



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART XIII **E+W+S**

#### INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

##### Modifications etc. (not altering text)

- C1** Pt. 13 (ss. 388-398) modified by S.I. 1990/1392, **art. 7**  
Pt. 13 (ss. 388-398) modified (1.2.1993) by Friendly Societies Act 1992 (c. 40), ss. 23, **Sch. 10 Pt. I para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**
- C2** Pt. 13 (ss. 388-398) applied (with modifications) (1.2.1993) by Friendly Societies Act 1992 (c. 40), ss. 21(1), 22, 23, **Sch. 10 Pt. I para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**  
Pt. 13 (ss. 388-398) applied (1.12.1994) by S.I. 1994/2421, **arts. 4(3)(d), 6(3)(d)**  
Pt. 13 (ss. 388-398) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(4)(5)(8)(9), 10(2)(3)(6), **Sch. 4 Pt. II, Sch. 7**  
Pt. 13 applied (with modifications) (5.10.2004) by Energy Act 2004 (c. 20), ss. 171(3), 198; S.I. 2004/2575, **art. 2(1), Sch. 1**
- C3** Third Group of Parts (Pts. 12-19) applied to limited liability partnerships (with modifications) (E.W.S.) (6.4.2001) by S.I. 2001/1090, reg. 5, **Schs. 3, 4** (as amended (4.3.2004) by S.I. 2004/355, **art. 10** and (1.10.2005) by S.I. 2005/1989, reg. 3, **Sch. 2** (with reg. 4))

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

### **388** Meaning of “act as insolvency practitioner” **E+W+S**

- (1) A person acts as an insolvency practitioner in relation to a company by acting—
- as its liquidator, provisional liquidator, administrator or administrative receiver, or
  - as supervisor of a voluntary arrangement approved by it under Part I.
- (2) A person acts as an insolvency practitioner in relation to an individual by acting—

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- (a) as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate; or
- (b) as trustee under a deed which is a deed of arrangement made for the benefit of his creditors or, in Scotland, a trust deed for his creditor; or
- (c) as supervisor of a voluntary arrangement proposed by him and approved under Part VIII; or
- (d) in the case of a deceased individual to the administration of whose estate this section applies by virtue of an order under section 421 (application of provisions of this Act to insolvent estates of deceased persons), as administrator of that estate.

[<sup>F1</sup>(2A) A person acts as an insolvency practitioner in relation to an insolvent partnership by acting—

- (a) as its liquidator, provisional liquidator or administrator, or
- (b) as trustee of the partnership under article 11 of the Insolvent Partnerships Order 1994, or
- (c) as supervisor of a voluntary arrangement approved in relation to it under Part I of this Act.]

(3) References in this section to an individual include, except in so far as the context otherwise requires, references <sup>F2</sup>. . . to any debtor within the meaning of the <sup>M1</sup>Bankruptcy (Scotland) Act 1985.

(4) In this section—

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

[<sup>F3</sup> “company” means a company within the meaning given by section 735(1) of the 1985 Act, a company which may be wound up under Part XXI of that Act or a building society within the meaning of the Building Societies Act 1986.]

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

[<sup>F4</sup>(5) Nothing in this section applies to anything done by—

- (a) the official receiver; or
- (b) the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985).]

#### Textual Amendments

**F1** S. 388(2A) inserted (1.12.1994) by S.I. 1994/2421, **arts. 1(2), 15(1)**

**F2** Words in s. 388(3) omitted (1.12.1994) by virtue of S.I. 1994/2421, **art. 15(2)**

**F3** Definition of “Company” substituted by virtue of **Interpretation Act 1978 (c. 30, SIF 115:1), s. 17(2)(a)** and **Building Societies Act 1986 (c. 53, SIF 16), ss. 54(3)(a)(5)(a), 120, Sch. 18 para. 17(2)** in s. 388(4) (the reference to the 1985 Act in the new definition being a reference to the Companies Act 1985)

**F4** S. 388(5) substituted (1.4.1993) by 1993 c. 6, **s. 11(1)** (with s. 12(6)); S.I. 1993/438, **art. 3** (with arts. 4, 5)

#### Modifications etc. (not altering text)

**C4** S. 388 applied with modifications by S.I. 1986/1999, **art. 3, Sch. 1 Pt. II**

S. 388 applied (7.2.1994) by 1993 c. 48, **s. 119(8)** (with s. 6(8)); S.I. 1994/86, **art. 2**

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- C5** S. 388 applied (with modifications) (*temp.* for a period of 12 months beginning with 22.3.1990: S.I. 1990/675; and for a further period of 12 months beginning with 22.3.1991: S.I. 1991/549, 779) by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), s. 13(8), **Sch. 4 para. 33(4)(a)**
- C6** S. 388 applied (31.10.1994) by 1994 c. 21, s. 36(7) (with s. 40(7)); S.I. 1994/2553, **art. 2**  
S. 388 applied (with modifications) (3.2.1995) by 1994 c. 37, ss. 35(4), 69(2) (with s. 66(2))  
S. 388 applied (with modifications) (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 5(3)**  
S. 388 applied (with modifications) (S.) (17.12.2001) by 2001 asp 13, s. 20, **Sch. 6 para. 11(6)** (with s. 29); S.S.I. 2001/456, **art. 2**  
S. 388 applied (with modifications) (E.W.) (13.6.2001 in accordance with art. 3 of the commencing S.I. and 1.9.2001 otherwise) by 2001 c. 17, s. 38, **Sch. 6 para. 13(6)** (with ss. 27(3), 39, 78); S.I. 2001/2161, **arts. 2, 3** (as amended by S.I. 2001/2304, **art. 2**)

#### Marginal Citations

- M1** 1985 c. 66.

### 389 Acting without qualification an offence. **E+W+S**

- (1) A person who acts as an insolvency practitioner in relation to a company or an individual at a time when he is not qualified to do so is liable to imprisonment or a fine, or to both.
- (2) This section does not apply to the official receiver [<sup>F5</sup>or the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985)].

#### Textual Amendments

- F5** Words in s. 389(2) inserted (1.4.1993) by 1993 c. 6, s. 11(2) (with s. 12(6)); S.I. 1993/438, **art.3** (with arts. 4, 5)

#### Modifications etc. (not altering text)

- C7** S. 389 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

VALID FROM 01/01/2003

### [<sup>F6</sup>389A Authorisation of nominees and supervisors. **E+W+S**

- (1) Section 389 does not apply to a person acting, in relation to a voluntary arrangement proposed or approved under Part I or Part VIII, as nominee or supervisor if he is authorised so to act.
- (2) For the purposes of subsection (1) and those Parts, an individual to whom subsection (3) does not apply is authorised to act as nominee or supervisor in relation to such an arrangement if—
  - (a) he is a member of a body recognised for the purpose by the Secretary of State, and
  - (b) there is in force security (in Scotland, caution) for the proper performance of his functions and that security or caution meets the prescribed requirements with respect to his so acting in relation to the arrangement.
- (3) This subsection applies to a person if—

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- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
  - (b) he is subject to a disqualification order made or a disqualification undertaking accepted under the <sup>M2</sup>Company Directors Disqualification Act 1986 or to a disqualification order made under Part II of the <sup>M3</sup>Companies (Northern Ireland) Order 1989, or
  - (c) he is a patient within the meaning of Part VII of the <sup>M4</sup>Mental Health Act 1983 or section 125(1) of the <sup>M5</sup>Mental Health (Scotland) Act 1984.
- (4) The Secretary of State may by order declare a body which appears to him to fall within subsection (5) to be a recognised body for the purposes of subsection (2)(a).
- (5) A body may be recognised if it maintains and enforces rules for securing that its members—
- (a) are fit and proper persons to act as nominees or supervisors, and
  - (b) meet acceptable requirements as to education and practical training and experience.
- (6) For the purposes of this section, a person is a member of a body only if he is subject to its rules when acting as nominee or supervisor (whether or not he is in fact a member of the body).
- (7) An order made under subsection (4) in relation to a body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within subsection (5).
- (8) An order of the Secretary of State under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision for members of the body in question to continue to be treated as members of a recognised body for a specified period after the revocation takes effect.]

#### Textual Amendments

- F6** S. 389A inserted (1.1.2003) by 2000 c. 39, s. 4(4); S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)

#### Marginal Citations

- M2** 1986 c. 46.  
**M3** S.I. 1989/2404 (N.I. 18).  
**M4** 1983 c. 20.  
**M5** 1984 c. 36.

VALID FROM 01/04/2004

#### [<sup>F7</sup>389B Official receiver as nominee or supervisor **E+W+S**

- (1) The official receiver is authorised to act as nominee or supervisor in relation to a voluntary arrangement approved under Part VIII provided that the debtor is an undischarged bankrupt when the arrangement is proposed.
- (2) The Secretary of State may by order repeal the proviso in subsection (1).

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- (3) An order under subsection (2)—
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F7** S. 389B inserted (1.4.2004) by 2002 c. 40, ss. 264(1), 279, Sch. 22 para. 3 (with s. 249(6)); S.I. 2003/2093, art. 2(2), Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

*The requisite qualification, and the means of obtaining it*

### 390 Persons not qualified to act as insolvency practitioners. **E+W+S**

- (1) A person who is not an individual is not qualified to act as an insolvency practitioner.
- (2) A person is not qualified to act as an insolvency practitioner at any time unless at that time—
- (a) he is authorised so to act by virtue of membership of a professional body recognised under section 391 below, being permitted so to act by or under the rules of that body, or
  - (b) he holds an authorisation granted by a competent authority under section 393.
- (3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless—
- (a) there is in force at that time security or, in Scotland, caution for the proper performance of his functions, and
  - (b) that security or caution meets the prescribed requirements with respect to his so acting in relation to that other person.
- (4) A person is not qualified to act as an insolvency practitioner at any time if at that time—
- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
  - (b) he is subject to a disqualification order made under the <sup>M6</sup>Company Directors Disqualification Act 1986, or
  - (c) he is a patient within the meaning of Part VII of the <sup>M7</sup>Mental Health Act 1983 or section 125(1) of the <sup>M8</sup>Mental Health (Scotland) Act 1984.

#### Modifications etc. (not altering text)

- C8** s.390 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II  
**C9** S. 390(2)(3) modified by S.I. 1990/1392, art. 7

#### Marginal Citations

- M6** 1986 c. 46.  
**M7** 1983 c. 20.  
**M8** 1984 C. 36.

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### 391 Recognised professional bodies. **E+W+S**

- (1) The Secretary of State may by order declare a body which appears to him to fall within subsection (2) below to be a recognised professional body for the purposes of this section.
- (2) A body may be recognised if it regulates the practice of a profession and maintains and enforces rules for securing that such of its members as are permitted by or under the rules to act as insolvency practitioners—
  - (a) are fit and proper persons so to act, and
  - (b) meet acceptable requirements as to education and practical training and experience.
- (3) 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.

The reference in section 390(2) above to membership of a professional body recognised under this section is to be read accordingly.

- (4) An order made under subsection (1) in relation to a professional body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within subsection (2).
- (5) An order of the Secretary of State under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision whereby members of the body in question continue to be treated as authorised to act as insolvency practitioners for a specified period after the revocation takes effect.

#### **Modifications etc. (not altering text)**

- C10** S. 391 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
- C11** S. 391 extended (22.5.2000) by S.I. 2000/1119, reg. 37, **Sch. 4 para. 12**  
 S. 391 extended (S.) (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(2), **Sch. 2**
- C12** S. 391 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by **Banking Act 2009** (c. 1), **ss. 103, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3, Sch. para. 2**
- C13** S. 391 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by **Banking Act 2009** (c. 1), **ss. 145, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3, Sch. para. 3**

### 392 Authorisation by competent authority. **E+W+S**

- (1) Application may be made to a competent authority for authorisation to act as an insolvency practitioner.
- (2) The competent authorities for this purpose are—
  - (a) in relation to a case of any description specified in directions given by the Secretary of State, the body or person so specified in relation to cases of that description, and
  - (b) in relation to a case not falling within paragraph (a), the Secretary of State.
- (3) The application—
  - (a) shall be made in such manner as the competent authority may direct,

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- (b) shall contain or be accompanied by such information as that authority may reasonably require for the purpose of determining the application, and
- (c) shall be accompanied by the prescribed fee;

and the authority may direct that notice of the making of the application shall be published in such manner as may be specified in the direction.

- (4) At any time after receiving the application and before determining it the authority may require the applicant to furnish additional information.
- (5) Directions and requirements given or imposed under subsection (3) or (4) may differ as between different applications.
- (6) Any information to be furnished to the competent authority under this section shall, if it so requires, be in such form or verified in such manner as it may specify.
- (7) An application may be withdrawn before it is granted or refused.
- (8) Any sums received under this section by a competent authority other than the Secretary of State may be retained by the authority; and any sums so received by the Secretary of State shall be paid into the Consolidated Fund.

**Modifications etc. (not altering text)**

C14 s. 392 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

**393 Grant, refusal and withdrawal of authorisation. E+W+S**

- (1) The competent authority may, on an application duly made in accordance with section 392 and after being furnished with all such information as it may require under that section, grant or refuse the application.
- (2) The authority shall grant the application if it appears to it from the information furnished by the applicant and having regard to such other information, if any, as it may have—
  - (a) that the applicant is a fit and proper person to act as an insolvency practitioner, and
  - (b) that the applicant meets the prescribed requirements with respect to education and practical training and experience.
- (3) An authorisation granted under this section, if not previously withdrawn, continues in force for such period not exceeding the prescribed maximum as may be specified in the authorisation.
- (4) An authorisation so granted may be withdrawn by the competent authority if it appears to it—
  - (a) that the holder of the authorisation is no longer a fit and proper person to act as an insolvency practitioner, or
  - (b) without prejudice to paragraph (a), that the holder—
    - (i) has failed to comply with any provision of this Part or of any regulations made under this Part or Part XV, or
    - (ii) in purported compliance with any such provision, has furnished the competent authority with false, inaccurate or misleading information.

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- (5) An authorisation granted under this section may be withdrawn by the competent authority at the request or with the consent of the holder of the authorisation.

**Modifications etc. (not altering text)**

C15 S. 393 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

**394 Notices.** **E+W+S**

- (1) Where a competent authority grants an authorisation under section 393, it shall give written notice of that fact to the applicant, specifying the date on which the authorisation takes effect.
- (2) Where the authority proposes to refuse an application, or to withdraw an authorisation under section 393(4), it shall give the applicant or holder of the authorisation written notice of its intention to do so, setting out particulars of the grounds on which it proposes to act.
- (3) In the case of a proposed withdrawal the notice shall state the date on which it is proposed that the withdrawal should take effect.
- (4) A notice under subsection (2) shall give particulars of the rights exercisable under the next two sections by a person on whom the notice is served.

**Modifications etc. (not altering text)**

C16 S. 394 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

**395 Right to make representations.** **E+W+S**

- (1) A person on whom a notice is served under section 394(2) may within 14 days after the date of service make written representations to the competent authority.
- (2) The competent authority shall have regard to any representations so made in determining whether to refuse the application or withdraw the authorisation, as the case may be.

**Modifications etc. (not altering text)**

C17 S. 395 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

**396 Reference to Tribunal.** **E+W+S**

- (1) The Insolvency Practitioners Tribunal (“the Tribunal”) continues in being; and the provisions of Schedule 7 apply to it.
- (2) Where a person is served with a notice under section 394(2), he may—
  - (a) at any time within 28 days after the date of service of the notice, or
  - (b) at any time after the making by him of representations under section 395 and before the end of the period of 28 days after the date of the service on him of a



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notice by the competent authority that the authority does not propose to alter its decision in consequence of the representations,  
give written notice to the authority requiring the case to be referred to the Tribunal.

- (3) Where a requirement is made under subsection (2), then, unless the competent authority—
- (a) has decided or decides to grant the application or, as the case may be, not to withdraw the authorisation, and
  - (b) within 7 days after the date of the making of the requirement, gives written notice of that decision to the person by whom the requirement was made,
- it shall refer the case to the Tribunal.

**Modifications etc. (not altering text)**

C18 S. 396 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**397 Action of Tribunal on reference. E+W+S**

- (1) On a reference under section 396 the Tribunal shall—
- (a) investigate the case, and
  - (b) make a report to the competent authority stating what would in their opinion be the appropriate decision in the matter and the reasons for that opinion, and it is the duty of the competent authority to decide the matter accordingly.
- (2) The Tribunal shall send a copy of the report to the applicant or, as the case may be, the holder of the authorisation; and the competent authority shall serve him with a written notice of the decision made by it in accordance with the report.
- (3) The competent authority may, if he thinks fit, publish the report of the Tribunal.

**Modifications etc. (not altering text)**

C19 S. 397 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)

**398 Refusal or withdrawal without reference to Tribunal. E+W+S**

Where in the case of any proposed refusal or withdrawal of an authorisation either—

- (a) the period mentioned in section 396(2)(a) has expired without the making of any requirement under that subsection or of any representations under section 395, or
- (b) the competent authority has given a notice such as is mentioned in section 396(2)(b) and the period so mentioned has expired without the making of any such requirement,

the competent authority may give written notice of the refusal or withdrawal to the person concerned in accordance with the proposal in the notice given under section 394(2).

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**Modifications etc. (not altering text)**

**C20** S. 398 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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