



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART VI

#### MISCELLANEOUS PROVISIONS APPLYING TO COMPANIES WHICH ARE INSOLVENT OR IN LIQUIDATION

#### *f<sup>1</sup> Decisions by creditors and contributories*

##### **Textual Amendments**

- F1** Ss. 246ZE-246ZG and cross-heading inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), [ss. 122\(2\), 164\(1\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(a\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#)); [S.I. 2019/816, reg. 4\(a\)](#) (with [reg. 5](#))

#### **246ZE Decisions by creditors and contributories: general**

- (1) This section applies where, for the purposes of this Group of Parts, a person (“P”) seeks a decision about any matter from a company's creditors or contributories.
- (2) The decision may be made by any qualifying decision procedure P thinks fit, except that it may not be made by a creditors' meeting or (as the case may be) a contributories' meeting unless subsection (3) applies.
- (3) This subsection applies if at least the minimum number of creditors or (as the case may be) contributories make a request to P in writing that the decision be made by a creditors' meeting or (as the case may be) a contributories' meeting.
- (4) If subsection (3) applies P must summon a creditors' meeting or (as the case may be) a contributories' meeting.
- (5) Subsection (2) is subject to any provision of this Act, the rules or any other legislation, or any order of the court—

*Status: Point in time view as at 06/04/2019.*

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- (a) requiring a decision to be made, or prohibiting a decision from being made, by a particular qualifying decision procedure (other than a creditors' meeting or a contributories' meeting);
  - (b) permitting or requiring a decision to be made by a creditors' meeting or a contributories' meeting.
- (6) Section 246ZF provides that in certain cases the deemed consent procedure may be used instead of a qualifying decision procedure.
- (7) For the purposes of subsection (3) the “minimum number” of creditors or contributories is any of the following—
- (a) 10% in value of the creditors or contributories;
  - (b) 10% in number of the creditors or contributories;
  - (c) 10 creditors or contributories.
- (8) The references in subsection (7) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.
- (9) In this section references to a meeting are to a meeting where the creditors or (as the case may be) contributories are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place).
- (10) Except as provided by subsection (8), references in this section to creditors include creditors of a particular class.
- (11) In this Group of Parts “qualifying decision procedure” means a procedure prescribed or authorised under paragraph 8A of Schedule 8.

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

**C1** Ss. 246ZE, 246ZF modified by The Insolvent Partnerships Order 1994 (S.I. 1994/2421), Sch. 7A (as inserted (6.4.2017) by [The Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) \(Savings\) Regulations 2017 \(S.I. 2017/540\)](#), reg. 1, [Sch. 2 para. 10](#) (with reg. 4))

**246ZF Deemed consent procedure**

- (1) The deemed consent procedure may be used instead of a qualifying decision procedure where a company's creditors or contributories are to make a decision about any matter, unless—
- (a) a decision about the matter is required by virtue of this Act, the rules, or any other legislation to be made by a qualifying decision procedure, or
  - (b) the court orders that a decision about the matter is to be made by a qualifying decision procedure.
- (2) If the rules provide for a company's creditors or contributories to make a decision about the remuneration of any person, they must provide that the decision is to be made by a qualifying decision procedure.
- (3) The deemed consent procedure is that the relevant creditors (other than opted-out creditors) or (as the case may be) the relevant contributories are given notice of—
- (a) the matter about which they are to make a decision,

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- (b) the decision that the person giving the notice proposes should be made (the “proposed decision”),
  - (c) the effect of subsections (4) and (5), and
  - (d) the procedure for objecting to the proposed decision.
- (4) If less than the appropriate number of relevant creditors or (as the case may be) relevant contributories object to the proposed decision in accordance with the procedure set out in the notice, the creditors or (as the case may be) the contributories are to be treated as having made the proposed decision.
- (5) Otherwise—
- (a) the creditors or (as the case may be) the contributories are to be treated as not having made a decision about the matter in question, and
  - (b) if a decision about that matter is again sought from the creditors or (as the case may be) the contributories, it must be sought using a qualifying decision procedure.
- (6) For the purposes of subsection (4) the “appropriate number” of relevant creditors or relevant contributories is 10% in value of those creditors or contributories.
- (7) “Relevant creditors” means the creditors who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.
- (8) “Relevant contributories” means the contributories who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.
- (9) In this section references to creditors include creditors of a particular class.
- (10) The rules may make further provision about the deemed consent procedure.

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

- C1** Ss. 246ZE, 246ZF modified by The Insolvent Partnerships Order 1994 (S.I. 1994/2421), Sch. 7A (as inserted (6.4.2017) by [The Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) \(Savings\) Regulations 2017](#) (S.I. 2017/540), reg. 1, [Sch. 2 para. 10](#) (with [reg. 4](#)))
- C2** S. 246ZF modified (S.) (6.4.2019) by [The Insolvency \(Scotland\) \(Company Voluntary Arrangements and Administration\) Rules 2018](#) (S.I. 2018/1082), rules 1, [5.7](#)

**246ZG Power to amend sections 246ZE and 246ZF**

- (1) The Secretary of State may by regulations amend section 246ZE so as to change the definition of—
  - (a) the minimum number of creditors;
  - (b) the minimum number of contributories.
- (2) The Secretary of State may by regulations amend section 246ZF so as to change the definition of—
  - (a) the appropriate number of relevant creditors;
  - (b) the appropriate number of relevant contributories.
- (3) Regulations under this section may define the minimum number or the appropriate number by reference to any one or more of—

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- (a) a proportion in value,
- (b) a proportion in number,
- (c) an absolute number,

and the definition may include alternative, cumulative or relative requirements.

- (4) Regulations under subsection (1) may define the minimum number of creditors or contributories by reference to all creditors or contributories, or by reference to creditors or contributories of a particular description.
- (5) Regulations under this section may make provision that will result in section 246ZE or 246ZF having different definitions for different cases, including—
  - (a) for creditors and for contributories,
  - (b) for different kinds of decisions.
- (6) Regulations under this section may make transitional provision.
- (7) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument.
- (8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.]

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