Insolvency Act 1986

1986 CHAPTER 45

PART IV

WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

Modifications etc. (not altering text)

C1 Pt. 4 (ss. 73-219) modified by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2)**, 25
Pt. 4 modified by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 30(6)**, 35(4), 47(4)(a)
Pt. 4 modified by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 86(5), 123, **Sch. 8 para. 16**
Pt. 4 modified (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3** (as amended (13.3.2018) by S.I. 2018/208, regs. 1(3), **3**)
Pt. 4 modified (E.W.S.) (31.3.1996) by 1995 c. 20, s. 110(1), **Sch. 4 para. 3(4)**; S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, Sch. 2) (which modifying Act was itself repealed (1.4.1996) by 1995 c. 40, ss. 6(1), 7(2), Sch. 5 (with **Sch. 3**, paras. 3, 16))
Pt. 4 modified (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 3(4)**
Pt. 4 modified (24.3.2003) by 2002 c. 29, ss. 426(8), 458(1)(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4))

C2 Pts. 1-4, 6, 7 applied to limited liability partnerships (with modifications) (E.W.S.) (6.4.2001) by S.I. 2001/1090, reg. 5, Schs. 3, **4** (as amended (4.3.2004) by S.I. 2004/355, **art. 10**; (1.10.2005) by S.I. 2005/1989, reg. 3, **Sch. 2** (with reg. 4); (8.12.2017) by S.I. 2017/1119, reg. 1(1), Sch. 1 Pts. 2, **3**; (temp.) (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), Sch. 10 paras. 8(1)(2), 14, **Sch. 12 para. 6** (with ss. 2(2), 5(2); (26.6.2020) by S.I. 2020/643, reg. 1(1), **Sch. 1** (with reg. 2); (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 12 para. 6** (with ss. 2(2), 5(2), 14(4)); and (16.2.2021) by S.I. 2021/60, reg. 1(1), **Sch. 1** (with reg. 3(2)))

C3 Pt. 4 (ss. 73-219) extended (with modifications) by Building Societies Act 1986 (1986 c. 53), ss. 54(3)(a)(5)(a), 90, 126(3), **Sch. 15** (as amended (13.3.2018) by S.I. 2018/208, regs. 1(3), **2(2)**)

C4 Pts. 1-7 (ss. 1-251) applied (with modifications) by S.I. 1989/1276, **arts. 2**, 3
Pt. 4 (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. 4 applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 8(4)(5)(8)(9)** (as amended (1.7.2005) by S.I. 2005/1516, **art. 4**)

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Pt. 4 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**)

C5 Pt. 4 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 S.I. 2014/3486, arts. 1(2), **14** (with art. 3))

C6 Pt. 4: power to apply or incorporate conferred (6.4.2001) by 2000 c. 12, **s. 14(1)**; S.I. 2000/3316, **art. 2**
Pt. 4: 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

C7 First Group of Parts (Pts. 1-7) applied (with modifications) (15.12.2006) by The Banks (Former Authorised Institutions) (Insolvency) Order 2006 (S.I. 2006/3107), art. 3, **Sch.** (as amended (1.4.2013) by S.I. 2013/472, art. 1(1), **Sch. 2 para. 117**; and (13.3.2018) by S.I. 2018/208, regs. 1(3), **11**

C8 Pt. 4 amended (1.12.2001) by 2000 c. 8, **s. 371(2)(b)**; S.I. 2001/3538, **art. 2(1)**

C9 Pt. 4 (except s. 185) modified (S.) (prosp.) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss. 45(5)**, 227(3) (subject to s. 45(1) and with ss. 45(6), 223)

C10 Pts. 1-4 applied (with modifications) in part (E.W.) (2.1.2013) by The Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (S.I. 2012/3013), reg. 1, **Sch. para. 1** (as amended (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 3 para. 49(3)** (with ss. 2(2), 5(2)); (7.7.2020) by S.I. 2020/710, regs. 1, **4** (with reg. 6) (which affecting legislation is revoked and this amendment reversed (13.8.2020) by S.I. 2020/856, regs. 1(2), **2**); and (13.8.2020 immediately after the coming into force of S.I. 2020/856, **reg. 2**) by S.I. 2020/856, regs. 1(3), **5** (with reg. 7))

C11 Pt. 4 applied (with modifications) (S.) by S.S.I. 2001/128, reg. 4, Schs. 2, **3**) (as modified) (temp.) (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), Sch. 10 paras. 8(1)(2), **14** (with ss. 2(2), 5(2))

C12 Pt. 4 modified (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), **ss. 12**, 49(1) (with ss. 2(2), 5(2))

C13 Pts. 1-4 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), reg. 2, **Sch. 1 para. 3** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**)

CHAPTER I

PRELIMINARY

Modifications etc. (not altering text)

C14 Pt. 4 Ch. 1 excluded (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **9** (with regs. 1(2), 3(a)(ii))

[F1 Introductory]

Textual Amendments

F1 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)

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F2 73 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.]

Textual Amendments

F2 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 [F3]. . . ;
  (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 [F4the 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,

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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.

Textual Amendments

F3 Words in s. 74(2)(c) 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(3)(a)** (with art. 10, Sch. 1 para. 84)

F4 Words in s. 74(2)(e) 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(3)(b)** (with art. 10, Sch. 1 para. 84)

Modifications etc. (not altering text)

C15 S. 74 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, 37, **Sch. 1 para. 3** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 11)

C16 S. 74(2)(a) modified (temp.) (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), Sch. 10 paras. 8(1)(2), **10** (with ss. 2(2), 5(2))

75 Directors, etc. with unlimited liability.

F5 . . . . . .

Textual Amendments

F5 S. 75 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(4)} (with arts. 9, 10, Sch. 1 para. 84)

76 Liability of past directors and shareholders.

(1) This section applies where a company is being wound up and—

(a) it has under **[**[F6]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 **[**[F7]statement**]** made in accordance with **[**[F8]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 **[**[F7]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) **[**[F9]Section 74 does not apply**]** in relation to liability accruing by virtue of this section.

(6) [F10]. . . . . .

Textual Amendments

F6 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)

F7 Words in s. 76(2)(b) substituted (12.5.2011) by The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), arts. 1(2), **6(3)**

F8 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)

F9 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)

F10 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)

Modifications etc. (not altering text)

C17 Ss. 76-79 applied (with modifications) (E.W.S.) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, 37, **Sch. 1 para. 3** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 11)

77 Limited company formerly unlimited.

(1) This section applies in the case of a company being wound up which was at some former time registered as unlimited but has **[**[F11]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 [F12]. . .

Status: *Point in time view as at 08/07/2021.*
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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.

Textual Amendments

F11 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)

F12 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)

Modifications etc. (not altering text)

C17 Ss. 76-79 applied (with modifications) (E.W.S.) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, 37, **Sch. 1 para. 3** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 11)

78 Unlimited company formerly limited.

(1) This section applies in the case of a company being wound up which was at some former time registered as limited but has been re-registered as unlimited [F13]. . . .

(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.

Textual Amendments

F13 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)

Modifications etc. (not altering text)

C17 Ss. 76-79 applied (with modifications) (E.W.S.) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, 37, **Sch. 1 para. 3** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 11)

79 Meaning of "contributory".

(1) In this Act [F14]. . . 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.

Status: *Point in time view as at 08/07/2021.*
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(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.

F15 . . . . . .

Textual Amendments

F14 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)

F15 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)

Modifications etc. (not altering text)

C17 Ss. 76-79 applied (with modifications) (E.W.S.) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, 37, **Sch. 1 para. 3** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 11)

80 Nature of contributory's liability.

The liability of a contributory creates a debt (in England and Wales in the nature of **[**[F16]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.

Textual Amendments

F16 Words in s. 80 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)

Modifications etc. (not altering text)

C18 Ss. 80-82 applied (with modifications) (E.W.S.) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 11)

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.

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

Modifications etc. (not altering text)

C18 Ss. 80-82 applied (with modifications) (E.W.S.) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 11)

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.

Modifications etc. (not altering text)

C18 Ss. 80-82 applied (with modifications) (E.W.S.) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 11)

83 [F17Companies registered but not formed under the Companies Act 2006]

(1) The following applies in the event of a company being wound up which **[**F18is 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.

Status: *Point in time view as at 08/07/2021.*
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(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.

Textual Amendments

F17 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)

F18 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)

Modifications etc. (not altering text)

C19 S. 83 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37**, **Sch. 1 para. 3** (with reg. 5)

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) [F19] . . . . . .

(2) In this Act the expression "a resolution for voluntary winding up" means a resolution passed under **[**[F20]either of the paragraphs**]** of subsection (1).

[[F21](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.**]**

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[[F22](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).**]**

[[F23](4) This section has effect subject to section 43 of the Commonhold and Leasehold Reform Act 2002.**]**

Textual Amendments

F19 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)

F20 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)

F21 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)

F22 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)

F23 S. 84(4) added (E.W.) (27.9.2004) by 2002 c. 15, ss. 68, 181(1), Sch. 5 para. 6; S.I. 2004/1832, **art. 2**

Modifications etc. (not altering text)

C20 S. 84 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3 (as amended (1.10.2009) by S.S.I. 2009/310, reg. 4, **Sch. 2 para. 1(a)**)

C21 S. 84 modified (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **5** (with regs. 1(2), 3(a)(i))

C22 S. 84(3) amended (1.7.1999) by 1998 c. 46, Sch. 8 para. 23(2)-(3) (as amended (28.6.2016) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), arts. 1(1), **6**)

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.

Modifications etc. (not altering text)

C23 S. 85 modified (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **10** (with regs. 1(2), 3(a)(ii))

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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.

Modifications etc. (not altering text)

C24 S. 88 excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 10(2)**

C25 S. 88 excluded by The Financial Market and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 16(3) (as amended (2.2.2006) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2006 (S.I. 2006/50), **reg. 2(8)(10)** and as amended (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 6(a)**)

C26 S. 88 excluded (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **11** (with regs. 1(2), 3(a)(ii))

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.

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) 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.

Modifications etc. (not altering text)

C27 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 (as amended (28.6.2016) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), arts. 1(1), **6**)

90 Distinction between "members'" and "creditors'" voluntary winding up.

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

CHAPTER III

MEMBERS' VOLUNTARY WINDING UP

Modifications etc. (not altering text)

C28 Pt. 4 Ch. 3 applied (8.12.2017) by The Risk Transformation Regulations 2017 (S.I. 2017/1212), regs. 1(2), **169(2)** (with reg. 189)

91 Appointment of liquidator.

(1) In a members' voluntary winding up, the company in general meeting shall appoint one or more liquidators for the purpose of winding up the company's affairs and distributing its assets.

(2) On the appointment of a liquidator all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance.

Modifications etc. (not altering text)

C29 S. 91(1)(2) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**
Ss. 91-93 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4, **Sch. 2**

92 Power to fill vacancy in office of liquidator.

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

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

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

Modifications etc. (not altering text)

C30 Ss. 91-93 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4, **Sch. 2**
S. 92(1)(2)(3)(4) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

[[F24]92A Progress report to company [F25]...

(1) Subject to **[**[F26]section 96**]**, [F27]... the liquidator must—

(a) for each prescribed period produce a progress report relating to the prescribed matters; and

(b) within such period commencing with the end of the period referred to in paragraph (a) as may be prescribed send a copy of the progress report to—

(i) the members of the company; and

(ii) such other persons as may be prescribed.

(2) A liquidator who fails to comply with this section is liable to a fine.**]**

Textual Amendments

F24 S. 92A added (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 6(1)** (with art. 12(1))

F25 Words in s. 92A title repealed (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(2)-(4), **5(1)(b)** (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

F26 Words in s. 92A(1) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 16**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F27 Words in s. 92A(1) repealed (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(2)-(4), **5(1)(a)** (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F29]93 General company meeting at each year's end [[F28](Scotland)]

. . . . . .

Textual Amendments

F28 Word in s. 93 heading inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 6(2)(a)** (with art. 12(2))

F29 S. 93 repealed (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(2)-(4), **5(2)** (with arts. 14, 15) (with savings by S.S.I. 2016/141, art. 16 (as inserted (S.) (1.8.2017) by The Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209), arts. 1(2), **8(3)**) (see S.I. 2019/816, reg. 4(a))

[[F30]94 Final account prior to dissolution

(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.**]**

Textual Amendments

F30 S. 94 substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 18**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

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.

[[F31](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.**]**

[F32](2) . . . . . .

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F32](2A) . . . . . .

[F32](3) . . . . . .

(4) The statement as to the affairs of the company [F33]. . . 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.

[[F34](4A) The statement as to the affairs of the company shall be [F35]...—

(a) in the case of a winding up of a company registered in England and Wales **[**[F36]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, **[**[F37]contain a statutory declaration by the liquidator**].]**

[[F38](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.**]**

[F39](5) . . . . . .

[F39](6) . . . . . .

[F39](7) . . . . . .

(8) If the liquidator without reasonable excuse fails to comply with **[**[F40]subsections (1) to (4A)**]**, he is liable to a fine.

Textual Amendments

F31 S. 95(1A) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F32 S. 95(2)-(3) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F33 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)**

F34 S. 95(4A) inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 5(2)(b)**

F35 Words in s. 95(4A) repealed (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(2)-(4), **8(a)** (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

F36 Words in s. 95(4A)(a) inserted (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(2)-(4), **8(b)** (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

F37 Words in s. 95(4A)(b) substituted (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(2)-(4), **8(c)** (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

F38 S. 95(4B)(4C) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F39 S. 95(5)-(7) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F40 Words in s. 95(8) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C31 S. 95 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**
S. 95 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

[F41 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.

F42 (4A) **[** The court shall grant an application under subsection (4) made by the holder of a qualifying floating charge in respect of the company's property (within the meaning of paragraph 14 of Schedule B1) unless the court thinks it right to refuse the application because of the particular circumstances of the case.**]**

(5) The "existing liquidator" is the person who is liquidator immediately before the winding up becomes a creditors' voluntary winding up.**]**

Textual Amendments

F41 S. 96 substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 20(1)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F42 S. 96(4A) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 20(2)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

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 **[**[F43]99 and 100**]** do not apply where, under section 96 in Chapter III, a members' voluntary winding up has become a creditors' voluntary winding up.

Textual Amendments

F43 Words in s. 97(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 21**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C32 S. 97 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

[F44]98 Meeting of creditors.

. . . . . .

Textual Amendments

F44 S. 98 omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 22**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

99 Directors to lay statement of affairs before creditors.

[[F45](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—

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(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 [F46]. . . 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.

[[F47](2A) The statement as to the affairs of the company shall **[**[F48]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, **[**[F49]be verified by some or all of the directors**]** by a statement of truth; and

(b) in the case of a winding up of a company registered in Scotland, **[**[F50]by affidavit**][**[F50]contain a statutory declaration by some or all of the directors**].]**

[[F51](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.**]**

Textual Amendments

F45 S. 99(1) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F46 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)**

F47 S. 99(2A) inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 5(3)(b)**

F48 Words in s. 99(2A) repealed (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), **arts. 1(3)(4)**, 9(a) (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

F49 Words in s. 99(2A)(a) inserted (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), **arts. 1(3)(4)**, 9(b) (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

F50 Words in s. 99(2A)(b) substituted (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), **arts. 1(3)(4)**, 9(c) (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

F51 S. 99(3) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C33 S. 99 modified (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **12** (with regs. 1(2), 3(a)(ii))

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

100 Appointment of liquidator.

[[F52](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.

Textual Amendments

F52 S. 100(1)-(1B) substituted for s. 100(1) (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 24**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C34 S. 100 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C35 S. 100 modified (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **5** (with regs. 1(2), 3(a)(i))

C36 S. 100(1)(3) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

101 Appointment of liquidation committee.

[[F53](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, **[**[F54]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 **[**[F54]decide**]**—

(a) **[**[F55]those persons**]** are not then, unless the court otherwise directs, qualified to act as members of the committee; and

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(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 **[**[F55]those persons**]**.

(4) **[**[F56]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.**]**

Textual Amendments

F53 S. 101(1) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F54 Word in s. 101(3) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F55 Words in s. 101(3) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F56 S. 101(4) repealed (S.) (1.10.2017 for specified purposes) by The Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209), arts. 1(3), **3**

Modifications etc. (not altering text)

C37 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**

C38 S. 101(2) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

[F57]102 Creditors' meeting where winding up converted under s. 96.

. . . . . .

Textual Amendments

F57 S. 102 omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

103 Cesser of directors' powers.

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

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104 Vacancy in office of liquidator.

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

Modifications etc. (not altering text)

C39 S. 104 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

[F58 104A Progress report to company and creditors F59... F60...

(1) [F61 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 [F62, 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.]

Textual Amendments

F58 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))

F59 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)

F60 Words in s. 104A heading repealed (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(3)(4), **6(1)(b)** (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

F61 Word in s. 104A(1) substituted (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(3)(4), **6(1)(a)** (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

F62 Words in s. 104A(1)(b)(i) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 27**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C40 S. 104A modified (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **13** (with regs. 1(2), 3(a)(ii))

F64 105 Meetings of company and creditors at each year's end [F63 (Scotland)].

. . . . . .

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Textual Amendments

F63 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))

F64 S. 105 repealed (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(3)(4), **6(2)** (with arts. 14, 15) (with savings by by S.S.I. 2016/141, art. 16 (as inserted (S.) (1.8.2017) by The Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209), arts. 1(2), **8(3)**) (see S.I. 2019/816, reg. 4(a))

[F65 106 Final account prior to dissolution.

(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.

F66(4A) . . . . . .

F66(4B) . . . . . .

(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.]

Textual Amendments

F65 S. 106 substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 29**; S.I. 2015/1329, **reg. 3(d)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F66 S. 106(4A)(4B) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 18** (with regs. 4, 5) (as amended by S.I. 2019/1459, reg. 1(2), Sch. para. 2); 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C41 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)**

C42 S. 106 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C43 S. 106 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3** (as amended (S.) (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 1 para. 57(2)**)

C44 S. 106 modified (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **14** (with regs. 1(2), 3(a)(ii))

C45 S. 106(3)(5) amended (1.7.1999) by Scotland Act 1998 (c. 46), s. 125, **Sch. 8 para. 23(2)(3)** (with s. 126(3)-(11)); S.I. 1998/3178, arts. 2, **3** (as amended (28.6.2016) by S.I. 2016/679, arts. 1(1), **6**)

CHAPTER V

PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP

107 Distribution of company's property.

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

Modifications etc. (not altering text)

C46 S. 107 restricted (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(2)**

C47 S. 107 modified (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **15** (with regs. 1(2), 3(a)(ii))

108 Appointment or removal of liquidator by the court.

(1) If from any cause whatever there is not liquidator acting, the court may appoint a liquidator.

(2) The court may, on cause shown, remove a liquidator and appoint another.

109 Notice by liquidator of his appointment.

(1) The liquidator shall, within 14 days after his appointment, publish in the Gazette and deliver to the registrar of companies for registration a notice of his appointment in the form prescribed by statutory instrument made by the Secretary of State.

(2) If the liquidator fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

Modifications etc. (not altering text)

C48 S. 109 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C49 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 (as amended (28.6.2016) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), arts. 1(1), **6**)

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

[[F67](a)**]** to another company ("the transferee company"), whether or not the latter is a **[**[F68]company registered under the Companies Act 2006**][**[F67], 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 **[**[F69]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 **[**[F70]company may—

(a) in the case of the transferee company, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto) participate in the profits of, or receive any other benefit from, the transferee company, or

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

(5) A sale or arrangement in pursuance of this section is binding on members of the transferor company.

(6) A special resolution is not invalid for purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but, if an order is made within a year for winding up the company by the court, the special resolution is not valid unless sanctioned by the court.

Extent Information

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

Textual Amendments

F67 Words in s. 110(1) inserted (6.4.2001) by S.I. 2001/1090, reg. 9, **Sch. 5 para. 15(2)**

F68 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)

F69 Word in s. 110(2) substituted (6.4.2001) by S.I. 2001/1090, reg. 9, **Sch. 5 para. 15(3)**

F70 Words in s. 110(4) substituted (6.4.2001) by S.I. 2001/1090, reg. 9, **Sch. 5 para. 15(4)**

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

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

[[F278](a)**]** to another company ("the transferee company"), whether or not the latter is a **[**[F279]company registered under the Companies Act 2006**][**[F278], 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 **[**[F280]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 **[**[F281]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.

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Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

Textual Amendments

F278 Words in s. 110(1) inserted (6.4.2001) by S.S.I. 2001/128, reg. 5, **Sch. 4 para. 1(2)**

F279 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)

F280 Words in s. 110(2) substituted (6.4.2001) by S.S.I. 2001/128, reg. 5, **Sch. 4 para. 1(3)**

F281 Words in s. 110(4) substituted (6.4.2001) by S.S.I. 2001/128, reg. 5, **Sch. 4 para. 1(4)**

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 [M1]Companies Clauses Consolidation Act 1845 or, in the case of a winding up in Scotland, the [M2]Companies Clauses Consolidation (Scotland) Act 1845 with respect to the settlement of disputes by arbitration are incorporated with this Act, and—

(a) in the construction of those provisions this Act is deemed the special Act and "the company" means the transferor company, and

(b) any appointment by the incorporated provisions directed to be made under the hand of the secretary or any two of the directors may be made in writing by the liquidator (or, if there is more than one liquidator, then any two or more of them).

Modifications etc. (not altering text)

C50 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

M1 1845 c. 16.

M2 1845 c. 17.

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112 Reference of questions to court.

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

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

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

Modifications etc. (not altering text)

C51 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**

C52 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 (as amended (28.6.2016) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), arts. 1(1), **6**)

113 Court's power to control proceedings (Scotland).

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

Modifications etc. (not altering text)

C53 S. 113 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

114 No liquidator appointed or nominated by company.

(1) This section applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the company.

(2) The powers of the directors shall not be exercised, except with the sanction of the court or (in the case of a creditors' voluntary winding up) so far as may be necessary to secure compliance with sections [F71]... 99 (statement of affairs) **[**[F72]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.

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) If the directors of the company without reasonable excuse fail to comply with this section, they are liable to a fine.

Textual Amendments

F71 Words in s. 114(2) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 30(a)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F72 Words in s. 114(2) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 30(b)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C54 S. 114 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

115 Expenses of voluntary winding up.

[[F73]After the payment of any liabilities to which section 174A applies,**]** 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.

Textual Amendments

F73 Words in s. 115 inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 3 para. 9** (with ss. 2(2), 5(2))

Modifications etc. (not altering text)

C55 S. 115 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

116 Saving for certain rights.

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

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.

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Where **[**[F74]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 [F75]... has concurrent jurisdiction with the High Court to wind up the company.

[[F76](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.

[F77](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.

[F78](6) . . . . . .

[F79](7) . . . . . .

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

Textual Amendments

F74 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)

F75 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)

F76 S. 117(2A) inserted by S.I. 1991/724, Sch. Pt. 1 (as amended) (E.W.) (22.4.2014) by The High Court and County Court Jurisdiction (Amendment) Order 2014 (S.I. 2014/821), arts. 1, **2(10)(a)(ii)** (with art. 3)

F77 S. 117(4) omitted (22.4.2014) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 93(b)**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F78 S. 117(6) omitted (22.4.2014) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 93(b)**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

F79 S. 117(7) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 19** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

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

Modifications etc. (not altering text)

C56 S. 117 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(3), **Sch. 3 Pt. II para. 6**

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

C57 S. 117 modified (1.12.1994) by S.I. 1994/2421, art. 9(a), **Sch. 5 para. 1**

118 Proceedings taken in wrong court.

(1) Nothing in section 117 invalidates a proceeding by reason of its being taken in the wrong court.

(2) The winding up of a company by the court in England and Wales, or any proceedings in the winding up, may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

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

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

(2) Thereupon the special case and the proceedings (or such of them as may be required) shall be transmitted to the High Court for the purposes of the determination.

Jurisdiction (Scotland)

120 Court of Session and sheriff court jurisdiction.

(1) The Court of Session has jurisdiction to wind up any company registered in Scotland.

(2) When the Court of Session is in vacation, the jurisdiction conferred on that court by this section may (subject to the provisions of this Part) be exercised by the judge acting as vacation judge **[**[F81]in pursuance of section 4 of the Admnistration of Justice (Scotland) Act 1933**]**.

(3) Where the amount of a company's share capital paid up or credited as paid up does not exceed £120,000, the sheriff court of the sheriffdom in which the company's registered office is situated has concurrent jurisdiction with the Court of Session to wind up the company; but—

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

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

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

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

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

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

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

[F82](6) . . . . . .

Textual Amendments

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

F82 S. 120(6) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 20** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C58 S. 120 extended (with modifications) by S.I. 1989/638, **regs. 19(2)**, 21
S. 120 applied (with modifications) (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. I para. 5**; S.I. 2001/766, **art. 2(1)(a)** (subject to art. 3)

121 Power to remit winding up to Lord Ordinary.

(1) The Court of Session may, by Act of Sederunt, make provision for the taking of proceedings in a winding up before one of the Lords Ordinary; and, where provision is so made, the Lord Ordinary has, for the purposes of the winding up all the powers and jurisdiction of the court.

(2) However, the Lord Ordinary may report to the Inner House any matter which may arise in the course of a winding up.

Modifications etc. (not altering text)

C59 S. 121 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)

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 **[**[F83]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 **[**[F84]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;

F85(e) . . . . . .

(f) the company is unable to pay its debts,

F86(fa) . . . . . .

(g) the court is of the opinion that it is just and equitable that the company should be wound up.

(2) In Scotland, a company which the Court of Session has jurisdiction to wind up may be wound up by the Court if there is subsisting a floating charge over property comprised in the company's property and undertaking, and the court is satisfied that the security of the creditor entitled to the benefit of the floating charge is in jeopardy.

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

Textual Amendments

F83 Words in s. 122(1)(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)

F84 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)

F85 S. 122(1)(e) omitted (12.5.2011) by virtue of The Companies Act 2006 (Consequential Amendments and Transitional Provisions) Order 2011 (S.I. 2011/1265), arts. 1(2), **6(4)**

F86 S. 122(1)(fa) omitted (26.6.2020) by virtue of Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 3 para. 10** (with ss. 2(2), 5(2))

Modifications etc. (not altering text)

C60 S. 122 applied (with modifications) by S.I. 1994/2421, art. 8, **Sch. 4 Pt. II para. 6(a)**

C61 S. 122 modified by 1986 c. 53, Sch. 15 para. 16(2) (as substituted (28.6.2016) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), art. 1(1)(4), **2**)

C62 S. 122 excluded by 1986 c. 53, Sch. 15 para. 16(1) (as substituted (28.6.2016) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), art. 1(1)(4), **2**)

C63 S. 122(1) modified (10.8.2005) by The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 (S.I. 2005/1998), regs. 2(3), **25(3)**

C64 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)

C65 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))

C66 S. 122(1)(f) modified (6.4.2010) by The Community Infrastructure Levy Regulations 2010 (S.I. 2010/948), **reg. 105(2)**

C67 S. 122(1)(f) restricted (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), **Sch. 10 para. 5(1)-(3)**(4) (with ss. 2(2), 5(2))

C68 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)

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

123 Definition of inability to pay debts.

(1) A company is deemed unable to pay its debts—

(a) if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company's registered office, a written demand (in the prescribed form) requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or

(b) if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or

(c) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or

(d) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company, or

(e) if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.

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

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

Modifications etc. (not altering text)

C69 S. 123 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8, **Sch. 4 Pt. II para. 7(a)**
S. 123 applied (1.10.1996) by 1996 c. 52, s. 7, **Sch. 1 Pt. II para. 14(2)**; S.I. 1996/2402, **art. 3** (subject to transitional provisions and savings in Sch.)

C70 S. 123 applied (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 166(3)**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 3

124 Application for winding up.

(1) Subject to the provisions of this section, an application to the court for the winding up of a company shall be by petition presented either by the company, or the directors, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, [F87]... **[**[F88]or by **[**[F89]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.

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) 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.

[F90] . . .

[F91](3A) . . . . . .

(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

[[F92](b) in a case falling within section 124A **[**[F93]or 124B**]** below.**]**

[[F94](4AA) A winding up petition may be presented by the **[**[F95]Financial Conduct Authority**]** in a case falling within section 124C(1) or (2).**]**

[[F96](4A) A winding-up petition may be presented by the Regulator of Community Interest Companies in a case falling within section 50 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.**]**

(5) Where a company is being wound up voluntarily in England and Wales, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section; but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

Textual Amendments

F87 Words in s. 124(1) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 21** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F88 Words inserted (E.W.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 62(2)(b), 123, **Sch. 8 para. 16**

F89 Words in s. 124(1) substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 294**; S.I. 2005/910, **art. 3(y)**

F90 Words in s. 122(1)(c) 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(12)} (with art. 10, Sch. 1 para. 84)

F91 S. 124(3A) omitted (26.6.2020) by virtue of Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 3 para. 11** (with ss. 2(2), 5(2))

F92 S. 124(4)(*b*) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 60(2)**, 213(2)

F93 Words in s. 124(4)(b) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 73(4)(a)**

F94 S. 124(4AA) inserted (18.8.2006) by The European Cooperative Society Regulations 2006 (S.I. 2006/2078), **reg. 33(2)**

F95 Words in s. 124(4AA) 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)(a)** (with Sch. 12)

F96 S. 124(4A) inserted (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 50(3)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3

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Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C71 S. 124 excluded (S.) (27.7.1992) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 19), **ss. 14(3)**, 15(9); S.I. 1992/1599, **art. 5**

C72 S. 124 extended (E.W.) by Magistrates' Courts Act 1980 (c. 43, SIF 82), **s. 87A** (as inserted (E.W.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 62(1), 123, **Sch. 8 para. 16**)

C73 S. 124 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(1)(a), Sch. 4 Pt. II para. 8, **Sch. 6 para. 2** (as amended (E.W.) (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 2 para. 6**)

C74 S. 124 restricted (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), **Sch. 10 para. 2(1)-(4)**(5) (with ss. 2(2), 5(2))

C75 S. 124 restricted (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), **Sch. 10 para. 3(1)-(4)**(5) (with ss. 2(2), 5(2))

C76 S. 124 restricted (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), **Sch. 10 para. 1(1)-(3)**(4) (with ss. 2(2), 5(2))

C77 S. 124(4)(b) applied by 2007 c. 27, **s. 27A(3)** (as inserted (1.3.2016) by Serious Crime Act 2015 (c. 9), s. 88(1), **Sch. 1 para. 20**; S.I. 2016/148, **reg. 3(f)**)

[F97 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 [F98(except section 448A)] of the M3 Companies Act 1985 (company investigations, &c.),

[F99(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 M4 Criminal Justice Act 1987 or [F100section 28 of the Criminal Law (Consolidation) (Scotland) Act 1995] (fraud investigations), or

(d) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),

that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.

(2) This section does not apply if the company is already being wound up by the court.]

Textual Amendments

F97 S. 124A inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 60(3)**, 213(2)

F98 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)

F99 S. 124A(b)(bb) substituted for s. 124A(b) (1.12.2001) by S.I. 2001/3649, **arts. 1**, 305

F100 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)**

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C78 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)

C79 S. 124A excluded (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **16** (with regs. 1(2), 3(a)(ii))

Marginal Citations

M3 1985 c. 6**(27).**

M4 1987 c.38**(39:1).**

[F101]124B Petition for winding up of SE

. . . . . .

Textual Amendments

F101 S. 124B omitted (31.12.2020) by virtue of The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/710), regs. 1(3), **2**; 2020 c. 1, Sch. 5 para. 1(1)

[F102]124C Petition for winding up of SCE

. . . . . .

Textual Amendments

F102 S. 124C omitted (31.12.2020) by virtue of The Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/710), regs. 1(3), **2**; 2020 c. 1, Sch. 5 para. 1(1)

125 Powers of court on hearing of petition.

(1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit; but the court shall not refuse to make a winding-up order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion—

(a) that the petitioners are entitled to relief either by winding up the company or by some other means, and

(b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

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

Status: *Point in time view as at 08/07/2021.*
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Modifications etc. (not altering text)

C80 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**

C81 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)

C82 S. 125 excluded (31.1.2019) by Technical and Further Education Act 2017 (c. 19), **ss. 11**, 47(2); S.I. 2018/1161, reg. 3(a)

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 **[**[F103]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.

[[F104](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.**]**

Textual Amendments

F103 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)

F104 S. 126(3) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), **Sch. 8 para. 27**

Modifications etc. (not altering text)

C83 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**

C84 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)

C85 S. 126(2) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

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127 Avoidance of property dispositions, etc.

[[F105](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.

[[F105](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.**]**

[[F106](3) This section has no effect in respect of anything done during a moratorium under Part A1, or during a period mentioned in section 5(4)(a) following the end of a moratorium, where the winding-up order was made on a petition presented before the moratorium begins, unless the petition was presented under section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in section 367(3)(b) of that Act.**]**

Textual Amendments

F105 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))

F106 S. 127(3) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 3 para. 12** (with ss. 2(2), 5(2))

Modifications etc. (not altering text)

C86 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.**

C87 S. 127 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 164(3), 175(4), 182(4), **Sch. 22 para. 11(4)**; S.I. 1991/878, art. 2, **Sch.**
S. 127 excluded (15.8.1995) by S.I. 1995/2049, **reg. 21(4)-(8)**
S. 127 excluded (11.12.1999) by S.I. 1999/2979, **reg. 19(3)**
S. 127 excluded (26.12.2003) by The Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226), **reg. 10(1)**

C88 S. 127 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**
S. 127 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

C89 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

C90 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.

[[F107](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).**]**

Textual Amendments

F107 S. 128(3) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), **Sch. 8 para. 28**

Modifications etc. (not altering text)

C91 S. 128 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154**, 155, 161(4); S.I. 1991/878, art. 2, **Sch.** .

C92 S. 128 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C93 S. 128 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C94 S. 128 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)

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.

[[F108](1A) Where the court makes a winding-up order by virtue of paragraph 13(1)(e) of Schedule B1, the winding up is deemed to commence on the making of the order.**]**

(2) In any other case, the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for winding up.

Textual Amendments

F108 S. 129(1A) inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 16 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C95 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**

C96 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)

C97 S. 129(1A) modified (5.10.2004) by Energy Act 2004 (c. 20), ss. 159(1), 198, **Sch. 20 para. 45**; S.I. 2004/2575, **art. 2(1)**, Sch. 1

C98 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)

C99 S. 129(1A) modified by S.I. 2012/3013, Sch. 2 para. 38 (as inserted (4.7.2018) by The Insolvency of Registered Providers of Social Housing Regulations 2018 (S.I. 2018/728), regs. 1, 3(6), **Sch. 2**)

C100 S. 129(1A) modified (4.7.2018) by The Insolvency of Registered Providers of Social Housing Regulations 2018 (S.I. 2018/728), regs. 1, 2(3), **Sch. 1 Pt. 2**

Status: *Point in time view as at 08/07/2021.*
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C101 S. 129(1A) modified (5.7.2018) by Housing and Planning Act 2016 (c. 22), s. 216(3), **Sch. 5 para. 44**; S.I. 2018/805, reg. 3(b)

C102 S. 129(2) modified (temp.) (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), Sch. 10 paras. 8(1)(2), **9** (with ss. 2(2), 5(2))

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 **[**[F109]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.

[[F110](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.

Textual Amendments

F109 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)

F110 S. 130(3A) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), **Sch. 8 para. 29**

Modifications etc. (not altering text)

C103 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.**.

C104 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.** .

C105 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

C106 S. 130 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)

C107 S. 130 modified (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **17** (with regs. 1(2), 3(a)(ii))

C108 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 (as amended (28.6.2016) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), arts. 1(1), **6**)
S. 130(1) applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

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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 [F111]. . . 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

[[F112](2A) The statement shall **[**[F113]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 **[**[F114]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, **[**[F115]by affidavit**][**[F115]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—

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(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.

Textual Amendments

F111 Words in s. 131(2) omitted (6.4.2010) by virtue of The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 5(4)(a)**

F112 S. 131(2A) inserted (6.4.2010) by The Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (S.I. 2010/18), **art. 5(4)(b)**

F113 Words in s. 131(2A) repealed (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(3)(4), **10(a)** (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

F114 Words in s. 131(2A)(a) inserted (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(3)(4), **10(b)** (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

F115 Words in s. 131(2A)(b) substituted (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(3)(4), **10(c)** (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

Modifications etc. (not altering text)

C109 S. 131 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(3), **Sch. 3 Pt. II para. 7**
s. 131 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8, **Sch. 4 Pt. II para. 10**
S. 131 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C110 S. 131 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C111 S. 131 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)

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.

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Modifications etc. (not altering text)

C112 S. 132 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)

133 Public examination of officers

(1) Where a company is being wound up by the court, the official receiver or, in Scotland, the liquidator may at any time before the dissolution of the company apply to the court for the public examination of any person who—

(a) is or has been an officer of the company; or

(b) has acted as liquidator or administrator of the company or as receiver or manager or, in Scotland, receiver of its property; or

(c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company.

(2) Unless the court otherwise orders, the official receiver or, in Scotland, the liquidator shall make an application under subsection (1) if he is requested in accordance with the rules to do so by—

(a) one-half, in value, of the company's creditors; or

(b) three-quarters, in value, of the company's contributories.

(3) On an application under subsection (1), the court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of the company or as to the conduct of its business and affairs, or his conduct or dealings in relation to the company.

(4) The following may take part in the public examination of a person under this section and may question that person concerning the matters mentioned in subsection (3), namely—

(a) the official receiver;

(b) the liquidator of the company;

(c) any person who has been appointed as special manager of the company's property or business;

(d) any creditor of the company who has tendered a proof or, in Scotland, submitted a claim in the winding up;

(e) any contributory of the company.

Modifications etc. (not altering text)

C113 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**

C114 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)

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134 Enforcement of s. 133.

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

(2) In a case where a person without reasonable excuse fails at any time to attend his examination under section 133 or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under that section, the court may cause a warrant to be issued to a constable or prescribed officer of the court—

(a) for the arrest of that person; and

(b) for the seizure of any books, papers, records, money or goods in that person's possession.

(3) In such a case the court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.

Modifications etc. (not altering text)

C115 S. 134 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C116 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.

Modifications etc. (not altering text)

C117 S. 135 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C118 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)

C119 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 (as amended (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(4)**)

C120 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 (as amended (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(10)**

C121 S. 135 excluded (31.1.2019) by Technical and Further Education Act 2017 (c. 19), **ss. 11**, 47(2); S.I. 2018/1161, reg. 3(a)

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 **[**[F116]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) [F117]... , 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 [F118]... 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 **[**[F119]seek nominations from**]** the company's creditors and contributories.

Textual Amendments

F116 Words in s. 136(4) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F117 Words in s. 136(5)(a) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F118 Words in s. 136(5)(c) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F119 Words in s. 136(6) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C122 S. 136 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II**, para. 12

C123 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 **[**[F120]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 [F121]..., 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 **[**[F122]must explain the procedure for establishing a liquidation committee under section 141.**]**

Textual Amendments

F120 Words in s. 137(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F121 Words in s. 137(2) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F122 Words in s. 137(5) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C124 S. 137 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 13**

C125 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, **[**[F123]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 **[**[F124]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 **[**[F125]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 **[**[F126]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.

Textual Amendments

F123 Words in s. 138(3) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F124 Words in s. 138(4) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and

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Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 33(3)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F125 Words in s. 138(5) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F126 Words in s. 138(5) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C126 S. 138 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C127 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 [F127by] creditors and contributories.

(1) This section applies where a company is being wound up by the court and **[**F128nominations 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 **[**F129may 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.

Textual Amendments

F127 Word in s. 139 heading substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F128 Words in s. 139(1) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F129 Words in s. 139(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C128 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**

C129 S. 139 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)

140 Appointment by the court following administration or voluntary arrangement.

[[F130](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 **[**[F131]section 136(5)(a) and (b) does not apply.**]**

Textual Amendments

F130 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))

F131 Words in s. 140(3) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 35**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C130 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).

[[F132](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.

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) 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.

Textual Amendments

F132 S. 141(1)-(3C) substituted for (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 36**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C131 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)**

C132 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(3)**)

C133 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).

[F133(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.

[A "liquidation committee" is a committee having such functions as are conferred on F134(3A) it by or under this Act.**]**

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(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) **[**[F135]**[**[F136]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.**]**

Textual Amendments

F133 S. 142(1)-(4) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F134 S. 142(3A) inserted (S.) (1.10.2017 for specified purposes) by The Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209), arts. 1(3), **4(a)**

F135 S. 142(6) repealed (S.) (1.10.2017 for specified purposes) by The Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 (S.S.I. 2017/209), arts. 1(3), **4(b)**

F136 Words in s. 142(6) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C134 S. 142 amended (1.12.2001) by 2000 c. 8, **s. 371(4)(b)**; S.I. 2001/3538, **art. 2(1)**
S. 142 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C135 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(3)**)

C136 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)

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,

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(b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and

(c) to give the official receiver such other assistance,

as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up.

Modifications etc. (not altering text)

C137 S. 143 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 17**
S. 143 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C138 S. 143 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C139 S. 143 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)

C140 S. 143 modified (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **18** (with regs. 1(2), 3(a)(ii))

144 Custody of company's property.

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

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

Modifications etc. (not altering text)

C141 S. 144 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C142 S. 144 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C143 S. 144 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)

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.

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Modifications etc. (not altering text)

C144 S. 145 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C145 S. 145 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C146 S. 145 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)

[[F137]146 Final account

(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.

[F138](6) . . . . . .

[F138](7) . . . . . .]

Textual Amendments

F137 S. 146 substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 38**; S.I. 2015/1329, **reg. 3(d)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F138 S. 146(6)(7) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 22** (with regs. 4, 5) (as amended by S.I. 2019/1459, reg. 1(2), Sch. para. 2); 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C147 S. 146 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 18**
S. 146 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

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C148 S. 146 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)

C149 S. 146(4) modified (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **19** (with regs. 1(2), 3(a)(ii))

C150 S. 146(6)(7) amendment by S.I. 2017/702, Sch. para. 7 extended to Scotland (S.) (6.4.2019) by The Small Business, Enterprise and Employment Act 2015 (Commencement No. 7, Consequential, Transitional and Savings Provisions) Regulations 2019 (S.I. 2019/816), **reg. 6(2)**

[F139]146A Official receiver's duty to send statement to registrar about other proceedings

. . . . . .

Textual Amendments

F139 S. 146A omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 23** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

General powers of court

147 Power to stay or sist winding up.

(1) The court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in the winding up ought to be stayed or sisted, make an order staying or sisting the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.

(2) The court may, before making an order, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

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

Modifications etc. (not altering text)

C151 S. 147 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 19**
S. 147 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C152 S. 147 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C153 S. 147 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)

C154 S. 147(3) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(2)-(3)**, (with s. 126(3)-(11)); S.I. 1998/3178, **arts. 2**, 3 (as amended (28.6.2016) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), arts. 1(1), **6**)

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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 [F140]. . . , 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.

Textual Amendments

F140 Words in s. 148(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)

C155 S. 148 modified by S.I. 1986/1918, **Rule 5**

C156 S. 148 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

149 Debts due from contributory to company.

(1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him (or from the estate of the person who he represents) to the company, exclusive of any money payable by him or the estate by virtue of any call [F141]. . . .

(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.

Textual Amendments

F141 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)

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Modifications etc. (not altering text)

C157 S. 149 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

150 Power to make calls.

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

(2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

Modifications etc. (not altering text)

C158 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

[F142]151 Payment into bank of money due to company.

. . . . . .

Textual Amendments

F142 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(e)(iii)

152 Order on contributory to be conclusive evidence.

(1) An order made by the court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, but subject to any right of appeal.

(2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings except proceedings in Scotland against the heritable estate of a deceased contributory; and in that case the order is only prima facie evidence for the purpose of charging his heritable estate, unless his heirs or legatees of heritage were on the list of contributories at the time of the order being made.

Modifications etc. (not altering text)

C159 S. 152 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

153 Power to exclude creditors not proving in time.

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

Modifications etc. (not altering text)

C160 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

C161 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.

Modifications etc. (not altering text)

C162 S. 154 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

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.

[[F143](3) For the purposes of subsection (2) above, references to a government department shall be construed as including references to any part of the Scottish Administration.**]**

Textual Amendments

F143 S. 155(3) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 85**; S.I. 1998/3178, **art. 3**

Modifications etc. (not altering text)

C163 S. 155 excluded by Social Security Pensions Act 1975 (c. 60, SIF 113:1), **s. 57D(6)** (as inserted by Social Security Act 1990 (c. 27, SIF 113:1), s. 14, **Sch. 4 Pt. I para. 1**)
S. 155 excluded (7.2.1994) by 1993 c. 48, **s. 122(1)** (with s. 6(8)); S.I. 1994/86, **art. 2**

C164 S. 155 excluded (6.4.1997) by 1995 c. 26, **s. 26(1)**; S.I. 1997/664, art. 2(3), **Sch. Pt. II** (with transitional adaptations, modifications and savings in arts. 3-14)

C165 S. 155 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

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C166 S. 155 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)

156 Payment of expenses of winding up.

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

Modifications etc. (not altering text)

C167 S. 156 restricted (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(3)**

C168 S. 156 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C169 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)

157 Attendance at company meetings (Scotland).

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

Modifications etc. (not altering text)

C170 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

C171 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)

158 Power to arrest absconding contributory.

The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, may cause the contributory to be arrested and his books and papers and moveable personal property to be seized and him and them to be kept safely until such time as the court may order.

Modifications etc. (not altering text)

C172 S. 158 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

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159 Powers of court to be cumulative.

Powers conferred **[**[F144]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.

Textual Amendments

F144 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)

Modifications etc. (not altering text)

C173 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)

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 [F145]... in respect of the following matters—

[[F146](a) the seeking of decisions on any matter from creditors and contributories,**]**

(b) the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,

(c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator,

(d) the making of calls,

(e) the fixing of a time within which debts and claims must be proved,

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

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

Textual Amendments

F145 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)

F146 S. 160(1)(a) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 39**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C174 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 (as

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amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(3)**)

C175 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.

Modifications etc. (not altering text)

C176 S. 161 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

162 Appeals from orders in Scotland.

(1) Subject to the provision of this section and to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court in Scotland under this Act lies in the same manner and subject to the same conditions as an appeal from an order or decision of the court in cases within its ordinary jurisdiction.

(2) In regard to orders of judgments pronounced by the judge acting as vacation judge **[**[F147]in pursuance of section 4 of the [M5]Administration of Justice (Scotland) Act 1933**]**—

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

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

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

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

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provisions of this section in regard to orders or judgments pronounced by the judge acting as vacation judge apply.

(5) Nothing in this section affects provisions of **[**[F148]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.

Textual Amendments

F147 Words repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), **Sch. 2**

F148 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)

Modifications etc. (not altering text)

C177 S. 162 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C178 S. 162 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C179 S. 162 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

M5 1933 c. 41.

CHAPTER VII

LIQUIDATORS

Preliminary

163 Style and title of liquidators.

The liquidator of a company shall be described—

(a) where a person other than the official receiver is liquidator, by the style of "the liquidator" of the particular company, or

(b) where the official receiver is liquidator, by the style of "the official receiver and liquidator" of the particular company;

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

Modifications etc. (not altering text)

C180 S. 163 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C181 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)

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164 Corrupt inducement affecting appointment.

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

Modifications etc. (not altering text)

C182 S. 164 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C183 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.

[[F149](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 **[**[F150]special resolution**]** or for any other purpose he may think fit.

(5) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.

(6) Where the liquidator in exercise of the powers conferred on him by this Act disposes of any property of the company to a person who is connected with the company (within the meaning of section 249 in Part VII), he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

Textual Amendments

F149 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)

F150 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)

C184 S. 165 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C185 S. 165(2) modified by SI 1994/2421 Sch. 3 para. 8A(1) (as inserted (6.4.2017) by The Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) (Savings) Regulations 2017 (S.I. 2017/540), reg. 1, **Sch. 2 para. 7(2)** (with reg. 4))

C186 S. 165 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

166 Creditors' voluntary winding up.

(1) This section applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.

[[F151](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, **[**[F152]before—

(a) the company's creditors under section 100 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.**]**

(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.

[F153](4) . . . . . .

(5) **[**[F154]If the directors fail to comply with—

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

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

the liquidator shall, within 7 days of the relevant day, apply to the court for directions as to the manner in which that default is to be remedied.

(6) "The relevant day" means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.

(7) If the liquidator without reasonable excuse fails to comply with this section, he is liable to a fine.

Textual Amendments

F151 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**

F152 Words in s. 166(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

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F153 S. 166(4) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F154 Words in s. 166(5) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C187 S. 166 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C188 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.

[[F155](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.

Textual Amendments

F155 S. 167(1) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 120(3)**, 164(3)(i)(i)

Modifications etc. (not altering text)

C189 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**

C190 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

C191 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)

C192 S. 167 applied (with modifications) (E.W.S.) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 11)

C193 S. 167(1) modified (6.4.2017) by The Insolvent Partnerships Order 1994 (S.I. 1994/2421), **Sch. 3 para. 8A(2)** (as inserted by S.I. 2017/540, reg. 1, **Sch. 2 para. 7(2)** (with reg. 4))

Status: *Point in time view as at 08/07/2021.*
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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.

[[F156](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.

[[F157](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 [M6]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.**]**

[[F158](5C) Where the court makes an order for the winding up of an insolvent partnership under—

(a) section 72(1)(a) of the Financial Services Act 1986;

(b) section 92(1)(a) of the Banking Act 1987; or

(c) section 367(3)(a) of the Financial Services and Markets Act 2000,

the court may make an order as to the future conduct of the winding up proceedings, and any such order may apply any provisions of the Insolvent Partnerships Order 1994 with any necessary modifications.**]**

Textual Amendments

F156 S. 168(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 41(2)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F157 S. 168(5A)(5B)(5C) inserted (1.12.1994) by S.I. 1994/2421, **art. 14(1)**

F158 S. 168(5C) substituted (3.7.2002) by S.I. 2002/1555, **art. 15(2)**

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Modifications etc. (not altering text)

C194 S. 168 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, **Sch. para. 2** (as amended (13.3.2018) by S.I. 2018/208, regs. 1(3), **5(3)**)

C195 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)

C196 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**

C197 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)

C198 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

C199 S. 168(4) applied (with modifications) (E.W.S.) 8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 11)

Marginal Citations

M6 S.I. 1994/2421.

169 Supplementary powers (Scotland).

(1) [F159] . . . . . .

(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.

Textual Amendments

F159 S. 169(1) omitted (26.5.2015) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 120(4)**, 164(3)(i)(i)

Modifications etc. (not altering text)

C200 S. 169 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C201 S. 169 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2 (as amended (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(4)**)

C202 S. 169 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)

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

(1) If a liquidator who has made any default—

(a) in filing, delivering or making any return, account or other document, or

(b) in giving any notice which he is by law required to file, deliver, make or give,

fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the court has the following powers.

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(2) On an application made by any creditor or contributory of the company, or by the registrar of companies, the court may make an order directing the liquidator to make good the default within such time as may be specified in the order.

(3) The court's order may provide that all costs of and incidental to the application shall be borne by the liquidator.

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

Modifications etc. (not altering text)

C203 S. 170 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C204 S. 170 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C205 S. 170 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)

C206 S. 170(2) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(1)-(3)**, (with s. 126(3)-(11)); S.I. 1998/3178, **arts. 2**, 3 (as amended (28.6.2016) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), arts. 1(1), **6**)

Removal; vacation of office

171 Removal, etc. (voluntary winding up).

(1) This section applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up voluntarily.

(2) Subject to the next subsection, the liquidator may be removed from office only by an order of the court or—

(a) in the case of a members' voluntary winding up, by a general meeting of the company summoned specially for that puropose, or

(b) in the case of a creditors' voluntary winding up, by a **[**[F160]decision of the company's creditors made by a qualifying decision procedure instigated**]** specially for that purpose in accordance with the rules.

[[F161](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

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(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.

[[F162](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).**]**

Textual Amendments

F160 Words in s. 171(2)(b) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 42(2)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F161 S. 171(3)(3A) substituted for s. 171(3) (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 42(3)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F162 S. 171(6)(7) substituted for s. 171(6) (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 42(4)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C207 S. 171 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C208 S. 171 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

C209 S. 171(5)(6) amended (1.7.1999) by 1998 c. 46, s. 125, Sch. 8 para. 23(4)-(5) (with s. 126(3)-(11)); S.I. 1998/3178, arts. 2, 3 (as amended (28.6.2016) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), arts. 1(1), **6**)

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

(1) This section applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up by the court, or of a provisional liquidator.

(2) Subject as follows, the liquidator may be removed from office only by an order of the court or by a **[**[F163]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—

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(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 [F164]... 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,

[[F165]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.

[[F166](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).**]**

[[F167](9) Subsection (10) applies where, immediately before a liquidator gives notice to the court and the registrar under subsection (8) (or, where the liquidator gives notice to the court and the registrar on different days, immediately before the liquidator gives the first of those notices), there are EU insolvency proceedings open in respect of the company in one or more other member States.

(10) The liquidator must send to the court and the registrar, with the notice, a statement—

(a) identifying those proceedings,

(b) identifying the member State liquidator appointed in each of those proceedings, and

(c) indicating, in relation to each of those member State liquidators, whether that member State liquidator consents to the company being dissolved.**]**

Textual Amendments

F163 Words in s. 172(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 43(2)**; S.I. 2015/1329, **reg. 3(d)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F164 Words in s. 172(3)(a) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 43(3)(a)**; S.I. 2015/1329, **reg. 3(d)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F165 Words in s. 172(3) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 43(3)(b)**; S.I. 2015/1329, **reg. 3(d)**; S.I.

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Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F166 S. 172(8) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 43(4)**; S.I. 2015/1329, **reg. 3(d)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F167 S. 172(9)(10) inserted (S.) (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 57** (with regs. 3, 4) (which affecting provision is omitted (6.4.2019) by virtue of S.I. 2019/816, **reg. 6(3)**)

Modifications etc. (not altering text)

C210 S. 172 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 21**
S. 172 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C211 S. 172 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C212 S. 172 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)

C213 S. 172 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2** (as amended (S.) (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 1 para. 57(3)**)

C214 S. 172(8) amended (1.12.2001) by S.I. 2001/1228, **arts. 1(2)(c)(3)**, 32(1); S.I. 2001/3538, **art. 2(1)**

Release of liquidator

173 Release (voluntary winding up).

(1) This section applies with respect to the release of the liquidator of a company which is being wound up voluntarily.

(2) A person who has ceased to be a liquidator shall have his release with effect from the following time, that is to say—

[[F168](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;

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(d) in the case of a person who has vacated office under subsection **[**[F169](6)**]** of section 171, the time at which he vacated office;

[[F170](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.**]**

[[F171](2A) 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.**]**

(3) In the application of subsection (2) to the winding up of a company registered in Scotland, the references to a determination by the Secretary of State as to the time from which a person who has ceased to be liquidator shall have his release are to be read as references to such a determination by the Accountant of Court.

(4) Where a liquidator has his release under subsection (2), he is, with effect from the time specified in that subsection, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator.

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

Textual Amendments

F168 S. 173(2)(a)(b) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F169 Word in s. 173(2)(d) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F170 S. 173(2)(e) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F171 S. 173(2A) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C215 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 (as amended (28.6.2016) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), arts. 1(1), **6**)

C216 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**

Status: *Point in time view as at 08/07/2021.*
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174 Release (winding up by the court).

(1) This section applies with respect to the release of the liquidator of a company which is being wound up by the court, or of a provisional liquidator.

(2) Where the official receiver has ceased to be liquidator and a person becomes liquidator in his stead, the official receiver has his release with effect from the following time, that is to say—

(a) in a case where that person was nominated by **[**[F172]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.

(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—

[[F173](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)—

[[F174](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.**]**

[[F175](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.**]**

[[F176](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.**]**

(5) A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the court may, on an application by him, determine.

(6) Where the official receiver or a liquidator or provisional liquidator has his release under this section, he is, with effect from the time specified in the preceding provisions of this section, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator or provisional liquidator.

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

(7) In the application of this section to a case where the order for winding up has been made by the court in Scotland, the references to a determination by the Secretary of State as to the time from which a person who has ceased to be liquidator has his release are to such a determination by the Accountant of Court.

Textual Amendments

F172 Words in s. 174(2)(a) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 45(2)(a)**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F173 S. 174(4)(a)(b) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F174 S. 174(4)(d)(i)(ii) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F175 S. 174(4ZA) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F176 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)

Modifications etc. (not altering text)

C217 S. 174 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 22**
S. 174 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C218 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)

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CHAPTER VIII

PROVISIONS OF GENERAL APPLICATION IN WINDING UP

[F177 *Moratorium: order of priority of payment of debts*

Textual Amendments

F177 S. 174A and cross-heading inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 3 para. 13** (with ss. 2(2), 5(2))

174A Moratorium debts etc: priority

(1) This section applies where proceedings for the winding up of a company are begun before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part A1.

(2) In the winding up, the following are payable out of the company's assets (in the order of priority shown) in preference to all other claims—

(a) any prescribed fees or expenses of the official receiver acting in any capacity in relation to the company;

(b) moratorium debts and priority pre-moratorium debts.

(3) In subsection (2)(b) "priority pre-moratorium debt" means—

(a) any pre-moratorium debt that is payable in respect of—

(i) the monitor's remuneration or expenses,

(ii) goods or services supplied during the moratorium,

(iii) rent in respect of a period during the moratorium, or

(iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,

(b) any pre-moratorium debt that—

(i) consists of a liability to make a redundancy payment, and

(ii) fell due before or during the moratorium, and

(c) any pre-moratorium debt that—

(i) arises under a contract or other instrument involving financial services,

(ii) fell due before or during the moratorium, and

(iii) is not relevant accelerated debt (see subsection (4)).

(4) For the purposes of subsection (3)(c)—

"relevant accelerated debt" means any pre-moratorium debt that fell due during the relevant period by reason of the operation of, or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;

"the relevant period" means the period—

(a) beginning with the day on which the statement under section A6(1)(e) is made, and

(b) ending with the last day of the moratorium.

Status: *Point in time view as at 08/07/2021.*
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(5) The rules may make provision as to the order in which the debts mentioned in subsection (2)(b) rank among themselves in a case where the assets of the company are insufficient to meet them in full.

(6) The Secretary of State may by regulations made by statutory instrument amend this section for the purposes of changing the definition of "moratorium debt" or "priority pre-moratorium debt" in this section.

(7) Regulations under subsection (6) may make consequential, supplementary, incidental or transitional provision or savings.

(8) A statutory instrument containing regulations under subsection (6) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(9) For the purposes of this section proceedings for the winding up of a company are begun when—
   (a) a winding-up petition is presented, or
   (b) a resolution for voluntary winding up is passed.

(10) Any rules made under section A18(4) (meaning of supply of goods or services) apply also for the purposes of subsection (3)(a)(ii) of this section.

(11) In this section—

"acceleration or early termination clause", in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument—
   (a) under which, on the happening of an event—
      (i) a debt or other liability falls due earlier than it otherwise would, or
      (ii) a debt or other liability is terminated and replaced by another debt or liability, or
   (b) which confers on a party a right which, if exercised, will result in —
      (i) a debt or other liability falling due earlier than it otherwise would, or
      (ii) a debt or other liability being terminated and replaced by another debt or liability;

"contract or other instrument involving financial services" has the same meaning as it has for the purposes of section A18 (see Schedule ZA2);

"monitor's remuneration or expenses" has the meaning given by section A18;

"moratorium debt" has the meaning given by section A53;

"pre-moratorium debt" has the meaning given by section A53;

"redundancy payment" has the meaning given by section A18;

"wages or salary" has the meaning given by section A18.**]**

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Preferential debts

175 Preferential debts (general provision).

(1) In a winding up the company's preferential debts [F178]... shall be paid in priority to all other debts **[**[F179]after the payment of—

(a) any liabilities to which section 174A applies, and

(b) expenses of the winding up.**]**

[[F180](1A) Ordinary preferential debts rank equally among themselves [F181]... 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—

[F182](a) . . . . . .

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

[[F183](3) In this section "preferential debts", "ordinary preferential debts" and "secondary preferential debts" each has the meaning given in section 386 in Part 12.**]**

Textual Amendments

F178 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)

F179 S. 175(1)(a)(b) and words inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 3 para. 14(2)** (with ss. 2(2), 5(2))

F180 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)

F181 Words in s. 175(1A) omitted (26.6.2020) by virtue of Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 3 para. 14(3)** (with ss. 2(2), 5(2))

F182 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)

F183 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)

C219 S. 175 excluded (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(4)**

C220 S. 175 applied (with modifications) (11.12.1999) by The Financial Market and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 14(5)(a)(i) (as substituted (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 4(d)(ii)**)

C221 S. 175 excluded (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **reg. 20** (with reg. 3)

S. 175 excluded (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 20** (with reg. 3) (as modified (10.8.2005) by S.I. 2005/1998, regs. 2(3), 40(1)-(5))

C222 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

C223 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)**)

C224 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)

C225 S. 175 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 23** (as amended (E.W.) (8.12.2017) by The Insolvency (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1119), reg. 1(1), **Sch. 2 para. 5**; and (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **20** (with art. 3); and (28.12.2020) (temp.) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(4), **121(4)**)

176 Preferential charge on goods distrained [F184, 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.).

[F185(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 [F186(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.

Textual Amendments

F184 Word in s. 176 heading inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), **Sch. 8 para. 30(4)**

F185 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)**

F186 Word in s. 176(3) substituted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), **Sch. 8 para. 30(3)**

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C226 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

C227 S. 176 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 11)

[F187 Non-preferential debts

Textual Amendments

F187 S. 176AZA and cross-heading inserted (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), arts. 1(2), **6** (with art. 3)

176AZA Non-preferential debts of financial institutions

(1) This section applies in the winding up of a company which is a relevant financial institution.

(2) The company's ordinary non-preferential debts shall be paid in priority to its secondary non-preferential debts.

(3) The company's secondary non-preferential debts—

(a) shall be paid in priority to its tertiary non-preferential debts, and

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

(4) See section 387A for definitions relevant to this section.**]**

Modifications etc. (not altering text)

C228 S. 176AZA applied (with modifications) (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), **arts. 1(2)**, 14(1) (with art. 3)

C229 S. 176AZA applied (with modifications) (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), **arts. 1(2)**, 16 (with art. 3)

C230 S. 176AZA applied (with modifications) (19.12.2018) by The Banks and Building Societies (Priorities on Insolvency) Order 2018 (S.I. 2018/1244), **arts. 1(2)**, 17 (with art. 3)

C231 S. 176AZA modified (28.12.2020 until IP completion day when the amending provision ceases to have effect in accordance with reg. 1(4) of the amending S.I.) by The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1350), regs. 1(4), **111** (with reg. 108)

[F188 Property subject to floating charge]

Textual Amendments

F188 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))

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F189 176ZA F189 Payment of expenses of winding up (England and Wales)]

(1) The expenses of winding up in England and Wales, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over any claims to property comprised in or subject to any floating charge created by the company and shall be paid out of any such property accordingly.

(2) In subsection (1)—

(a) the reference to assets of the company available for payment of general creditors does not include any amount made available under section 176A(2)(a);

(b) the reference to claims to property comprised in or subject to a floating charge is to the claims of—

(i) the holders of debentures secured by, or holders of, the floating charge, and

(ii) any preferential creditors entitled to be paid out of that property in priority to them.

(3) Provision may be made by rules restricting the application of subsection (1), in such circumstances as may be prescribed, to expenses authorised or approved—

(a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them, or

(b) by the court.

(4) References in this section to the expenses of the winding up are to all expenses properly incurred in the winding up, including the remuneration of the liquidator.**]**

Textual Amendments

F189 S. 176ZA inserted (20.1.2007 for specified purposes, otherwise 6.4.2008) by Companies Act 2006 (c. 46), **ss. 1282(1)**, 1300(2); S.I. 2006/3428, **art. 3(3)** (subject to art. 5, Sch. 1 and with arts. 6, 8, Sch. 5); S.I. 2007/3495, arts. 2(2), **3(1)(v)** (with Sch. 4 para. 43)

Modifications etc. (not altering text)

C232 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

C233 S. 176ZA applied by S.I. 1999/2979 reg. 14(5)(a)(i) (as substituted (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 4(d)(ii)**)

C234 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)**)

[F190 176ZB 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

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(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 **[**[F191]or 26A**]** of the Companies Act 2006 (arrangements and reconstructions).**]**

Textual Amendments

F190 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)

F191 Words in s. 176ZB(4)(b) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 9 para. 6(2)** (with ss. 2(2), 5(2))

Modifications etc. (not altering text)

C235 S. 176ZB applied (with modifications) by S.I. 2014/229, art. 2A (as inserted (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **12(2)**)

C236 S. 176ZB applied (with modifications) by 2009 c. 1, s. 103 (as amended (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(4)**)

C237 S. 176ZB applied (with modifications) by 2009 c. 1, s. 145 Table 2 (as amended (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(10)**)

C238 S. 176ZB applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 11)

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F192 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 **[**F193 Part 26 **[**F194 or 26A**]** 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.**]**

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F192 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))

F193 Words in s. 176A(4)(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. 103** (with arts. 6, 11, 12)

F194 Words in s. 176A(4)(b) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 9 para. 6(3)** (with ss. 2(2), 5(2))

Modifications etc. (not altering text)

C239 S. 176A excluded (6.3.2008) by The Regulated Covered Bonds Regulations 2008 (S.I. 2008/346), reg. 46, **Sch. para. 2(4)**

C240 S. 176A excluded (26.12.2003) by The Financial Collateral Arrangements (No.2) Regulations 2003 (S.I. 2003/3226), **reg. 10(3)**

C241 S. 176A modified (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 21(7)** (with reg. 3) (as modified (10.8.2005) by S.I. 2005/1998, regs. 2(3), 40(1)-(4))

C242 S. 176A 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

C243 S. 176A 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

C244 S. 176A applied by S.I. 1999/2979 reg. 14(5)(a)(i) (as substituted (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 4(d)(ii)**)

C245 S. 176A 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, **3**

C246 S. 176A applied (with modifications) (E.W.S.) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, 11)

Special managers

177 Power to appoint special manager.

(1) Where a company has gone into liquidation or a provisional liquidator has been appointed, the court may, on an application under this section, appoint any person to be the special manager of the business or property of the company.

(2) The application may be made by the liquidator or provisional liquidator in any case where it appears to him that the nature of the business or property of the company, or the interests of the company's creditors or contributories or members generally, require the appointment of another to manage the company's business or property.

(3) The special manager has such powers as may be entrusted to him by the court.

(4) The court's power to entrust powers to the special manager includes power to direct that any provision of this Act that has effect in relation to the provisional liquidator or liquidator of a company shall have the like effect in relation to the special manager for the purposes of the carrying out by him of any of the functions of the provisional liquidator or liquidator.

(5) The special manager shall—

(a) give such security or, in Scotland, caution, as may be prescribed;
(b) prepare and keep such accounts as may be prescribed; and
(c) produce those accounts in accordance with the rules to the Secretary of State or to such other persons as may be prescribed.

Modifications etc. (not altering text)

C247 S. 177 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C248 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

C249 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 disclaim or not, and
(b) the period of 28 days beginning with the day on which that application was made, or such longer period as the court may allow, has expired without a notice of disclaimer having been given under this section in respect of that property.

(6) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C250 S. 178 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 164(1), 182(4), **Sch. 22 para. 7(1)**; S.I. 1991/878, art. 2, **Sch.**
S. 178 excluded (11.12.1999) by S.I. 1999/2979, **reg. 16(1)**
S. 178 excluded (26.12.2003) by The Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226), **reg. 10(4)**

C251 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**

C252 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

C253 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

C254 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)

C255 S. 178 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

C256 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)**)

C257 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)**)

C258 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.

Modifications etc. (not altering text)

C259 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

C260 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

C261 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)

C262 S. 179 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

180 Land subject to rentcharge.

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

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

Modifications etc. (not altering text)

C263 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

C264 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

C265 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)

C266 S. 180 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

181 Powers of court (general).

(1) This section and the next apply where the liquidator has disclaimed property under section 178.

(2) An application under this section may be made to the court by—
  (a) any person who claims an interest in the disclaimed property, or
  (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

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

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

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

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

Modifications etc. (not altering text)

C267 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

C268 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

C269 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)

C270 S. 181 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

182 Powers of court (leaseholds).

(1) The court shall not make an order under section 181 vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person—

(a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up, or

(b) if the court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.

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

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

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

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

Modifications etc. (not altering text)

C271 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

C272 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

C273 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)

C274 S. 182 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

Execution, attachment and the Scottish equivalents

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

(1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to it, and the company is subsequently wound up, he is not entitled to retain the beneift of the execution or attachment against the liquidator unless he has completed the execution or attachment before the commencement of the winding up.

(2) However—

(a) if a creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which he had notice is substituted, for the purpose of subsection (1), for the date of commencement of the winding up;

(b) a person who purchases in good faith under a sale by the **[**[F195]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 [M7]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 **[**[F196]"enforcement officer" means an individual who is authorised to act as an enforcement officer under the Courts Act2003**]**.

[[F197](4A) 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.

Textual Amendments

F195 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)

F196 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)

F197 S. 183(4A) inserted (18.11.2015) by Finance (No. 2) Act 2015 (c. 33), **Sch. 8 para. 31**

Modifications etc. (not altering text)

C275 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

C276 S. 183 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37**, **Sch. 1 para. 3** (with reg. 5)

Marginal Citations

M7 1979 c. 53.

184 Duties of [F198officers 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 **[**F199enforcement 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 **[**F200enforcement 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 **[**F201£500**]** a company's goods are sold or money is paid in order to avoid sale, the **[**F202enforcement 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 **[**F202enforcement 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 **[**F202enforcement 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 **[**F203"enforcement officer" means an individual who is authorised to act as an enforcement officer under the Courts Act 2003.**]**

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

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

Textual Amendments

F198 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)

F199 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)

F200 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)

F201 "£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)

F202 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)

F203 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)

C277 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

C278 S. 184 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

185 Effect of diligence (Scotland)

(1) In the winding up of a company registered in Scotland, the following provisions of the Bankruptcy (Scotland) Act **[**[F204]2016—

(a) subsections (3) to (10) of section 23A (effect of sequestration on land attachment) and section 24 (effect of sequestration on diligence generally); and

(b) subsections (6), (7), (10) and (11) of section 109 (management and 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 **[**[F205]2016**]** 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 **[**[F206]permanent**]** trustee, substitute references to the liquidator.

(3) In this section, "the commencement of the winding up of the company" means, where it is being wound up by the court, the day on which the winding-up order is made.

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

Textual Amendments

F204 Words in s. 185(1) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 4(3)(a)**

F205 Word in s. 185(2) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 4(3)(b)**

F206 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)

C279 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**

C280 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

C281 S. 185 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

C282 S. 185(1)(a)(2) applied by Administration of Justice Act 1956 (c. 46), s. 47G(3) (as substituted (S.) (30.11.2016) by Bankruptcy (Scotland) Act 2016 (asp 21), s. 237(2), **Sch. 8 para. 4** (with ss. 232, 234(3), 235, 236); S.S.I. 2016/294, reg. 2)

Miscellaneous matters

186 Rescission of contracts by the court.

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

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

Modifications etc. (not altering text)

C283 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)**

C284 S. 186 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C285 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

C286 S. 186 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)

C287 S. 186 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

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 **[**[F207]section 247 of the Companies Act 2006**]**(power to provide for employees or former employees on cessation or transfer of business).

[[F208](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 **[**[F209]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).

Textual Amendments

F207 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)

F208 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)

F209 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)

C288 S. 187 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**
S. 187 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

C289 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

C290 S. 187 excluded (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **20** (with regs. 1(2), 3(a)(ii))

C291 S. 187 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37**, **Sch. 1 para. 3** (with reg. 5)

188 Notification that company is in liquidation.

[[F210](1) When a company is being wound up, whether by the court or voluntarily—

(a) every invoice, order for goods **[**[F211]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, [F212]. . . and

(b) all the company's websites,

must contain a statement that the company is being wound up.**]**

(2) If default is made in complying with this section, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, is liable to a fine.

Textual Amendments

F210 S. 188(1) substituted (1.1.2007) by The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), **reg. 7(1)**

F211 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)**

F212 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)

C292 S. 188 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C293 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

C294 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

C295 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.

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

(a) the rate specified in section 17of the [M8]Judgments Act 1838 on the day on which the company went into liquidation, and

(b) the rate applicable to that debt apart from the winding up.

(5) In the application of this section to Scotland—

(a) references to a debt proved in a winding up have effect as references to a claim accepted in a winding up, and

(b) the reference to section 17 of the Judgments Act 1838 has effect as a reference to the rules.

Modifications etc. (not altering text)

C296 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**

C297 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

C298 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)

C299 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

M8 1838 c. 110.

190 Documents exempt from stamp duty.

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

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

(a) every assurance relating solely to freehold or leasehold property, or to any estate, right or interest in, any real or personal property, which forms part of the company's assets and which, after the execution of the assurance, either at law of in equity, is or remains part of those assets, and

(b) every writ, order, certificate, or other instrument or writing relating solely to the property of any company which is being wound up as mentioned in subsection (1), or to any proceeding under such a winding up.

"Assurance" here includes deed, conveyance, assignment and surrender.

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

(a) every conveyance relating solely to property which forms part of the company's assets and which, after the execution of the conveyance, is or remains the company's property for the benefit of its creditors,

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) any articles of roup of sale, submission and every other instrument and writing whatsoever relating solely to the company's property, and

(c) every deed or writing forming part of the proceedings in the winding up.

"Conveyance" here includes assignation, instrument, discharge, writing and deed.

Modifications etc. (not altering text)

C300 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

C301 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.

Modifications etc. (not altering text)

C302 S. 191 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C303 S. 191 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

192 Information as to pending liquidations.

(1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.

(2) If a liquidator fails to comply with this section, he is liable to a fine and, for continued contravention, to a daily default fine.

Modifications etc. (not altering text)

C304 S. 192 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C305 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

C306 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)

C307 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 (as amended (28.6.2016) by The Building Societies (Floating Charges and Other Provisions) Order 2016 (S.I. 2016/679), arts. 1(1), **6**)

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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 **[**[F213]228(1) of the Bankruptcy (Scotland) Act 2016**]** (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 **[**[F214]150 of the Bankruptcy (Scotland) Act 2016**]** (so far as consistent with this Act and **[**[F215]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 **[**[F216]148**]** of the Act first mentioned.

Textual Amendments

F213 Words in s. 193(2) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 4(4)(a)**

F214 Words in s. 193(3) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 4(4)(b)(i)**

F215 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)

F216 Word in s. 193(3) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 4(4)(b)(ii)**

Modifications etc. (not altering text)

C308 S. 193 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C309 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

C310 S. 193 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

[F217]194 Resolutions passed at adjourned meetings.

. . . . . .

Textual Amendments

F217 S. 194 omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C311 S. 194 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37**, **Sch. 1 para. 3** (with reg. 5)

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

195 [F218Court'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 [F219qualifying 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 F220. . . .

Textual Amendments

F218 Words in s. 195 heading substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F219 Words in s. 195(1)(b) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F220 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)

C312 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(3)**)

C313 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 [F221the 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 [F222the Companies Acts], or any official copy of such a document.

Textual Amendments

F221 Words in s. 196(a) 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)

F222 Words in s. 196(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(23)** (with art. 10, Sch. 1 para. 84)

Modifications etc. (not altering text)

C314 S. 196 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C315 S. 196 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C316 S. 196 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)

C317 S. 196 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

197 Commission for receiving evidence.

(1) When a company is wound up in England and Wales or in Scotland, the court may refer the whole or any part of the examination of witnesses—

(a) to **[**[F223]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.

Textual Amendments

F223 Word in s. 197(1)(a) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 93(c)**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

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Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Modifications etc. (not altering text)

C318 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

C319 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)

C320 S. 197 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

198 Court order for examination of persons in Scotland.

(1) The court may direct the examination in Scotland of any person for the time being in Scotland (whether a contributory of the company or not), in regard to the trade, dealings, affairs or property of any company in course of being wound up, or of any person being a contributory of the company, so far as the company may be interested by reason of his being a contributory.

(2) The order or commission to take the examination shall be directed to the sheriff principal of the sheriffdom in which the person to be examined is residing or happens to be for the time; and the sheriff principal shall summon the person to appear before him at a time and place to be specified in the summons for examination on oath as a witness or as a haver, and to produce any books or papers called for which are in his possession or power.

(3) The sheriff principal may take the examination either orally or on written interrogatories, and shall report the same in writing in the usual form to the court, and shall transmit with the report the books and papers produced, if the originals are required and specified by the order or commission, or otherwise copies or extracts authenticated by the sheriff.

(4) If a person so summoned fails to appear at the time and place specified, or refuses to be examined or to make the production required, the sheriff principal shall proceed against him as a witness or haver duly cited; and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland.

(5) The sheriff principal is entitled to such fees, and the witness is entitled to such allowances, as sheriffs principal when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland.

(6) If any objection is stated to the sheriff principal by the witness, either on the ground of his incompetency as a witness, or as to the production required, or on any other ground, the sheriff principal may, if he thinks fit, report the objection to the court, and suspend the examination of the witness until it has been disposed of by the court.

Modifications etc. (not altering text)

C321 S. 198 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C322 S. 198 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)

C323 S. 198 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

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

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

Modifications etc. (not altering text)

C324 S. 199 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C325 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

C326 S. 199 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)

C327 S. 199 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

200 Affidavits etc. in United Kingdom and overseas.

(1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in the United Kingdom, or elsewhere in Her Majesty's dominions, before any court, judge or person lawfully authorised to take and receive affidavits, or before any of Her Majesty's consuls or vice-consuls in any place outside Her dominions.

(2) All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul or vice-consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

Modifications etc. (not altering text)

C328 S. 200 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C329 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

C330 S. 200 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)

C331 S. 200(1) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

Status: *Point in time view as at 08/07/2021.*
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CHAPTER IX

DISSOLUTION OF COMPANIES AFTER WINDING UP

201 Dissolution (voluntary winding up).

(1) This section applies, in the case of a company wound up voluntarily, where the liquidator has sent to the registrar of companies his final account [F224]... under section 94 (members' voluntary) or **[**[F225]his final account and statement under**]** section 106 (creditors' voluntary).

(2) The registrar on receiving the account **[**[F226], or the account and statement,**]**[F227]... shall forthwith register **[**[F228]it or**]** them; and on the expiration of 3 months from the registration of **[**[F229]the account**]** the company is deemed to be dissolved [F230]....

[F231](2A) . . . . . .

[F231](2B) . . . . . .

(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 **[**[F232]a copy**]** of the order for registration; and if that person fails to do so he is liable to a fine and, for continued contravention, to a daily default fine.

Textual Amendments

F224 Words in s. 201(1) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 48(2)(a)**; S.I. 2015/1329, **reg. 3(d)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F225 Words in s. 201(1) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 48(2)(b)**; S.I. 2015/1329, **reg. 3(d)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F226 Words in s. 201(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 48(3)(a)**; S.I. 2015/1329, **reg. 3(d)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F227 Words in s. 201(2) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 24(2)(a)** (with regs. 4, 5) (as amended by S.I. 2019/1459, reg. 1(2), Sch. para. 2); 2020 c. 1, Sch. 5 para. 1(1)

F228 Words in s. 201(2) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 48(3)(b)**; S.I. 2015/1329, **reg. 3(d)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F229 Words in s. 201(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 48(3)(c)**; S.I. 2015/1329, **reg. 3(d)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F230 Words in s. 201(2) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 24(2)(b)** (with regs. 4, 5) (as amended by S.I. 2019/1459, reg. 1(2), Sch. para. 2); 2020 c. 1, Sch. 5 para. 1(1)

F231 S. 201(2A)(2B) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 24(3)** (with regs. 4, 5) (as amended by S.I. 2019/1459, reg. 1(2), Sch. para. 2); 2020 c. 1, Sch. 5 para. 1(1)

F232 Words in s. 201(4) substituted (1.1.2007) by The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (S.I. 2006/3429), regs. 1(1), **3(1)(d)**

Modifications etc. (not altering text)

C332 Ss. 201, 205 applied by Building Societies Act 1986 (c. 53), ss. 54(3)(a)(5)(a), 90, 126(3), **Sch. 15 para. 56**

202 Early dissolution (England and Wales).

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

(2) The official receiver, if—

(a) he is the liquidator of the company, and

(b) it appears to him—

(i) that the realisable assets of the company are insufficient to cover the expenses of the winding up, and

(ii) that the affairs of the company do not require any further investigation,

may at any time apply to the registrar of companies for the early dissolution of the company.

[F233](2A) . . . . . .

[F233](2B) . . . . . .

(3) Before making **[**[F234]an application under subsection (2)**]**, the official receiver shall give not less than 28 days' notice of his intention to do so to the company's creditors **[**[F235], other than opted-out creditors,**]** and contributories and, if there is an administrative receiver of the company, to that receiver.

(4) With the giving of that notice the official receiver ceases (subject to any directions under the next section) to be required to perform any duties imposed on him in relation to the company, its creditors or contributories by virtue of any provision of this Act, apart from a duty to make an application under subsection (2) [F236]....

(5) On the receipt of the official receivers' application under subsection (2) [F237]... the registrar shall forthwith register it [F238]... 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 [F239]....

[F240](6) . . . . . .

[F240](7) . . . . . .

[[F241](8) 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 **[**[F242]the period in subsection (5) [F243]...**].]**

Textual Amendments

F233 S. 202(2A)(2B) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 25(2)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F234 Words in s. 202(3) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 10(3)** (with regs. 3, 4)

F235 Words in s. 202(3) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 49**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F236 Words in s. 202(4) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 25(3)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F237 Words in s. 202(5) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 25(4)(a)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F238 Words in s. 202(5) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 25(4)(b)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F239 Words in s. 202(5) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 25(4)(c)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F240 S. 202(6)(7) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 25(5)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

F241 S. 202(8): words in s. 202(5) renumbered as s. 202(8) (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 10(6)** (with regs. 3, 4)

F242 Words in s. 202(5) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 10(7)** (with regs. 3, 4)

F243 Words in s. 202(8) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 25(6)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C333 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 **[**[F244]section 202(8)**]** , 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.

Textual Amendments

F244 Words in s. 203(3)(b) substituted (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 11** (with regs. 3, 4)

Modifications etc. (not altering text)

C334 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 **[**[F245]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, **[**[F246]he may apply**][**[F246]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.

[F247](4A) . . . . . .

Status: *Point in time view as at 08/07/2021.*
Changes to legislation: *Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F247](4B) . . . . . .

[F247](4C) . . . . . .

[F247](4D) . . . . . .

[F247](4E) . . . . . .

(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.

Textual Amendments

F245 Words in s. 204(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 50**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

F246 Words in s. 204(2) substituted (S.) (1.4.2016 for specified purposes, 6.4.2019 in so far as not already in force) by The Public Services Reform (Insolvency) (Scotland) Order 2016 (S.S.I. 2016/141), arts. 1(3)(4), **11** (with arts. 14, 15) (see S.I. 2019/816, reg. 4(a))

F247 S. 204(4A)-(4E) omitted (S.) (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 137** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

205 Dissolution otherwise than under ss. 202-204.

(1) This section applies where the registrar of companies receives—

[[F248](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, **[**[F249]on receipt of **[**[F250]the final account and statement or**]** the notice [F251]..., forthwith register **[**[F252]them or**]** it**][**[F249]on receipt of the notice and any statement sent under section 172(10), forthwith register it or them**]**; and, subject, as follows, at the end of the period of 3 months beginning with the day of the registration **[**[F253]of the final account or notice**]**[F254]..., the company shall be dissolved.

[F255](2A) . . . . . .

[F255](2B) . . . . . .

Status: *Point in time view as at 08/07/2021.*
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(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.

Textual Amendments

F248 S. 205(1)(a) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F249 Words in s. 205(2) substituted (S.) (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 60(1)** (with regs. 3, 4) (which affecting provision is omitted (6.4.2019) by virtue of S.I. 2019/816, **reg. 6(3)**)

F250 Words in s. 205(2) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F251 Words in s. 205(2) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 26(2)** (with regs. 4, 5) (as amended by S.I. 2019/1459, reg. 1(2), Sch. para. 2); 2020 c. 1, Sch. 5 para. 1(1)

F252 Words in s. 205(2) inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) 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)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F253 Words in s. 205(2) inserted (E.W.) (26.6.2017) by The Insolvency Amendment (EU 2015/848) Regulations 2017 (S.I. 2017/702), reg. 1, **Sch. para. 12(2)(b)** (with regs. 3, 4) (which amendment is extended (S.) (6.4.2019) by virtue of S.I. 2019/816, **reg. 6(2)**)

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F254 Words in s. 205(2) omitted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by virtue of Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 51(3)(c)**; S.I. 2015/1329, **reg. 3(d)**; S.I. 2016/1020, **reg. 4(e)** (with reg. 5) (as amended by S.I. 2017/363, **reg. 3**); S.I. 2019/816, **reg. 4(c)** (with reg. 5)

F255 S. 205(2A)(2B) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 26(3)** (with regs. 4, 5) (as amended by S.I. 2019/1459, reg. 1(2), Sch. para. 2); 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C335 Ss. 201, 205 applied by Building Societies Act 1986 (c. 53, SIF 16), ss. 54(3)(a)(5)(a), 90, 126(3), **Sch. 15 para. 56**
Ss. 202, 203, 205 excluded (1.11.1994) by S.I. 1994/2759, reg. 3, **Sch. 3 para. 91A(2)**

CHAPTER X

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

Offences of fraud, deception, etc.

206 Fraud, etc. in anticipation of winding up.

(1) When a company is ordered to be wound up by the court, or passes a resolution for voluntary winding up, any person, being a past or present officer of the company, is deemed to have committed an offence if, within the 12 months immediately preceding the commencement of the winding up, he has—

(a) concealed any part of the company's property to the value of **[**[F256]£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 **[**[F256]£500**]** or more, or

(c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the company's property or affairs, or

(d) made any false entry in any book or paper affecting or relating to the company's property or affairs, or

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's property or affairs, or

(f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).

(2) Such a person is deemed to have committed an offence if within the period above mentioned he has been privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of subsection (1); and he commits an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in paragraphs (a) to (f) of that subsection, or is privy to the doing by others of any of the things mentioned in paragraphs (c) to (e) of it.

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

(4) It is a defence—

(a) for a person charged under paragraph (a) or (f) of subsection (1) (or under subsection (2) in respect of the things mentioned in either of those two paragraphs) to prove that he had no intent to defraud, and

(b) for a person charged under paragraph (c) or (d) of subsection (1) (or under subsection (2) in respect of the things mentioned in either of those two paragraphs) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(5) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1)(f), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in such circumstances, is guilty of an offence.

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

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

Textual Amendments

F256 "£500" substituted by virtue of S.I. 1986/1996, art. 2(1), **Sch. Pt. I**

Modifications etc. (not altering text)

C336 S. 206 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C337 S. 206 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C338 S. 206 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)

C339 S. 206 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

C340 S. 206(1) modified (temp.) (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), Sch. 10 paras. 8(1)(2), **11** (with ss. 2(2), 5(2))

207 Transactions in fraud of creditors.

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

(a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the company's property, or

(b) has concealed or removed any part of the company's property since, or within 2 months before, the date of any unsatisfied judgment or order for the payment of money obtained against the company.

(2) A person is not guilty of an offence under this section—

(a) by reason of conduct constituting an offence under subsection (1)(a) which occurred more than 5 years before the commencement of the winding up, or

(b) if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

Status: *Point in time view as at 08/07/2021.*
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(3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

Modifications etc. (not altering text)

C341 S. 207 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C342 S. 207 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C343 S. 207 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)

C344 S. 207 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

C345 S. 207(1) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

C346 S. 207(2)(a) modified (temp.) (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), Sch. 10 paras. 8(1)(2), **12** (with ss. 2(2), 5(2))

208 Misconduct in course of winding up.

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

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

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

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

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

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

(2) Such a person commits an offence if after the commencement of the winding up he attempts to account for any part of the company's property by fictitious losses or expenses; and he is deemed to have committed that offence if he has so attempted **[**[F257]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.

Textual Amendments

F257 Words in s. 208(2) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by Small Business, Enterprise and Employment Act 2015 (c. 26), s. 164(1), **Sch. 9 para. 52**; S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)

Modifications etc. (not altering text)

C347 S. 208 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C348 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 (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **5(3)**)

C349 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)

C350 S. 208 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

C351 S. 208(2) modified (temp.) (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), Sch. 10 paras. 8(1)(2), **13** (with ss. 2(2), 5(2))

209 Falsification of company's books.

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

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

Modifications etc. (not altering text)

C352 S. 209 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C353 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

C354 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)

C355 S. 209 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

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

(1) When a company is being wound up, whether by the court or voluntarily, any person, being a past or present officer of the company, commits an offence if he makes any material omission in any statement relating to the company's affairs.

(2) When a company has been ordered to be wound up by the court, or has passed a resolution for voluntary winding up, any such person is deemed to have committed that offence if, prior to the winding up, he has made any material omission in any such statement.

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

(4) It is a defence for a person charged under this section to prove that he had no intent to defraud.

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

Modifications etc. (not altering text)

C356 S. 210 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C357 S. 210 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C358 S. 210 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)

C359 S. 210 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

C360 S. 210(2) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

211 False representations to creditors.

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

(a) commits an offence if he makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the winding up, and

(b) is deemed to have committed that offence if, prior to the winding up, he has made any false representation, or committed any other fraud, for that purpose.

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

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

Modifications etc. (not altering text)

C361 S. 211 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8, **Sch. 4 Pt. I para. 1**, Pt. II para. 25
S. 211 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C362 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

C363 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)

C364 S. 211 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37**, **Sch. 2 paras. 4-6** (with reg. 5)

Penalisation of directors and officers

212 Summary remedy against delinquent directors, liquidators, etc.

(1) This section applies if in the course of the winding up of a company it appears that a person who—

(a) is or has been an officer of the company,

(b) has acted as liquidator [F258]. . . 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 [F259]. . . of the company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator [F259]. . . 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 [F260]. . . of the company is not exerciseable, except with the leave of the court, after **[**[F261]he**]** has had his release.

(5) The power of a contributory to make an application under subsection (3) is not exercisable except with the leave of the court, but is exercisable notwithstanding that he will not benefit from any order the court may make on the application.

Textual Amendments

F258 Word in s. 212(1)(b) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 18(a), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F259 Words in s. 212(2) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 18(b), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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F260 Words in s. 212(4) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 18(c)(i), Sch. 26 (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

F261 Word in s. 212(4) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 18(c)(ii) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

C365 S. 212 applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 4(2)(3)**
S. 212 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**
S. 212 applied (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **reg. 31** (with reg. 3)
S. 212 applied (18.2.2004) by The Insurers (Reorganisation and Winding Up) Regulations 2004 (S.I. 2004/353), **reg. 31** (with reg. 3) (as modified (10.8.2005) by S.I. 2005/1998, regs. 2(3), 40(1)-(4)(10))

C366 S. 212 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C367 S. 212 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)

C368 S. 212 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

213 Fraudulent trading.

(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.

(2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.

Modifications etc. (not altering text)

C369 S. 213 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C370 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

C371 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)

C372 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** (as amended (7.4.2017) by S.I. 2017/400, regs. 1(2), **5(10)**)

C373 S. 213 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

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 **[**[F262]or entering insolvent administration**]**, 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 (**[**[F263]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.

[[F264](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.

Textual Amendments

F262 Words in s. 214(2)(b) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 117(3)(a)**, 164(1); S.I. 2015/1689, **reg. 2(j)** (with Sch. para. 15)

F263 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)

F264 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)

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Modifications etc. (not altering text)

C374 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)**

C375 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)**

C376 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)**

C377 S. 214 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C378 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)**

C379 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)

C380 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. 1(1), 7(1)(3), **Sch. para. 2(a)**

C381 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** (as amended (7.4.2017) by S.I. 2017/400, regs. 1(2), **5(4)**)

C382 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** (as amended (7.4.2017) S.I. 2017/400, regs. 1(2), **5(10)**)

C383 S. 214 modified (26.11.2020) by The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading and Extension of the Relevant Period) Regulations 2020 (S.I. 2020/1349), regs. 1, **2(1)**(2) (with reg. 2(3)-(9))

C384 S. 214 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37**, **Sch. 1 para. 3** (with reg. 5)

C385 S. 214(2) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

C386 S. 214(4) applied (6.4.2005) by The Pensions Regulator (Notifiable Events) Regulations 2005 (S.I. 2005/900), **reg. 2(2)(c)**

215 Proceedings under ss. 213, 214.

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

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

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

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

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

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

(b) does not include an assignee for valuable consideration (not including consideration by way of marriage **[**[F265]or the formation of a civil partnership**]**) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where the court makes a declaration under either section in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5) Sections 213 and 214 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

Textual Amendments

F265 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)

C387 S. 215 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

C388 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

C389 S. 215 applied (with modifications) (S.) (25.2.2009) by The Bank Administration (Scotland) Rules 2009 (S.I. 2009/350), **rule 38**

C390 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**

C391 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)

C392 S. 215 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37**, **Sch. 1 para. 3** (with reg. 5)

C393 S. 215(1)(2)(4)(5) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

216 Restriction on re-use of company names.

(1) This section applies to a person where a company ("the liquidating company") has gone into insolvent liquidation on or after the appointed day and he was a director or shadow director of the company at any time in the period of 12 months ending with the day before it went into liquidation.

(2) For the purposes of this section, a name is a prohibited name in relation to such a person if—

(a) it is a name by which the liquidating company was known at any time in that period of 12 months, or

(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

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(b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company, or

(c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.

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

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

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

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

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

Modifications etc. (not altering text)

C394 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

C395 S. 216 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

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.

Modifications etc. (not altering text)

C396 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

C397 S. 217 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

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

[[F266](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**]**

[F267](2) . . . . . .

(3) If in the case of a winding up by the court in England and Wales it appears to the liquidator, not being the official receiver, that any past or present officer of the company, or any member of it, has been guilty of an offence in relation to the company for which he is criminally liable, the liquidator shall report the matter to the official receiver.

(4) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty of an offence in relation to the company for which he is criminally liable, he shall **[**[F268]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**]** such information and give to him such access to and facilities for inspecting and taking

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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 **[**[F269]the Secretary of State or (as the case may be) the Lord Advocate**]** requires.

[[F270](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 **[**[F271]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 [F272]. . . under subsection (4),

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

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

Textual Amendments

F266 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)

F267 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)

F268 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)

F269 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)

F270 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)

F271 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)

F272 Words in s. 218(6)(b) repealed (2.4.2001) by 2000 c. 39, ss. 10(6), 15, **Sch. 5**; S.I. 2001/766, **art. 2(1)(b)(c)** (subject to art. 3)

Modifications etc. (not altering text)

C398 S. 218 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C399 S. 218 amendment to earlier amending provision S.I. 2009/805, Sch. 1 para. 13(6) (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 11 para. 16(3)(a)** (with Sch. 12)

C400 S. 218 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)

C401 S. 218 modified (E.W.) (31.1.2019) by The Further Education Bodies (Insolvency) Regulations 2019 (S.I. 2019/138), regs. 1(1), **21** (with regs. 1(2), 3(a)(ii))

C402 S. 218 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37**, **Sch. 1 para. 3** (with reg. 5)

C403 S. 218(1)(4)(6) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

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C404 S. 218(1)(2)(4)(6) applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

219 Obligations arising under s. 218.

(1) For the purpose of an investigation by the Secretary of State **[**[F273]in consequence of a report made to him under section 218(4)**]**, any obligation imposed on a person by any provision of **[**[F274]the Companies Act 1985**]** to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in **[**[F273]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.

[[F275](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 [M9]Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or

(b) an offence under section 44(1) or (2) of the [M10]Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).**]**

(3) Where criminal proceedings are instituted by **[**[F276]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 **[**[F276]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 **[**[F277]Director of Public Prosecutions, the Lord Advocate**]** or the Secretary of State (as the case may be) direct the person to comply with that subsection; and if the application is made with respect to a liquidator, the court may (unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so) direct that the costs shall be borne by the liquidator personally.

Textual Amendments

F273 Words in s. 219(1) substituted (2.4.2001) by 2000 c. 39, **s. 10(7)(a)**; S.I. 2001/766, **art. 2(1)(b)** (subject to art. 3)

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F274 Words in s. 219(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(24)** (with art. 10, Sch. 1 para. 84)

F275 S. 219(2A)(2B) inserted (2.4.2001) by 2000 c. 39, **s. 11**; S.I. 2001/766, **art. 2(1)(b)**; (subject to art. 3)

F276 Words in s. 219(3) substituted (2.4.2001) by 2000 c. 39, **s. 10(7)(b)**; S.I. 2001/766, **art. 2(1)(b)** (subject to art. 3)

F277 Words in s. 219(4) substituted (2.4.2001) by 2000 c. 39, **s. 10(7)(c)**; S.I. 2001/766, **art. 2(1)(b)** (subject to art. 3)

Modifications etc. (not altering text)

C405 S. 219 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2**, 3, Sch. para. 2

C406 S. 219 amendment to earlier amending provision S.I. 2009/805, **Sch. 1 para. 13(6)** (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), **Sch. 11 para. 16(3)(b)** (with Sch. 12)

C407 S. 219 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)

C408 S. 219 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), regs. 2, **37** (with reg. 5)

Marginal Citations

M9 1911 c. 6.

M10 1995 c. 39.

Status:
Point in time view as at 08/07/2021.

Changes to legislation:
Insolvency Act 1986, Part IV is up to date with all changes known to be in force on or before 01 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.