



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IV

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

### CHAPTER X

#### MALPRACTICE BEFORE AND DURING LIQUIDATION; PENALISATION OF COMPANIES AND COMPANY OFFICERS; INVESTIGATIONS AND PROSECUTIONS

#### *Investigation and prosecution of malpractice*

#### **218 Prosecution of delinquent officers and members of company.**

(1) If it appears to the court in the course of a winding up by the court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the court may (either on the application of a person interested in the winding up or of its own motion) direct the liquidator to refer the matter

- [<sup>F1</sup>(a) in the case of a winding up in England and Wales, to the Secretary of State, and
- (b) in the case of a winding up in Scotland, to the Lord Advocate]

<sup>F2</sup>(2) .....

(3) If in the case of a winding up by the court in England and Wales it appears to the liquidator, not being the official receiver, that any past or present officer of the company, or any member of it, has been guilty of an offence in relation to the company for which he is criminally liable, the liquidator shall report the matter to the official receiver.

(4) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty of an offence in

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relation to the company for which he is criminally liable, he shall <sup>F3</sup>forthwith report the matter—

- (a) in the case of a winding up in England and Wales, to the Secretary of State, and
- (b) in the case of a winding up in Scotland, to the Lord Advocate,

and shall furnish to the Secretary of State or (as the case may be) the Lord Advocate]such information and give to him such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as <sup>F4</sup>the Secretary of State or (as the case may be) the Lord Advocate] requires.

<sup>F5</sup>(5) Where a report is made to the Secretary of State under subsection (4) he may, for the purpose of investigating the matter reported to him and such other matters relating to the affairs of the company as appear to him to require investigation, exercise any of the powers which are exercisable by inspectors appointed under section 431 or 432 of the <sup>F6</sup>the Companies Act 1985] to investigate a company's affairs.]

(6) If it appears to the court in the course of a voluntary winding up that—

- (a) any past or present officer of the company, or any member of it, has been guilty as above-mentioned, and
- (b) no report with respect to the matter has been made by the liquidator <sup>F7</sup>. . . under subsection (4),

the court may (on the application of any person interested in the winding up or of its own motion) direct the liquidator to make such a report.

On a report being made accordingly, this section has effect as though the report had been made in pursuance of subsection (4).

#### Textual Amendments

- F1** S. 218(1)(a)(b) substituted for words in s. 218(1) (2.4.2001) by 2000 c. 39, s. 10(2); S.I. 2001/766, art. 2(1)(b) (subject to art. 3)
- F2** S. 218(2) repealed (2.4.2001) by 2000 c. 39, ss. 10(3), 15, Sch. 5; S.I. 2001/766, art. 2(1)(b)(c) (subject to art. 3)
- F3** Words in s. 218(4)(a)(b) substituted (2.4.2001) by 2000 c. 39, s. 10(4)(a); S.I. 2001/766, art. 2(b) (subject to art. 3)
- F4** Words in s. 218(4) substituted (2.4.2001) by 2000 c. 39, s. 10(4)(b); S.I. 2001/766, art. 2(b) (subject to art. 3)
- F5** S. 218(5) substituted (2.4.2001) by 2000 c. 39, s. 10(5); S.I. 2001/766, art. 2(b) (subject to art. 3)
- F6** Words in s. 218(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(24)} (with art. 10, Sch. 1 para. 84)
- F7** Words in s. 218(6)(b) repealed (2.4.2001) by 2000 c. 39, ss. 10(6), 15, Sch. 5; S.I. 2001/766, art. 2(1)(b)(c) (subject to art. 3)

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

- C1** S. 218 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
- C2** S. 218 amendment to earlier amending provision S.I. 2009/805, Sch. 1 para. 13(6) (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 11 para. 16(3)(a) (with Sch. 12)

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| <p><b>C3</b></p> <p><b>C4</b></p> <p><b>C5</b></p> | <p>S. 218 applied (with modifications) (6.6.2013) by <a href="#">The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388)</a>, Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)</p> <p>S. 218(1)(4)(6) modified (S.) (6.4.2001) by <a href="#">S.S.I. 2001/128</a>, reg. 4(2), <a href="#">Sch. 3</a></p> <p>S. 218(1)(2)(4)(6) applied (with modifications) (S.) (6.4.2001) by <a href="#">S.S.I. 2001/128</a>, reg. 4(1), <a href="#">Sch. 2</a></p> |
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## 219 Obligations arising under s. 218.

(1) For the purpose of an investigation by the Secretary of State [<sup>F8</sup>in consequence of a report made to him under section 218(4)], any obligation imposed on a person by any provision of [<sup>F9</sup>the Companies Act 1985] to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in [<sup>F8</sup>section 218(5)] is to be regarded as an obligation similarly to assist the Secretary of State in his investigation.

(2) An answer given by a person to a question put to him in exercise of the powers conferred by section 218(5) may be used in evidence against him.

[<sup>F10</sup>(2A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

- (a) no evidence relating to the answer may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(2B) Subsection (2A) applies to any offence other than—

- (a) an offence under section 2 or 5 of the <sup>M1</sup>Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or
- (b) an offence under section 44(1) or (2) of the <sup>M2</sup>Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).]

(3) Where criminal proceedings are instituted by [<sup>F11</sup>the Director of Public Prosecutions, the Lord Advocate] or the Secretary of State following any report or reference under section 218, it is the duty of the liquidator and every officer and agent of the company past and present (other than the defendant or defender) to give to [<sup>F11</sup>the Director of Public Prosecutions, the Lord Advocate] or the Secretary of State (as the case may be) all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(4) If a person fails or neglects to give assistance in the manner required by subsection (3), the court may, on the application of the [<sup>F12</sup>Director of Public Prosecutions, the Lord Advocate] or the Secretary of State (as the case may be) direct the person to comply with that subsection; and if the application is made with respect to a liquidator, the court may (unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so) direct that the costs shall be borne by the liquidator personally.

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### Textual Amendments

- F8** Words in s. 219(1) substituted (2.4.2001) by 2000 c. 39, s. 10(7)(a); S.I. 2001/766, art. 2(1)(b) (subject to art. 3)
- F9** Words in s. 219(1) 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(24) (with art. 10, Sch. 1 para. 84)
- F10** S. 219(2A)(2B) inserted (2.4.2001) by 2000 c. 39, s. 11; S.I. 2001/766, art. 2(1)(b); (subject to art. 3)
- F11** Words in s. 219(3) substituted (2.4.2001) by 2000 c. 39, s. 10(7)(b); S.I. 2001/766, art. 2(1)(b) (subject to art. 3)
- F12** Words in s. 219(4) substituted (2.4.2001) by 2000 c. 39, s. 10(7)(c); S.I. 2001/766, art. 2(1)(b) (subject to art. 3)

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- C6** S. 219 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
- C7** S. 219 amendment to earlier amending provision S.I. 2009/805, Sch. 1 para. 13(6) (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 11 para. 16(3)(b) (with Sch. 12)
- C8** S. 219 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

### Marginal Citations

- M1** 1911 c. 6.  
**M2** 1995 c. 39.

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