



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IV

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

#### CHAPTER VI

#### WINDING UP BY THE COURT

#### *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)**

- C1** S. 135 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)
- C2** 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](#)

*Status: Point in time view as at 01/10/2012.*

*Changes to legislation: Insolvency Act 1986, Cross Heading: Appointment of liquidator is up to date with all changes known to be in force on or before 29 May 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. (See end of Document for details)*

**C3** 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**

### **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)**

**C4** 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.

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- (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.
- (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)**

C5 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.

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

**C6** S. 138 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\)](#), [Sch. 2](#)

**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)**

**C7** 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>F1</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**

**F1** 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](#)))

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

- C8** 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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