



Insolvency Act 1986

1986 CHAPTER 45

PART XIII

INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

Restrictions on unqualified persons acting as liquidator, trustee in bankruptcy, etc.

388 Meaning of “act as insolvency practitioner”

- (1) A person acts as an insolvency practitioner in relation to a company by acting—
 - (a) as its liquidator, provisional liquidator, administrator or administrative receiver, or
 - [^{F1}(b) where a voluntary arrangement in relation to the company is proposed or approved under Part I, as nominee or supervisor]
 - (2) A person acts as an insolvency practitioner in relation to an individual by acting—
 - (a) as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate; or
 - (b) as trustee under a deed which is ^{F2}..., in Scotland, a trust deed for his creditor; or
 - [^{F3}(c) where a voluntary arrangement in relation to the individual is proposed or approved under Part VIII, as nominee or supervisor]
 - (d) in the case of a deceased individual to the administration of whose estate this section applies by virtue of an order under section 421 (application of provisions of this Act to insolvent estates of deceased persons), as administrator of that estate.
- [^{F4}(2A) A person acts as an insolvency practitioner in relation to an insolvent partnership by acting—
- (a) as its liquidator, provisional liquidator or administrator, or
 - (b) as trustee of the partnership under article 11 of the Insolvent Partnerships Order 1994, or

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[where a voluntary arrangement in relation to the insolvent partnership is
F5(c) proposed or approved under Part I of the Act, as nominee or supervisor.]]

[F6(2B) In relation to a voluntary arrangement proposed under Part I or VIII, a person acts as nominee if he performs any of the functions conferred on nominees under the Part in question.]

(3) References in this section to an individual include, except in so far as the context otherwise requires, references F7. . . to any debtor within the meaning of the M1 Bankruptcy (Scotland) Act 1985.

(4) In this section—

“administrative receiver” has the meaning given by section 251 in Part VII;

[F8“company” means—

(a) a company registered under the Companies Act 2006 in England and Wales or Scotland, or

(b) a company that may be wound up under Part 5 of this Act (unregistered companies).]

“interim trustee” and “permanent trustee” mean the same as in the Bankruptcy (Scotland) Act 1985.

[F9(5) Nothing in this section applies to anything done by—

(a) the official receiver; or

(b) the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985).]

[F10(6) Nothing in this section applies to anything done (whether in the United Kingdom or elsewhere) in relation to insolvency proceedings under the EC Regulation in a member State other than the United Kingdom.]

Textual Amendments

- F1** S. 388(1)(b) substituted (1.1.2003) by 2000 c. 39, s. 4(2)(a); S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)
- F2** Words in s. 388(2)(b) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 2(11)(f) (with Sch. 6 para. 3); S.I. 2015/1732, art. 2(e)(i)
- F3** S. 388(2)(c) substituted (1.1.2003) by 2000 c. 39, s. 4(2)(b); S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)
- F4** S. 388(2A) inserted (1.12.1994) by S.I. 1994/2421, arts. 1(2), 15(1)
- F5** S. 388(2A)(c) substituted (1.1.2003) by S.I. 2002/2708, art. 3 (with art. 11(1)(3))
- F6** S. 388(2B) inserted (1.1.2003) by 2000 c. 39, s. 4(2)(c); S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)
- F7** Words in s. 388(3) omitted (1.12.1994) by virtue of S.I. 1994/2421, art. 15(2)
- F8** S. 388(4): definition substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 78(2)} (with art. 10, Sch. 1 para. 84)
- F9** S. 388(5) substituted (1.4.1993) by 1993 c. 6, s. 11(1) (with s. 12(6)); S.I. 1993/438, art. 3 (with arts. 4, 5)
- F10** S. 388(6) inserted (31.5.2002) by S.I. 2002/1240, reg. 17

Modifications etc. (not altering text)

- C1** S. 388 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
S. 388 applied (7.2.1994) by 1993 c. 48, s. 119(8) (with s. 6(8)); S.I. 1994/86, art. 2

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- S. 388 applied (31.10.1994) by 1994 c. 21, s. 36(7) (with s. 40(7)); S.I. 1994/2553, art. 2
- S. 388 applied (with modifications) (3.2.1995) by 1994 c. 37, ss. 35(4), 69(2) (with s. 66(2))
- S. 388 applied (with modifications) (1.4.1996) by 1995 c. 43, ss. 44, 50(2), Sch. 2 para. 5(3)
- S. 388 applied (with modifications) (E.W.) (13.6.2001 for certain purposes and 1.9.2001 otherwise) by 2001 c. 17, s. 38, Sch. 6 para. 11(6) (with ss. 27(3), 39, 78); S.I. 2001/2161, arts. 2, 3 (as amended by S.I. 2001/2304, art. 2)
- S. 388 applied (with modifications) (S.) (10.12.2001) by 2001 asp 13, s. 20, Sch. 6 para. 11(6) (with s. 29); S.S.I. 2001/456, art. 2
- S. 388 applied (with modifications) (24.3.2003) by 2002 c. 29, ss. 433(4), 458(1)(3); S.I. 2003/333, art. 2, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4))
- S. 388 applied (with modifications) (6.4.2005) by Pensions Act 2004 (c. 35), ss. 121(9)(11), 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (subject to art. 2(12))
- C2** S. 388 applied (with modifications) (*temp.* for a period of 12 months beginning with 22.3.1990: S.I. 1990/675; and for a further period of 12 months beginning with 22.3.1991: S.I. 1991/549, 779) by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), s. 13(8), Sch. 4 para. 33(4) (a)
- C3** S. 388 excluded (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 8
- C4** S. 388 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

- M1** 1985 c. 66.

389 Acting without qualification an offence.

- (1) A person who acts as an insolvency practitioner in relation to a company or an individual at a time when he is not qualified to do so is liable to imprisonment or a fine, or to both.

^{F11}(1A)

- (2) This section does not apply to the official receiver [^{F12}or the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985)].

Textual Amendments

- F11** S. 389(1A) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 18; S.I. 2015/1732, art. 2(e)(vi)
- F12** Words in s. 389(2) inserted (1.4.1993) by 1993 c. 6, s. 11(2) (with s. 12(6)); S.I. 1993/438, art. 3 (with arts. 4, 5)

Modifications etc. (not altering text)

- C5** S. 389 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
- C6** S. 389 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 103, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 2
- C7** S. 389 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 145, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 3
- C8** S. 389 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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^{F13}389A Authorisation of nominees and supervisors.

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Textual Amendments

F13 S. 389A omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), [Sch. 6 para. 19](#); [S.I. 2015/1732](#), art. 2(e)(vi)

^{F14}389B Official receiver as nominee or supervisor

- (1) The official receiver is authorised to act as nominee or supervisor in relation to a voluntary arrangement approved under Part VIII provided that the debtor is an undischarged bankrupt when the arrangement is proposed.
- (2) The Secretary of State may by order repeal the proviso in subsection (1).
- (3) An order under subsection (2)—
 - (a) must be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F14 S. 389B inserted (1.4.2004) by [2002 c. 40](#), ss. 264(1), 279, [Sch. 22 para. 3](#) (with s. 249(6)); [S.I. 2003/2093](#), [art. 2\(2\)](#), [Sch. 2](#) (subject to [arts. 3-8](#) (as amended by [S.I. 2003/2332](#), art. 2))

390 Persons not qualified to act as insolvency practitioners.

- (1) A person who is not an individual is not qualified to act as an insolvency practitioner.
- ^{F15}(2) A person is not qualified to act as an insolvency practitioner at any time unless at that time the person is appropriately authorised under section 390A.]
- (3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless—
 - (a) there is in force at that time security or, in Scotland, caution for the proper performance of his functions, and
 - (b) that security or caution meets the prescribed requirements with respect to his so acting in relation to that other person.
- (4) A person is not qualified to act as an insolvency practitioner at any time if at that time—
 - (a) he has been adjudged bankrupt [^{F16}under this Act or the Insolvency (Northern Ireland) Order 1989] or sequestration of his estate has been awarded and (in either case) he has not been discharged,
 - ^{F17}(aa) a moratorium period under a debt relief order [^{F18}under this Act or the Insolvency (Northern Ireland) Order 1989] applies in relation of him,]
 - ^{F19}(b) he is subject to a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002,]

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- (c) he is a patient within the meaning of ^{F20} . . . [^{F21}section 329(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003][^{F22}or has had a guardian appointed to him under the Adults with Incapacity (Scotland) Act 2000 (asp 4).][^{F23}, or
- (d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as an insolvency practitioner.]

[^{F24}(5) A person is not qualified to act as an insolvency practitioner while there is in force in respect of that person—

- (a) a bankruptcy restrictions order under this Act, the Bankruptcy (Scotland) Act 1985 or the Insolvency (Northern Ireland) Order 1989, or
- (b) a debt relief restrictions order under this Act or that Order.]

Textual Amendments

- F15** S. 390(2) substituted (1.10.2015) by [Deregulation Act 2015 \(c. 20\), ss. 17\(2\), 115\(7\)](#); S.I. 2015/1732, art. 2(c)
- F16** Words in s. 390(4)(a) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 115\(a\)\(i\), 164\(1\)](#); S.I. 2015/1689, reg. 2(i) (with Sch. para. 13)
- F17** S. 390(4)(aa) inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), ss. 108\(3\), 148\(5\), Sch. 20 para. 6\(2\)](#); S.I. 2009/382, art. 2
- F18** Words in s. 390(4)(aa) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 115\(a\)\(ii\), 164\(1\)](#); S.I. 2015/1689, reg. 2(i) (with Sch. para. 13)
- F19** S. 390(4)(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. 78\(4\)](#) (with art. 10, Sch. 1 para. 84)
- F20** Words in s. 390(4)(c) repealed (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), ss. 67\(1\)\(2\), 68, Sch. 6 para. 31\(3\)\(b\), Sch. 7](#) (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)
- F21** Words in s. 390(4)(c) substituted (27.9.2005 for S. and 5.10.2005 otherwise) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\), art. 2, Sch. 1 para. 18\(3\)](#) and [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/2078\), arts. 1, 15, Sch. 1 para. 3\(3\)](#)
- F22** Words in s. 390(4)(c) inserted (S.) (1.4.2002) by 2000 asp 4, s. 88(2), [Sch. 5 para. 18](#); S.S.I. 2001/81, art. 3, [Sch. 2](#)
- F23** S. 390(4)(d) and preceding word inserted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), ss. 67\(1\), 68, Sch. 6 para. 31\(3\)\(c\)](#) (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)
- F24** S. 390(5) substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 115\(b\), 164\(1\)](#); S.I. 2015/1689, reg. 2(i) (with Sch. para. 13)

Modifications etc. (not altering text)

- C9** s.390 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)
- C10** S. 390 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 103, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 2
- C11** S. 390 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 3
- C12** S. 390(2)(3) modified by [S.I. 1990/1392, art. 7](#)

[^{F25}390A Authorisation

- (1) In this Part—

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“partial authorisation” means authorisation to act as an insolvency practitioner—

- (a) only in relation to companies, or
- (b) only in relation to individuals;

“full authorisation” means authorisation to act as an insolvency practitioner in relation to companies, individuals and insolvent partnerships;

“partially authorised” and “fully authorised” are to be construed accordingly.

- (2) A person is fully authorised under this section to act as an insolvency practitioner—
 - (a) by virtue of being a member of a professional body recognised under section 391(1) and being permitted to act as an insolvency practitioner for all purposes by or under the rules of that body, or
 - (b) by holding an authorisation granted by the Department of Enterprise, Trade and Investment in Northern Ireland under Article 352 of the Insolvency (Northern Ireland) Order 1989.
- (3) A person is partially authorised under this section to act as an insolvency practitioner—
 - (a) by virtue of being a member of a professional body recognised under section 391(1) and being permitted to act as an insolvency practitioner in relation only to companies or only to individuals by or under the rules of that body, or
 - (b) by virtue of being a member of a professional body recognised under section 391(2) and being permitted to act as an insolvency practitioner by or under the rules of that body.

Textual Amendments

F25 Ss. 390A, 390B inserted (1.10.2015) by [Deregulation Act 2015 \(c. 20\)](#), ss. **17(3)**, 115(7); S.I. 2015/1732, art. 2(c)

390B Partial authorisation: acting in relation to partnerships

- (1) A person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not accept an appointment to act in relation to a company if at the time of the appointment the person is aware that the company—
 - (a) is or was a member of a partnership, and
 - (b) has outstanding liabilities in relation to the partnership.
- (2) A person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not accept an appointment to act in relation to an individual if at the time of the appointment the person is aware that the individual—
 - (a) is or was a member of a partnership other than a Scottish partnership, and
 - (b) has outstanding liabilities in relation to the partnership.
- (3) Subject to subsection (9), a person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not continue to act in relation to a company if the person becomes aware that the company—
 - (a) is or was a member of a partnership, and
 - (b) has outstanding liabilities in relation to the partnership,

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unless the person is granted permission to continue to act by the court.

(4) Subject to subsection (9), a person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not continue to act in relation to an individual if the person becomes aware that the individual—

- (a) is or was a member of a partnership other than a Scottish partnership, and
- (b) has outstanding liabilities in relation to the partnership,

unless the person is granted permission to continue to act by the court.

(5) The court may grant a person permission to continue to act for the purposes of subsection (3) or (4) if it is satisfied that the person is competent to do so.

(6) A person who is partially authorised and becomes aware as mentioned in subsection (3) or (4) may alternatively apply to the court for an order (a “replacement order”) appointing in his or her place a person who is fully authorised to act as an insolvency practitioner in relation to the company or (as the case may be) the individual.

(7) A person may apply to the court for permission to continue to act or for a replacement order under—

- (a) where acting in relation to a company, this section or, if it applies, section 168(5B) (member of insolvent partnership: England and Wales);
- (b) where acting in relation to an individual, this section or, if it applies, section 303(2C) (member of insolvent partnership: England and Wales).

(8) A person who acts as an insolvency practitioner in contravention of any of subsections (1) to (4) is guilty of an offence under section 389 (acting without qualification).

(9) A person does not contravene subsection (3) or (4) by continuing to act as an insolvency practitioner during the permitted period if, within the period of 7 business days beginning with the day after the day on which the person becomes aware as mentioned in the subsection, the person—

- (a) applies to the court for permission to continue to act, or
- (b) applies to the court for a replacement order.

(10) For the purposes of subsection (9)—

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain;

“permitted period” means the period beginning with the day on which the person became aware as mentioned in subsection (3) or (4) and ending on the earlier of—

- (a) the expiry of the period of 6 weeks beginning with the day on which the person applies to the court as mentioned in subsection (9)(a) or (b), and
- (b) the day on which the court disposes of the application (by granting or refusing it);

“replacement order” has the meaning given by subsection (6).]

Textual Amendments

F25 Ss. 390A, 390B inserted (1.10.2015) by [Deregulation Act 2015 \(c. 20\)](#), [ss. 17\(3\), 115\(7\)](#); S.I. [2015/1732](#), [art. 2\(c\)](#)

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[^{F26}391 Recognised professional bodies

- (1) The Secretary of State may by order, if satisfied that a body meets the requirements of subsection (4), declare the body to be a recognised professional body which is capable of providing its insolvency specialist members with full authorisation or partial authorisation.
- (2) The Secretary of State may by order, if satisfied that a body meets the requirements of subsection (4), declare the body to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (as to which, see section 390A(1)).
- (3) Section 391A makes provision about the making by a body of an application to the Secretary of State for an order under this section.
- (4) The requirements are that—
 - (a) the body regulates (or is going to regulate) the practice of a profession,
 - (b) the body has rules which it is going to maintain and enforce for securing that its insolvency specialist members—
 - (i) are fit and proper persons to act as insolvency practitioners, and
 - (ii) meet acceptable requirements as to education and practical training and experience, and
 - (c) the body's rules and practices for or in connection with authorising persons to act as insolvency practitioners, and its rules and practices for or in connection with regulating persons acting as such, are designed to ensure that the regulatory objectives are met (as to which, see section 391C).
- (5) An order of the Secretary of State under this section has effect from such date as is specified in the order.
- (6) An order under this section may be revoked by an order under section 391L or 391N (and see section 415A(1)(b)).
- (7) In this Part—
 - (a) references to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question;
 - (b) references to insolvency specialist members of a professional body are to members who are permitted by or under the rules of the body to act as insolvency practitioners.
- (8) A reference in this Part to a recognised professional body is to a body recognised under this section (and see sections 391L(6) and 391N(5)).

Textual Amendments

F26 Ss 391, 391A substituted for s. 391 (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), **ss. 137(1), 164(1)** (with s. 137(2)); S.I. 2015/1689, reg. 3(a)

391A Application for recognition as recognised professional body

- (1) An application for an order under section 391(1) or (2) must—

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- (a) be made to the Secretary of State in such form and manner as the Secretary of State may require,
 - (b) be accompanied by such information as the Secretary of State may require, and
 - (c) be supplemented by such additional information as the Secretary of State may require at any time between receiving the application and determining it.
- (2) The requirements which may be imposed under subsection (1) may differ as between different applications.
- (3) The Secretary of State may require information provided under this section to be in such form, and verified in such manner, as the Secretary of State may specify.
- (4) An application for an order under section 391(1) or (2) must be accompanied by—
 - (a) a copy of the applicant's rules,
 - (b) a copy of the applicant's policies and practices, and
 - (c) a copy of any guidance issued by the applicant in writing.
- (5) The reference in subsection (4)(c) to guidance issued by the applicant is a reference to guidance or recommendations which are—
 - (a) issued or made by it which will apply to its insolvency specialist members or to persons seeking to become such members,
 - (b) relevant for the purposes of this Part, and
 - (c) intended to have continuing effect,including guidance or recommendations relating to the admission or expulsion of members.
- (6) The Secretary of State may refuse an application for an order under section 391(1) or (2) if the Secretary of State considers that recognition of the body concerned is unnecessary having regard to the existence of one or more other bodies which have been or are likely to be recognised under section 391.
- (7) Subsection (8) applies where the Secretary of State refuses an application for an order under section 391(1) or (2); and it applies regardless of whether the application is refused on the ground mentioned in subsection (6), because the Secretary of State is not satisfied as mentioned in section 391(1) or (2) or because a fee has not been paid (see section 415A(1)(b)).
- (8) The Secretary of State must give the applicant a written notice of the Secretary of State's decision; and the notice must set out the reasons for refusing the application.]

Textual Amendments

F26 Ss 391, 391A substituted for s. 391 (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), ss. [137\(1\)](#), [164\(1\)](#) (with s. [137\(2\)](#)); S.I. [2015/1689](#), reg. [3\(a\)](#)

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