 204(4A)-(4E) omitted by S.I. 2019/146 Sch. para. 137
– s. 205(2)(2A)(2B) amendments by S.I. 2017/702, Sch. para. 12 extended to Scotland by S.I. 2019/816 reg. 6(2)
– s. 205(2A)(2B) inserted by S.I. 2017/702 Sch. para. 12(3)
– s. 205(2A)(2B) inserted by S.I. 2019/146 Sch. para. 26(3)
– s. 205(2A)(2B) omitted by S.I. 2019/146 Sch. para. 138(b)
– s. 210(2A)(2B) omitted by S.I. 2019/146 Sch. para. 24(3)
– s. 258(5)(d) and word inserted by S.I. 2018/1244 art. 7(b)
– s. 263(1)(ab) inserted by S.I. 2019/146 Sch. para. 31(2)(a)
– s. 263(5) inserted by S.I. 2019/146 Sch. para. 31(3)
– s. 265(1)(ab) inserted by S.I. 2019/146 Sch. para. 33(2)(a)
– s. 265(5) inserted by S.I. 2019/146 Sch. para. 33(3)
– s. 288(2A) inserted by 2015 c. 20 Sch. 6 para. 15(3)
– s. 291A inserted by 2015 c. 26 s. 133(1)
– s. 328(3A) inserted by S.I. 2018/1244 art. 8(2)
– s. 328(4)(a)(b) s. 328(4)(a)(b) substituted for words in s. 328(4) by S.I. 2018/1244 art. 8(3)
– s. 387A applied (with modifications) by 2009 (c. 1), s. 103 Table (as amended) by S.I. 2018/1244 art. 14(2)
– s. 387A inserted by S.I. 2018/1244 art. 11
– s. 422A inserted by S.I. 2019/146 Sch. para. 41
– Sch. A1 para. 31(5)(d) and word inserted by S.I. 2018/1244 art. 12(2)(b)
– Sch. B1 para. 84(1A)(1B) inserted by S.I. 2017/702 Sch. para. 30(2)(a)
– Sch. B1 para. 84(6A)(6B) inserted by S.I. 2017/702 Sch. para. 30(4)
– Sch. B1 para. 73(1)(e) and word inserted by S.I. 2018/1244 art. 13(3)(c)
– Sch. B1 para. 84(1A)(1B) omitted by S.I. 2019/146 Sch. para. 44(a)(i)
– Sch. B1 para. 84(6A)(6B) omitted by S.I. 2019/146 Sch. para. 44(a)(iv)
– Sch. 6 para. 15BB(a) words substituted by S.I. 2018/1394 Sch. 2 para. 2(a)(i)
– Sch. 6 para. 15BB(a) words substituted by S.I. 2018/1394 Sch. 2 para. 2(a)(ii)
– Sch. 6 para. 15BB(b) words substituted by S.I. 2018/1394 Sch. 2 para. 2(b)