



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IV

#### WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

### CHAPTER VI

#### WINDING UP BY THE COURT

#### *Jurisdiction (England and Wales)*

#### **117 High Court and county court jurisdiction.**

- (1) The High Court has jurisdiction to wind up any company registered in England and Wales.
- (2) Where the amount of a company's share capital paid up or credited as paid up does not exceed £120,000, then (subject to this section) the county court of the district in which the company's registered office is situated has concurrent jurisdiction with the High Court to wind up the company.
- (3) The money sum for the time being specified in subsection (2) is subject to increase or reduction by order under section 416 in Part XV.
- (4) The Lord Chancellor [<sup>F1</sup>may, with the concurrence of the Lord Chief Justice, by order] in a statutory instrument exclude a county court from having winding-up jurisdiction, and for the purposes of that jurisdiction may attach its district, or any part thereof, to any other county court, and may by statutory instrument revoke or vary any such order.

In exercising the powers of this section, the Lord Chancellor shall provide that a county court is not to have winding-up jurisdiction unless it has for the time being jurisdiction for the purposes of Parts VIII to XI of this Act (individual insolvency).

*Status: Point in time view as at 19/09/2012.*

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- (5) Every court in England and Wales having winding-up jurisdiction has for the purposes of that jurisdiction all the powers of the High Court; and every prescribed officer of the court shall perform any duties which an officer of the High Court may discharge by order of a judge of that court or otherwise in relation to winding up.
- (6) For the purposes of this section, a company’s “registered office” is the place which has longest been its registered office during the 6 months immediately preceding the presentation of the petition for winding up.
- [<sup>F2</sup>(7) This section is subject to Article 3 of the EC Regulation (jurisdiction under EC Regulation).]
- [<sup>F3</sup>(8) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions under this section.]

#### Textual Amendments

- F1** Words in s. 117(4) substituted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15\(1\), 148, Sch. 4 para. 186\(2\)](#); [S.I. 2006/1014, art. 2\(a\), Sch. 1](#)
- F2** S. 117(7) inserted (31.5.2002) by [S.I. 2002/1240, reg. 6](#)
- F3** S. 117(8) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\), ss. 15\(1\), 148, Sch. 4 para. 186\(3\)](#); [S.I. 2006/1014, art. 2\(a\), Sch. 1](#)

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

- C1** S. 117 applied (with modifications) (1.12.1994) by [S.I. 1994/2421, art. 7\(3\), Sch. 3 Pt. II para. 6](#)  
 S. 117 applied (with modifications) (1.12.1994) by [S.I. 1994/2421, art. 8\(3\)\(9\), Sch. 4 Pt. II para. 5](#)  
 S. 117 applied (with modifications) (1.12.1994) by [S.I. 1994/2421, art. 10\(1\), Sch. 6 para. 1](#)  
 S. 117 applied (with modifications) (2.4.2001) by [2000 c. 39, s. 8, Sch. 4 Pt. I para. 5](#); [S.I. 2001/766, art. 2\(1\)\(a\)](#) (subject to [art. 3](#))
- C2** S. 117 modified (1.12.1994) by [S.I. 1994/2421, art. 9\(a\), Sch. 5 para. 1](#)

### 118 Proceedings taken in wrong court.

- (1) Nothing in section 117 invalidates a proceeding by reason of its being taken in the wrong court.
- (2) The winding up of a company by the court in England and Wales, or any proceedings in the winding up, may be retained in the court in which the proceedings were commenced, although it may not be the court in which they ought to have been commenced.

### 119 Proceedings in county court; case stated for High Court.

- (1) If any question arises in any winding-up proceedings in a county court which all the parties to the proceedings, or which one of them and the judge of the court, desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court.
- (2) Thereupon the special case and the proceedings (or such of them as may be required) shall be transmitted to the High Court for the purposes of the determination.

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### *Jurisdiction (Scotland)*

#### **120 Court of Session and sheriff court jurisdiction.**

- (1) The Court of Session has jurisdiction to wind up any company registered in Scotland.
- (2) When the Court of Session is in vacation, the jurisdiction conferred on that court by this section may (subject to the provisions of this Part) be exercised by the judge acting as vacation judge [<sup>F4</sup>in pursuance of section 4 of the Administration of Justice (Scotland) Act 1933].
- (3) Where the amount of a company's share capital paid up or credited as paid up does not exceed £120,000, the sheriff court of the sheriffdom in which the company's registered office is situated has concurrent jurisdiction with the Court of Session to wind up the company; but—
  - (a) the Court of Session may, if it thinks expedient having regard to the amount of the company's assets to do so—
    - (i) remit to a sheriff court any petition presented to the Court of Session for winding up such a company, or
    - (ii) require such a petition presented to a sheriff court to be remitted to the Court of Session; and
  - (b) the Court of Session may require any such petition as above mentioned presented to one sheriff court to be remitted to another sheriff court; and
  - (c) in a winding up in the sheriff court the sheriff may submit a stated case for the opinion of the Court of Session on any question of law arising in that winding up.
- (4) For purposes of this section, the expression “registered office” means the place which has longest been the company's registered office during the 6 months immediately preceding the presentation of the petition for winding up.
- (5) The money sum for the time being specified in subsection (3) is subject to increase or reduction by order under section 416 in Part XV.
- [<sup>F5</sup>(6) This section is subject to Article 3 of the EC Regulation (jurisdiction under EC Regulation).]

#### **Textual Amendments**

**F4** Words repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2](#)

**F5** S. 120(6) inserted (31.5.2002) by [S.I. 2002/1240](#), [reg. 7](#)

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

**C3** S. 120 extended (with modifications) by [S.I. 1989/638](#), [regs. 19\(2\)](#), 21

S. 120 applied (with modifications) (2.4.2001) by [2000 c. 39](#), s. 8, [Sch. 4 Pt. I para. 5](#); [S.I. 2001/766](#), [art. 2\(1\)\(a\)](#) (subject to [art. 3](#))

#### **121 Power to remit winding up to Lord Ordinary.**

- (1) The Court of Session may, by Act of Sederunt, make provision for the taking of proceedings in a winding up before one of the Lords Ordinary; and, where provision

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is so made, the Lord Ordinary has, for the purposes of the winding up all the powers and jurisdiction of the court.

- (2) However, the Lord Ordinary may report to the Inner House any matter which may arise in the course of a winding up.

### *Grounds and effect of winding-up petition*

## 122 Circumstances in which company may be wound up by the court.

- (1) A company may be wound up by the court if—
- (a) the company has by special resolution resolved that the company be wound up by the court,
  - (b) being a public company which was registered as such on its original incorporation, the company has not been issued with [<sup>F6</sup>a trading certificate under section 761 of the Companies Act 2006 (requirement as to minimum share capital)] and more than a year has expired since it was so registered,
  - (c) it is an old public company, within the meaning of the [<sup>F7</sup>Schedule 3 to the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009],
  - (d) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
  - (e) <sup>F8</sup> .....
  - (f) the company is unable to pay its debts,
  - [<sup>F9</sup>(fa) at the time at which a moratorium for the company under section 1A comes to an end, no voluntary arrangement approved under Part I has effect in relation to the company]
  - (g) the court is of the opinion that it is just and equitable that the company should be wound up.
- (2) In Scotland, a company which the Court of Session has jurisdiction to wind up may be wound up by the Court if there is subsisting a floating charge over property comprised in the company's property and undertaking, and the court is satisfied that the security of the creditor entitled to the benefit of the floating charge is in jeopardy.

For this purpose a creditor's security is deemed to be in jeopardy if the Court is satisfied that events have occurred or are about to occur which render it unreasonable in the creditor's interests that the company should retain power to dispose of the property which is subject to the floating charge.

#### Textual Amendments

- F6** Words in s. 122(1)(b) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 3(1), **Sch. 1 para. 102** (with arts. 6, 11, 12)
- F7** Words in s. 122(1)(c) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009, \(S.I. 2009/1941\)](#) arts. 2(1), 8, {Sch. 1 para. 75(12)} (with art. 10, Sch. 1 para. 84)
- F8** S. 122(1)(e) omitted (12.5.2011) by virtue of [The Companies Act 2006 \(Consequential Amendments and Transitional Provisions\) Order 2011 \(S.I. 2011/1265\)](#), arts. 1(2), **6(4)**
- F9** S. 122(1)(fa) inserted (1.1.2003) by [2000 c. 39, s. 1, Sch. 1 para. 6](#); [S.I. 2002/2711](#), **art. 2** (with transitional provisions in [arts. 3-5](#))

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

- C4** S. 122 applied (with modifications) by S.I. 1994/2421, art. 8, **Sch. 4 Pt. II para. 6(a)**
- C5** S. 122(1) modified (10.8.2005) by **The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 (S.I. 2005/1998)**, regs. 2(3), **25(3)**
- C6** S. 122(1)(b) excluded (27.7.1999) by 1999 c. 20, ss. 2(5), 5(1), **Sch. 2 Pt. II para. 9(b)** (with s. 15)  
S. 122(1)(b) excluded (8.10.2004) by **The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326)**, regs. 85, 88, **Sch. 4 para. 9(b)** (with Sch. 4 para. 11)
- C7** S. 122(1)(f) modified by S.I. 1989/1058, **reg. 18(2)**  
S. 122(1)(f) extended (1.4.1992) by S.I. 1992/613, **reg. 49(2)**  
S. 122(1)(f): power to modify conferred (E.W.) (6.3.1992) by 1992 c. 14, s. 14(3), **Sch. 4 para. 10(1)** (with s. 118(1)(2))
- C8** S. 122(1)(f) modified (6.4.2010) by **The Community Infrastructure Levy Regulations 2010 (S.I. 2010/948)**, **reg. 105(2)**

**123 Definition of inability to pay debts.**

- (1) A company is deemed unable to pay its debts—
- if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company's registered office, a written demand (in the prescribed form) requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or
  - if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or
  - if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or
  - if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company, or
  - if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.
- (2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.
- (3) The money sum for the time being specified in subsection (1)(a) is subject to increase or reduction by order under section 416 in Part XV.

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

- C9** S. 123 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8, **Sch. 4 Pt. II para. 7(a)**  
S. 123 applied (1.10.1996) by 1996 c. 52, s. 7, **Sch. 1 Pt. II para. 14(2)**; S.I. 1996/2402, **art. 3** (subject to transitional provisions and savings in Sch.)
- C10** S. 123 applied (17.2.2009 for certain purposes, otherwise 21.2.2009) by **Banking Act 2009 (c. 1)**, ss. **166(3)**, **263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3

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## 124 Application for winding up.

- (1) Subject to the provisions of this section, an application to the court for the winding up of a company shall be by petition presented either by the company, or the directors, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories <sup>[F10]</sup>, or by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation or a temporary administrator (within the meaning of Article 38 of the EC Regulation) <sup>[F11]</sup> or by <sup>[F12]</sup> the designated officer for a magistrates' court] in the exercise of the power conferred by section 87A of the Magistrates' Courts Act 1980 (enforcement of fines imposed on companies)], or by all or any of those parties, together or separately.
  - (2) Except as mentioned below, a contributory is not entitled to present a winding-up petition unless either—
    - (a) the number of members is reduced below 2, or
    - (b) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder.
  - (3) A person who is liable under section 76 to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in section 122(1) (f) and (g), and subsection (2) above does not then apply; but unless the person is a contributory otherwise than under section 76, he may not in his character as contributory petition on any other ground.
- F13 . . .
- <sup>[F14]</sup>(3A) A winding-up petition on the ground set out in section 122(1)(fa) may only be presented by one or more creditors]
- (4) A winding-up petition may be presented by the Secretary of State—
    - (a) if the ground of the petition is that in section 122(1)(b) or (c), or <sup>[F15]</sup>(b) in a case falling within section 124A <sup>[F16]</sup> or 124B] below.]
  - <sup>[F17]</sup>(4AA) A winding up petition may be presented by the Financial Services Authority in a case falling within section 124C(1) or (2).]
  - <sup>[F18]</sup>(4A) A winding-up petition may be presented by the Regulator of Community Interest Companies in a case falling within section 50 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.]
- (5) Where a company is being wound up voluntarily in England and Wales, a winding-up petition may be presented by the official receiver attached to the court as well as by any other person authorised in that behalf under the other provisions of this section; but the court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

### Textual Amendments

**F10** Words in s. 124(1) inserted (31.5.2002) by S.I. 2002/1240, reg. 8

**F11** Words inserted (E.W.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 62(2)(b), 123, Sch. 8 para.

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- F12** Words in s. 124(1) substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 294**; S.I. 2005/910, **art. 3(y)**
- F13** Words in s. 122(1)(c) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(12)} (with art. 10, Sch. 1 para. 84)
- F14** S. 124(3A) inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 7**; S.I. 2002/2711, **art. 2** (with transitional provisions in arts. 3-5)
- F15** S. 124(4)(b) substituted by Companies Act 1989 (c. 40, SIF 27), **ss. 60(2)**, 213(2)
- F16** Words in s. 124(4)(b) inserted (8.10.2004) by The European Public Limited-Liability Company Regulations 2004 (S.I. 2004/2326), **reg. 73(4)(a)**
- F17** S. 124(4AA) inserted (18.8.2006) by The European Cooperative Society Regulations 2006 (S.I. 2006/2078), **reg. 33(2)**
- F18** S. 124(4A) inserted (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), **ss. 50(3)**, 65; S.I. 2004/3322, **art. 2(3)**, Sch. 3

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

- C11** S. 124 excluded (S.) (27.7.1992) by Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40, SIF 19), **ss. 14(3)**, 15(9); S.I. 1992/1599, **art. 5**
- C12** S. 124 extended (E.W.) by Magistrates' Courts Act 1980 (c. 43, SIF 82), **s. 87A** (as inserted (E.W.) by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 62(1), 123, **Sch. 8 para. 16**)
- C13** S. 124 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(3)(9), 10(1)(a), Sch. 4 Pt. II para. 8, **Sch. 6 para. 2**

**[<sup>F19</sup>124A] Petition for winding up on grounds of public interest.**

- (1) Where it appears to the Secretary of State from—
- (a) any report made or information obtained under Part XIV [<sup>F20</sup>(except section 448A)] of the <sup>M1</sup> Companies Act 1985 (company investigations, &c.),
- [ any report made by inspectors under—
- <sup>F21</sup>(b) (i) section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000, or
- (ii) where the company is an open-ended investment company (within the meaning of that Act), regulations made as a result of section 262(2)(k) of that Act;
- (bb) any information or documents obtained under section 165, 171, 172, 173 or 175 of that Act,]
- (c) any information obtained under section 2 of the <sup>M2</sup> Criminal Justice Act 1987 or [<sup>F22</sup>section 28 of the Criminal Law (Consolidation) (Scotland) Act 1995] (fraud investigations), or
- (d) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),
- that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.
- (2) This section does not apply if the company is already being wound up by the court.]

**Textual Amendments**

- F19** S. 124A inserted by Companies Act 1989 (c. 40, SIF 27), **ss. 60(3)**, 213(2)

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- F20** Words in s. 124A(1)(a) inserted (by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004](#) (c. 27), ss. 25(1), 65, [Sch. 2 para. 27](#); S.I. 2004/3322, [art. 2\(2\)](#), Sch. 2 (subject to arts. 3-13)
- F21** S. 124A(b)(bb) substituted for s. 124A(b) (1.12.2001) by S.I. 2001/3649, [arts. 1, 305](#)
- F22** Words in s. 124A(1) substituted (1.4.1996) by virtue of 1995 c. 40, ss. 5, 7(2), [Sch. 4 para. 56\(2\)](#) and 1978 c. 30, [s. 17\(2\)\(a\)](#)

#### Marginal Citations

- M1** [1985 c. 6\(27\)](#).
- M2** [1987 c.38\(39:1\)](#).

### [<sup>F23</sup>124B Petition for winding up of SE

(“) Where—

- (a) an SE whose registered office is in Great Britain is not in compliance with Article 7 of Council Regulation [\(EC\) No 2157/2001](#) on the Statute for a European company (the “EC Regulation”)(location of head office and registered office), and
- (b) it appears to the Secretary of State that the SE should be wound up, he may present a petition for it to be wound up if the court thinks it is just and equitable for it to be so.

(2) This section does not apply if the SE is already being wound up by the court.

(3) In this section “SE” has the same meaning as in the EC Regulation.]

#### Textual Amendments

- F23** S. 124B inserted (8.10.2004) by [The European Public Limited-Liability Company Regulations 2004](#) (S.I. 2004/2326), [reg. 73\(3\)](#)

### [<sup>F24</sup>124C Petition for winding up of SCE

(1) Where, in the case of an SCE whose registered office is in Great Britain—

- (a) there has been such a breach as is mentioned in Article 73(1) of Council Regulation [\(EC\) No 1435/2003](#) on the Statute for a European Cooperative Society (SCE)(the “European Cooperative Society Regulation”)(winding up by the court or other competent authority), and
- (b) it appears to the Financial Services Authority that the SCE should be wound up,

the Authority may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(2) Where, in the case of an SCE whose registered office is in Great Britain—

- (a) the SCE is not in compliance with Article 6 of the European Cooperative Society Regulation (location of head office and registered office, and
  - (b) it appears to the Financial Service Authority that the SCE should be wound up,
- the Authority may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.



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- (3) This section does not apply if the SCE is already being wound up by the court.
- (4) In this section “SCE” has the same meaning as in the European Cooperative Society Regulation.]

#### Textual Amendments

**F24** S. 124C inserted (18.8.2006) by [The European Cooperative Society Regulations 2006 \(S.I. 2006/2078\)](#), [reg. 33\(1\)](#)

### 125 Powers of court on hearing of petition.

- (1) On hearing a winding-up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit; but the court shall not refuse to make a winding-up order on the ground only that the company’s assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.
- (2) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the court, if it is of opinion—
  - (a) that the petitioners are entitled to relief either by winding up the company or by some other means, and
  - (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,shall make a winding-up order; but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

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

**C14** S. 125 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), [art. 8\(3\)\(9\)](#), [Sch. 4 Pt. II para. 9](#)  
S. 125 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), [art. 10\(1\)\(a\)](#), [Sch. 6 para. 3](#)

### 126 Power to stay or restrain proceedings against company.

- (1) At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the company, or any creditor or contributory, may—
  - (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal in England and Wales or Northern Ireland, apply to the court in which the action or proceeding is pending for a stay of proceedings therein, and
  - (b) where any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding;and the court to which the application is so made may (as the case may be) stay, sist or restrain the proceedings accordingly on such terms as it thinks fit.

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- (2) In the case of <sup>[F25]</sup>a company registered but not formed under the Companies Act 2006], where the application to stay, sist or restrain is by a creditor, this section extends to actions and proceedings against any contributory of the company.

#### Textual Amendments

**F25** Words in s. 126(2) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(14)} (with art. 10, Sch. 1 para. 84)

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

- C15** S. 126 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 161(4); S.I. 1991/878, art. 2, Sch.  
 S. 126 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
- C16** S. 126(2) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3

### 127 Avoidance of property dispositions, etc.

<sup>[F26]</sup>(1) In a winding up by the court, any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the court otherwise orders, void.

<sup>[F26]</sup>(2) This section has no effect in respect of anything done by an administrator of a company while a winding-up petition is suspended under paragraph 40 of Schedule B1.]

#### Textual Amendments

**F26** S. 127 renumbered as s. 127(1) and s. 127(2) added (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 15 (with s. 249(1)-(3)(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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

- C17** S. 127 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), Sch. 22 para. 7(2); S.I. 1991/878, art. 2, Sch.
- C18** S. 127 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 164(3), 175(4), 182(4), Sch. 22 para. 11(4); S.I. 1991/878, art. 2, Sch.  
 S. 127 excluded (15.8.1995) by S.I. 1995/2049, reg. 21(4)-(8)  
 S. 127 excluded (11.12.1999) by S.I. 1999/2979, reg. 19(3)  
 S. 127 excluded (26.12.2003) by The Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226), reg. 10(1)
- C19** S. 127 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2  
 S. 127 modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), Sch. 3
- C20** S. 127 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

### 128 Avoidance of attachments, etc.

- (1) Where a company registered in England and Wales is being wound up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up is void.

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- (2) This section, so far as relates to any estate or effects of the company situated in England and Wales, applies in the case of a company registered in Scotland as it applies in the case of a company registered in England and Wales.

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

- C21** S. 128 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), **ss. 154**, 155, 161(4); S.I. 1991/878, **art. 2**, **Sch. 2**.
- C22** S. 128 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), **reg. 4(1)**, **Sch. 2**
- C23** S. 128 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**

*Commencement of winding up*

**129 Commencement of winding up by the court.**

- (1) If, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution; and unless the court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

[<sup>F27</sup>(1A) Where the court makes a winding-up order by virtue of paragraph 13(1)(e) of Schedule B1, the winding up is deemed to commence on the making of the order.]

- (2) In any other case, the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for winding up.

**Textual Amendments**

- F27** S. 129(1A) inserted (15.9.2003) by [2002 c. 40](#), **ss. 248(3)**, 279, **Sch. 17 para. 16** (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, **Sch. 1** (subject to **arts. 3-8** (as amended by S.I. 2003/2332, **art. 2**))

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

- C24** S. 129 applied (7.2.1994) by [1993 c. 48](#), **s. 144(4)(b)(i)** (with s. 6(8)); S.I. 1994/86, **art. 2**
- C25** S. 129(1A) modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 159(1)**, 198, **Sch. 20 para. 45**; S.I. 2004/2575, **art. 2(1)**, **Sch. 1**
- C26** S. 129(1A) modified (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), **ss. 73**, 93(2)(3), **Sch. 10 para. 45**; S.I. 2011/2329, **art. 3** (with **arts. 4**, 5)

**130 Consequences of winding-up order.**

- (1) On the making of a winding-up order, a copy of the order must forthwith be forwarded by the company (or otherwise as may be prescribed) to the registrar of companies, who shall enter it in his records relating to the company.
- (2) When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the court and subject to such terms as the court may impose.

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- (3) When an order has been made for winding up a company [<sup>F28</sup>registered but not formed under the Companies Act 2006], no action or proceeding shall be commenced or proceeded with against the company or its property or any contributory of the company, in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.
- (4) An order for winding up a company operates in favour of all the creditors and of all contributories of the company as if made on the joint petition of a creditor and of a contributory.

#### Textual Amendments

**F28** Words in s. 130(3) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(15)} (with art. 10, Sch. 1 para. 84)

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

- C27** S. 130 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 161(4), 182(4), **Sch. 22 para. 5(2)**; S.I. 1991/878, art. 2, **Sch.**
- C28** S. 130 modified (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 12(4)**; S.I. 1991/878, art. 2, **Sch.**
- C29** S. 130 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**
- C30** S. 130(1) amended (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8 para. 23(2)(3)**; S.I. 1998/3178, **arts. 2, 3**  
 S. 130(1) applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

### *Investigation procedures*

#### **131 Company's statement of affairs.**

- (1) Where the court has made a winding-up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in subsection (3) below to make out and submit to him a statement in the prescribed form as to the affairs of the company.
- (2) The statement <sup>F29</sup> . . . shall show—
- (a) particulars of the company's assets, debts and liabilities;
  - (b) the names and addresses of the company's creditors;
  - (c) the securities held by them respectively;
  - (d) the dates when the securities were respectively given; and
  - (e) such further or other information as may be prescribed or as the official receiver may require

[<sup>F30</sup>(2A) The statement shall be verified by the persons required to submit it—

- (a) in the case of an appointment of a provisional liquidator or a winding up by the court in England and Wales, by a statement of truth; and
- (b) in the case of an appointment of a provisional liquidator or a winding up by the court in Scotland, by affidavit.]

(3) The persons referred to in subsection (1) are—

- (a) those who are or have been officers of the company;

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- (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
  - (c) those who are in the company's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;
  - (d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.
- (4) Where any persons are required under this section to submit a statement of affairs to the official receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the official receiver.
- (5) The official receiver, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2) above; or
  - (b) either when giving the notice mentioned in subsection (4) or subsequently, extend the period so mentioned;
- and where the official receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.
- (6) In this section—
- “employment” includes employment under a contract for services; and
  - “the relevant date” means—
- (a) in a case where a provisional liquidator is appointed, the date of his appointment; and
  - (b) in a case where no such appointment is made, the date of the winding-up order.
- (7) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is liable to a fine and, for continued contravention, to a daily default fine.
- (8) In the application of this section to Scotland references to the official receiver are to the liquidator or, in a case where a provisional liquidator is appointed, the provisional liquidator.

#### Textual Amendments

**F29** Words in s. 131(2) omitted (6.4.2010) by virtue of [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), [art. 5\(4\)\(a\)](#)

**F30** S. 131(2A) inserted (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), [art. 5\(4\)\(b\)](#)

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

**C31** S. 131 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), [art. 7\(3\)](#), [Sch. 3 Pt. II para. 7](#)  
s. 131 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), [art. 8](#), [Sch. 4 Pt. II para. 10](#)  
S. 131 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), [reg. 4\(1\)](#), [Sch. 2](#)

**C32** S. 131 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](#)

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### 132 Investigation by official receiver.

- (1) Where a winding-up order is made by the court in England and Wales, it is the duty of the official receiver to investigate—
  - (a) if the company has failed, the causes of the failure; and
  - (b) generally, the promotion, formation, business, dealings and affairs of the company,
 and to make such report (if any) to the court as he thinks fit.
- (2) The report is, in any proceedings, prima facie evidence of the facts stated in it.

### 133 Public examination of officers

- (1) Where a company is being wound up by the court, the official receiver or, in Scotland, the liquidator may at any time before the dissolution of the company apply to the court for the public examination of any person who—
  - (a) is or has been an officer of the company; or
  - (b) has acted as liquidator or administrator of the company or as receiver or manager or, in Scotland, receiver of its property; or
  - (c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company.
- (2) Unless the court otherwise orders, the official receiver or, in Scotland, the liquidator shall make an application under subsection (1) if he is requested in accordance with the rules to do so by—
  - (a) one-half, in value, of the company's creditors; or
  - (b) three-quarters, in value, of the company's contributories.
- (3) On an application under subsection (1), the court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of the company or as to the conduct of its business and affairs, or his conduct or dealings in relation to the company.
- (4) The following may take part in the public examination of a person under this section and may question that person concerning the matters mentioned in subsection (3), namely—
  - (a) the official receiver;
  - (b) the liquidator of the company;
  - (c) any person who has been appointed as special manager of the company's property or business;
  - (d) any creditor of the company who has tendered a proof or, in Scotland, submitted a claim in the winding up;
  - (e) any contributory of the company.

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

- C33** S.133 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), [Sch. 4 Pt. II para. 11](#)  
 S. 133 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 7(3), [Sch. 3 Pt. II para. 8](#)  
 s. 133 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), [art. 8\(3\)\(9\)](#), [Sch. 4, Pt. II, para. 11](#)  
 S. 133 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), [Sch. 2](#)

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### 134 Enforcement of s. 133.

- (1) If a person without reasonable excuse fails at any time to attend his public examination under section 133, he is guilty of a contempt of court and liable to be punished accordingly.
- (2) In a case where a person without reasonable excuse fails at any time to attend his examination under section 133 or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under that section, the court may cause a warrant to be issued to a constable or prescribed officer of the court—
  - (a) for the arrest of that person; and
  - (b) for the seizure of any books, papers, records, money or goods in that person's possession.
- (3) In such a case the court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.

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

C34 S. 134 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)

### *Appointment of liquidator*

### 135 Appointment and powers of provisional liquidator.

- (1) Subject to the provisions of this section, the court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally.
- (2) In England and Wales, the appointment of a provisional liquidator may be made at any time before the making of a winding-up order; and either the official receiver or any other fit person may be appointed.
- (3) In Scotland, such an appointment may be made at any time before the first appointment of liquidators.
- (4) The provisional liquidator shall carry out such functions as the court may confer on him.
- (5) When a liquidator is provisionally appointed by the court, his powers may be limited by the order appointing him.

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

C35 S. 135 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)

C36 S. 135 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](#)

C37 S. 135 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](#)

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### **136 Functions of official receiver in relation to office of liquidator.**

- (1) The following provisions of this section have effect, subject to section 140 below, on a winding-up order being made by the court in England and Wales.
- (2) The official receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator under the provisions of this Part.
- (3) The official receiver is, by virtue of his office, the liquidator during any vacancy.
- (4) At any time when he is the liquidator of the company, the official receiver may summon separate meetings of the company's creditors and contributories for the purpose of choosing a person to be liquidator of the company in place of the official receiver.
- (5) It is the duty of the official receiver—
  - (a) as soon as practicable in the period of 12 weeks beginning with the day on which the winding-up order was made, to decide whether to exercise his power under sub-section (4) to summon meetings, and
  - (b) if in pursuance of paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the court and to the company's creditors and contributories, and
  - (c) (whether or not he has decided to exercise that power) to exercise his power to summon meetings under subsection (4) if he is at any time requested, in accordance with rules, to do so by one-quarter, in value, of the company's creditors;

and accordingly, where the duty imposed by paragraph (c) arises before the official receiver has performed a duty imposed by paragraph (a) or (b), he is not required to perform the latter duty.
- (6) A notice given under subsection (5)(b) to the company's creditors shall contain an explanation of the creditors' power under subsection (5)(c) to require the official receiver to summon meetings of the company's creditors and contributories.

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

**C38** S. 136 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), [Sch. 4 Pt. II](#), para. 12

### **137 Appointment by Secretary of State.**

- (1) In a winding up by the court in England and Wales the official receiver may, at any time when he is the liquidator of the company, apply to the Secretary of State for the appointment of a person as liquidator in his place.
- (2) If meetings are held in pursuance of a decision under section 136(5)(a), but no person is chosen to be liquidator as a result of those meetings, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Secretary of State.
- (3) On an application under subsection (1), or a reference made in pursuance of a decision under subsection (2), the Secretary of State shall either make an appointment or decline to make one.



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- (4) Where a liquidator has been appointed by the Secretary of State under subsection (3), the liquidator shall give notice of his appointment to the company's creditors or, if the court so allows, shall advertise his appointment in accordance with the directions of the court.
- (5) In that notice or advertisement the liquidator shall—
  - (a) state whether he proposes to summon a general meeting of the company's creditors under section 141 below for the purpose of determining (together with any meeting of contributories) whether a liquidation committee should be established under that section, and
  - (b) if he does not propose to summon such a meeting, set out the power of the company's creditors under that section to require him to summon one.

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

**C39** S. 137 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), [Sch. 4 Pt. II para. 13](#)

**138 Appointment of liquidator in Scotland.**

- (1) Where a winding-up order is made by the court in Scotland, a liquidator shall be appointed by the court at the time when the order is made.
- (2) The liquidator so appointed (here referred to as “the interim liquidator”) continues in office until another person becomes liquidator in his place under this section or the next.
- (3) The interim liquidator shall (subject to the next subsection) as soon as practicable in the period of 28 days beginning with the day on which the winding-up order was made or such longer period as the court may allow, summon separate meetings of the company's creditors and contributories for the purpose of choosing a person (who may be the person who is the interim liquidator) to be liquidator of the company in place of the interim liquidator.
- (4) If it appears to the interim liquidator, in any case where a company is being wound up on grounds including its inability to pay its debts, that it would be inappropriate to summon under subsection (3) a meeting of the company's contributories, he may summon only a meeting of the company's creditors for the purpose mentioned in that subsection.
- (5) If one or more meetings are held in pursuance of this section but no person is appointed or nominated by the meeting or meetings, the interim liquidator shall make a report to the court which shall appoint either the interim liquidator or some other person to be liquidator of the company.
- (6) A person who becomes liquidator of the company in place of the interim liquidator shall, unless he is appointed by the court, forthwith notify the court of that fact.

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

**C40** S. 138 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), [Sch. 2](#)

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### 139 Choice of liquidator at meetings of creditors and contributories.

- (1) This section applies where a company is being wound up by the court and separate meetings of the company's creditors and contributories are summoned for the purpose of choosing a person to be liquidator of the company.
- (2) The creditors and the contributories at their respective meetings may nominate a person to be liquidator.
- (3) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the contributories.
- (4) In the case of different persons being nominated, any contributory or creditor may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either—
  - (a) appointing the person nominated as liquidator by the contributories to be a liquidator instead of, or jointly with, the person nominated by the creditors; or
  - (b) appointing some other person to be liquidator instead of the person nominated by the creditors.

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

- C41** S. 139 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), [art. 8\(3\)\(9\)](#), [Sch. 4 Pt. II para. 14](#)  
 S. 139 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), [reg. 4\(1\)](#), [Sch. 2](#)

### 140 Appointment by the court following administration or voluntary arrangement.

- [<sup>F31</sup>(1) Where a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect, the court may appoint as liquidator of the company the person whose appointment as administrator has ceased to have effect.]
- (2) Where a winding-up order is made at a time when there is a supervisor of a voluntary arrangement approved in relation to the company under Part I, the court may appoint as liquidator of the company the person who is the supervisor at the time when the winding-up order is made.
  - (3) Where the court makes an appointment under this section, the official receiver does not become the liquidator as otherwise provided by section 136(2), and he has no duty under section 136(5)(a) or (b) in respect of the summoning of creditors' or contributories' meetings.

#### Textual Amendments

- F31** S. 140(1) substituted (15.9.2003) by [2002 c. 40](#), [ss. 248\(3\), 279](#), [Sch. 17 para. 17](#) (with [s. 249\(1\)-\(3\)\(6\)](#)); [S.I. 2003/2093](#), [art. 2\(1\)](#), [Sch. 1](#) (subject to [arts. 3-8](#) (as amended by [S.I. 2003/2332](#), [art. 2](#)))

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

- C42** S. 140 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), [art. 8\(3\)\(9\)](#), [Sch. 4 Pt. II para. 15](#)  
 (as amended (1.7.2005) by [S.I. 2005/1516](#), [art. 9\(3\)](#))  
 S. 140 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), [reg. 4\(1\)](#), [Sch. 2](#)

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### *Liquidation committees*

#### **141 Liquidation committee (England and Wales).**

- (1) Where a winding-up order has been made by the court in England and Wales and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator, those meetings may establish a committee (“the liquidation committee”) to exercise the functions conferred on it by or under this Act.
- (2) The liquidator (not being the official receiver) may at any time, if he thinks fit, summon separate general meetings of the company’s creditors and contributories for the purpose of determining whether such a committee should be established and, if it is so determined, of establishing it.

The liquidator (not being the official receiver) shall summon such a meeting if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company’s creditors.

- (3) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator, and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the committee shall be established in accordance with the rules, unless the court otherwise orders.
- (4) The liquidation committee is not to be able or required to carry out its functions at any time when the official receiver is liquidator; but at any such time its functions are vested in the Secretary of State except to the extent that the rules otherwise provide.
- (5) Where there is for the time being no liquidation committee, and the liquidator is a person other than the official receiver, the functions of such a committee are vested in the Secretary of State except to the extent that the rules otherwise provide.

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

- C43** S. 141 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), [Sch. 4 Pt. II para. 16](#)  
S. 141 amended (1.12.2001) by [2000 c. 8, s. 371\(4\)\(b\)](#); [S.I. 2001/3538](#), art. 2(1)
- C44** S. 141 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](#)

#### **142 Liquidation committee (Scotland).**

- (1) Where a winding-up order has been made by the court in Scotland and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator or, under section 138(4), only a meeting of creditors has been summoned for that purpose, those meetings or (as the case may be) that meeting may establish a committee (“the liquidation committee”) to exercise the functions conferred on it by or under this Act.
- (2) The liquidator may at any time, if he thinks fit, summon separate general meetings of the company’s creditors and contributories for the purpose of determining whether such a committee should be established and, if it is so determined, of establishing it.

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- (3) The liquidator, if appointed by the court otherwise than under section 139(4)(a), is required to summon meetings under subsection (2) if he is requested, in accordance with the rules, to do so by one-tenth, in value, of the company's creditors.
- (4) Where meetings are summoned under this section, or for the purpose of choosing a person to be liquidator, and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the committee shall be established in accordance with the rules, unless the court otherwise orders.
- (5) Where in the case of any winding up there is for the time being no liquidation committee, the functions of such a committee are vested in the court except to the extent that the rules otherwise provide.
- (6) In addition to the powers and duties conferred and imposed on it by this Act, a liquidation committee has such of the powers and duties of commissioners in a sequestration as may be conferred and imposed on such committees by the rules.

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

- C45** S. 142 amended (1.12.2001) by [2000 c. 8, s. 371\(4\)\(b\)](#); [S.I. 2001/3538, art. 2\(1\)](#)  
 S. 142 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)
- C46** S. 142 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](#)
- C47** S. 142(1)–(4) restricted by [S.I. 1986/1915, Rule 4.61](#).

*The liquidator's functions*

**143 General functions in winding up by the court.**

- (1) The functions of the liquidator of a company which is being wound up by the court are to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.
- (2) It is the duty of the liquidator of a company which is being wound up by the court in England and Wales, if he is not the official receiver—
  - (a) to furnish the official receiver with such information,
  - (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
  - (c) to give the official receiver such other assistance,
 as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up.

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

- C48** S. 143 applied (with modifications) (1.12.1994) by [S.I. 1994/2421, art. 8\(3\)\(9\)](#), [Sch. 4 Pt. II para. 17](#)  
 S. 143 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)
- C49** S. 143 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](#)

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#### **144 Custody of company's property.**

- (1) When a winding-up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator (as the case may be) shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.
- (2) In a winding up by the court in Scotland, if and so long as there is no liquidator, all the property of the company is deemed to be in the custody of the court.

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

- C50** S. 144 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)
- C51** S. 144 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](#)

#### **145 Vesting of company property in liquidator.**

- (1) When a company is being wound up by the court, the court may on the application of the liquidator by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name; and thereupon the property to which the order relates vests accordingly.
- (2) The liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

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

- C52** S. 145 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#)
- C53** S. 145 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](#)

#### **146 Duty to summon final meeting.**

- (1) Subject to the next subsection, if it appears to the liquidator of a company which is being wound up by the court that the winding up of the company is for practical purposes complete and the liquidator is not the official receiver, the liquidator shall summon a final general meeting of the company's creditors which—
  - (a) shall receive the liquidator's report of the winding up, and
  - (b) shall determine whether the liquidator should have his release under section 174 in Chapter VII of this Part.
- (2) The liquidator may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the company's property but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the liquidator is able to report to the meeting that the winding up of the company is for practical purposes complete.

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- (3) In the carrying out of his functions in the winding up it is the duty of the liquidator to retain sufficient sums from the company's property to cover the expenses of summoning and holding the meeting required by this section.

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

- C54** S. 146 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), [Sch. 4 Pt. II para. 18](#)  
 S. 146 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), [Sch. 2](#)

*General powers of court*

**147 Power to stay or sist winding up.**

- (1) The court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in the winding up ought to be stayed or sisted, make an order staying or sisting the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit.
- (2) The court may, before making an order, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.
- (3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar of companies, who shall enter it in his records relating to the company.

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

- C55** S. 147 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), art. 8(3)(9), [Sch. 4 Pt. II para. 19](#)  
 S. 147 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), [Sch. 2](#)
- C56** S. 147 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](#)
- C57** S. 147(3) amended (1.7.1999) by [1998 c. 46](#), s. 125, [Sch. 8](#), para. 23(2)(3) (with s. 126(3)-(11)); [S.I. 1998/3178](#), [arts. 2](#), 3

**148 Settlement of list of contributories and application of assets.**

- (1) As soon as may be after making a winding-up order, the court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required<sup>F32</sup>. . . , and shall cause the company's assets to be collected, and applied in discharge of its liabilities.
- (2) If it appears to the court that it will not be necessary to make calls on or adjust the rights of contributories, the court may dispense with the settlement of a list of contributories.
- (3) In settling the list, the court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

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#### Textual Amendments

**F32** Words in s. 148(1) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(16)} (with art. 10, Sch. 1 para. 84)

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

**C58** S. 148 modified by S.I. 1986/1918, **Rule 5**

**C59** S. 148 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

### 149 Debts due from contributory to company.

- (1) The court may, at any time after making a winding-up order, make an order on any contributory for the time being on the list of contributories to pay, in manner directed by the order, any money due from him (or from the estate of the person who he represents) to the company, exclusive of any money payable by him or the estate by virtue of any call <sup>F33</sup> . . . .
- (2) The court in making such an order may—
  - (a) in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit, and
  - (b) in the case of a limited company, make to any director or manager whose liability is unlimited or to his estate the like allowance.
- (3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full (together with interest at the official rate) any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

#### Textual Amendments

**F33** Words in s. 149(1) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(16)} (with art. 10, Sch. 1 para. 84)

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

**C60** S. 149 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

### 150 Power to make calls.

- (1) The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the court considers necessary to satisfy the company's debts and liabilities, and the expenses of winding up, and

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for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

- (2) In making a call the court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

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

**C61** S. 150 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

**151 Payment into bank of money due to company.**

- (1) The court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into the Bank of England (or any branch of it) to the account of the liquidator instead of to the liquidator, and such an order may be enforced in the same manner as if it had directed payment to the liquidator.
- (2) All money and securities paid or delivered into the Bank of England (or branch) in the event of a winding up by the court are subject in all respects to the orders of the court.

**152 Order on contributory to be conclusive evidence.**

- (1) An order made by the court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, but subject to any right of appeal.
- (2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings except proceedings in Scotland against the heritable estate of a deceased contributory; and in that case the order is only prima facie evidence for the purpose of charging his heritable estate, unless his heirs or legatees of heritage were on the list of contributories at the time of the order being made.

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

**C62** S. 152 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

**153 Power to exclude creditors not proving in time.**

The court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

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

**C63** S. 153 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



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## 154 Adjustment of rights of contributories.

The court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

### Modifications etc. (not altering text)

**C64** S. 154 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

## 155 Inspection of books by creditors, etc.

(1) The court may, at any time after making a winding-up order, make such order for inspection of the company's books and papers by creditors and contributories as the court thinks just; and any books and papers in the company's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this section excludes or restricts any statutory rights of a government department or person acting under the authority of a government department.

[<sup>F34</sup>(3) For the purposes of subsection (2) above, references to a government department shall be construed as including references to any part of the Scottish Administration.]

### Textual Amendments

**F34** S. 155(3) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 85**; S.I. 1998/3178, **art. 3**

### Modifications etc. (not altering text)

**C65** S. 155 excluded by [Social Security Pensions Act 1975 \(c. 60, SIF 113:1\)](#), **s. 57D(6)** (as inserted by [Social Security Act 1990 \(c. 27, SIF 113:1\)](#), s. 14, **Sch. 4 Pt. I para. 1**)

S. 155 excluded (7.2.1994) by [1993 c. 48](#), **s. 122(1)** (with s. 6(8)); S.I. 1994/86, **art. 2**

**C66** S. 155 excluded (6.4.1997) by [1995 c. 26](#), **s. 26(1)**; S.I. 1997/664, art. 2(3), **Sch. Pt. II** (with transitional adaptations, modifications and savings in [arts. 3-14](#))

**C67** S. 155 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

## 156 Payment of expenses of winding up.

The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the court thinks just.

### Modifications etc. (not altering text)

**C68** S. 156 restricted (6.3.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), reg. 46, **Sch. para. 2(3)**

**C69** S. 156 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

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### 157 Attendance at company meetings (Scotland).

In the winding up by the court of a company registered in Scotland, the court has power to require the attendance of any officer of the company at any meeting of creditors or of contributories, or of a liquidation committee, for the purpose of giving information as to the trade, dealings, affairs or property of the company.

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

**C70** S. 157 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**

### 158 Power to arrest absconding contributory.

The court, at any time either before or after making a winding-up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, may cause the contributory to be arrested and his books and papers and moveable personal property to be seized and him and them to be kept safely until such time as the court may order.

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

**C71** S. 158 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**

### 159 Powers of court to be cumulative.

Powers conferred [<sup>F35</sup>on the court by this Act] are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

#### Textual Amendments

**F35** Words in s. 159 substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(17)} (with art. 10, Sch. 1 para. 84)

### 160 Delegation of powers to liquidator (England and Wales).

- (1) Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the court in England and Wales <sup>F36</sup>. . . in respect of the following matters—
- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories,
  - (b) the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,
  - (c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator,

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- (d) the making of calls,
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the court, and subject to the court's control.

- (2) But the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either that special leave or the sanction of the liquidation committee.

#### Textual Amendments

**F36** Words in s. 160(1) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(18)} (with art. 10, Sch. 1 para. 84)

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

**C72** S. 160 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

### *Enforcement of, and appeal from, orders*

#### **161 Orders for calls on contributories (Scotland).**

- (1) In Scotland, where an order, interlocutor or decree has been made for winding up a company by the court, it is competent to the court, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls, and of the amount due by each contributory, and of the date when that amount became due, to pronounce forthwith a decree against those contributories for payment of the sums so certified to be due, with interest from that date until payment (at 5 per cent. per annum) in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of 6 days, of a legal obligation to pay those calls and interest.
- (2) The decree may be extracted immediately, and no suspension of it is competent, except on caution or consignment, unless with special leave of the court.

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

**C73** S. 161 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

#### **162 Appeals from orders in Scotland.**

- (1) Subject to the provision of this section and to rules of court, an appeal from any order or decision made or given in the winding up of a company by the court in Scotland under this Act lies in the same manner and subject to the same conditions as an appeal from an order or decision of the court in cases within its ordinary jurisdiction.
- (2) In regard to orders of judgments pronounced by the judge acting as vacation judge [<sup>F37</sup> in pursuance of section 4 of the <sup>M3</sup> Administration of Justice (Scotland) Act 1933]—

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- (a) none of the orders specified in Part I of Schedule 3 to this Act are subject to review, reduction, suspension or stay of execution, and
  - (b) every other order or judgment (except as mentioned below) may be submitted to review by the Inner House by reclaiming motion enrolled within 14 days from the date of the order or judgment.
- (3) However, an order being one of those specified in Part II of that Schedule shall, from the date of the order and notwithstanding that it has been submitted to review as above, be carried out and receive effect until the Inner House have disposed of the matter.
- (4) In regard to orders or judgments pronounced in Scotland by a Lord Ordinary before whom proceedings in a winding up are being taken, any such order or judgment may be submitted to review by the Inner House by reclaiming motion enrolled within 14 days from its date; but should it not be so submitted to review during session, the provisions of this section in regard to orders or judgments pronounced by the judge acting as vacation judge apply.
- (5) Nothing in this section affects provisions of [<sup>F38</sup>the Companies Acts] or this Act in reference to decrees in Scotland for payment of calls in the winding up of companies, whether voluntary or by the court.

#### Textual Amendments

- F37** Words repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2](#)
- F38** Words in s. 162(5) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, ([S.I. 2009/1941](#)) arts. 2(1), 8, {Sch. 1 para. 75(19)} (with art. 10, Sch. 1 para. 84)

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

- C74** S. 162 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128](#), reg. 4(1), [Sch. 2](#)
- C75** S. 162 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](#)

#### Marginal Citations

- M3** [1933 c. 41](#).

**Status:**

Point in time view as at 19/09/2012.

**Changes to legislation:**

Insolvency Act 1986, Chapter VI is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.