



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART XIII

#### INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

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

#### **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.
- (2) A person is not qualified to act as an insolvency practitioner at any time unless at that time—
  - (a) he is authorised so to act by virtue of membership of a professional body recognised under section 391 below, being permitted so to act by or under the rules of that body, or
  - (b) he holds an authorisation granted by a competent authority under section 393<sup>[F1]</sup>; or
  - (c) he holds an authorisation granted by the Department of Enterprise, Trade and Investment for Northern Ireland under Article 352 of the Insolvency (Northern Ireland) Order 1989.]
- (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 adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
  - [<sup>F2</sup>(aa) a moratorium period under a debt relief order applies in relation of him,]

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- [<sup>F3</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>F4</sup>. . . [<sup>F5</sup>section 329(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003][<sup>F6</sup>or has had a guardian appointed to him under the Adults with Incapacity (Scotland) Act 2000 (asp 4).][<sup>F7</sup>, or
- (d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as an insolvency practitioner.]

[<sup>F8</sup>(5) A person is not qualified to act as an insolvency practitioner while a bankruptcy restrictions order [<sup>F9</sup>or a debt relief restrictions order] is in force in respect of him.]

#### Textual Amendments

- F1** S. 390(2)(c) and preceding word inserted (28.12.2009) by [The Provision of Services \(Insolvency Practitioners\) Regulations 2009 \(S.I. 2009/3081\)](#), **reg. 2(3)**
- F2** 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**
- F3** 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)
- F4** 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)**
- F5** 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)**
- F6** 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**
- F7** 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)**
- F8** S. 390(5) added (1.4.2004) by [2002 c. 40](#), ss. 257(3), 279, Sch. 21 para. 4 (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))
- F9** Words in s. 390(5) 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(3)**; S.I. 2009/382, **art. 2**

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

- C1** s.390 applied with modifications by [S.I. 1986/1999](#), art. 3, **Sch. 1 Pt. II**
- C2** 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
- C3** 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
- C4** S. 390(2)(3) modified by [S.I. 1990/1392](#), **art. 7**

### 391 Recognised professional bodies.

- (1) The Secretary of State may by order declare a body which appears to him to fall within subsection (2) below to be a recognised professional body for the purposes of this section.

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- (2) A body may be recognised if it regulates the practice of a profession and maintains and enforces rules for securing that such of its members as are permitted by or under the rules to act as insolvency practitioners—
- (a) are fit and proper persons so to act, and
  - (b) meet acceptable requirements as to education and practical training and experience.
- (3) 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.
- The reference in section 390(2) above to membership of a professional body recognised under this section is to be read accordingly.
- (4) An order made under subsection (1) in relation to a professional body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within subsection (2).
- (5) 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 whereby members of the body in question continue to be treated as authorised to act as insolvency practitioners for a specified period after the revocation takes effect.

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

- C5** S. 391 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**
- C6** S. 391 extended (22.5.2000) by S.I. 2000/1119, reg. 37, **Sch. 4 para. 12**  
S. 391 extended (S.) (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(2), **Sch. 2**
- C7** S. 391 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**
- C8** S. 391 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**

**392 Authorisation by competent authority.**

- (1) Application may be made to a competent authority for authorisation to act as an insolvency practitioner.
- (2) The competent authorities for this purpose are—
- (a) in relation to a case of any description specified in directions given by the Secretary of State, the body or person so specified in relation to cases of that description, and
  - (b) in relation to a case not falling within paragraph (a), the Secretary of State.
- (3) The application—
- (a) shall be made in such manner as the competent authority may direct,
  - (b) shall contain or be accompanied by such information as that authority may reasonably require for the purpose of determining the application, and
  - (c) shall be accompanied by the prescribed fee;

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and the authority may direct that notice of the making of the application shall be published in such manner as may be specified in the direction.

- (4) At any time after receiving the application and before determining it the authority may require the applicant to furnish additional information.
- (5) Directions and requirements given or imposed under subsection (3) or (4) may differ as between different applications.
- (6) Any information to be furnished to the competent authority under this section shall, if it so requires, be in such form or verified in such manner as it may specify.
- (7) An application may be withdrawn before it is granted or refused.
- (8) Any sums received under this section by a competent authority other than the Secretary of State may be retained by the authority; and any sums so received by the Secretary of State shall be paid into the Consolidated Fund.
- [<sup>F10</sup>(9) Subsection (3)(c) shall not have effect in respect of an application made to the Secretary of State (but this subsection is without prejudice to section 415A).]

#### Textual Amendments

**F10** S. 392(9) added (1.4.2004) by 2002 c. 40, ss. 270(3), 279 (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 and S.I. 2003/3340, art. 2)

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

**C9** S. 392 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

### 393 Grant, refusal and withdrawal of authorisation.

- (1) The competent authority may, on an application duly made in accordance with section 392 and after being furnished with all such information as it may require under that section, grant or refuse the application.
- (2) The authority shall grant the application if it appears to it from the information furnished by the applicant and having regard to such other information, if any, as it may have—
  - (a) that the applicant is a fit and proper person to act as an insolvency practitioner, and
  - (b) that the applicant meets the prescribed requirements with respect to education and practical training and experience.
- [<sup>F11</sup>(3) An authorisation granted under this section, if not previously withdrawn, continues in force for one year.
- (3A) But where an authorisation is granted under this section the competent authority must, before its expiry (and without a further application made in accordance with section 392) grant a further authorisation under this section taking effect immediately after the expiry of the previous authorisation, unless it appears to the authority that the subject of the authorisation no longer complies with subsection (2)(a) and (b).]
- (4) An authorisation [<sup>F12</sup>granted under this section] may be withdrawn by the competent authority if it appears to it—

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- (a) that the holder of the authorisation is no longer a fit and proper person to act as an insolvency practitioner, or
  - (b) without prejudice to paragraph (a), that the holder—
    - (i) has failed to comply with any provision of this Part or of any regulations made under this Part or Part XV, or
    - (ii) in purported compliance with any such provision, has furnished the competent authority with false, inaccurate or misleading information.
- (5) An authorisation granted under this section may be withdrawn by the competent authority at the request or with the consent of the holder of the authorisation.
- [<sup>F13</sup>(6) Where an authorisation granted under this section is withdrawn—
- (a) subsection (3A) does not require a further authorisation to be granted, or
  - (b) if a further authorisation has already been granted at the time of the withdrawal, the further authorisation is also withdrawn.]

#### Textual Amendments

- F11** S. 393(3)(3A) substituted for s. 393(3) (28.12.2009) by [The Provision of Services \(Insolvency Practitioners\) Regulations 2009 \(S.I. 2009/3081\)](#), [reg. 2\(4\)\(a\)](#)
- F12** Words in s. 393(4) substituted (28.12.2009) by [The Provision of Services \(Insolvency Practitioners\) Regulations 2009 \(S.I. 2009/3081\)](#), [reg. 2\(4\)\(b\)](#)
- F13** S. 393(6) added (28.12.2009) by [The Provision of Services \(Insolvency Practitioners\) Regulations 2009 \(S.I. 2009/3081\)](#), [reg. 2\(4\)\(c\)](#)

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

- C10** S. 393 applied with modifications by [S.I. 1986/1999](#), [art. 3](#), [Sch. 1 Pt. II](#)

### 394 Notices.

- (1) Where a competent authority grants an authorisation under section 393, it shall give written notice of that fact to the applicant, specifying the date on which the authorisation takes effect.
- (2) Where the authority proposes to refuse an application, or to withdraw an authorisation under section 393(4), it shall give the applicant or holder of the authorisation written notice of its intention to do so, setting out particulars of the grounds on which it proposes to act.
- (3) In the case of a proposed withdrawal the notice shall state the date on which it is proposed that the withdrawal should take effect.
- (4) A notice under subsection (2) shall give particulars of the rights exercisable under the next two sections by a person on whom the notice is served.

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

- C11** S. 394 applied with modifications by [S.I. 1986/1999](#), [art. 3](#), [Sch. 1 Pt. II](#)

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### 395 Right to make representations.

- (1) A person on whom a notice is served under section 394(2) may within 14 days after the date of service make written representations to the competent authority.
- (2) The competent authority shall have regard to any representations so made in determining whether to refuse the application or withdraw the authorisation, as the case may be.

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

C12 S. 395 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

### 396 Reference to Tribunal.

- (1) The Insolvency Practitioners Tribunal (“the Tribunal”) continues in being; and the provisions of Schedule 7 apply to it.
- (2) Where a person is served with a notice under section 394(2), he may—
  - (a) at any time within 28 days after the date of service of the notice, or
  - (b) at any time after the making by him of representations under section 395 and before the end of the period of 28 days after the date of the service on him of a notice by the competent authority that the authority does not propose to alter its decision in consequence of the representations,
 give written notice to the authority requiring the case to be referred to the Tribunal.
- (3) Where a requirement is made under subsection (2), then, unless the competent authority—
  - (a) has decided or decides to grant the application or, as the case may be, not to withdraw the authorisation, and
  - (b) within 7 days after the date of the making of the requirement, gives written notice of that decision to the person by whom the requirement was made,
 it shall refer the case to the Tribunal.

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

C13 S.. 396 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

### 397 Action of Tribunal on reference.

- (1) On a reference under section 396 the Tribunal shall—
  - (a) investigate the case, and
  - (b) make a report to the competent authority stating what would in their opinion be the appropriate decision in the matter and the reasons for that opinion,
 and it is the duty of the competent authority to decide the matter accordingly.
- (2) The Tribunal shall send a copy of the report to the applicant or, as the case may be, the holder of the authorisation; and the competent authority shall serve him with a written notice of the decision made by it in accordance with the report.
- (3) The competent authority may, if he thinks fit, publish the report of the Tribunal.

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

C14 S. 397 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

**398 Refusal or withdrawal without reference to Tribunal.**

Where in the case of any proposed refusal or withdrawal of an authorisation either—

- (a) the period mentioned in section 396(2)(a) has expired without the making of any requirement under that subsection or of any representations under section 395, or
- (b) the competent authority has given a notice such as is mentioned in section 396(2)(b) and the period so mentioned has expired without the making of any such requirement,

the competent authority may give written notice of the refusal or withdrawal to the person concerned in accordance with the proposal in the notice given under section 394(2).

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

C15 S. 398 applied with modifications by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

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