



Insolvency Act 1986

1986 CHAPTER 45

PART XIII

INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

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—
 - (a) as its liquidator, provisional liquidator, administrator or administrative receiver, or
 - [^{F1}(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 permanent or interim trustee in the sequestration of his estate; or
 - (b) as trustee under a deed which is a deed of arrangement made for the benefit of his creditors or, in Scotland, a trust deed for his creditor; or
 - [^{F2}(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.
- [^{F3}(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

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- [where a voluntary arrangement in relation to the insolvent partnership is
F4(c) proposed or approved under Part I of the Act, as nominee or supervisor.]]
- [F5(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 F6. . . to any debtor within the meaning of the M1 Bankruptcy (Scotland) Act 1985.
- (4) In this section—
“administrative receiver” has the meaning given by section 251 in Part VII;
[F7“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).]
“interim trustee” and “permanent trustee” mean the same as in the Bankruptcy (Scotland) Act 1985.
- [F8(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 1985).]
- [F9(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.]

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** 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)
- F3** S. 388(2A) inserted (1.12.1994) by S.I. 1994/2421, arts. 1(2), 15(1)
- F4** S. 388(2A)(c) substituted (1.1.2003) by S.I. 2002/2708, art. 3 (with art. 11(1)(3))
- F5** 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)
- F6** Words in s. 388(3) omitted (1.12.1994) by virtue of S.I. 1994/2421, art. 15(2)
- F7** 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)
- F8** 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)
- F9** S. 388(6) inserted (31.5.2002) by S.I. 2002/1240, reg. 17

Modifications etc. (not altering text)

- C1** 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))

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- 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)**)
- C2** 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)**
- C3** S. 388 excluded (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 8**

Marginal Citations

M1 1985 c. 66.

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.

[^{F10}(1A) This section is subject to section 389A.]

- (2) This section does not apply to the official receiver [^{F11}or the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985)].

Textual Amendments

- F10** S. 389(1A) inserted (1.1.2003) by 2000 c. 39, s. 4(3); S.I. 2002/2711, **art. 2** (subject to transitional provisions in **arts. 3-5**)
- F11** 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**)

Modifications etc. (not altering text)

- C4** S. 389 applied with modifications by S.I. 1986/1999, **art. 3, Sch. 1 Pt. II**
- C5** 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**
- C6** 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**

[^{F12}389A Authorisation of nominees and supervisors.

- (1) Section 389 does not apply to a person acting, in relation to a voluntary arrangement proposed or approved under Part I or Part VIII, as nominee or supervisor if he is authorised so to act.

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- (2) For the purposes of subsection (1) and those Parts, an individual to whom subsection (3) does not apply is authorised to act as nominee or supervisor in relation to such an arrangement if—
- (a) he is a member of a body recognised for the purpose by the Secretary of State [^{F13} or of a body recognised for the purpose of Article 348A(2)(a) of the Insolvency (Northern Ireland) Order 1989 by the Department of Enterprise, Trade and Investment for Northern Ireland], and
 - (b) there is in force security (in Scotland, caution) for the proper performance of his functions and that security or caution meets the prescribed requirements with respect to his so acting in relation to the arrangement.
- (3) This subsection applies to a person if—
- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
 - [^{F14}(aa) a moratorium period under a debt relief order applies in relation to him (under Part 7A of this Act),]
 - [^{F15}(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 ^{F16} . . . [^{F17}section 329(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003].^{F18}, or
 - (d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as nominee or supervisor]
- (4) The Secretary of State may by order declare a body which appears to him to fall within subsection (5) to be a recognised body for the purposes of subsection (2)(a).
- (5) A body may be recognised if it maintains and enforces rules for securing that its members—
- (a) are fit and proper persons to act as nominees or supervisors, and
 - (b) meet acceptable requirements as to education and practical training and experience.
- (6) For the purposes of this section, a person is a member of a body only if he is subject to its rules when acting as nominee or supervisor (whether or not he is in fact a member of the body).
- (7) An order made under subsection (4) in relation to a body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within subsection (5).
- (8) An order of the Secretary of State under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision for members of the body in question to continue to be treated as members of a recognised body for a specified period after the revocation takes effect.]

Textual Amendments

F12 S. 389A inserted (1.1.2003) by 2000 c. 39, s. 4(4); S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)

F13 Words in s. 389A(2)(a) inserted (28.12.2009) by The Provision of Services (Insolvency Practitioners) Regulations 2009 (S.I. 2009/3081), reg. 2(2)

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- F14** S. 389A(3)(aa) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 23** (with art. 5)
- F15** S. 389A(3)(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(3)} (with art. 10, Sch. 1 para. 84)
- F16** Words in s. 389A(3)(c) repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(1)(2), 68, Sch. 6 para. 31(2)(b), **Sch. 7** (with ss. 27-29, 62); S.I. 2007/1897, **art. 2(1)(d)**
- F17** Words in s. 389A(3)(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(2)** 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(2)**
- F18** S. 389A(3)(d) and preceding word inserted (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(1), 68, **Sch. 6 para. 31(2)(c)** (with ss. 27-29, 62); S.I. 2007/1897, **art. 2(1)(d)**

[^{F19}**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.]

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))

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