

STATUTORY INSTRUMENTS

2017 No. 400

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

PART 2

Amendments of primary legislation

The Banking Act 2009

5.—(1) The Banking Act 2009(1) is amended as follows.

(2) In section 94 (bank insolvency order), in subsection (2) at the end insert “in relation to the bank”.

(3) In section 103 (general powers and duties of bank liquidators and effect of bank insolvency), in subsection (4) at the beginning of paragraph (h) insert “except where otherwise specified in the Table,”.

(4) In section 103, in the Table of applied provisions of the Insolvency Act 1986(2)—

- (a) in the entry for section 135 (provisional appointment), in the third column, in paragraph (d) after “practitioner” insert “in relation to the bank”;
- (b) in the entry for section 169 (supplementary powers (Scotland)), in the third column omit paragraph (a);
- (c) after the entry for section 176ZA(3) insert—

“Section 176ZB	Application of proceeds of office-holder claims”	
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(d) for the entry for section 214 substitute—

“Section 214	Wrongful trading	(a) Treat the reference in subsection (2) (b) to entering insolvent administration as a reference to entering bank administration under Part 3 of this Act at a time when the bank’s assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration.
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(1) 2009 c. 1.

(2) 1986 c. 45.

(3) Section 176ZA was inserted by the Companies Act 2006 (c. 46), section 1282(1).

Changes to legislation: There are currently no known outstanding effects for the 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, Section 5. (See end of Document for details)

	(b) Ignore subsection (6A).”
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(e) after the entry for section 246 insert—

“Section 246ZD(4)	Power to assign certain causes of action”	
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(f) for the entries for sections 390 and 391(5) substitute—

“Sections 390 to 391T(6)	Authorisation and regulation of insolvency practitioners	<p>(a) In section 390 treat references to acting as an insolvency practitioner as references to acting as a bank liquidator.</p> <p>(b) Read subsection (2) of that section (as so modified) as if after “authorised” there were inserted “to act as an insolvency practitioner”.</p> <p>(c) An order under section 391 has effect in relation to any provision applied for the purposes of bank insolvency.</p> <p>(d) In sections 390A, 390B(1) and (3), 391O(1)(b) and 391R(3)(b), in a reference to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to) companies the reference to companies has effect without the modification in subsection (4)(h) of this section.</p> <p>(e) In sections 391Q(2)(b) and 391S(3) (e) the reference to a company has effect without the modification in subsection (4)(h) of this section.”</p>
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(5) In section 110 (disqualification), in subsection (1) after “practitioner” insert “in relation to the bank”.

(6) In section 121 (disqualification of directors) for subsection (3) substitute—

“(3) For the purposes of the application of section 7A of the Disqualification Act(7) (office-holder’s report on conduct of directors) to a bank which is subject to a bank insolvency order—

(a) the “office-holder” is the bank liquidator,

(4) Section 246ZD was inserted by the Small Business, Enterprise and Employment Act 2015, section 118.
 (5) Section 390 was amended by the Deregulation Act 2015, section 17(1) and (2). Section 391 was substituted by section 17(1) and (4) of that Act and then by the Small Business, Enterprise and Employment Act 2015, section 137.
 (6) Sections 391A to 391T were inserted by the Small Business, Enterprise and Employment Act 2015, sections 137 to 143.
 (7) In section 121 “the Disqualification Act” means the Company Directors Disqualification Act 1986.

(b) the “insolvency date” means the date on which the bank insolvency order is made, and

(c) subsections (9) to (11) are omitted.”.

(7) In section 141 (bank administration order), in subsection (2) at the end insert “in relation to the bank”.

(8) In section 145 (general powers and duties of bank administrators and effect of bank administration), in subsection (4)—

(a) at the beginning of paragraph (d) insert “except where otherwise specified in Table 2,”; and

(b) in paragraph (f) after “Schedule B1” insert “and section 246ZB(8)”.

(9) In section 145, in Table 1 (applied provisions of the Insolvency Act 1986, Schedule B1(9))—

(a) in the entry for paragraph 65 (distribution to creditors), in the third column for paragraph (b) substitute—

“(b) Where paragraph (a) applies, ignore sub-para (3).”; and

(b) for the entry for paragraphs 112 to 116 (Scotland), substitute—

“Paras 112 to 114	Scotland: miscellaneous	
Para 115	Scotland: floating charges	(a) In Scotland, on the giving by the Bank of England of consent as provided for in Para 65 (as applied by this section), any floating charge granted by the bank attaches to the property which is subject to the charge, unless it has already so attached, but only if the distribution concerned is to be made to creditors of the residual bank who are neither secured creditors nor preferential creditors and otherwise than by virtue of section 176A(2)(a) (as applied by this section). (b) Where paragraph (a) applies, ignore sub-paras (1A) and (1B)(10).
Para 116	Scotland: payment to holder of floating charge subject to rights”	

(10) In section 145, in Table 2 (other applied provisions of the Insolvency Act 1986)—

(a) in the entry for section 135 (provisional appointment), in the third column, in paragraph (d) after “practitioner” insert “in relation to the bank”;

(b) after the entry for section 168(4) insert—

(8) Section 246ZB was inserted by the Small Business, Enterprise and Employment Act 2015, section 117.

(9) Schedule B1 was inserted by the Enterprise Act 2002, section 248(2) and Schedule 16; and was amended by the Small Business, Enterprise and Employment Act 2015, sections 128(1) and (2) and 130. There are other amendments not relevant to these Regulations.

(10) Sub-paragraphs (1A) and (1B) were inserted by the Small Business, Enterprise and Employment Act 2015, section 130(1) and (2).

Changes to legislation: There are currently no known outstanding effects for the 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, Section 5. (See end of Document for details)

“Section 176ZB	Application of proceeds of office-holder claims”	
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- (c) omit the entries for sections 213 and 214 (fraudulent trading and wrongful trading);
- (d) after the entry for section 246 insert—

“Section 246ZA(11)	Fraudulent administration	trading:	
Section 246ZB	Wrongful administration	trading:	(a) Treat the reference in subsection (2) (b) to going into insolvent liquidation as a reference to entering bank insolvency under Part 2 of this Act at a time when the bank’s assets are insufficient for the payment of its debts and other liabilities and the expenses of the bank insolvency. (b) Ignore subsection (6)(b).
Section 246ZC	Proceedings under section 246ZA or 246ZB		
Section 246ZD	Power to assign certain causes of action”		

- (e) for the entries for sections 390 and 391 substitute—

“Sections 390 to 391 T	Authorisation and regulation of insolvency practitioners		(a) In section 390 treat references to acting as an insolvency practitioner as references to acting as a bank administrator. (b) Read subsection (2) of that section (as so modified) as if after “authorised” there were inserted “to act as an insolvency practitioner”. (c) An order under section 391 has effect in relation to any provision applied for the purposes of bank administration. (d) In sections 390A, 390B(1) and (3), 391O(1)(b) and 391R(3)(b), in a reference to authorisation or permission to act as an insolvency practitioner in relation to (or only in relation to) companies the reference to companies has effect without the modification in subsection (4)(d) of this section.
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(11) Sections 246ZB to 246ZD were inserted by the Small Business, Enterprise and Employment Act 2015, section 117 and 118.

Changes to legislation: There are currently no known outstanding effects for the 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, Section 5. (See end of Document for details)

	(e) In sections 391Q(2)(b) and 391S(3) (e) the reference to a company has effect without the modification in subsection (4)(d) of this section.”
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(11) In section 155 (disqualification of directors) for subsection (3) substitute—

“(3) For the purposes of the application of section 7A of the Disqualification Act⁽¹²⁾ (office-holder’s report on conduct of directors) to a bank which is subject to a bank administration order—

- (a) the “office-holder” is the bank administrator;
- (b) the “insolvency date” means the date on which the bank administration order is made; and
- (c) subsections (9) to (11) are omitted.”.

Commencement Information

II Reg. 5 in force at 7.4.2017, see [reg. 1\(2\)](#)

⁽¹²⁾ In section 155 “the Disqualification Act” means the Company Directors Disqualification Act 1986.

Changes to legislation:

There are currently no known outstanding effects for the 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, Section 5.