



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART XIII

#### INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

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

- C1** Pt. 13 (ss. 388-398) modified by [S.I. 1990/1392](#), [art. 7](#)  
Pt. 13 (ss. 388-398) modified (1.2.1993) by [Friendly Societies Act 1992](#) (c. 40), ss. 23, [Sch. 10 Pt. I para. 1\(a\)](#) (with ss. 7(5), 93(4)); [S.I. 1993/16](#), art. 2, [Sch. 3](#)
- C2** Pt. 13 (ss. 388-398) applied (with modifications) (1.2.1993) by [Friendly Societies Act 1992](#) (c. 40), ss. 21(1), 22, 23, [Sch. 10 Pt. I para. 1\(a\)](#) (with ss. 7(5), 93(4)); [S.I. 1993/16](#), art. 2, [Sch. 3](#)  
Pt. 13 (ss. 388-398) applied (1.12.1994) by [S.I. 1994/2421](#), [arts. 4\(3\)\(d\)](#), 6(3)(d)  
Pt. 13 (ss. 388-398) applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), [arts. 8\(4\)\(5\)\(8\)\(9\)](#), 10(2)(3)(6), [Sch. 4 Pt. II](#), [Sch. 7](#)  
Pt. 13 applied (with modifications) (5.10.2004) by [Energy Act 2004](#) (c. 20), [ss. 171\(3\)](#), 198; [S.I. 2004/2575](#), [art. 2\(1\)](#), [Sch. 1](#)
- C3** Third Group of Parts (Pts. 12-19) applied to limited liability partnerships (with modifications) (E.W.S.) (6.4.2001) by [S.I. 2001/1090](#), [reg. 5](#), [Schs. 3, 4](#) (as amended (4.3.2004) by [S.I. 2004/355](#), [art. 10](#) and (1.10.2005) by [S.I. 2005/1989](#), [reg. 3](#), [Sch. 2](#) (with [reg. 4](#)))
- C4** Pts. 12-19 applied (with modifications) (6.4.2014) by [The Industrial and Provident Societies and Credit Unions \(Arrangements, Reconstructions and Administration\) Order 2014](#) (S.I. 2014/229), [arts. 1, 4\(c\)](#), [Sch. 3](#)

*Restrictions on unqualified persons acting as liquidator, trustee in bankruptcy, etc.*

### 388 Meaning of “act as insolvency practitioner”

- (1) A person acts as an insolvency practitioner in relation to a company by acting—
- as its liquidator, provisional liquidator, administrator or administrative receiver, or

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- [<sup>F1</sup>(b) where a voluntary arrangement in relation to the company is proposed or approved under Part I, as nominee or supervisor]
- (2) A person acts as an insolvency practitioner in relation to an individual by acting—
- (a) as his trustee in bankruptcy or interim receiver of his property or as [<sup>F2</sup>trustee (or interim trustee)] in the sequestration of his estate; or
  - (b) as trustee under a deed which is <sup>F3</sup>..., in Scotland, a trust deed for his creditor; or
- [<sup>F4</sup>(c) where a voluntary arrangement in relation to the individual is proposed or approved under Part VIII, as nominee or supervisor]
- (d) in the case of a deceased individual to the administration of whose estate this section applies by virtue of an order under section 421 (application of provisions of this Act to insolvent estates of deceased persons), as administrator of that estate.
- [<sup>F5</sup>(2A) A person acts as an insolvency practitioner in relation to an insolvent partnership by acting—
- (a) as its liquidator, provisional liquidator or administrator, or
  - (b) as trustee of the partnership under article 11 of the Insolvent Partnerships Order 1994, or
- [ where a voluntary arrangement in relation to the insolvent partnership is
- <sup>F6</sup>(c) proposed or approved under Part I of the Act, as nominee or supervisor.]]
- [<sup>F7</sup>(2B) In relation to a voluntary arrangement proposed under Part I or VIII, a person acts as nominee if he performs any of the functions conferred on nominees under the Part in question.]
- (3) References in this section to an individual include, except in so far as the context otherwise requires, references <sup>F8</sup>... to any debtor within the meaning of the Bankruptcy (Scotland) Act [<sup>F9</sup>2016].
- (4) In this section—
- “administrative receiver” has the meaning given by section 251 in Part VII;
- [<sup>F10</sup>“company” means—
- (a) a company registered under the Companies Act 2006 in England and Wales or Scotland, or
  - (b) a company that may be wound up under Part 5 of this Act (unregistered companies).]
- [<sup>F11</sup>“sequestration” means sequestration under the Bankruptcy (Scotland) Act 2016]
- [<sup>F12</sup>(5) Nothing in this section applies to anything done by—
- (a) the official receiver; or
  - (b) the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act [<sup>F13</sup>2016]).]
- [<sup>F14</sup>(6) Nothing in this section applies to anything done (whether in the United Kingdom or elsewhere) in relation to insolvency proceedings under the EC Regulation in a member State other than the United Kingdom.]

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### Textual Amendments

- F1** S. 388(1)(b) substituted (1.1.2003) by 2000 c. 39, s. 4(2)(a); S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)
- F2** Words in s. 388(2)(a) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 4(6)(a)
- F3** Words in s. 388(2)(b) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), Sch. 6 para. 2(11)(f) (with Sch. 6 para. 3); S.I. 2015/1732, art. 2(e)(i)
- F4** S. 388(2)(c) substituted (1.1.2003) by 2000 c. 39, s. 4(2)(b); S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)
- F5** S. 388(2A) inserted (1.12.1994) by S.I. 1994/2421, arts. 1(2), 15(1)
- F6** S. 388(2A)(c) substituted (1.1.2003) by S.I. 2002/2708, art. 3 (with art. 11(1)(3))
- F7** S. 388(2B) inserted (1.1.2003) by 2000 c. 39, s. 4(2)(c); S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)
- F8** Words in s. 388(3) omitted (1.12.1994) by virtue of S.I. 1994/2421, art. 15(2)
- F9** Word in s. 388(3) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 4(6)(b)
- F10** S. 388(4): definition 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. 78(2)} (with art. 10, Sch. 1 para. 84)
- F11** Words in s. 388(4) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 4(6)(c)
- F12** S. 388(5) substituted (1.4.1993) by 1993 c. 6, s. 11(1) (with s. 12(6)); S.I. 1993/438, art. 3 (with arts. 4, 5)
- F13** Word in s. 388(5)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 4(6)(d)
- F14** S. 388(6) inserted (31.5.2002) by S.I. 2002/1240, reg. 17

### Modifications etc. (not altering text)

- C5** S. 388 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II
- S. 388 applied (7.2.1994) by 1993 c. 48, s. 119(8) (with s. 6(8)); S.I. 1994/86, art. 2
- S. 388 applied (31.10.1994) by 1994 c. 21, s. 36(7) (with s. 40(7)); S.I. 1994/2553, art. 2
- S. 388 applied (with modifications) (3.2.1995) by 1994 c. 37, ss. 35(4), 69(2) (with s. 66(2))
- S. 388 applied (with modifications) (1.4.1996) by 1995 c. 43, ss. 44, 50(2), Sch. 2 para. 5(3)
- S. 388 applied (with modifications) (E.W.) (13.6.2001 for certain purposes and 1.9.2001 otherwise) by 2001 c. 17, s. 38, Sch. 6 para. 11(6) (with ss. 27(3), 39, 78); S.I. 2001/2161, arts. 2, 3 (as amended by S.I. 2001/2304, art. 2)
- S. 388 applied (with modifications) (S.) (10.12.2001) by 2001 asp 13, s. 20, Sch. 6 para. 11(6) (with s. 29); S.S.I. 2001/456, art. 2
- S. 388 applied (with modifications) (24.3.2003) by 2002 c. 29, ss. 433(4), 458(1)(3); S.I. 2003/333, art. 2, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4))
- S. 388 applied (with modifications) (6.4.2005) by Pensions Act 2004 (c. 35), ss. 121(9)(11), 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (subject to art. 2(12))
- C6** S. 388 applied (with modifications) (*temp.* for a period of 12 months beginning with 22.3.1990: S.I. 1990/675; and for a further period of 12 months beginning with 22.3.1991: S.I. 1991/549, 779) by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), s. 13(8), Sch. 4 para. 33(4)(a)
- C7** S. 388 excluded (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 8
- C8** S. 388 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)

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### 389 Acting without qualification an offence.

- (1) A person who acts as an insolvency practitioner in relation to a company or an individual at a time when he is not qualified to do so is liable to imprisonment or a fine, or to both.

<sup>F15</sup>(1A) .....

- (2) This section does not apply to the official receiver [<sup>F16</sup>or the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act [<sup>F17</sup>2016]).].

#### Textual Amendments

- F15** S. 389(1A) omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), [Sch. 6 para. 18](#); [S.I. 2015/1732](#), art. 2(e)(vi)
- F16** Words in s. 389(2) inserted (1.4.1993) by [1993 c. 6, s. 11\(2\)](#) (with s. 12(6)); [S.I. 1993/438](#), [art. 3](#) (with arts. 4, 5)
- F17** Word in s. 389(2) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 4\(7\)](#)

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

- C9** S. 389 applied with modifications by [S.I. 1986/1999](#), art. 3, [Sch. 1 Pt. II](#)
- C10** S. 389 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](#)
- C11** S. 389 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](#)
- C12** S. 389 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)

### <sup>F18</sup>389A Authorisation of nominees and supervisors.

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#### Textual Amendments

- F18** S. 389A omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), [Sch. 6 para. 19](#); [S.I. 2015/1732](#), art. 2(e)(vi)

### <sup>F19</sup>389B Official receiver as nominee or supervisor

- (1) The official receiver is authorised to act as nominee or supervisor in relation to a voluntary arrangement approved under Part VIII provided that the debtor is an undischarged bankrupt when the arrangement is proposed.
- (2) The Secretary of State may by order repeal the proviso in subsection (1).
- (3) An order under subsection (2)—
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

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#### Textual Amendments

**F19** S. 389B inserted (1.4.2004) by 2002 c. 40, ss. 264(1), 279, Sch. 22 para. 3 (with s. 249(6)); S.I. 2003/2093, art. 2(2), Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

### 390 Persons not qualified to act as insolvency practitioners.

- (1) A person who is not an individual is not qualified to act as an insolvency practitioner.
- <sup>F20</sup>(2) A person is not qualified to act as an insolvency practitioner at any time unless at that time the person is appropriately authorised under section 390A.]
- (3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless—
- (a) there is in force at that time security or, in Scotland, caution for the proper performance of his functions, and
  - (b) that security or caution meets the prescribed requirements with respect to his so acting in relation to that other person.
- (4) A person is not qualified to act as an insolvency practitioner at any time if at that time—
- (a) he has been <sup>F21</sup>made] bankrupt <sup>F22</sup>under this Act or the Insolvency (Northern Ireland) Order 1989] or sequestration of his estate has been awarded and (in either case) he has not been discharged,
  - <sup>F23</sup>(aa) a moratorium period under a debt relief order <sup>F24</sup>under this Act or the Insolvency (Northern Ireland) Order 1989] applies in relation of him,]
  - <sup>F25</sup>(b) he is subject to a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002,]
  - (c) he is a patient within the meaning of <sup>F26</sup>. . . <sup>F27</sup>section 329(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003]]<sup>F28</sup> or has had a guardian appointed to him under the Adults with Incapacity (Scotland) Act 2000 (asp 4).]]<sup>F29</sup>, or
  - (d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as an insolvency practitioner.]
- <sup>F30</sup>(5) A person is not qualified to act as an insolvency practitioner while there is in force in respect of that person—
- (a) a bankruptcy restrictions order under this Act, the Bankruptcy (Scotland) Act 1985 <sup>F31</sup>or the Bankruptcy (Scotland) Act 2016] or the Insolvency (Northern Ireland) Order 1989, or
  - (b) a debt relief restrictions order under this Act or that Order.]

#### Textual Amendments

**F20** S. 390(2) substituted (1.10.2015) by Deregulation Act 2015 (c. 20), ss. 17(2), 115(7); S.I. 2015/1732, art. 2(c)

**F21** Word in s. 390(4)(a) substituted (6.4.2016) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 19 para. 58; S.I. 2016/191, art. 2 (with art. 3)

**F22** Words in s. 390(4)(a) inserted (1.10.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), ss. 115(a)(i), 164(1); S.I. 2015/1689, reg. 2(i) (with Sch. para. 13)

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- F23** S. 390(4)(aa) inserted (24.2.2009 for certain purposes otherwise 6.4.2009) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\), ss. 108\(3\), 148\(5\), Sch. 20 para. 6\(2\)](#); S.I. 2009/382, [art. 2](#)
- F24** Words in s. 390(4)(aa) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 115\(a\)\(ii\), 164\(1\)](#); S.I. 2015/1689, [reg. 2\(i\)](#) (with [Sch. para. 13](#))
- F25** S. 390(4)(b) 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. 78\(4\)](#) (with [art. 10, Sch. 1 para. 84](#))
- F26** Words in s. 390(4)(c) repealed (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), ss. 67\(1\)\(2\), 68, Sch. 6 para. 31\(3\)\(b\), Sch. 7](#) (with [ss. 27-29, 62](#)); S.I. 2007/1897, [art. 2\(1\)\(d\)](#)
- F27** Words in s. 390(4)(c) substituted (27.9.2005 for S. and 5.10.2005 otherwise) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\), art. 2, Sch. 1 para. 18\(3\)](#) and [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/2078\), arts. 1, 15, Sch. 1 para. 3\(3\)](#)
- F28** Words in s. 390(4)(c) inserted (S.) (1.4.2002) by [2000 asp 4, s. 88\(2\), Sch. 5 para. 18](#); S.S.I. 2001/81, [art. 3, Sch. 2](#)
- F29** S. 390(4)(d) and preceding word inserted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), ss. 67\(1\), 68, Sch. 6 para. 31\(3\)\(c\)](#) (with [ss. 27-29, 62](#)); S.I. 2007/1897, [art. 2\(1\)\(d\)](#)
- F30** S. 390(5) substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 115\(b\), 164\(1\)](#); S.I. 2015/1689, [reg. 2\(i\)](#) (with [Sch. para. 13](#))
- F31** Words in s. 390(5)(a) inserted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\), art. 1, Sch. 1 para. 4\(8\)](#)

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

- C13** s.390 applied with modifications by [S.I. 1986/1999, art. 3, Sch. 1 Pt. II](#)
- C14** S. 390 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](#)
- C15** S. 390 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](#)
- C16** S. 390(2)(3) modified by [S.I. 1990/1392, art. 7](#)

### [<sup>F32</sup>390A Authorisation

- (1) In this Part—
- “partial authorisation” means authorisation to act as an insolvency practitioner—
- (a) only in relation to companies, or
- (b) only in relation to individuals;
- “full authorisation” means authorisation to act as an insolvency practitioner in relation to companies, individuals and insolvent partnerships;
- “partially authorised” and “fully authorised” are to be construed accordingly.
- (2) A person is fully authorised under this section to act as an insolvency practitioner—
- (a) by virtue of being a member of a professional body recognised under section 391(1) and being permitted to act as an insolvency practitioner for all purposes by or under the rules of that body, or
- (b) by holding an authorisation granted by the Department of Enterprise, Trade and Investment in Northern Ireland under Article 352 of the Insolvency (Northern Ireland) Order 1989.
- (3) A person is partially authorised under this section to act as an insolvency practitioner—

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- (a) by virtue of being a member of a professional body recognised under section 391(1) and being permitted to act as an insolvency practitioner in relation only to companies or only to individuals by or under the rules of that body, or
- (b) by virtue of being a member of a professional body recognised under section 391(2) and being permitted to act as an insolvency practitioner by or under the rules of that body.

#### Textual Amendments

**F32** Ss. 390A, 390B inserted (1.10.2015) by [Deregulation Act 2015 \(c. 20\)](#), [ss. 17\(3\)](#), [115\(7\)](#); [S.I. 2015/1732](#), [art. 2\(c\)](#)

### **390B Partial authorisation: acting in relation to partnerships**

- (1) A person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not accept an appointment to act in relation to a company if at the time of the appointment the person is aware that the company—
  - (a) is or was a member of a partnership, and
  - (b) has outstanding liabilities in relation to the partnership.
- (2) A person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not accept an appointment to act in relation to an individual if at the time of the appointment the person is aware that the individual—
  - (a) is or was a member of a partnership other than a Scottish partnership, and
  - (b) has outstanding liabilities in relation to the partnership.
- (3) Subject to subsection (9), a person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not continue to act in relation to a company if the person becomes aware that the company—
  - (a) is or was a member of a partnership, and
  - (b) has outstanding liabilities in relation to the partnership,unless the person is granted permission to continue to act by the court.
- (4) Subject to subsection (9), a person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not continue to act in relation to an individual if the person becomes aware that the individual—
  - (a) is or was a member of a partnership other than a Scottish partnership, and
  - (b) has outstanding liabilities in relation to the partnership,unless the person is granted permission to continue to act by the court.
- (5) The court may grant a person permission to continue to act for the purposes of subsection (3) or (4) if it is satisfied that the person is competent to do so.
- (6) A person who is partially authorised and becomes aware as mentioned in subsection (3) or (4) may alternatively apply to the court for an order (a “replacement order”) appointing in his or her place a person who is fully authorised to act as an insolvency practitioner in relation to the company or (as the case may be) the individual.
- (7) A person may apply to the court for permission to continue to act or for a replacement order under—

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- (a) where acting in relation to a company, this section or, if it applies, section 168(5B) (member of insolvent partnership: England and Wales);
  - (b) where acting in relation to an individual, this section or, if it applies, section 303(2C) (member of insolvent partnership: England and Wales).
- (8) A person who acts as an insolvency practitioner in contravention of any of subsections (1) to (4) is guilty of an offence under section 389 (acting without qualification).
- (9) A person does not contravene subsection (3) or (4) by continuing to act as an insolvency practitioner during the permitted period if, within the period of 7 business days beginning with the day after the day on which the person becomes aware as mentioned in the subsection, the person—
- (a) applies to the court for permission to continue to act, or
  - (b) applies to the court for a replacement order.
- (10) For the purposes of subsection (9)—
- “business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain;
  - “permitted period” means the period beginning with the day on which the person became aware as mentioned in subsection (3) or (4) and ending on the earlier of—
    - (a) the expiry of the period of 6 weeks beginning with the day on which the person applies to the court as mentioned in subsection (9)(a) or (b), and
    - (b) the day on which the court disposes of the application (by granting or refusing it);
  - “replacement order” has the meaning given by subsection (6).]

#### **Textual Amendments**

**F32** Ss. 390A, 390B inserted (1.10.2015) by [Deregulation Act 2015 \(c. 20\)](#), **ss. 17(3)**, 115(7); S.I. 2015/1732, art. 2(c)

### **[<sup>F33</sup>391 Recognised professional bodies**

- (1) The Secretary of State may by order, if satisfied that a body meets the requirements of subsection (4), declare the body to be a recognised professional body which is capable of providing its insolvency specialist members with full authorisation or partial authorisation.
- (2) The Secretary of State may by order, if satisfied that a body meets the requirements of subsection (4), declare the body to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (as to which, see section 390A(1)).
- (3) Section 391A makes provision about the making by a body of an application to the Secretary of State for an order under this section.
- (4) The requirements are that—
  - (a) the body regulates (or is going to regulate) the practice of a profession,
  - (b) the body has rules which it is going to maintain and enforce for securing that its insolvency specialist members—
    - (i) are fit and proper persons to act as insolvency practitioners, and



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- (ii) meet acceptable requirements as to education and practical training and experience, and
  - (c) the body's rules and practices for or in connection with authorising persons to act as insolvency practitioners, and its rules and practices for or in connection with regulating persons acting as such, are designed to ensure that the regulatory objectives are met (as to which, see section 391C).
- (5) An order of the Secretary of State under this section has effect from such date as is specified in the order.
- (6) An order under this section may be revoked by an order under section 391L or 391N (and see section 415A(1)(b)).
- (7) In this Part—
- (a) references to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question;
  - (b) references to insolvency specialist members of a professional body are to members who are permitted by or under the rules of the body to act as insolvency practitioners.
- (8) A reference in this Part to a recognised professional body is to a body recognised under this section (and see sections 391L(6) and 391N(5)).

#### Textual Amendments

**F33** Ss 391, 391A substituted for s. 391 (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), **ss. 137(1), 164(1)** (with s. 137(2)); [S.I. 2015/1689](#), reg. 3(a)

### **391A Application for recognition as recognised professional body**

- (1) An application for an order under section 391(1) or (2) must—
- (a) be made to the Secretary of State in such form and manner as the Secretary of State may require,
  - (b) be accompanied by such information as the Secretary of State may require, and
  - (c) be supplemented by such additional information as the Secretary of State may require at any time between receiving the application and determining it.
- (2) The requirements which may be imposed under subsection (1) may differ as between different applications.
- (3) The Secretary of State may require information provided under this section to be in such form, and verified in such manner, as the Secretary of State may specify.
- (4) An application for an order under section 391(1) or (2) must be accompanied by—
- (a) a copy of the applicant's rules,
  - (b) a copy of the applicant's policies and practices, and
  - (c) a copy of any guidance issued by the applicant in writing.
- (5) The reference in subsection (4)(c) to guidance issued by the applicant is a reference to guidance or recommendations which are—

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- (a) issued or made by it which will apply to its insolvency specialist members or to persons seeking to become such members,
  - (b) relevant for the purposes of this Part, and
  - (c) intended to have continuing effect,
- including guidance or recommendations relating to the admission or expulsion of members.
- (6) The Secretary of State may refuse an application for an order under section 391(1) or (2) if the Secretary of State considers that recognition of the body concerned is unnecessary having regard to the existence of one or more other bodies which have been or are likely to be recognised under section 391.
- (7) Subsection (8) applies where the Secretary of State refuses an application for an order under section 391(1) or (2); and it applies regardless of whether the application is refused on the ground mentioned in subsection (6), because the Secretary of State is not satisfied as mentioned in section 391(1) or (2) or because a fee has not been paid (see section 415A(1)(b)).
- (8) The Secretary of State must give the applicant a written notice of the Secretary of State's decision; and the notice must set out the reasons for refusing the application.]

#### Textual Amendments

**F33** Ss 391, 391A substituted for s. 391 (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), **ss. 137(1), 164(1)** (with s. 137(2)); S.I. 2015/1689, reg. 3(a)

### *[<sup>F34</sup>Regulatory objectives*

#### Textual Amendments

**F34** Ss. 391B, 391C and cross-heading inserted (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), **ss. 138(1), 164(1)**; S.I. 2015/1689, reg. 3(a)

### **391B Application of regulatory objectives**

- (1) In discharging regulatory functions, a recognised professional body must, so far as is reasonably practicable, act in a way—
- (a) which is compatible with the regulatory objectives, and
  - (b) which the body considers most appropriate for the purpose of meeting those objectives.
- (2) In discharging functions under this Part, the Secretary of State must have regard to the regulatory objectives.

### **391C Meaning of “regulatory functions” and “regulatory objectives”**

- (1) This section has effect for the purposes of this Part.

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- (2) “Regulatory functions”, in relation to a recognised professional body, means any functions the body has—
- (a) under or in relation to its arrangements for or in connection with—
    - (i) authorising persons to act as insolvency practitioners, or
    - (ii) regulating persons acting as insolvency practitioners, or
  - (b) in connection with the making or alteration of those arrangements.
- (3) “Regulatory objectives” means the objectives of—
- (a) having a system of regulating persons acting as insolvency practitioners that—
    - (i) secures fair treatment for persons affected by their acts and omissions,
    - (ii) reflects the regulatory principles, and
    - (iii) ensures consistent outcomes,
  - (b) encouraging an independent and competitive insolvency-practitioner profession whose members—
    - (i) provide high quality services at a cost to the recipient which is fair and reasonable,
    - (ii) act transparently and with integrity, and
    - (iii) consider the interests of all creditors in any particular case,
  - (c) promoting the maximisation of the value of returns to creditors and promptness in making those returns, and
  - (d) protecting and promoting the public interest.
- (4) In subsection (3)(a), “regulatory principles” means—
- (a) the principles that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
  - (b) any other principle appearing to the body concerned (in the case of the duty under section 391B(1)), or to the Secretary of State (in the case of the duty under section 391B(2)), to lead to best regulatory practice.]

*[<sup>F35</sup>Oversight of recognised professional bodies*

#### Textual Amendments

**F35** Ss. 391D-391K and cross-heading inserted (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), [ss. 139\(1\)](#), 164(1); S.I. 2015/1689, [reg. 3\(a\)](#)

### 391D Directions

- (1) This section applies if the Secretary of State is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.
- (2) The Secretary of State may, if in all the circumstances of the case satisfied that it is appropriate to do so, direct the body to take such steps as the Secretary of State considers will counter the adverse impact, mitigate its effect or prevent its occurrence or recurrence.

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- (3) A direction under this section may require a recognised professional body—
  - (a) to take only such steps as it has power to take under its regulatory arrangements;
  - (b) to take steps with a view to the modification of any part of its regulatory arrangements.
- (4) A direction under this section may require a recognised professional body—
  - (a) to take steps with a view to the institution of, or otherwise in respect of, specific regulatory proceedings;
  - (b) to take steps in respect of all, or a specified class of, such proceedings.
- (5) For the purposes of this section, a direction to take steps includes a direction which requires a recognised professional body to refrain from taking a particular course of action.
- (6) In this section “regulatory arrangements”, in relation to a recognised professional body, means the arrangements that the body has for or in connection with—
  - (a) authorising persons to act as insolvency practitioners, or
  - (b) regulating persons acting as insolvency practitioners.

### **391E Directions: procedure**

- (1) Before giving a recognised professional body a direction under section 391D, the Secretary of State must give the body a notice accompanied by a draft of the proposed direction.
- (2) The notice under subsection (1) must—
  - (a) state that the Secretary of State proposes to give the body a direction in the form of the accompanying draft,
  - (b) specify why the Secretary of State has reached the conclusions mentioned in section 391D(1) and (2), and
  - (c) specify a period within which the body may make written representations with respect to the proposal.
- (3) The period specified under subsection (2)(c)—
  - (a) must begin with the date on which the notice is given to the body, and
  - (b) must not be less than 28 days.
- (4) On the expiry of that period, the Secretary of State must decide whether to give the body the proposed direction.
- (5) The Secretary of State must give notice of that decision to the body.
- (6) Where the Secretary of State decides to give the proposed direction, the notice under subsection (5) must—
  - (a) contain the direction,
  - (b) state the time at which the direction is to take effect, and
  - (c) specify the Secretary of State's reasons for the decision to give the direction.
- (7) Where the Secretary of State decides to give the proposed direction, the Secretary of State must publish the notice under subsection (5); but this subsection does not apply to a direction to take any step with a view to the institution of, or otherwise in respect of, regulatory proceedings against an individual.

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- (8) The Secretary of State may revoke a direction under section 391D; and, where doing so, the Secretary of State—
- (a) must give the body to which the direction was given notice of the revocation, and
  - (b) must publish the notice and, if the notice under subsection (5) was published under subsection (7), must do so (if possible) in the same manner as that in which that notice was published.

### **391F Financial penalty**

- (1) This section applies if the Secretary of State is satisfied—
- (a) that a recognised professional body has failed to comply with a requirement to which this section applies, and
  - (b) that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the body.
- (2) This section applies to a requirement imposed on the recognised professional body—
- (a) by a direction given under section 391D, or
  - (b) by a provision of this Act or of subordinate legislation under this Act.
- (3) The Secretary of State may impose a financial penalty, in respect of the failure, of such amount as the Secretary of State considers appropriate.
- (4) In deciding what amount is appropriate, the Secretary of State—
- (a) must have regard to the nature of the requirement which has not been complied with, and
  - (b) must not take into account the Secretary of State's costs in discharging functions under this Part.
- (5) A financial penalty under this section is payable to the Secretary of State; and sums received by the Secretary of State in respect of a financial penalty under this section (including by way of interest) are to be paid into the Consolidated Fund.
- (6) In sections 391G to 391I, “penalty” means a financial penalty under this section.

### **391G Financial penalty: procedure**

- (1) Before imposing a penalty on a recognised professional body, the Secretary of State must give notice to the body—
- (a) stating that the Secretary of State proposes to impose a penalty and the amount of the proposed penalty,
  - (b) specifying the requirement in question,
  - (c) stating why the Secretary of State is satisfied as mentioned in section 391F(1), and
  - (d) specifying a period within which the body may make written representations with respect to the proposal.
- (2) The period specified under subsection (1)(d)—
- (a) must begin with the date on which the notice is given to the body, and
  - (b) must not be less than 28 days.
- (3) On the expiry of that period, the Secretary of State must decide—

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- (a) whether to impose a penalty, and
  - (b) whether the penalty should be the amount stated in the notice or a reduced amount.
- (4) The Secretary of State must give notice of the decision to the body.
- (5) Where the Secretary of State decides to impose a penalty, the notice under subsection (4) must—
- (a) state that the Secretary of State has imposed a penalty on the body and its amount,
  - (b) specify the requirement in question and state—
    - (i) why it appears to the Secretary of State that the requirement has not been complied with, or
    - (ii) where, by that time, the requirement has been complied with, why it appeared to the Secretary of State when giving the notice under subsection (1) that the requirement had not been complied with, and
  - (c) specify a time by which the penalty is required to be paid.
- (6) The time specified under subsection (5)(c) must be at least three months after the date on which the notice under subsection (4) is given to the body.
- (7) Where the Secretary of State decides to impose a penalty, the Secretary of State must publish the notice under subsection (4).
- (8) The Secretary of State may rescind or reduce a penalty imposed on a recognised professional body; and, where doing so, the Secretary of State—
- (a) must give the body notice that the penalty has been rescinded or reduced to the amount stated in the notice, and
  - (b) must publish the notice; and it must (if possible) be published in the same manner as that in which the notice under subsection (4) was published.

### **391H Appeal against financial penalty**

- (1) A recognised professional body on which a penalty is imposed may appeal to the court on one or more of the appeal grounds.
- (2) The appeal grounds are—
- (a) that the imposition of the penalty was not within the Secretary of State's power under section 391F;
  - (b) that the requirement in respect of which the penalty was imposed had been complied with before the notice under section 391G(1) was given;
  - (c) that the requirements of section 391G have not been complied with in relation to the imposition of the penalty and the interests of the body have been substantially prejudiced as a result;
  - (d) that the amount of the penalty is unreasonable;
  - (e) that it was unreasonable of the Secretary of State to require the penalty imposed to be paid by the time specified in the notice under section 391G(5) (c).
- (3) An appeal under this section must be made within the period of three months beginning with the day on which the notice under section 391G(4) in respect of the penalty is given to the body.

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- (4) On an appeal under this section the court may—
  - (a) quash the penalty,
  - (b) substitute a penalty of such lesser amount as the court considers appropriate, or
  - (c) in the case of the appeal ground in subsection (2)(e), substitute for the time imposed by the Secretary of State a different time.
- (5) Where the court substitutes a penalty of a lesser amount, it may require the payment of interest on the substituted penalty from such time, and at such rate, as it considers just and equitable.
- (6) Where the court substitutes a later time for the time specified in the notice under section 391G(5)(c), it may require the payment of interest on the penalty from the substituted time at such rate as it considers just and equitable.
- (7) Where the court dismisses the appeal, it may require the payment of interest on the penalty from the time specified in the notice under section 391G(5)(c) at such rate as it considers just and equitable.
- (8) In this section, “the court” means the High Court or, in Scotland, the Court of Session.

### **391I Recovery of financial penalties**

- (1) If the whole or part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (but this is subject to any requirement imposed by the court under section 391H(5), (6) or (7)).
- (2) If an appeal is made under section 391H in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn.
- (3) Subsection (4) applies where the whole or part of a penalty has not been paid by the time it is required to be paid and—
  - (a) no appeal relating to the penalty has been made under section 391H during the period within which an appeal may be made under that section, or
  - (b) an appeal has been made under that section and determined or withdrawn.
- (4) The Secretary of State may recover from the recognised professional body in question, as a debt due to the Secretary of State, any of the penalty and any interest which has not been paid.

### **391J Reprimand**

- (1) This section applies if the Secretary of State is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.
- (2) The Secretary of State may, if in all the circumstances of the case satisfied that it is appropriate to do so, publish a statement reprimanding the body for the act or omission (or series of acts or omissions).

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### **391K Reprimand: procedure**

- (1) If the Secretary of State proposes to publish a statement under section 391J in respect of a recognised professional body, it must give the body a notice—
  - (a) stating that the Secretary of State proposes to publish such a statement and setting out the terms of the proposed statement,
  - (b) specifying the acts or omissions to which the proposed statement relates, and
  - (c) specifying a period within which the body may make written representations with respect to the proposal.
- (2) The period specified under subsection (1)(c)—
  - (a) must begin with the date on which the notice is given to the body, and
  - (b) must not be less than 28 days.
- (3) On the expiry of that period, the Secretary of State must decide whether to publish the statement.
- (4) The Secretary of State may vary the proposed statement; but before doing so, the Secretary of State must give the body notice—
  - (a) setting out the proposed variation and the reasons for it, and
  - (b) specifying a period within which the body may make written representations with respect to the proposed variation.
- (5) The period specified under subsection (4)(b)—
  - (a) must begin with the date on which the notice is given to the body, and
  - (b) must not be less than 28 days.
- (6) On the expiry of that period, the Secretary of State must decide whether to publish the statement as varied.]

*[<sup>F36</sup>Revocation etc of recognition*

#### **Textual Amendments**

**F36** Ss. 391L-391N and cross-heading inserted (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), **ss. 140(1), 164(1)**; S.I. 2015/1689, reg. 3(a)

### **391L Revocation of recognition at instigation of Secretary of State**

- (1) An order under section 391(1) or (2) in relation to a recognised professional body may be revoked by the Secretary of State by order if the Secretary of State is satisfied that—
  - (a) an act or omission of the body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives, and
  - (b) it is appropriate in all the circumstances of the case to revoke the body's recognition under section 391.
- (2) If the condition set out in subsection (3) is met, an order under section 391(1) in relation to a recognised professional body may be revoked by the Secretary of State by an order which also declares the body concerned to be a recognised professional



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body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (see section 390A(1)).

- (3) The condition is that the Secretary of State is satisfied—
  - (a) as mentioned in subsection (1)(a), and
  - (b) that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.
- (4) In this Part—
  - (a) an order under subsection (1) is referred to as a “revocation order”;
  - (b) an order under subsection (2) is referred to as a “partial revocation order”.
- (5) A revocation order or partial revocation order—
  - (a) has effect from such date as is specified in the order, and
  - (b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.
- (6) A partial revocation order has effect as if it were an order made under section 391(2).

### **391M Orders under section 391L: procedure**

- (1) Before making a revocation order or partial revocation order in relation to a recognised professional body, the Secretary of State must give notice to the body—
  - (a) stating that the Secretary of State proposes to make the order and the terms of the proposed order,
  - (b) specifying the Secretary of State's reasons for proposing to make the order, and
  - (c) specifying a period within which the body, members of the body or other persons likely to be affected by the proposal may make written representations with respect to it.
- (2) Where the Secretary of State gives a notice under subsection (1), the Secretary of State must publish the notice on the same day.
- (3) The period specified under subsection (1)(c)—
  - (a) must begin with the date on which the notice is given to the body, and
  - (b) must not be less than 28 days.
- (4) On the expiry of that period, the Secretary of State must decide whether to make the revocation order or (as the case may be) partial revocation order in relation to the body.
- (5) The Secretary of State must give notice of the decision to the body.
- (6) Where the Secretary of State decides to make the order, the notice under subsection (5) must specify—
  - (a) when the order is to take effect, and
  - (b) the Secretary of State's reasons for making the order.
- (7) A notice under subsection (5) must be published; and it must (if possible) be published in the same manner as that in which the notice under subsection (1) was published.

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### **391N Revocation of recognition at request of body**

- (1) An order under section 391(1) or (2) in relation to a recognised professional body may be revoked by the Secretary of State by order if—
  - (a) the body has requested that an order be made under this subsection, and
  - (b) the Secretary of State is satisfied that it is appropriate in all the circumstances of the case to revoke the body's recognition under section 391.
- (2) An order under section 391(1) in relation to a recognised professional body may be revoked by the Secretary of State by an order which also declares the body concerned to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order (see section 390A(1)) if—
  - (a) the body has requested that an order be made under this subsection, and
  - (b) the Secretary of State is satisfied that it is appropriate in all the circumstances of the case for the body to be declared to be a recognised professional body which is capable of providing its insolvency specialist members with partial authorisation only of the kind specified in the order.
- (3) Where the Secretary of State decides to make an order under this section the Secretary of State must publish a notice specifying—
  - (a) when the order is to take effect, and
  - (b) the Secretary of State's reasons for making the order.
- (4) An order under this section—
  - (a) has effect from such date as is specified in the order, and
  - (b) may make provision for members of the body in question to continue to be treated as fully or partially authorised (as the case may be) to act as insolvency practitioners for a specified period after the order takes effect.
- (5) An order under subsection (2) has effect as if it were an order made under section 391(2).]

*[<sup>F37</sup>Court sanction of insolvency practitioners in public interest cases*

#### **Textual Amendments**

**F37** Ss. 391O-391R and cross-heading inserted (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), **ss. 141**, 164(1); [S.I. 2015/1689](#), reg. 3(a) (with [Sch. para. 18](#))

### **391O Direct sanctions orders**

- (1) For the purposes of this Part a “direct sanctions order” is an order made by the court against a person who is acting as an insolvency practitioner which—
  - (a) declares that the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;
  - (b) declares that the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the order;

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- (c) declares that the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the order or until such time as the requirements so specified are complied with;
    - (d) requires the person to comply with such other requirements as may be specified in the order while acting as an insolvency practitioner;
    - (e) requires the person to make such contribution as may be specified in the order to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.
- (2) Where the court makes a direct sanctions order, the relevant recognised professional body must take all necessary steps to give effect to the order.
- (3) A direct sanctions order must not be made against a person whose authorisation to act as an insolvency practitioner was granted by the Department of Enterprise, Trade and Investment in Northern Ireland (see section 390A(2)(b)).
- (4) A direct sanctions order must not specify a contribution as mentioned in subsection (1) (e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.
- (5) In this section and section 391P—
  - “the court” means the High Court or, in Scotland, the Court of Session;
  - “relevant recognised professional body”, in relation to a person who is acting as an insolvency practitioner, means the recognised professional body by virtue of which the person is authorised so to act.

### **391P Application for, and power to make, direct sanctions order**

- (1) The Secretary of State may apply to the court for a direct sanctions order to be made against a person if it appears to the Secretary of State that it would be in the public interest for the order to be made.
- (2) The Secretary of State must send a copy of the application to the relevant recognised professional body.
- (3) The court may make a direct sanctions order against a person where, on an application under this section, the court is satisfied that condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person.
- (4) The conditions are set out in section 391Q.
- (5) In deciding whether to make a direct sanctions order against a person the court must have regard to the extent to which—
  - (a) the relevant recognised professional body has taken action against the person in respect of the failure mentioned in condition 1, and
  - (b) that action is sufficient to address the failure.

### **391Q Direct sanctions order: conditions**

- (1) Condition 1 is that the person, in acting as an insolvency practitioner or in connection with any appointment as such, has failed to comply with—
  - (a) a requirement imposed by the rules of the relevant recognised professional body;

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- (b) any standards, or code of ethics, for the insolvency-practitioner profession adopted from time to time by the relevant recognised professional body.
- (2) Condition 2 is that the person—
- (a) is not a fit and proper person to act as an insolvency practitioner;
  - (b) is a fit and proper person to act as an insolvency practitioner only in relation to companies, but the person's authorisation is not so limited; or
  - (c) is a fit and proper person to act as an insolvency practitioner only in relation to individuals, but the person's authorisation is not so limited.
- (3) Condition 3 is that it is appropriate for the person's authorisation to act as an insolvency practitioner to be suspended for a period or until one or more requirements are complied with.
- (4) Condition 4 is that it is appropriate to impose other restrictions on the person acting as an insolvency practitioner.
- (5) Condition 5 is that loss has been suffered as a result of the failure mentioned in condition 1 by one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.
- (6) In this section “relevant recognised professional body” has the same meaning as in section 391O.

### **391R Direct sanctions direction instead of order**

- (1) The Secretary of State may give a direction (a “direct sanctions direction”) in relation to a person acting as an insolvency practitioner to the relevant recognised professional body (instead of applying, or continuing with an application, for a direct sanctions order against the person) if the Secretary of State is satisfied that—
- (a) condition 1 and at least one of conditions 2, 3, 4 and 5 are met in relation to the person (see section 391Q), and
  - (b) it is in the public interest for the direction to be given.
- (2) But the Secretary of State may not give a direct sanctions direction in relation to a person without that person's consent.
- (3) A direct sanctions direction may require the relevant recognised professional body to take all necessary steps to secure that—
- (a) the person is no longer authorised (whether fully or partially) to act as an insolvency practitioner;
  - (b) the person is no longer fully authorised to act as an insolvency practitioner but remains partially authorised to act as such either in relation to companies or individuals, as specified in the direction;
  - (c) the person's authorisation to act as an insolvency practitioner is suspended for the period specified in the direction or until such time as the requirements so specified are complied with;
  - (d) the person must comply with such other requirements as may be specified in the direction while acting as an insolvency practitioner;
  - (e) the person makes such contribution as may be specified in the direction to one or more creditors of a company, individual or insolvent partnership in relation to which the person is acting or has acted as an insolvency practitioner.

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- (4) A direct sanctions direction must not be given in relation to a person whose authorisation to act as an insolvency practitioner was granted by the Department of Enterprise, Trade and Investment in Northern Ireland (see section 390A(2)(b)).
- (5) A direct sanctions direction must not specify a contribution as mentioned in subsection (3)(e) which is more than the remuneration that the person has received or will receive in respect of acting as an insolvency practitioner in the case.
- (6) In this section “relevant recognised professional body” has the same meaning as in section 391O.]

### *F<sup>38</sup>General*

#### **Textual Amendments**

**F38** S. 391S and cross-heading inserted (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), **ss. 142, 164(1)**; S.I. 2015/1689, reg. 3(a)

#### **391S Power for Secretary of State to obtain information**

- (1) A person mentioned in subsection (2) must give the Secretary of State such information as the Secretary of State may by notice in writing require for the exercise of the Secretary of State's functions under this Part.
- (2) Those persons are—
  - (a) a recognised professional body;
  - (b) any individual who is or has been authorised under section 390A to act as an insolvency practitioner;
  - (c) any person who is connected to such an individual.
- (3) A person is connected to an individual who is or has been authorised to act as an insolvency practitioner if, at any time during the authorisation—
  - (a) the person was an employee of the individual;
  - (b) the person acted on behalf of the individual in any other way;
  - (c) the person employed the individual;
  - (d) the person was a fellow employee of the individual's employer;
  - (e) in a case where the individual was employed by a firm, partnership or company, the person was a member of the firm or partnership or (as the case may be) a director of the company.
- (4) In imposing a requirement under subsection (1) the Secretary of State may specify—
  - (a) the time period within which the information in question is to be given, and
  - (b) the manner in which it is to be verified.]

#### **[<sup>F39</sup>391T Compliance orders**

- (1) If at any time it appears to the Secretary of State that—
  - (a) a recognised professional body has failed to comply with a requirement imposed on it by or by virtue of this Part, or

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- (b) any other person has failed to comply with a requirement imposed on the person by virtue of section 391S,  
 the Secretary of State may make an application to the court.
- (2) If, on an application under this section, the court decides that the body or other person has failed to comply with the requirement in question, it may order the body or person to take such steps as the court considers will secure that the requirement is complied with.
- (3) In this section, “the court” means the High Court or, in Scotland, the Court of Session.]

**Textual Amendments**

**F39** S. 391T inserted (1.10.2015 immediately after 2015 c. 20, s. 17 comes into force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), **ss. 143**, 164(1); S.I. 2015/1689, reg. 3(a)

*The requisite qualification, and the means of obtaining it*

**<sup>F40</sup>392 Authorisation by competent authority.**

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**Textual Amendments**

**F40** Ss. 392-398 omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), **Sch. 6 para. 21** (with [Sch. 6 para. 23](#)); S.I. 2015/1732, art. 2(e)(vi)

**<sup>F40</sup>393 Grant, refusal and withdrawal of authorisation.**

.....

**Textual Amendments**

**F40** Ss. 392-398 omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), **Sch. 6 para. 21** (with [Sch. 6 para. 23](#)); S.I. 2015/1732, art. 2(e)(vi)

**<sup>F40</sup>394 Notices.**

.....

**Textual Amendments**

**F40** Ss. 392-398 omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), **Sch. 6 para. 21** (with [Sch. 6 para. 23](#)); S.I. 2015/1732, art. 2(e)(vi)

**<sup>F40</sup>395 Right to make representations.**

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**Textual Amendments**

**F40** Ss. 392-398 omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), [Sch. 6 para. 21](#) (with [Sch. 6 para. 23](#)); [S.I. 2015/1732](#), art. 2(e)(vi)

**<sup>F40</sup>396 Reference to Tribunal.**

.....

**Textual Amendments**

**F40** Ss. 392-398 omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), [Sch. 6 para. 21](#) (with [Sch. 6 para. 23](#)); [S.I. 2015/1732](#), art. 2(e)(vi)

**<sup>F40</sup>397 Action of Tribunal on reference.**

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**Textual Amendments**

**F40** Ss. 392-398 omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), [Sch. 6 para. 21](#) (with [Sch. 6 para. 23](#)); [S.I. 2015/1732](#), art. 2(e)(vi)

**<sup>F40</sup>398 Refusal or withdrawal without reference to Tribunal.**

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**Textual Amendments**

**F40** Ss. 392-398 omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), [Sch. 6 para. 21](#) (with [Sch. 6 para. 23](#)); [S.I. 2015/1732](#), art. 2(e)(vi)

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