



# Insolvency Act 1986

## 1986 CHAPTER 45

The Third Group of Parts Miscellaneous Matters Bearing on both Company and Individual Insolvency ; General Interpretation ; Final Provisions

### PART XIV

PUBLIC ADMINISTRATION (ENGLAND AND WALES)

#### *Official Receivers*

#### **399 Appointment, etc. of official receivers**

- (1) For the purposes of this Act the official receiver, in relation to any bankruptcy or winding up, is any person who by virtue of the following provisions of this section or section 401 below is authorised to act as the official receiver in relation to that bankruptcy or winding up.
- (2) The Secretary of State may (subject to the approval of the Treasury as to numbers) appoint persons to the office of official receiver, and a person appointed to that office (whether under this section or section 70 of the Bankruptcy Act 1914)—
  - (a) shall be paid out of money provided by Parliament such salary as the Secretary of State may with the concurrence of the Treasury direct,
  - (b) shall hold office on such other terms and conditions as the Secretary of State may with the concurrence of the Treasury direct, and
  - (c) may be removed from office by a direction of the Secretary of State.
- (3) Where a person holds the office of official receiver, the Secretary of State shall from time to time attach him either to the High Court or to a county court having jurisdiction for the purposes of the second Group of Parts of this Act.
- (4) Subject to any directions under subsection (6) below, an official receiver attached to a particular court is the person authorised to act as the official receiver in relation to every bankruptcy or winding up falling within the jurisdiction of that court.

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- (5) The Secretary of State shall ensure that there is, at all times, at least one official receiver attached to the High Court and at least one attached to each county court having jurisdiction for the purposes of the second Group of Parts; but he may attach the same official receiver to two or more different courts.
- (6) The Secretary of State may give directions with respect to the disposal of the business of official receivers, and such directions may, in particular—
  - (a) authorise an official receiver attached to one court to act as the official receiver in relation to any case or description of cases falling within the jurisdiction of another court;
  - (b) provide, where there is more than one official receiver authorised to act as the official receiver in relation to cases falling within the jurisdiction of any court, for the distribution of their business between or among themselves.
- (7) A person who at the coming into force of section 222 of the Insolvency Act 1985 (replaced by this section) is an official receiver attached to a court shall continue in office after the coming into force of that section as an official receiver attached to that court under this section.

#### **400 Functions and status of official receivers**

- (1) in addition to any functions conferred on him by this Act, a person holding the office of official receiver shall carry out such other functions as may from time to time be conferred on him by the Secretary of State.
- (2) In the exercise of the functions of his office a person holding the office of official receiver shall act under the general directions of the Secretary of State and shall also be an officer of the court in relation to which he exercises those functions.
- (3) Any property vested in his official capacity in a person holding the office of official receiver shall, on his dying, ceasing to hold office or being otherwise succeeded in relation to the bankruptcy or winding up in question by another official receiver, vest in his successor without any conveyance, assignment or transfer.

#### **401 Deputy official receivers and staff**

- (1) The Secretary of State may, if he thinks it expedient to do so in order to facilitate the disposal of the business of the official receiver attached to any court, appoint an officer of his department to act as deputy to that official receiver.
- (2) Subject to any directions given by the Secretary of State under section 399 or 400, a person appointed to act as deputy to an official receiver has, on such conditions and for such period as may be specified in the terms of his appointment, the same status and functions as the official receiver to whom he is appointed deputy.

Accordingly, references in this Act (except section 399(1) to (5)) to an official receiver include a person appointed to act as his deputy.

- (3) An appointment made under subsection (1) may be terminated at any time by the Secretary of State.
- (4) The Secretary of State may, subject to the approval of the Treasury as to numbers and remuneration and as to the other terms and conditions of the appointments, appoint

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officers of his department to assist official receivers in the carrying out of their functions.

### *The Official Petitioner*

#### **402 Official Petitioner**

- (1) There continues to be an officer known as the Official Petitioner for the purpose of discharging, in relation to cases in which a criminal bankruptcy order is made, the functions assigned to him by or under this Act; and the Director of Public Prosecutions continues, by virtue of his office, to be the Official Petitioner.
- (2) The functions of the Official Petitioner include the following—
  - (a) to consider whether, in a case in which a criminal bankruptcy order is made, it is in the public interest that he should himself present a petition under section 264(1)(d) of this Act;
  - (b) to present such a petition in any case where he determines that it is in the public interest for him to do so;
  - (c) to make payments, in such cases as he may determine, towards expenses incurred by other persons in connection with proceedings in pursuance of such a petition; and
  - (d) to exercise, so far as he considers it in the public interest to do so, any of the powers conferred on him by or under this Act.
- (3) Any functions of the Official Petitioner may be discharged on his behalf by any person acting with his authority.
- (4) Neither the Official Petitioner nor any person acting with his authority is liable to any action or proceeding in respect of anything done or omitted to be done in the discharge, or purported discharge, of the functions of the Official Petitioner.
- (5) In this section "criminal bankruptcy order" means an order under section 39(1) of the Powers of Criminal Courts Act 1973.

### *Insolvency Service finance, accounting and investment*

#### **403 Insolvency Services Account**

- (1) All money received by the Secretary of State in respect of proceedings under this Act as it applies to England and Wales shall be paid into the Insolvency Services Account kept by the Secretary of State with the Bank of England; and all payments out of money standing to the credit of the Secretary of State in that account shall be made by the Bank of England in such manner as he may direct.
- (2) Whenever the cash balance standing to the credit of the Insolvency Services Account is in excess of the amount which in the opinion of the Secretary of State is required for the time being to answer demands in respect of bankrupts' estates or companies' estates, the Secretary of State shall—
  - (a) notify the excess to the National Debt Commissioners, and
  - (b) pay into the Insolvency Services Investment Account ("the Investment Account") kept by the Commissioners with the Bank of England the whole

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or any part of the excess as the Commissioners may require for investment in accordance with the following provisions of this Part.

- (3) Whenever any part of the money so invested is, in the opinion of the Secretary of State, required to answer any demand in respect of bankrupt's estates or companies' estates, he shall notify to the National Debt Commissioners the amount so required and the Commissioners—
- (a) shall thereupon repay to the Secretary of State such sum as may be required to the credit of the Insolvency Services Account, and
  - (b) for that purpose may direct the sale of such part of the securities in which the money has been invested as may be necessary.

#### **404 Investment Account**

Any money standing to the credit of the Investment Account (including any money received by the National Debt Commissioners by way of interest on or proceeds of any investment under this section) may be invested by the Commissioners, in accordance with such directions as may be given by the Treasury, in any manner for the time being specified in Part II of Schedule 1 to the Trustee Investments Act 1961.

#### **405 Application of income in Investment Account; adjustment of balances**

- (1) Where the annual account to be kept by the National Debt Commissioners under section 409 below shows that in the year for which it is made up the gross amount of the interest accrued from the securities standing to the credit of the Investment Account exceeded the aggregate of—
- (a) a sum, to be determined by the Treasury, to provide against the depreciation in the value of the securities, and
  - (b) the sums paid into the Insolvency Services Account in pursuance of the next section together with the sums paid in pursuance of that section to the Commissioners of Inland Revenue,
- the National Debt Commissioners shall, within 3 months after the account is laid before Parliament, cause the amount of the excess to be paid out of the Investment Account into the Consolidated Fund in such manner as may from time to time be agreed between the Treasury and the Commissioners.
- (2) Where the said annual account shows that in the year for which it is made up the gross amount of interest accrued from the securities standing to the credit of the Investment Account was less than the aggregate mentioned in subsection (1), an amount equal to the deficiency shall, at such times as the Treasury direct, be paid out of the Consolidated Fund into the Investment Account.
- (3) If the Investment Account is insufficient to meet its liabilities the Treasury may, on being informed of the insufficiency by the National Debt Commissioners, issue the amount of the deficiency out of the Consolidated Fund and the Treasury shall certify the deficiency to Parliament.

#### **406 Interest on money received by liquidators and invested**

Where under rules made by virtue of paragraph 16 of Schedule 8 to this Act (investment of money received by company liquidators) a company has become entitled to any sum by way of interest, the Secretary of State shall certify that sum

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and the amount of tax payable on it to the National Debt Commissioners ; and the Commissioners shall pay, out of the Investment Account—

- (a) into the Insolvency Services Account, the sum so certified less the amount of tax so certified, and
- (b) to the Commissioners of Inland Revenue, the amount of tax so certified.

#### **407 Unclaimed dividends and undistributed balances**

- (1) The Secretary of State shall from time to time pay into the Consolidated Fund out of the Insolvency Services Account so much of the sums standing to the credit of that Account as represents—
  - (a) dividends which were declared before such date as the Treasury may from time to time determine and have not been claimed, and
  - (b) balances ascertained before that date which are too small to be divided among the persons entitled to them.
- (2) For the purposes of this section the sums standing to the credit of the Insolvency Services Account are deemed to include any sums paid out of that Account and represented by any sums or securities standing to the credit of the Investment Account.
- (3) The Secretary of State may require the National Debt Commissioners to pay out of the Investment Account into the Insolvency Services Account the whole or part of any sum which he is required to pay out of that account under subsection (1); and the Commissioners may direct the sale of such securities standing to the credit of the Investment Account as may be necessary for that purpose.

#### **408 Recourse to Consolidated Fund**

If, after any repayment due to it from the Investment Account, the Insolvency Services Account is insufficient to meet its liabilities, the Treasury may, on being informed of it by the Secretary of State, issue the amount of the deficiency out of the Consolidated Fund, and the Treasury shall certify the deficiency to Parliament.

#### **409 Annual financial statement and audit**

- (1) The National Debt Commissioners shall for each year ending on 31st March prepare a statement of the sums credited and debited to the Investment Account in such form and manner as the Treasury may direct and shall transmit it to the Comptroller and Auditor General before the end of November next following the year.
- (2) The Secretary of State shall for each year ending 31st March prepare a statement of the sums received or paid by him under section 403 above in such form and manner as the Treasury may direct and shall transmit each statement to the Comptroller and Auditor General before the end of November next following the year.
- (3) Every such statement shall include such additional information as the Treasury may direct.
- (4) The Comptroller and Auditor General shall examine, certify and report on every such statement and shall lay copies of it, and of his report, before Parliament.

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### *Supplementary*

#### **410 Extent of this Part**

This part of this Act extends to England and Wales only.