



Financial Services and Markets Act 2000

2000 CHAPTER 8

PART XXIV

INSOLVENCY

Interpretation

355 Interpretation of this Part

(1) In this Part—

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985;

“the 1986 Act” means the Insolvency Act 1986;

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989;

“body” means a body of persons—

(a) over which the court has jurisdiction under any provision of, or made under, the 1986 Act (or the 1989 Order); but

(b) which is not a building society, a friendly society or an industrial and provident society; and

“court” means—

(a) the court having jurisdiction for the purposes of the 1985 Act or the 1986 Act; or

(b) in Northern Ireland, the High Court.

(2) In this Part “insurer” has such meaning as may be specified in an order made by the Treasury.

Voluntary arrangements

356 Authority's powers to participate in proceedings: company voluntary arrangements

- (1) This section applies if a voluntary arrangement has been approved under Part I of the 1986 Act (or Part II of the 1989 Order) in respect of a company or insolvent partnership which is an authorised person.
- (2) The Authority may make an application to the court in relation to the company or insolvent partnership under section 6 of the 1986 Act (or Article 19 of the 1989 Order).
- (3) If a person other than the Authority makes an application to the court in relation to the company or insolvent partnership under either of those provisions, the Authority is entitled to be heard at any hearing relating to the application.

357 Authority's powers to participate in proceedings: individual voluntary arrangements

- (1) The Authority is entitled to be heard on an application by an individual who is an authorised person under section 253 of the 1986 Act (or Article 227 of the 1989 Order).
- (2) Subsections (3) to (6) apply if such an order is made on the application of such a person.
- (3) A person appointed for the purpose by the Authority is entitled to attend any meeting of creditors of the debtor summoned under section 257 of the 1986 Act (or Article 231 of the 1989 Order).
- (4) Notice of the result of a meeting so summoned is to be given to the Authority by the chairman of the meeting.
- (5) The Authority may apply to the court—
 - (a) under section 262 of the 1986 Act (or Article 236 of the 1989 Order); or
 - (b) under section 263 of the 1986 Act (or Article 237 of the 1989 Order).
- (6) If a person other than the Authority makes an application to the court under any provision mentioned in subsection (5), the Authority is entitled to be heard at any hearing relating to the application.

358 Authority's powers to participate in proceedings: trust deeds for creditors in Scotland

- (1) This section applies where a trust deed has been granted by or on behalf of a debtor who is an authorised person.
- (2) The trustee must, as soon as practicable after he becomes aware that the debtor is an authorised person, send to the Authority—
 - (a) in every case, a copy of the trust deed;
 - (b) where any other document or information is sent to every creditor known to the trustee in pursuance of paragraph 5(1)(c) of Schedule 5 to the 1985 Act, a copy of such document or information.

- (3) Paragraph 7 of that Schedule applies to the Authority as if it were a qualified creditor who has not been sent a copy of the notice as mentioned in paragraph 5(1)(c) of the Schedule.
- (4) The Authority must be given the same notice as the creditors of any meeting of creditors held in relation to the trust deed.
- (5) A person appointed for the purpose by the Authority is entitled to attend and participate in (but not to vote at) any such meeting of creditors as if the Authority were a creditor under the deed.
- (6) This section does not affect any right the Authority has as a creditor of a debtor who is an authorised person.
- (7) Expressions used in this section and in the 1985 Act have the same meaning in this section as in that Act.

Administration orders

359 Petitions

- (1) The Authority may present a petition to the court under section 9 of the 1986 Act (or Article 22 of the 1989 Order) in relation to a company or insolvent partnership which—
 - (a) is, or has been, an authorised person;
 - (b) is, or has been, an appointed representative; or
 - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) Subsection (3) applies in relation to a petition presented by the Authority by virtue of this section.
- (3) If the company or partnership is in default on an obligation to pay a sum due and payable under an agreement, it is to be treated for the purpose of section 8(1)(a) of the 1986 Act (or Article 21(1)(a) of the 1989 Order) as unable to pay its debts.
- (4) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the company or partnership.
- (5) “Company” means—
 - (a) a company to which section 8 of the 1986 Act applies; or
 - (b) in relation to Northern Ireland, a company to which Article 21 of the 1989 Order applies.

360 Insurers

- (1) The Treasury may by order provide that such provisions of Part II of the 1986 Act (or Part III of the 1989 Order) as may be specified are to apply in relation to insurers with such modifications as may be specified.
- (2) An order under this section—

- (a) may provide that such provisions of this Part as may be specified are to apply in relation to the administration of insurers in accordance with the order with such modifications as may be specified; and
 - (b) requires the consent of the Secretary of State.
- (3) “Specified” means specified in the order.

361 Administrator’s duty to report to Authority

- (1) If—
- (a) an administration order is in force in relation to a company or partnership by virtue of a petition presented by a person other than the Authority, and
 - (b) it appears to the administrator that the company or partnership is carrying on, or has carried on, a regulated activity in contravention of the general prohibition,
- the administrator must report the matter to the Authority without delay.
- (2) “An administration order” means an administration order under Part II of the 1986 Act (or Part III of the 1989 Order).

362 Authority’s powers to participate in proceedings

- (1) This section applies if a person other than the Authority presents a petition to the court under section 9 of the 1986 Act (or Article 22 of the 1989 Order) in relation to a company or partnership which—
- (a) is, or has been, an authorised person;
 - (b) is, or has been, an appointed representative; or
 - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) The Authority is entitled to be heard—
- (a) at the hearing of the petition; and
 - (b) at any other hearing of the court in relation to the company or partnership under Part II of the 1986 Act (or Part III of the 1989 Order).
- (3) Any notice or other document required to be sent to a creditor of the company or partnership must also be sent to the Authority.
- (4) The Authority may apply to the court under section 27 of the 1986 Act (or Article 39 of the 1989 Order); and on such an application, section 27(1)(a) (or Article 39(1)(a)) has effect with the omission of the words “(including at least himself)”.
- (5) A person appointed for the purpose by the Authority is entitled—
- (a) to attend any meeting of creditors of the company or partnership summoned under any enactment;
 - (b) to attend any meeting of a committee established under section 26 of the 1986 Act (or Article 38 of the 1989 Order); and
 - (c) to make representations as to any matter for decision at such a meeting.
- (6) If, during the course of the administration of a company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the Authority may apply to the court under section 425 of the Companies Act 1985 (or Article 418 of the Companies (Northern Ireland) Order 1986).

Receivership

363 Authority's powers to participate in proceedings

- (1) This section applies if a receiver has been appointed in relation to a company which—
 - (a) is, or has been, an authorised person;
 - (b) is, or has been, an appointed representative; or
 - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) The Authority is entitled to be heard on an application made under section 35 or 63 of the 1986 Act (or Article 45 of the 1989 Order).
- (3) The Authority is entitled to make an application under section 41(1)(a) or 69(1)(a) of the 1986 Act (or Article 51(1)(a) of the 1989 Order).
- (4) A report under section 48(1) or 67(1) of the 1986 Act (or Article 58(1) of the 1989 Order) must be sent by the person making it to the Authority.
- (5) A person appointed for the purpose by the Authority is entitled—
 - (a) to attend any meeting of creditors of the company summoned under any enactment;
 - (b) to attend any meeting of a committee established under section 49 or 68 of the 1986 Act (or Article 59 of the 1989 Order); and
 - (c) to make representations as to any matter for decision at such a meeting.

364 Receiver's duty to report to Authority

If—

- (a) a receiver has been appointed in relation to a company, and
 - (b) it appears to the receiver that the company is carrying on, or has carried on, a regulated activity in contravention of the general prohibition,
- the receiver must report the matter to the Authority without delay.

Voluntary winding up

365 Authority's powers to participate in proceedings

- (1) This section applies in relation to a company which—
 - (a) is being wound up voluntarily;
 - (b) is an authorised person; and
 - (c) is not an insurer effecting or carrying out contracts of long-term insurance.
- (2) The Authority may apply to the court under section 112 of the 1986 Act (or Article 98 of the 1989 Order) in respect of the company.
- (3) The Authority is entitled to be heard at any hearing of the court in relation to the voluntary winding up of the company.
- (4) Any notice or other document required to be sent to a creditor of the company must also be sent to the Authority.

- (5) A person appointed for the purpose by the Authority is entitled—
 - (a) to attend any meeting of creditors of the company summoned under any enactment;
 - (b) to attend any meeting of a committee established under section 101 of the 1986 Act (or Article 87 of the 1989 Order); and
 - (c) to make representations as to any matter for decision at such a meeting.
- (6) The voluntary winding up of the company does not bar the right of the Authority to have it wound up by the court.
- (7) If, during the course of the winding up of the company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the Authority may apply to the court under section 425 of the Companies Act 1985 (or Article 418 of the Companies (Northern Ireland) Order 1986).

366 Insurers effecting or carrying out long-term contracts or insurance

- (1) An insurer effecting or carrying out contracts of long-term insurance may not be wound up voluntarily without the consent of the Authority.
- (2) If notice of a general meeting of such an insurer is given, specifying the intention to propose a resolution for voluntary winding up of the insurer, a director of the insurer must notify the Authority as soon as practicable after he becomes aware of it.
- (3) A person who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) The following provisions do not apply in relation to a winding-up resolution—
 - (a) sections 378(3) and 381A of the Companies Act 1985 (“the 1985 Act”); and
 - (b) Articles 386(3) and 389A of the Companies (Northern Ireland) Order 1986 (“the 1986 Order”).
- (5) A copy of a winding-up resolution forwarded to the registrar of companies in accordance with section 380 of the 1985 Act (or Article 388 of the 1986 Order) must be accompanied by a certificate issued by the Authority stating that it consents to the voluntary winding up of the insurer.
- (6) If subsection (5) is complied with, the voluntary winding up is to be treated as having commenced at the time the resolution was passed.
- (7) If subsection (5) is not complied with, the resolution has no effect.
- (8) “Winding-up resolution” means a resolution for voluntary winding up of an insurer effecting or carrying out contracts of long-term insurance.

Winding up by the court

367 Winding-up petitions

- (1) The Authority may present a petition to the court for the winding up of a body which—
 - (a) is, or has been, an authorised person;
 - (b) is, or has been, an appointed representative; or

- (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) In subsection (1) “body” includes any partnership.
- (3) On such a petition, the court may wind up the body if—
 - (a) the body is unable to pay its debts within the meaning of section 123 or 221 of the 1986 Act (or Article 103 or 185 of the 1989 Order); or
 - (b) the court is of the opinion that it is just and equitable that it should be wound up.
- (4) If a body is in default on an obligation to pay a sum due and payable under an agreement, it is to be treated for the purpose of subsection (3)(a) as unable to pay its debts.
- (5) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the body concerned.
- (6) Subsection (7) applies if a petition is presented under subsection (1) for the winding up of a partnership—
 - (a) on the ground mentioned in subsection (3)(b); or
 - (b) in Scotland, on a ground mentioned in subsection (3)(a) or (b).
- (7) The court has jurisdiction, and the 1986 Act (or the 1989 Order) has effect, as if the partnership were an unregistered company as defined by section 220 of that Act (or Article 184 of that Order).

368 Winding-up petitions: EEA and Treaty firms

The Authority may not present a petition to the court under section 367 for the winding up of—

- (a) an EEA firm which qualifies for authorisation under Schedule 3, or
- (b) a Treaty firm which qualifies for authorisation under Schedule 4,

unless it has been asked to do so by the home state regulator of the firm concerned.

369 Insurers: service of petition etc. on Authority

- (1) If a person other than the Authority presents a petition for the winding up of an authorised person with permission to effect or carry out contracts of insurance, the petitioner must serve a copy of the petition on the Authority.
- (2) If a person other than the Authority applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised person with permission to effect or carry out contracts of insurance, the applicant must serve a copy of the application on the Authority.

370 Liquidator’s duty to report to Authority

If—

- (a) a company is being wound up voluntarily or a body is being wound up on a petition presented by a person other than the Authority, and
- (b) it appears to the liquidator that the company or body is carrying on, or has carried on, a regulated activity in contravention of the general prohibition,

the liquidator must report the matter to the Authority without delay.

371 Authority's powers to participate in proceedings

- (1) This section applies if a person other than the Authority presents a petition for the winding up of a body which—
 - (a) is, or has been, an authorised person;
 - (b) is, or has been, an appointed representative; or
 - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) The Authority is entitled to be heard—
 - (a) at the hearing of the petition; and
 - (b) at any other hearing of the court in relation to the body under or by virtue of Part IV or V of the 1986 Act (or Part V or VI of the 1989 Order).
- (3) Any notice or other document required to be sent to a creditor of the body must also be sent to the Authority.
- (4) A person appointed for the purpose by the Authority is entitled—
 - (a) to attend any meeting of creditors of the body;
 - (b) to attend any meeting of a committee established for the purposes of Part IV or V of the 1986 Act under section 101 of that Act or under section 141 or 142 of that Act;
 - (c) to attend any meeting of a committee established for the purposes of Part V or VI of the 1989 Order under Article 87 of that Order or under Article 120 of that Order; and
 - (d) to make representations as to any matter for decision at such a meeting.
- (5) If, during the course of the winding up of a company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the Authority may apply to the court under section 425 of the Companies Act 1985 (or Article 418 of the Companies (Northern Ireland) Order 1986).

Bankruptcy

372 Petitions

- (1) The Authority may present a petition to the court—
 - (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual; or
 - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual.
- (2) But such a petition may be presented only on the ground that—
 - (a) the individual appears to be unable to pay a regulated activity debt; or
 - (b) the individual appears to have no reasonable prospect of being able to pay a regulated activity debt.
- (3) An individual appears to be unable to pay a regulated activity debt if he is in default on an obligation to pay a sum due and payable under an agreement.

- (4) An individual appears to have no reasonable prospect of being able to pay a regulated activity debt if—
 - (a) the Authority has served on him a demand requiring him to establish to the satisfaction of the Authority that there is a reasonable prospect that he will be able to pay a sum payable under an agreement when it falls due;
 - (b) at least three weeks have elapsed since the demand was served; and
 - (c) the demand has been neither complied with nor set aside in accordance with rules.
- (5) A demand made under subsection (4)(a) is to be treated for the purposes of the 1986 Act (or the 1989 Order) as if it were a statutory demand under section 268 of that Act (or Article 242 of that Order).
- (6) For the purposes of a petition presented in accordance with subsection (1)(b)—
 - (a) the Authority is to be treated as a qualified creditor; and
 - (b) a ground mentioned in subsection (2) constitutes apparent insolvency.
- (7) “Individual” means an individual—
 - (a) who is, or has been, an authorised person; or
 - (b) who is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (8) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the individual concerned.
- (9) “Rules” means—
 - (a) in England and Wales, rules made under section 412 of the 1986 Act;
 - (b) in Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and
 - (c) in Northern Ireland, rules made under Article 359 of the 1989 Order.

373 Insolvency practitioner’s duty to report to Authority

- (1) If—
 - (a) a bankruptcy order or sequestration award is in force in relation to an individual by virtue of a petition presented by a person other than the Authority, and
 - (b) it appears to the insolvency practitioner that the individual is carrying on, or has carried on, a regulated activity in contravention of the general prohibition, the insolvency practitioner must report the matter to the Authority without delay.
- (2) “Bankruptcy order” means a bankruptcy order under Part IX of the 1986 Act (or Part IX of the 1989 Order).
- (3) “Sequestration award” means an award of sequestration under section 12 of the 1985 Act.
- (4) “Individual” includes an entity mentioned in section 374(1)(c).

374 Authority's powers to participate in proceedings

- (1) This section applies if a person other than the Authority presents a petition to the court—
 - (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual;
 - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual; or
 - (c) under section 6 of the 1985 Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.
- (2) The Authority is entitled to be heard—
 - (a) at the hearing of the petition; and
 - (b) at any other hearing in relation to the individual or entity under—
 - (i) Part IX of the 1986 Act;
 - (ii) Part IX of the 1989 Order; or
 - (iii) the 1985 Act.
- (3) A copy of the report prepared under section 274 of the 1986 Act (or Article 248 of the 1989 Order) must also be sent to the Authority.
- (4) A person appointed for the purpose by the Authority is entitled—
 - (a) to attend any meeting of creditors of the individual or entity;
 - (b) to attend any meeting of a committee established under section 301 of the 1986 Act (or Article 274 of the 1989 Order);
 - (c) to attend any meeting of commissioners held under paragraph 17 or 18 of Schedule 6 to the 1985 Act; and
 - (d) to make representations as to any matter for decision at such a meeting.
- (5) “Individual” means an individual who—
 - (a) is, or has been, an authorised person; or
 - (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (6) “Entity” means an entity which—
 - (a) is, or has been, an authorised person; or
 - (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

*Provisions against debt avoidance***375 Authority's right to apply for an order**

- (1) The Authority may apply for an order under section 423 of the 1986 Act (or Article 367 of the 1989 Order) in relation to a debtor if—
 - (a) at the time the transaction at an undervalue was entered into, the debtor was carrying on a regulated activity (whether or not in contravention of the general prohibition); and

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- (b) a victim of the transaction is or was party to an agreement entered into with the debtor, the making or performance of which constituted or was part of a regulated activity carried on by the debtor.
- (2) An application made under this section is to be treated as made on behalf of every victim of the transaction to whom subsection (1)(b) applies.
- (3) Expressions which are given a meaning in Part XVI of the 1986 Act (or Article 367, 368 or 369 of the 1989 Order) have the same meaning when used in this section.

Supplemental provisions concerning insurers

376 Continuation of contracts of long-term insurance where insurer in liquidation

- (1) This section applies in relation to the winding up of an insurer which effects or carries out contracts of long-term insurance.
- (2) Unless the court otherwise orders, the liquidator must carry on the insurer's business so far as it consists of carrying out the insurer's contracts of long-term insurance with a view to its being transferred as a going concern to a person who may lawfully carry out those contracts.
- (3) In carrying on the business, the liquidator—
 - (a) may agree to the variation of any contracts of insurance in existence when the winding up order is made; but
 - (b) must not effect any new contracts of insurance.
- (4) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to contracts of long-term insurance effected by it require the appointment of a special manager, he may apply to the court.
- (5) On such an application, the court may appoint a special manager to act during such time as the court may direct.
- (6) The special manager is to have such powers, including any of the powers of a receiver or manager, as the court may direct.
- (7) Section 177(5) of the 1986 Act (or Article 151(5) of the 1989 Order) applies to a special manager appointed under subsection (5) as it applies to a special manager appointed under section 177 of the 1986 Act (or Article 151 of the 1989 Order).
- (8) If the court thinks fit, it may reduce the value of one or more of the contracts of long-term insurance effected by the insurer.
- (9) Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.
- (10) The court may, on the application of an official, appoint an independent actuary to investigate the insurer's business so far as it consists of carrying out its contracts of long-term insurance and to report to the official—
 - (a) on the desirability or otherwise of that part of the insurer's business being continued; and
 - (b) on any reduction in the contracts of long-term insurance effected by the insurer that may be necessary for successful continuation of that part of the insurer's business.

- (11) “Official” means—
- (a) the liquidator;
 - (b) a special manager appointed under subsection (5); or
 - (c) the Authority.
- (12) The liquidator may make an application in the name of the insurer and on its behalf under Part VII without obtaining the permission that would otherwise be required by section 167 of, and Schedule 4 to, the 1986 Act (or Article 142 of, and Schedule 2 to, the 1989 Order).

377 Reducing the value of contracts instead of winding up

- (1) This section applies in relation to an insurer which has been proved to be unable to pay its debts.
- (2) If the court thinks fit, it may reduce the value of one or more of the insurer’s contracts instead of making a winding up order.
- (3) Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.

378 Treatment of assets on winding up

- (1) The Treasury may by regulations provide for the treatment of the assets of an insurer on its winding up.
- (2) The regulations may, in particular, provide for—
 - (a) assets representing a particular part of the insurer’s business to be available only for meeting liabilities attributable to that part of the insurer’s business;
 - (b) separate general meetings of the creditors to be held in respect of liabilities attributable to a particular part of the insurer’s business.

379 Winding-up rules

- (1) Winding-up rules may include provision—
 - (a) for determining the amount of the liabilities of an insurer to policyholders of any class or description for the purpose of proof in a winding up; and
 - (b) generally for carrying into effect the provisions of this Part with respect to the winding up of insurers.
- (2) Winding-up rules may, in particular, make provision for all or any of the following matters—
 - (a) the identification of assets and liabilities;
 - (b) the apportionment, between assets of different classes or descriptions, of—
 - (i) the costs, charges and expenses of the winding up; and
 - (ii) any debts of the insurer of a specified class or description;
 - (c) the determination of the amount of liabilities of a specified description;
 - (d) the application of assets for meeting liabilities of a specified description;
 - (e) the application of assets representing any excess of a specified description.
- (3) “Specified” means specified in winding-up rules.

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

- (4) “Winding-up rules” means rules made under section 411 of the 1986 Act (or Article 359 of the 1989 Order).
- (5) Nothing in this section affects the power to make winding-up rules under the 1986 Act or the 1989 Order.