



Insolvency Act 1986

1986 CHAPTER 45

PART VI

MISCELLANEOUS PROVISIONS APPLYING TO COMPANIES WHICH ARE INSOLVENT OR IN LIQUIDATION

[^{F1}Administration: penalisation of directors etc

[^{F1}246ZB] Wrongful trading: administration

- (1) Subject to subsection (3), if while a company is in administration it appears that subsection (2) applies in relation to a person who is or has been a director of the company, the court, on the application of the administrator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the court thinks proper.
- (2) This subsection applies in relation to a person if—
 - (a) the company has entered insolvent administration,
 - (b) at some time before the company entered administration, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid entering insolvent administration or going into insolvent liquidation, and
 - (c) the person was a director of the company at that time.
- (3) The court must not make a declaration under this section with respect to any person if it is satisfied that, after the condition specified in subsection (2)(b) was first satisfied in relation to the person, the person took every step with a view to minimising the potential loss to the company's creditors as (on the assumption that the person had knowledge of the matter mentioned in subsection (2)(b)) the person ought to have taken.
- (4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which the director ought to reach and the

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- steps which the director ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—
- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and
 - (b) the general knowledge, skill and experience that that director has.
- (5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any functions which the director does not carry out but which have been entrusted to the director.
- (6) For the purposes of this section—
- (a) a company enters insolvent administration if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration;
 - (b) a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.
- (7) In this section “director” includes shadow director.
- (8) This section is without prejudice to section 246ZA.]

Textual Amendments

- F1** Ss. 246ZA-246ZC and cross-heading inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 117\(2\), 164\(1\); S.I. 2015/1689, reg. 2\(j\) \(with Sch. para. 15\)](#)

Modifications etc. (not altering text)

- C1** Ss. 246ZA-246ZD 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\(10\)](#)
- C2** Ss. 246ZA-246ZC applied (with modifications) (31.1.2019) by [Technical and Further Education Act 2017 \(c. 19\), s. 47\(2\), Sch. 4; S.I. 2018/1161, reg. 3\(d\)](#)
- C3** Ss. 246ZA-246ZC applied (with modifications) (31.1.2019) by [Technical and Further Education Act 2017 \(c. 19\), s. 47\(2\), Sch. 3; S.I. 2018/1161, reg. 3\(c\)](#)
- C4** S. 246ZB 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\(3\)-\(9\)\)](#)
- C5** Ss. 246ZA-246ZC applied (with modifications) (E.W.) (15.3.2024) by [The Water Industry \(Special Administration\) Regulations 2024 \(S.I. 2024/205\), regs. 2\(2\), 5\(1\) \(with reg. 64\)](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act amendment to earlier affecting provision S.I. 1986/1999, art. 3, Sch. 1 Pt. 2 by [S.I. 2017/1119 Sch. 3 para. 1](#)
- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172 Regulations](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 41HB(2) words substituted by [2018 c. 14 s. 1\(3\)\(b\)](#)