



# Small Business, Enterprise and Employment Act 2015

## 2015 CHAPTER 26

### PART 10

#### INSOLVENCY

##### *Office-holder actions*

#### **117 Power for administrator to bring claim for fraudulent or wrongful trading**

- (1) The Insolvency Act 1986 is amended as follows.
- (2) After section 246 insert—

*“Administration: penalisation of directors etc*

#### **246ZA Fraudulent trading: administration**

- (1) If while a company is in administration it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.
- (2) The court, on the application of the administrator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in subsection (1) are to be liable to make such contributions (if any) to the company’s assets as the court thinks proper.

#### **246ZB Wrongful trading: administration**

- (1) Subject to subsection (3), if while a company is in administration it appears that subsection (2) applies in relation to a person who is or has been a director

of the company, the court, on the application of the administrator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the court thinks proper.

- (2) This subsection applies in relation to a person if—
- (a) the company has entered insolvent administration,
  - (b) at some time before the company entered administration, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid entering insolvent administration or going into insolvent liquidation, and
  - (c) the person was a director of the company at that time.
- (3) The court must not make a declaration under this section with respect to any person if it is satisfied that, after the condition specified in subsection (2) (b) was first satisfied in relation to the person, the person took every step with a view to minimising the potential loss to the company's creditors as (on the assumption that the person had knowledge of the matter mentioned in subsection (2)(b)) the person ought to have taken.
- (4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which the director ought to reach and the steps which the director ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—
- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and
  - (b) the general knowledge, skill and experience that that director has.
- (5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any functions which the director does not carry out but which have been entrusted to the director.
- (6) For the purposes of this section—
- (a) a company enters insolvent administration if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration;
  - (b) a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.
- (7) In this section “director” includes shadow director.
- (8) This section is without prejudice to section 246ZA.

#### **246ZC Proceedings under section 246ZA or 246ZB**

Section 215 applies for the purposes of an application under section 246ZA or 246ZB as it applies for the purposes of an application under section 213 but as if the reference in subsection (1) of section 215 to the liquidator was a reference to the administrator.”

- (3) In section 214 (wrongful trading)—

- (a) in subsection (2)(b), after “liquidation” insert “or entering insolvent administration”;
- (b) in subsection (3), for the words from “assuming” to “liquidation” substitute “on the assumption that he had knowledge of the matter mentioned in subsection (2)(b)”, and
- (c) after subsection (6) insert—

“(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.”

## **118 Power for liquidator or administrator to assign causes of action**

After section 246ZC of the Insolvency Act 1986 (inserted by section 117) insert—

*“Power to assign certain causes of action*

### **246ZD Power to assign**

- (1) This section applies in the case of a company where—
  - (a) the company enters administration, or
  - (b) the company goes into liquidation;and “the office-holder” means the administrator or the liquidator, as the case may be.
- (2) The office-holder may assign a right of action (including the proceeds of an action) arising under any of the following—
  - (a) section 213 or 246ZA (fraudulent trading);
  - (b) section 214 or 246ZB (wrongful trading);
  - (c) section 238 (transactions at an undervalue (England and Wales));
  - (d) section 239 (preferences (England and Wales));
  - (e) section 242 (gratuitous alienations (Scotland));
  - (f) section 243 (unfair preferences (Scotland));
  - (g) section 244 (extortionate credit transactions).”

## **119 Application of proceeds of office-holder claims**

After section 176ZA of the Insolvency Act 1986 insert—

### **“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

- (b) the administrator or the liquidator (referred to in this section as “the office-holder”) has—
  - (i) brought a claim under any provision mentioned in subsection (3), or
  - (ii) made an assignment (or, in Scotland, assignation) in relation to a right of action under any such provision under section 246ZD.
- (2) The proceeds of the claim or assignment (or, in Scotland, assignation) are not to be treated as part of the company’s net property, that is to say the amount of its property which would be available for satisfaction of claims of holders of debentures secured by, or holders of, any floating charge created by the company.
- (3) The provisions are—
  - (a) section 213 or 246ZA (fraudulent trading);
  - (b) section 214 or 246ZB (wrongful trading);
  - (c) section 238 (transactions at an undervalue (England and Wales));
  - (d) section 239 (preferences (England and Wales));
  - (e) section 242 (gratuitous alienations (Scotland));
  - (f) section 243 (unfair preferences (Scotland));
  - (g) section 244 (extortionate credit transactions).
- (4) Subsection (2) does not apply to a company if or in so far as it is disapplied by—
  - (a) a voluntary arrangement in respect of the company, or
  - (b) a compromise or arrangement agreed under Part 26 of the Companies Act 2006 (arrangements and reconstructions).”

*Removing requirements to seek sanction***120 Exercise of powers by liquidator: removal of need for sanction**

- (1) The Insolvency Act 1986 is amended as follows.
- (2) In section 165 (voluntary winding up: powers of liquidator), for subsections (2) and (3) substitute—
 

“(2) The liquidator may exercise any of the powers specified in Parts 1 to 3 of Schedule 4.”
- (3) In section 167 (winding up by the court: powers of liquidator), for subsection (1) substitute—
 

“(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.”
- (4) In section 169 (supplementary powers (Scotland)), omit subsection (1).
- (5) In Part 2 of Schedule 3 (appeals from orders in Scotland: orders which take effect until matter disposed of by Inner House), omit the entry relating to orders under section 167 or 169.
- (6) In Schedule 4 (powers of liquidator in a winding up)—

- (a) in paragraph 3, omit “In the case of a winding up in Scotland,”,
- (b) omit paragraph 6A, and
- (c) omit the headings for each of Parts 1 to 3.

## **121 Exercise of powers by trustee in bankruptcy: removal of need for sanction**

- (1) The Insolvency Act 1986 is amended as follows.
- (2) In section 314 (bankruptcy: powers of trustee)—
  - (a) for subsection (1) substitute—

“(1) The trustee may exercise any of the powers specified in Parts 1 and 2 of Schedule 5.”,
  - (b) in subsection (2), omit “With the permission of the creditors’ committee or the court,”, and
  - (c) omit subsections (3) and (4).
- (3) In Schedule 5 (powers of trustee in bankruptcy), omit the headings for each of Parts 1 to 3.

### *Position of creditors*

## **122 Abolition of requirements to hold meetings: company insolvency**

- (1) The Insolvency Act 1986 is amended as follows.
- (2) After section 246ZD (as inserted by section 118) insert—

### *“Decisions by creditors and contributories*

#### **246ZE Decisions by creditors and contributories: general**

- (1) This section applies where, for the purposes of this Group of Parts, a person (“P”) seeks a decision about any matter from a company’s creditors or contributories.
- (2) The decision may be made by any qualifying decision procedure P thinks fit, except that it may not be made by a creditors’ meeting or (as the case may be) a contributories’ meeting unless subsection (3) applies.
- (3) This subsection applies if at least the minimum number of creditors or (as the case may be) contributories make a request to P in writing that the decision be made by a creditors’ meeting or (as the case may be) a contributories’ meeting.
- (4) If subsection (3) applies P must summon a creditors’ meeting or (as the case may be) a contributories’ meeting.
- (5) Subsection (2) is subject to any provision of this Act, the rules or any other legislation, or any order of the court—
  - (a) requiring a decision to be made, or prohibiting a decision from being made, by a particular qualifying decision procedure (other than a creditors’ meeting or a contributories’ meeting);

- (b) permitting or requiring a decision to be made by a creditors' meeting or a contributories' meeting.
- (6) Section 246ZF provides that in certain cases the deemed consent procedure may be used instead of a qualifying decision procedure.
- (7) For the purposes of subsection (3) the “minimum number” of creditors or contributories is any of the following—
  - (a) 10% in value of the creditors or contributories;
  - (b) 10% in number of the creditors or contributories;
  - (c) 10 creditors or contributories.
- (8) The references in subsection (7) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.
- (9) In this section references to a meeting are to a meeting where the creditors or (as the case may be) contributories are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place).
- (10) Except as provided by subsection (8), references in this section to creditors include creditors of a particular class.
- (11) In this Group of Parts “qualifying decision procedure” means a procedure prescribed or authorised under paragraph 8A of Schedule 8.

#### **246ZF Deemed consent procedure**

- (1) The deemed consent procedure may be used instead of a qualifying decision procedure where a company's creditors or contributories are to make a decision about any matter, unless—
  - (a) a decision about the matter is required by virtue of this Act, the rules, or any other legislation to be made by a qualifying decision procedure, or
  - (b) the court orders that a decision about the matter is to be made by a qualifying decision procedure.
- (2) If the rules provide for a company's creditors or contributories to make a decision about the remuneration of any person, they must provide that the decision is to be made by a qualifying decision procedure.
- (3) The deemed consent procedure is that the relevant creditors (other than opted-out creditors) or (as the case may be) the relevant contributories are given notice of—
  - (a) the matter about which they are to make a decision,
  - (b) the decision that the person giving the notice proposes should be made (the “proposed decision”),
  - (c) the effect of subsections (4) and (5), and
  - (d) the procedure for objecting to the proposed decision.
- (4) If less than the appropriate number of relevant creditors or (as the case may be) relevant contributories object to the proposed decision in accordance with the procedure set out in the notice, the creditors or (as the case may be) the contributories are to be treated as having made the proposed decision.

- (5) Otherwise—
  - (a) the creditors or (as the case may be) the contributories are to be treated as not having made a decision about the matter in question, and
  - (b) if a decision about that matter is again sought from the creditors or (as the case may be) the contributories, it must be sought using a qualifying decision procedure.
- (6) For the purposes of subsection (4) the “appropriate number” of relevant creditors or relevant contributories is 10% in value of those creditors or contributories.
- (7) “Relevant creditors” means the creditors who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.
- (8) “Relevant contributories” means the contributories who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.
- (9) In this section references to creditors include creditors of a particular class.
- (10) The rules may make further provision about the deemed consent procedure.

#### **246ZG Power to amend sections 246ZE and 246ZF**

- (1) The Secretary of State may by regulations amend section 246ZE so as to change the definition of—
  - (a) the minimum number of creditors;
  - (b) the minimum number of contributories.
- (2) The Secretary of State may by regulations amend section 246ZF so as to change the definition of—
  - (a) the appropriate number of relevant creditors;
  - (b) the appropriate number of relevant contributories.
- (3) Regulations under this section may define the minimum number or the appropriate number by reference to any one or more of—
  - (a) a proportion in value,
  - (b) a proportion in number,
  - (c) an absolute number,and the definition may include alternative, cumulative or relative requirements.
- (4) Regulations under subsection (1) may define the minimum number of creditors or contributories by reference to all creditors or contributories, or by reference to creditors or contributories of a particular description.
- (5) Regulations under this section may make provision that will result in section 246ZE or 246ZF having different definitions for different cases, including—
  - (a) for creditors and for contributories,
  - (b) for different kinds of decisions.
- (6) Regulations under this section may make transitional provision.

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- (7) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument.
- (8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”
- (3) In Schedule 8 (provisions which may be included in company insolvency rules), after paragraph 8 insert—
- “8A (1) Provision about the making of decisions by creditors and contributories, including provision—
- (a) prescribing particular procedures by which creditors and contributories may make decisions;
  - (b) authorising the use of other procedures for creditors and contributories to make decisions, if those procedures comply with prescribed requirements.
- (2) Provision under sub-paragraph (1) may in particular include provision about—
- (a) how creditors and contributories may request that a creditors’ meeting or a contributories’ meeting be held,
  - (b) the rights of creditors, contributories and others to be given notice of, and participate in, procedures,
  - (c) creditors’ and contributories’ rights to vote in procedures,
  - (d) the period within which any right to participate or vote is to be exercised,
  - (e) the proportion of creditors or contributories that must vote for a proposal for it to be approved,
  - (f) how the value of any debt or contribution should be determined,
  - (g) the time at which decisions taken by a procedure are to be treated as having been made.”

(4) In section 251 (interpretation of first Group of Parts)—

    - (a) after the definition of “the court” insert—  
““deemed consent procedure” means the deemed consent procedure provided for by section 246ZF;”;
    - (b) after the definition of “prescribed” insert—  
““qualifying decision procedure” has the meaning given by section 246ZE(11);”.

## **123 Abolition of requirements to hold meetings: individual insolvency**

- (1) The Insolvency Act 1986 is amended as follows.
- (2) After section 379 insert—



### *“Creditors’ decisions*

#### **379ZA Creditors’ decisions: general**

- (1) This section applies where, for the purposes of this Group of Parts, a person (“P”) seeks a decision from an individual’s creditors about any matter.
- (2) The decision may be made by any creditors’ decision procedure P thinks fit, except that it may not be made by a creditors’ meeting unless subsection (3) applies.
- (3) This subsection applies if at least the minimum number of creditors request in writing that the decision be made by a creditors’ meeting.
- (4) If subsection (3) applies, P must summon a creditors’ meeting.
- (5) Subsection (2) is subject to any provision of this Act, the rules or any other legislation, or any order of the court—
  - (a) requiring a decision to be made, or prohibiting a decision from being made, by a particular creditors’ decision procedure (other than a creditors’ meeting);
  - (b) permitting or requiring a decision to be made by a creditors’ meeting.
- (6) Section 379ZB provides that in certain cases the deemed consent procedure may be used instead of a creditors’ decision procedure.
- (7) For the purposes of subsection (3) the “minimum number” of creditors is any of the following—
  - (a) 10% in value of the creditors;
  - (b) 10% in number of the creditors;
  - (c) 10 creditors.
- (8) The references in subsection (7) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.
- (9) In this section references to a meeting are to a meeting where the creditors are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place).
- (10) Except as provided by subsection (8), references in this section to creditors include creditors of a particular class.
- (11) In this Group of Parts “creditors’ decision procedure” means a procedure prescribed or authorised under paragraph 11A of Schedule 9.

#### **379ZB Deemed consent procedure**

- (1) The deemed consent procedure may be used instead of a creditors’ decision procedure where an individual’s creditors are to make a decision about any matter, unless—
  - (a) a decision about the matter is required by virtue of this Act, the rules or any other legislation to be made by a creditors’ decision procedure, or

- (b) the court orders that a decision about the matter is to be made by a creditors' decision procedure.
- (2) If the rules provide for an individual's creditors to make a decision about the remuneration of any person, they must provide that the decision is to be made by a creditors' decision procedure.
- (3) The deemed consent procedure is that the relevant creditors (other than opted-out creditors) are given notice of—
  - (a) the matter about which the creditors are to make a decision,
  - (b) the decision the person giving the notice proposes should be made (the "proposed decision"),
  - (c) the effect of subsections (4) and (5), and
  - (d) the procedure for objecting to the proposed decision.
- (4) If less than the appropriate number of relevant creditors object to the proposed decision in accordance with the procedure set out in the notice, the creditors are to be treated as having made the proposed decision.
- (5) Otherwise—
  - (a) the creditors are to be treated as not having made a decision about the matter in question, and
  - (b) if a decision about that matter is again sought from the creditors, it must be sought using a creditors' decision procedure.
- (6) For the purposes of subsection (4) the "appropriate number" of relevant creditors is 10% in value of those creditors.
- (7) "Relevant creditors" means the creditors who, if the decision were to be made by a creditors' decision procedure, would be entitled to vote in the procedure.
- (8) In this section references to creditors include creditors of a particular class.
- (9) The rules may make further provision about the deemed consent procedure.

### **379ZC Power to amend sections 379ZA and 379ZB**

- (1) The Secretary of State may by regulations amend section 379ZA so as to change the definition of the minimum number of creditors.
- (2) The Secretary of State may by regulations amend section 379ZB so as to change the definition of the appropriate number of relevant creditors.
- (3) Regulations under this section may define the minimum number or the appropriate number by reference to any one or more of—
  - (a) a proportion in value,
  - (b) a proportion in number,
  - (c) an absolute number,
 and the definition may include alternative, cumulative or relative requirements.
- (4) Regulations under subsection (1) may define the minimum number of creditors by reference to all creditors, or by reference to creditors of a particular description.

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*Status: This is the original version (as it was originally enacted).*

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- (5) Regulations under this section may make provision that will result in section 379ZA or 379ZB having different definitions for different cases, including for different kinds of decisions.
  - (6) Regulations under this section may make transitional provision.
  - (7) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument.
  - (8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”
- (3) In Schedule 9 (provisions which may be included in individual insolvency rules), after paragraph 11 insert—
- “11A (1) Provision about the making of decisions by creditors, including provision—
- (a) prescribing particular procedures by which creditors may make decisions;
  - (b) authorising the use of other procedures for creditors to make decisions, if those procedures comply with prescribed requirements.
- (2) Provision under sub-paragraph (1) may in particular include provision about—
- (a) how creditors may request that a creditors’ meeting be held,
  - (b) the rights of creditors and others to be given notice of, and participate in, procedures,
  - (c) creditors’ rights to vote in procedures,
  - (d) the period within which any right to participate or vote is to be exercised,
  - (e) the proportion of creditors that must vote for a proposal for it to be approved,
  - (f) how the value of any debt should be determined,
  - (g) the time at which decisions taken by a procedure are to be treated as having been made.”

(4) In section 385(1) (miscellaneous definitions relating to individual insolvency)—

    - (a) after the definition of “the court” insert—  
““creditors’ decision procedure” has the meaning given by section 379ZA(11);”;
    - (b) after the definition of “debt relief order” insert—  
““deemed consent procedure” means the deemed consent procedure provided for by section 379ZB;”.

## **124 Ability for creditors to opt not to receive certain notices: company insolvency**

- (1) The Insolvency Act 1986 is amended as follows.
- (2) For the italic heading before section 246B substitute—

*“Giving of notices etc by office-holders”.*

(3) After section 246B insert—

**“246C Creditors’ ability to opt out of receiving certain notices**

- (1) Any provision of the rules which requires an office-holder of a company to give a notice to creditors of the company does not apply, in circumstances prescribed by the rules, in relation to opted-out creditors.
- (2) Subsection (1)—
  - (a) does not apply in relation to a notice of a distribution or proposed distribution to creditors;
  - (b) is subject to any order of the court requiring a notice to be given to all creditors (or all creditors of a particular category).
- (3) Except as provided by the rules, a creditor may participate and vote in a qualifying decision procedure or a deemed consent procedure even though, by virtue of being an opted-out creditor, the creditor does not receive notice of it.
- (4) In this section—
 

“give” includes deliver, furnish or send;  
 “notice” includes any document or information in any other form;  
 “office-holder”, in relation to a company, means—

  - (a) a liquidator, provisional liquidator, administrator or administrative receiver of the company,
  - (b) a receiver appointed under section 51 in relation to any property of the company, or
  - (c) the supervisor of a voluntary arrangement which has taken effect under Part 1 in relation to the company.”

(4) After section 248 insert—

**“248A “Opted-out creditor”**

- (1) For the purposes of this Group of Parts “opted-out creditor”, in relation to an office-holder of a company, means a person who—
  - (a) is a creditor of the company, and
  - (b) in accordance with the rules has elected (or is deemed to have elected) to be (and not to cease to be) an opted-out creditor in relation to the office-holder.
- (2) In this section, “office-holder”, in relation to a company, means—
  - (a) a liquidator, provisional liquidator, administrator or administrative receiver of the company,
  - (b) a receiver appointed under section 51 in relation to any property of the company, or
  - (c) the supervisor of a voluntary arrangement which has taken effect under Part 1 in relation to the company.”

(5) In Schedule 8 (provisions which may be included in company insolvency rules), after paragraph 5 insert—

“5A Provision for enabling a creditor of a company to elect to be, or to cease to be, an opted-out creditor in relation to an office-holder of the company (within the meaning of section 248A), including, in particular, provision—

- (a) for requiring an office-holder to provide information to creditors about how they may elect to be, or cease to be, opted-out creditors;
- (b) for deeming an election to be, or cease to be, an opted-out creditor in relation to a particular office-holder of a company to be such an election also in relation to any other office-holder of the company.”

## **125 Ability for creditors to opt not to receive certain notices: individual insolvency**

(1) The Insolvency Act 1986 is amended as follows.

(2) For the italic heading before section 379B substitute—

*“Giving of notices etc by office-holders”.*

(3) After section 379B insert—

### **“379C Creditors’ ability to opt out of receiving certain notices**

(1) Any provision of the rules which requires an office-holder to give a notice to creditors of an individual does not apply, in circumstances prescribed by the rules, in relation to opted-out creditors.

(2) Subsection (1)—

- (a) does not apply in relation to a notice of a distribution or proposed distribution to creditors;
- (b) is subject to any order of the court requiring a notice to be given to all creditors (or all creditors of a particular category).

(3) Except as provided by the rules, a creditor may participate and vote in a creditors’ decision procedure or a deemed consent procedure even though, by virtue of being an opted-out creditor, the creditor does not receive notice of it.

(4) In this section—

“give” includes deliver, furnish or send;

“notice” includes any document or information in any other form;

“office-holder”, in relation to an individual, means—

- (a) where a bankruptcy order is made against the individual, the official receiver or the trustee in bankruptcy;
- (b) where an interim receiver of the individual’s property is appointed, the interim receiver;
- (c) the supervisor of a voluntary arrangement approved under Part 8 in relation to the individual.”

(4) After section 383 insert—

**“383A “Opted-out creditor”**

- (1) For the purposes of this Group of Parts “opted-out creditor” in relation to an office-holder for an individual means a person who—
- (a) is a creditor of the individual, and
  - (b) in accordance with the rules has elected (or is deemed to have elected) to be (and not to cease to be) an opted-out creditor in relation to the office-holder.
- (2) In this section, “office-holder”, in relation to an individual, means—
- (a) where a bankruptcy order is made against the individual, the official receiver or the trustee in bankruptcy;
  - (b) where an interim receiver of the individual’s property is appointed, the interim receiver;
  - (c) the supervisor of a voluntary arrangement approved under Part 8 in relation to the individual.”
- (5) In Schedule 9 (provisions capable of inclusion in individual insolvency rules), after paragraph 7 insert—
- “7F Provision for enabling a creditor of an individual to elect to be, or to cease to be, an opted-out creditor in relation to an office-holder for the individual (within the meaning of section 383A), including, in particular, provision—
- (a) for requiring an office-holder to provide information to creditors about how they may elect to be, or cease to be, opted-out creditors;
  - (b) for deeming an election to be, or cease to be, an opted-out creditor in relation to a particular office-holder for an individual to be such an election also in relation to any other office-holder for the individual.”

**126 Sections 122 to 125: further amendments**

Schedule 9 (abolition of requirements to hold meetings; opted-out creditors)—

- (a) makes amendments relating to sections 122 to 125, and
- (b) removes requirements to hold a general meeting of a company when the company’s affairs are fully wound up.

*Administration*

**127 Extension of administrator’s term of office**

In paragraph 76(2)(b) of Schedule B1 to the Insolvency Act 1986 (administrator’s term of office may be extended for up to six months by consent) for “six months” substitute “one year”.

## **128 Administration: payments to unsecured creditors**

- (1) Schedule B1 to the Insolvency Act 1986 (administration) is amended as follows.
- (2) In paragraph 65(3) (restrictions on distribution to unsecured creditors) for “unless” substitute “unless—
  - (a) the distribution is made by virtue of section 176A(2)(a), or
  - (b)”.
- (3) In paragraph 83 (power to move from administration to creditors’ voluntary liquidation), in sub-paragraphs (1)(b) and (2)(b), after “any” insert “which is not a distribution by virtue of section 176A(2)(a)”.

## **129 Administration: sales to connected persons**

- (1) Schedule B1 to the Insolvency Act 1986 (administration) is amended as follows.
- (2) Paragraph 60 (power of administrators) becomes sub-paragraph (1) of that paragraph.
- (3) After that sub-paragraph insert—
  - “(2) But the power to sell, hire out or otherwise dispose of property is subject to any regulations that may be made under paragraph 60A.”
- (4) After paragraph 60 insert—

“60A (1) The Secretary of State may by regulations make provision for—

  - (a) prohibiting, or
  - (b) imposing requirements or conditions in relation to, the disposal, hiring out or sale of property of a company by the administrator to a connected person in circumstances specified in the regulations.

(2) Regulations under this paragraph may in particular require the approval of, or provide for the imposition of requirements or conditions by—

  - (a) creditors of the company,
  - (b) the court, or
  - (c) a person of a description specified in the regulations.

(3) In sub-paragraph (1), “connected person”, in relation to a company, means—

  - (a) a relevant person in relation to the company, or
  - (b) a company connected with the company.

(4) For the purposes of sub-paragraph (3)—

  - (a) “relevant person”, in relation to a company, means—
    - (i) a director or other officer, or shadow director, of the company;
    - (ii) a non-employee associate of such a person;
    - (iii) a non-employee associate of the company;
  - (b) a company is connected with another if any relevant person of one is or has been a relevant person of the other.

- (5) In sub-paragraph (4), “non-employee associate” of a person means a person who is an associate of that person otherwise than by virtue of employing or being employed by that person.
- (6) Subsection (10) of section 435 (extended definition of company) applies for the purposes of sub-paragraphs (3) to (5) as it applies for the purposes of that section.
- (7) Regulations under this paragraph may—
  - (a) make different provision for different purposes;
  - (b) make incidental, consequential, supplemental and transitional provision.
- (8) Regulations under this paragraph are to be made by statutory instrument.
- (9) Regulations under this paragraph may not be made unless a draft of the statutory instrument containing the regulations has been laid before Parliament and approved by a resolution of each House of Parliament.
- (10) This paragraph expires at the end of the period of 5 years beginning with the day on which it comes into force unless the power conferred by it is exercised during that period.”

### **130 Attachment of floating charges on administration (Scotland)**

- (1) Paragraph 115 of Schedule B1 (administration) to the Insolvency Act 1986 is amended as follows.
- (2) After sub-paragraph (1) insert—
  - “(1A) In Scotland, sub-paragraph (1B) applies in connection with the giving by the court of permission as provided for in paragraph 65(3)(b).
  - (1B) On the giving by the court of such permission, any floating charge granted by the company shall, unless it has already so attached, attach to the property which is subject to the charge.”
- (3) In sub-paragraph (3), omit the words from “and” to the end.
- (4) After that sub-paragraph insert—
  - “(4) Attachment of a floating charge under sub-paragraph (1B) or (3) has effect as if the charge is a fixed security over the property to which it has attached.”

### *Small debts*

### **131 Creditors not required to prove small debts: company insolvency**

In Schedule 8 to the Insolvency Act 1986 (provisions capable of inclusion in company insolvency rules) after paragraph 13 insert—

- “13A Provision for a creditor who has not proved a small debt to be treated as having done so for purposes relating to the distribution of a company’s



property (and for provisions of, or contained in legislation made under, this Act to apply accordingly).”

### **132 Creditors not required to prove small debts: individual insolvency**

In Schedule 9 to the Insolvency Act 1986 (provisions capable of inclusion in individual insolvency rules) after paragraph 18 insert—

“18A Provision for a creditor who has not proved a small debt to be treated as having done so for purposes relating to the distribution of a bankrupt’s estate (and for provisions of, or contained in legislation made under, this Act to apply accordingly).”

#### *Trustees in bankruptcy*

### **133 Trustees in bankruptcy**

(1) In the Insolvency Act 1986, before section 292 insert—

#### **“291A First trustee in bankruptcy**

- (1) On the making of a bankruptcy order the official receiver becomes trustee of the bankrupt’s estate, unless the court appoints another person under subsection (2).
- (2) If when the order is made there is a supervisor of a voluntary arrangement approved in relation to the bankrupt under Part 8, the court may on making the order appoint the supervisor of the arrangement as the trustee.
- (3) Where a person becomes trustee of a bankrupt’s estate under this section, the person must give notice of that fact to the bankrupt’s creditors (or, if the court so allows, advertise it in accordance with the court’s directions).
- (4) A notice or advertisement given by a trustee appointed under subsection (2) must explain the procedure for establishing a creditors’ committee under section 301.”

(2) Schedule 10 makes consequential amendments.

#### *Voluntary arrangements*

### **134 Time limit for challenging IVAs**

In section 262(3)(a) of the Insolvency Act 1986 (time limit for challenging voluntary arrangement), for the words from “the report” to “section 259” substitute “the creditors decided whether to approve the proposed voluntary arrangement or, where a report was required to be made to the court under section 259(1)(b), the day on which the report was made”.

**135 Abolition of fast-track voluntary arrangements**

- (1) Omit sections 263A to 263G of the Insolvency Act 1986 (fast-track voluntary arrangements (England and Wales)) and the cross heading immediately before section 263A.
- (2) In consequence of the repeals made by subsection (1), in the Insolvency Act 1986—
  - (a) in section 282 (court’s power to annul bankruptcy order), in subsection (4), omit “or 263D”, and
  - (b) in Schedule 4A (bankruptcy restrictions order and undertaking), in paragraph 11, omit “, 263D”.
- (3) Also in consequence of the repeals made by subsection (1), in the Enterprise Act 2002—
  - (a) omit section 264(2) to (4) (orders to extend application of provisions of sections 263B to 263G of the Insolvency Act 1986),
  - (b) in Schedule 22, omit paragraph 2 (fast-track voluntary arrangements) and the heading immediately before it, and
  - (c) in Schedule 23 (minor and consequential amendments), omit paragraph 4(a) and the “and” immediately after it.
- (4) The repeals made by this section have no effect in relation to a case where a debtor has submitted the document and statement mentioned in section 263B(1) to the official receiver before this section comes into force.

*Progress reports***136 Voluntary winding-up: progress reports**

- (1) The Insolvency Act 1986 is amended as follows.
- (2) In section 92A (progress reports in members’ voluntary winding-up)—
  - (a) in subsection (1), for the words from “in the event” to “one year,” substitute “where the company is registered in England and Wales”;
  - (b) in the heading, omit “at year’s end”.
- (3) In section 104A (progress reports in creditors’ voluntary winding-up)—
  - (a) in subsection (1), for the words from “If the” to “one year,” substitute “Where the company is registered in England and Wales”;
  - (b) in the heading, omit “at year’s end”.
- (4) In the table in Schedule 10 (punishment of offences)—
  - (a) in the entry for section 92A(2), in column 2, omit “at year’s end”;
  - (b) in the entry for section 104A(2), in column 2, omit “at year’s end”.

*Regulation of insolvency practitioners: amendments to existing regime***137 Recognised professional bodies: recognition**

- (1) In Part 13 of the Insolvency Act 1986 (insolvency practitioners), for section 391 (recognised professional bodies) (as substituted by section 17 of the Deregulation Act 2015) substitute—

### **“391 Recognised professional bodies**

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

### **391A Application for recognition as recognised professional body**

- (1) An application for an order under section 391(1) or (2) must—
  - (a) be made to the Secretary of State in such form and manner as the Secretary of State may require,

- (b) be accompanied by such information as the Secretary of State may require, and
    - (c) be supplemented by such additional information as the Secretary of State may require at any time between receiving the application and determining it.
  - (2) The requirements which may be imposed under subsection (1) may differ as between different applications.
  - (3) The Secretary of State may require information provided under this section to be in such form, and verified in such manner, as the Secretary of State may specify.
  - (4) An application for an order under section 391(1) or (2) must be accompanied by—
    - (a) a copy of the applicant’s rules,
    - (b) a copy of the applicant’s policies and practices, and
    - (c) a copy of any guidance issued by the applicant in writing.
  - (5) The reference in subsection (4)(c) to guidance issued by the applicant is a reference to guidance or recommendations which are—
    - (a) issued or made by it which will apply to its insolvency specialist members or to persons seeking to become such members,
    - (b) relevant for the purposes of this Part, and
    - (c) intended to have continuing effect,
 including guidance or recommendations relating to the admission or expulsion of members.
  - (6) The Secretary of State may refuse an application for an order under section 391(1) or (2) if the Secretary of State considers that recognition of the body concerned is unnecessary having regard to the existence of one or more other bodies which have been or are likely to be recognised under section 391.
  - (7) Subsection (8) applies where the Secretary of State refuses an application for an order under section 391(1) or (2); and it applies regardless of whether the application is refused on the ground mentioned in subsection (6), because the Secretary of State is not satisfied as mentioned in section 391(1) or (2) or because a fee has not been paid (see section 415A(1)(b)).
  - (8) The Secretary of State must give the applicant a written notice of the Secretary of State’s decision; and the notice must set out the reasons for refusing the application.”
- (2) An order under section 391(1) or (2) of the Insolvency Act 1986 made before the coming into force of this section is, following the coming into force of this section, to be treated as if it were made under section 391(1) or (as the case may be) (2) as substituted by subsection (1) of this section.

### **138 Regulatory objectives**

- (1) After section 391A of the Insolvency Act 1986 (inserted by section 137) insert—

*“Regulatory objectives*

**391B Application of regulatory objectives**

- (1) In discharging regulatory functions, a recognised professional body must, so far as is reasonably practicable, act in a way—
  - (a) which is compatible with the regulatory objectives, and
  - (b) which the body considers most appropriate for the purpose of meeting those objectives.
- (2) In discharging functions under this Part, the Secretary of State must have regard to the regulatory objectives.

**391C Meaning of “regulatory functions” and “regulatory objectives”**

- (1) This section has effect for the purposes of this Part.
- (2) “Regulatory functions”, in relation to a recognised professional body, means any functions the body has—
  - (a) under or in relation to its arrangements for or in connection with—
    - (i) authorising persons to act as insolvency practitioners, or
    - (ii) regulating persons acting as insolvency practitioners, or
  - (b) in connection with the making or alteration of those arrangements.
- (3) “Regulatory objectives” means the objectives of—
  - (a) having a system of regulating persons acting as insolvency practitioners that—
    - (i) secures fair treatment for persons affected by their acts and omissions,
    - (ii) reflects the regulatory principles, and
    - (iii) ensures consistent outcomes,
  - (b) encouraging an independent and competitive insolvency-practitioner profession whose members—
    - (i) provide high quality services at a cost to the recipient which is fair and reasonable,
    - (ii) act transparently and with integrity, and
    - (iii) consider the interests of all creditors in any particular case,
  - (c) promoting the maximisation of the value of returns to creditors and promptness in making those returns, and
  - (d) protecting and promoting the public interest.
- (4) In subsection (3)(a), “regulatory principles” means—
  - (a) the principles that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
  - (b) any other principle appearing to the body concerned (in the case of the duty under section 391B(1)), or to the Secretary of State (in the case of the duty under section 391B(2)), to lead to best regulatory practice.”

- (2) In section 419 of the Insolvency Act 1986 (regulations for the purposes of Part 13), at the end insert—

“(5) In making regulations under this section, the Secretary of State must have regard to the regulatory objectives (as defined by section 391C(3)).”

### **139 Oversight of recognised professional bodies**

- (1) After section 391C of the Insolvency Act 1986 (inserted by section 138) insert—

*“Oversight of recognised professional bodies*

#### **391D Directions**

- (1) This section applies if the Secretary of State is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.
- (2) The Secretary of State may, if in all the circumstances of the case satisfied that it is appropriate to do so, direct the body to take such steps as the Secretary of State considers will counter the adverse impact, mitigate its effect or prevent its occurrence or recurrence.
- (3) A direction under this section may require a recognised professional body—
  - (a) to take only such steps as it has power to take under its regulatory arrangements;
  - (b) to take steps with a view to the modification of any part of its regulatory arrangements.
- (4) A direction under this section may require a recognised professional body—
  - (a) to take steps with a view to the institution of, or otherwise in respect of, specific regulatory proceedings;
  - (b) to take steps in respect of all, or a specified class of, such proceedings.
- (5) For the purposes of this section, a direction to take steps includes a direction which requires a recognised professional body to refrain from taking a particular course of action.
- (6) In this section “regulatory arrangements”, in relation to a recognised professional body, means the arrangements that the body has for or in connection with—
  - (a) authorising persons to act as insolvency practitioners, or
  - (b) regulating persons acting as insolvency practitioners.

#### **391E Directions: procedure**

- (1) Before giving a recognised professional body a direction under section 391D, the Secretary of State must give the body a notice accompanied by a draft of the proposed direction.

- (2) The notice under subsection (1) must—
  - (a) state that the Secretary of State proposes to give the body a direction in the form of the accompanying draft,
  - (b) specify why the Secretary of State has reached the conclusions mentioned in section 391D(1) and (2), and
  - (c) specify a period within which the body may make written representations with respect to the proposal.
- (3) The period specified under subsection (2)(c)—
  - (a) must begin with the date on which the notice is given to the body, and
  - (b) must not be less than 28 days.
- (4) On the expiry of that period, the Secretary of State must decide whether to give the body the proposed direction.
- (5) The Secretary of State must give notice of that decision to the body.
- (6) Where the Secretary of State decides to give the proposed direction, the notice under subsection (5) must—
  - (a) contain the direction,
  - (b) state the time at which the direction is to take effect, and
  - (c) specify the Secretary of State’s reasons for the decision to give the direction.
- (7) Where the Secretary of State decides to give the proposed direction, the Secretary of State must publish the notice under subsection (5); but this subsection does not apply to a direction to take any step with a view to the institution of, or otherwise in respect of, regulatory proceedings against an individual.
- (8) The Secretary of State may revoke a direction under section 391D; and, where doing so, the Secretary of State—
  - (a) must give the body to which the direction was given notice of the revocation, and
  - (b) must publish the notice and, if the notice under subsection (5) was published under subsection (7), must do so (if possible) in the same manner as that in which that notice was published.

### **391F Financial penalty**

- (1) This section applies if the Secretary of State is satisfied—
  - (a) that a recognised professional body has failed to comply with a requirement to which this section applies, and
  - (b) that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the body.
- (2) This section applies to a requirement imposed on the recognised professional body—
  - (a) by a direction given under section 391D, or
  - (b) by a provision of this Act or of subordinate legislation under this Act.

- (3) The Secretary of State may impose a financial penalty, in respect of the failure, of such amount as the Secretary of State considers appropriate.
- (4) In deciding what amount is appropriate, the Secretary of State—
  - (a) must have regard to the nature of the requirement which has not been complied with, and
  - (b) must not take into account the Secretary of State’s costs in discharging functions under this Part.
- (5) A financial penalty under this section is payable to the Secretary of State; and sums received by the Secretary of State in respect of a financial penalty under this section (including by way of interest) are to be paid into the Consolidated Fund.
- (6) In sections 391G to 391I, “penalty” means a financial penalty under this section.

### **391G Financial penalty: procedure**

- (1) Before imposing a penalty on a recognised professional body, the Secretary of State must give notice to the body—
  - (a) stating that the Secretary of State proposes to impose a penalty and the amount of the proposed penalty,
  - (b) specifying the requirement in question,
  - (c) stating why the Secretary of State is satisfied as mentioned in section 391F(1), and
  - (d) specifying a period within which the body may make written representations with respect to the proposal.
- (2) The period specified under subsection (1)(d)—
  - (a) must begin with the date on which the notice is given to the body, and
  - (b) must not be less than 28 days.
- (3) On the expiry of that period, the Secretary of State must decide—
  - (a) whether to impose a penalty, and
  - (b) whether the penalty should be the amount stated in the notice or a reduced amount.
- (4) The Secretary of State must give notice of the decision to the body.
- (5) Where the Secretary of State decides to impose a penalty, the notice under subsection (4) must—
  - (a) state that the Secretary of State has imposed a penalty on the body and its amount,
  - (b) specify the requirement in question and state—
    - (i) why it appears to the Secretary of State that the requirement has not been complied with, or
    - (ii) where, by that time, the requirement has been complied with, why it appeared to the Secretary of State when giving the notice under subsection (1) that the requirement had not been complied with, and
  - (c) specify a time by which the penalty is required to be paid.



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*Status: This is the original version (as it was originally enacted).*

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- (6) The time specified under subsection (5)(c) must be at least three months after the date on which the notice under subsection (4) is given to the body.
- (7) Where the Secretary of State decides to impose a penalty, the Secretary of State must publish the notice under subsection (4).
- (8) The Secretary of State may rescind or reduce a penalty imposed on a recognised professional body; and, where doing so, the Secretary of State—
  - (a) must give the body notice that the penalty has been rescinded or reduced to the amount stated in the notice, and
  - (b) must publish the notice; and it must (if possible) be published in the same manner as that in which the notice under subsection (4) was published.

### **391H Appeal against financial penalty**

- (1) A recognised professional body on which a penalty is imposed may appeal to the court on one or more of the appeal grounds.
- (2) The appeal grounds are—
  - (a) that the imposition of the penalty was not within the Secretary of State’s power under section 391F;
  - (b) that the requirement in respect of which the penalty was imposed had been complied with before the notice under section 391G(1) was given;
  - (c) that the requirements of section 391G have not been complied with in relation to the imposition of the penalty and the interests of the body have been substantially prejudiced as a result;
  - (d) that the amount of the penalty is unreasonable;
  - (e) that it was unreasonable of the Secretary of State to require the penalty imposed to be paid by the time specified in the notice under section 391G(5)(c).
- (3) An appeal under this section must be made within the period of three months beginning with the day on which the notice under section 391G(4) in respect of the penalty is given to the body.
- (4) On an appeal under this section the court may—
  - (a) quash the penalty,
  - (b) substitute a penalty of such lesser amount as the court considers appropriate, or
  - (c) in the case of the appeal ground in subsection (2)(e), substitute for the time imposed by the Secretary of State a different time.
- (5) Where the court substitutes a penalty of a lesser amount, it may require the payment of interest on the substituted penalty from such time, and at such rate, as it considers just and equitable.
- (6) Where the court substitutes a later time for the time specified in the notice under section 391G(5)(c), it may require the payment of interest on the penalty from the substituted time at such rate as it considers just and equitable.

- (7) Where the court dismisses the appeal, it may require the payment of interest on the penalty from the time specified in the notice under section 391G(5)(c) at such rate as it considers just and equitable.
- (8) In this section, “the court” means the High Court or, in Scotland, the Court of Session.

### **391I Recovery of financial penalties**

- (1) If the whole or part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (but this is subject to any requirement imposed by the court under section 391H(5), (6) or (7)).
- (2) If an appeal is made under section 391H in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn.
- (3) Subsection (4) applies where the whole or part of a penalty has not been paid by the time it is required to be paid and—
  - (a) no appeal relating to the penalty has been made under section 391H during the period within which an appeal may be made under that section, or
  - (b) an appeal has been made under that section and determined or withdrawn.
- (4) The Secretary of State may recover from the recognised professional body in question, as a debt due to the Secretary of State, any of the penalty and any interest which has not been paid.

### **391J Reprimand**

- (1) This section applies if the Secretary of State is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.
- (2) The Secretary of State may, if in all the circumstances of the case satisfied that it is appropriate to do so, publish a statement reprimanding the body for the act or omission (or series of acts or omissions).

### **391K Reprimand: procedure**

- (1) If the Secretary of State proposes to publish a statement under section 391J in respect of a recognised professional body, it must give the body a notice—
  - (a) stating that the Secretary of State proposes to publish such a statement and setting out the terms of the proposed statement,
  - (b) specifying the acts or omissions to which the proposed statement relates, and
  - (c) specifying a period within which the body may make written representations with respect to the proposal.

- (2) The period specified under subsection (1)(c)—
    - (a) must begin with the date on which the notice is given to the body, and
    - (b) must not be less than 28 days.
  - (3) On the expiry of that period, the Secretary of State must decide whether to publish the statement.
  - (4) The Secretary of State may vary the proposed statement; but before doing so, the Secretary of State must give the body notice—
    - (a) setting out the proposed variation and the reasons for it, and
    - (b) specifying a period within which the body may make written representations with respect to the proposed variation.
  - (5) The period specified under subsection (4)(b)—
    - (a) must begin with the date on which the notice is given to the body, and
    - (b) must not be less than 28 days.
  - (6) On the expiry of that period, the Secretary of State must decide whether to publish the statement as varied.”
- (2) In section 415A of the Insolvency Act 1986 (fees orders: general), after subsection (1A) (inserted by section 17 of the Deregulation Act 2015) insert—
- “(1B) In setting under subsection (1) the amount of a fee in connection with maintenance of recognition, the matters to which the Secretary of State may have regard include, in particular, the costs of the Secretary of State in connection with any functions under sections 391D, 391E, 391J, 391K and 391N.”

#### **140 Recognised professional bodies: revocation of recognition**

- (1) After section 391K of the Insolvency Act 1986 (inserted by section 139) insert—

*“Revocation etc of recognition*

##### **391L Revocation of recognition at instigation of Secretary of State**

- (1) An order under section 391(1) or (2) in relation to a recognised professional body may be revoked by the Secretary of State by order if the Secretary of State is satisfied that—
  - (a) an act or omission of the body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives, and
  - (b) it is appropriate in all the circumstances of the case to revoke the body’s recognition under section 391.
- (2) If the condition set out in subsection (3) is met, an order under section 391(1) in relation to a recognised professional body may be revoked by the Secretary of State by an order which also declares the body concerned to be a recognised professional body which is capable of providing its insolvency specialist

members with partial authorisation only of the kind specified in the order (see section 390A(1)).

- (3) The condition is that the Secretary of State is satisfied—
  - (a) as mentioned in subsection (1)(a), and
  - (b) that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.
- (4) In this Part—
  - (a) an order under subsection (1) is referred to as a “revocation order”;
  - (b) an order under subsection (2) is referred to as a “partial revocation order”.
- (5) A revocation order or partial revocation order—
  - (a) has effect from such date as is specified in the order, and
  - (b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.
- (6) A partial revocation order has effect as if it were an order made under section 391(2).

### **391M Orders under section 391L: procedure**

- (1) Before making a revocation order or partial revocation order in relation to a recognised professional body, the Secretary of State must give notice to the body—
  - (a) stating that the Secretary of State proposes to make the order and the terms of the proposed order,
  - (b) specifying the Secretary of State’s reasons for proposing to make the order, and
  - (c) specifying a period within which the body, members of the body or other persons likely to be affected by the proposal may make written representations with respect to it.
- (2) Where the Secretary of State gives a notice under subsection (1), the Secretary of State must publish the notice on the same day.
- (3) The period specified under subsection (1)(c)—
  - (a) must begin with the date on which the notice is given to the body, and
  - (b) must not be less than 28 days.
- (4) On the expiry of that period, the Secretary of State must decide whether to make the revocation order or (as the case may be) partial revocation order in relation to the body.
- (5) The Secretary of State must give notice of the decision to the body.
- (6) Where the Secretary of State decides to make the order, the notice under subsection (5) must specify—
  - (a) when the order is to take effect, and

(b) the Secretary of State’s reasons for making the order.

(7) A notice under subsection (5) must be published; and it must (if possible) be published in the same manner as that in which the notice under subsection (1) was published.

### **391N Revocation of recognition at request of body**

(1) An order under section 391(1) or (2) in relation to a recognised professional body may be revoked by the Secretary of State by order if—

- (a) the body has requested that an order be made under this subsection, and
- (b) the Secretary of State is satisfied that it is appropriate in all the circumstances of the case to revoke the body’s recognition under section 391.

(2) An order under section 391(1) in relation to a recognised professional body may be revoked by the Secretary of State by an order which also declares the body concerned to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (see section 390A(1)) if—

- (a) the body has requested that an order be made under this subsection, and
- (b) the Secretary of State is satisfied that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.

(3) Where the Secretary of State decides to make an order under this section the Secretary of State must publish a notice specifying—

- (a) when the order is to take effect, and
- (b) the Secretary of State’s reasons for making the order.

(4) An order under this section—

- (a) has effect from such date as is specified in the order, and
- (b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.

(5) An order under subsection (2) has effect as if it were an order made under section 391(2).”

(2) In section 415A of the Insolvency Act 1986 (fees orders: general), after subsection (4) insert—

“(5) Section 391M applies for the purposes of an order under subsection (1)(b) as it applies for the purposes of a revocation order made under section 391L.”

## **141 Court sanction of insolvency practitioners in public interest cases**

After section 391N of the Insolvency Act 1986 (inserted by section 140) insert—

*“Court sanction of insolvency practitioners in public interest cases***391O Direct sanctions orders**

- (1) For the purposes of this Part a “direct sanctions order” is an order made by the court against a person who is acting as an insolvency practitioner which—
  - (a) declares that the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;
  - (b) declares that the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the order;
  - (c) declares that the person’s authorisation to act as an insolvency practitioner is suspended for the period specified in the order or until such time as the requirements so specified are complied with;
  - (d) requires the person to comply with such other requirements as may be specified in the order while acting as an insolvency practitioner;
  - (e) requires the person to make such contribution as may be specified in the order to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.
- (2) Where the court makes a direct sanctions order, the relevant recognised professional body must take all necessary steps to give effect to the order.
- (3) A direct sanctions order must not be made against a person whose authorisation to act as an insolvency practitioner was granted by the Department of Enterprise, Trade and Investment in Northern Ireland (see section 390A(2)(b)).
- (4) A direct sanctions order must not specify a contribution as mentioned in subsection (1)(e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.
- (5) In this section and section 391P—
  - “the court” means the High Court or, in Scotland, the Court of Session;
  - “relevant recognised professional body”, in relation to a person who is acting as an insolvency practitioner, means the recognised professional body by virtue of which the person is authorised so to act.

**391P Application for, and power to make, direct sanctions order**

- (1) The Secretary of State may apply to the court for a direct sanctions order to be made against a person if it appears to the Secretary of State that it would be in the public interest for the order to be made.
- (2) The Secretary of State must send a copy of the application to the relevant recognised professional body.
- (3) The court may make a direct sanctions order against a person where, on an application under this section, the court is satisfied that condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person.

- (4) The conditions are set out in section 391Q.
- (5) In deciding whether to make a direct sanctions order against a person the court must have regard to the extent to which—
  - (a) the relevant recognised professional body has taken action against the person in respect of the failure mentioned in condition 1, and
  - (b) that action is sufficient to address the failure.

### **391Q Direct sanctions order: conditions**

- (1) Condition 1 is that the person, in acting as an insolvency practitioner or in connection with any appointment as such, has failed to comply with—
  - (a) a requirement imposed by the rules of the relevant recognised professional body;
  - (b) any standards, or code of ethics, for the insolvency-practitioner profession adopted from time to time by the relevant recognised professional body.
- (2) Condition 2 is that the person—
  - (a) is not a fit and proper person to act as an insolvency practitioner;
  - (b) is a fit and proper person to act as an insolvency practitioner only in relation to companies, but the person’s authorisation is not so limited; or
  - (c) is a fit and proper person to act as an insolvency practitioner only in relation to individuals, but the person’s authorisation is not so limited.
- (3) Condition 3 is that it is appropriate for the person’s authorisation to act as an insolvency practitioner to be suspended for a period or until one or more requirements are complied with.
- (4) Condition 4 is that it is appropriate to impose other restrictions on the person acting as an insolvency practitioner.
- (5) Condition 5 is that loss has been suffered as a result of the failure mentioned in condition 1 by one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.
- (6) In this section “relevant recognised professional body” has the same meaning as in section 391O.

### **391R Direct sanctions direction instead of order**

- (1) The Secretary of State may give a direction (a “direct sanctions direction”) in relation to a person acting as an insolvency practitioner to the relevant recognised professional body (instead of applying, or continuing with an application, for a direct sanctions order against the person) if the Secretary of State is satisfied that—
  - (a) condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person (see section 391Q), and
  - (b) it is in the public interest for the direction to be given.

- (2) But the Secretary of State may not give a direct sanctions direction in relation to a person without that person’s consent.
- (3) A direct sanctions direction may require the relevant recognised professional body to take all necessary steps to secure that—
  - (a) the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;
  - (b) the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the direction;
  - (c) the person’s authorisation to act as an insolvency practitioner is suspended for the period specified in the direction or until such time as the requirements so specified are complied with;
  - (d) the person must comply with such other requirements as may be specified in the direction while acting as an insolvency practitioner;
  - (e) the person makes such contribution as may be specified in the direction to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.
- (4) A direct sanctions direction must not be given in relation to a person whose authorisation to act as an insolvency practitioner was granted by the Department of Enterprise, Trade and Investment in Northern Ireland (see section 390A(2)(b)).
- (5) A direct sanctions direction must not specify a contribution as mentioned in subsection (3)(e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.
- (6) In this section “relevant recognised professional body” has the same meaning as in section 391O.”

## **142 Power for Secretary of State to obtain information**

After section 391R of the Insolvency Act 1986 (inserted by section 141) insert—

### *“General*

#### **391S Power for Secretary of State to obtain information**

- (1) A person mentioned in subsection (2) must give the Secretary of State such information as the Secretary of State may by notice in writing require for the exercise of the Secretary of State’s functions under this Part.
- (2) Those persons are—
  - (a) a recognised professional body;
  - (b) any individual who is or has been authorised under section 390A to act as an insolvency practitioner;
  - (c) any person who is connected to such an individual.



- (3) A person is connected to an individual who is or has been authorised to act as an insolvency practitioner if, at any time during the authorisation—
  - (a) the person was an employee of the individual;
  - (b) the person acted on behalf of the individual in any other way;
  - (c) the person employed the individual;
  - (d) the person was a fellow employee of the individual’s employer;
  - (e) in a case where the individual was employed by a firm, partnership or company, the person was a member of the firm or partnership or (as the case may be) a director of the company.
- (4) In imposing a requirement under subsection (1) the Secretary of State may specify—
  - (a) the time period within which the information in question is to be given, and
  - (b) the manner in which it is to be verified.”

### **143 Compliance orders**

After section 391S of the Insolvency Act 1986 (inserted by section 142) insert—

#### **“391T Compliance orders**

- (1) If at any time it appears to the Secretary of State that—
  - (a) a recognised professional body has failed to comply with a requirement imposed on it by or by virtue of this Part, or
  - (b) any other person has failed to comply with a requirement imposed on the person by virtue of section 391S,the Secretary of State may make an application to the court.
- (2) If, on an application under this section, the court decides that the body or other person has failed to comply with the requirement in question, it may order the body or person to take such steps as the court considers will secure that the requirement is complied with.
- (3) In this section, “the court” means the High Court or, in Scotland, the Court of Session.”

#### *Power to establish single regulator of insolvency practitioners*

### **144 Power to establish single regulator of insolvency practitioners**

- (1) The Secretary of State may by regulations designate a body for the purposes of—
  - (a) authorising persons to act as insolvency practitioners, and
  - (b) regulating persons acting as such.
- (2) The designated body may be either—
  - (a) a body corporate established by the regulations, or
  - (b) a body (whether a body corporate or an unincorporated association) already in existence when the regulations are made (an “existing body”).

- (3) The regulations may, in particular, confer the following functions on the designated body—
- (a) establishing criteria for determining whether a person is a fit and proper person to act as an insolvency practitioner;
  - (b) establishing the requirements as to education, practical training and experience which a person must meet in order to act as an insolvency practitioner;
  - (c) establishing and maintaining a system for providing full authorisation or partial authorisation to persons who meet those criteria and requirements;
  - (d) imposing technical standards for persons so authorised and enforcing compliance with those standards;
  - (e) imposing professional and ethical standards for persons so authorised and enforcing compliance with those standards;
  - (f) monitoring the performance and conduct of persons so authorised;
  - (g) investigating complaints made against, and other matters concerning the performance or conduct of, persons so authorised.
- (4) The regulations may require the designated body, in discharging regulatory functions, so far as is reasonably practicable, to act in a way—
- (a) which is compatible with the regulatory objectives, and
  - (b) which the body considers most appropriate for the purpose of meeting those objectives.
- (5) Provision made under subsection (3)(d) or (3)(e) for the enforcement of the standards concerned may include provision enabling the designated body to impose a financial penalty on a person who is or has been authorised to act as an insolvency practitioner.
- (6) The regulations may, in particular, include provision for the purpose of treating a person authorised to act as an insolvency practitioner by virtue of being a member of a professional body recognised under section 391 of the Insolvency Act 1986 immediately before the regulations come into force as authorised to act as an insolvency practitioner by the body designated by the regulations after that time.
- (7) Expressions used in this section which are defined for the purposes of Part 13 of the Insolvency Act 1986 have the same meaning in this section as in that Part.
- (8) Section 145 makes further provision about regulations under this section which designate an existing body.
- (9) Schedule 11 makes supplementary provision in relation to the designation of a body by regulations under this section.

#### **145 Regulations under section 144: designation of existing body**

- (1) The Secretary of State may make regulations under section 144 designating an existing body only if it appears to the Secretary of State that—
- (a) the body is able and willing to exercise the functions that would be conferred by the regulations, and
  - (b) the body has arrangements in place relating to the exercise of those functions which are such as to be likely to ensure that the conditions in subsection (2) are met.

- (2) The conditions are—
  - (a) that the functions in question will be exercised effectively, and
  - (b) where the regulations are to contain any requirements or other provisions prescribed under subsection (3), that those functions will be exercised in accordance with any such requirements or provisions.
- (3) Regulations which designate an existing body may contain such requirements or other provisions relating to the exercise of the functions by the designated body as appear to the Secretary of State to be appropriate.

**146 Regulations under section 144: timing and supplementary**

- (1) Section 144 and, accordingly, section 145 and subsections (3) and (4) below expire at the end of the relevant period unless the power conferred by subsection (1) of section 144 is exercised before the end of that period.
- (2) The “relevant period” is the period of 7 years beginning with the day on which section 144 comes into force.
- (3) Regulations under section 144 are subject to affirmative resolution procedure.
- (4) If a draft of a statutory instrument containing regulations under section 144 would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.