



Insolvency Act 1986

1986 CHAPTER 45

PART IV

WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

CHAPTER X

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

Investigation and prosecution of malpractice

218 Prosecution of delinquent officers and members of company.

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

- [^{F1}(a) in the case of a winding up in England and Wales, to the Secretary of State, and
- (b) in the case of a winding up in Scotland, to the Lord Advocate]

^{F2}(2)

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

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

Changes to legislation: Insolvency Act 1986, Section 218 is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

relation to the company for which he is criminally liable, he shall ^{F3}forthwith report the matter—

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

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

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

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

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

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

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

Textual Amendments

- F1** S. 218(1)(a)(b) substituted for words in s. 218(1) (2.4.2001) by 2000 c. 39, s. 10(2); S.I. 2001/766, art. 2(1)(b) (subject to art. 3)
- F2** S. 218(2) repealed (2.4.2001) by 2000 c. 39, ss. 10(3), 15, Sch. 5; S.I. 2001/766, art. 2(1)(b)(c) (subject to art. 3)
- F3** Words in s. 218(4)(a)(b) substituted (2.4.2001) by 2000 c. 39, s. 10(4)(a); S.I. 2001/766, art. 2(b) (subject to art. 3)
- F4** Words in s. 218(4) substituted (2.4.2001) by 2000 c. 39, s. 10(4)(b); S.I. 2001/766, art. 2(b) (subject to art. 3)
- F5** S. 218(5) substituted (2.4.2001) by 2000 c. 39, s. 10(5); S.I. 2001/766, art. 2(b) (subject to art. 3)
- F6** Words in s. 218(5) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 75(24)} (with art. 10, Sch. 1 para. 84)
- F7** Words in s. 218(6)(b) repealed (2.4.2001) by 2000 c. 39, ss. 10(6), 15, Sch. 5; S.I. 2001/766, art. 2(1)(b)(c) (subject to art. 3)

Modifications etc. (not altering text)

- C1** Pts. 1–4 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), reg. 2, Sch. 1 para. 3 (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), 4)
- C2** S. 218 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. 103, 263(1)(2) (with s. 247); S.I. 2009/296, arts. 2, 3, Sch. para. 2

Changes to legislation: Insolvency Act 1986, Section 218 is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- C3** S. 218 amendment to earlier amending provision S.I. 2009/805, Sch. 1 para. 13(6) (1.4.2013) by [The Financial Services Act 2012 \(Mutual Societies\) Order 2013 \(S.I. 2013/496\)](#), art. 1(1), **Sch. 11 para. 16(3)(a)** (with Sch. 12)
- C4** S. 218 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)
- C5** S. 218 modified (E.W.) (31.1.2019) by [The Further Education Bodies \(Insolvency\) Regulations 2019 \(S.I. 2019/138\)](#), regs. 1(1), **21** (with regs. 1(2), 3(a)(ii))
- C6** S. 218 applied (with modifications) (8.7.2021) by [The Payment and Electronic Money Institution Insolvency Regulations 2021 \(S.I. 2021/716\)](#), regs. 2, **37**, **Sch. 1 para. 3** (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), **4**, **11**)
- C7** S. 218 applied in part (with modifications) (4.1.2024) by S.I. 2021/716, **Sch. 1 para. 3** (as amended by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), regs. 1(2), **20**)
- C8** S. 218(1)(4)(6) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**
- C9** S. 218(1)(2)(4)(6) applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

Changes to legislation:

Insolvency Act 1986, Section 218 is up to date with all changes known to be in force on or before 01 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act amendment to earlier affecting provision S.I. 1986/1999, art. 3, Sch. 1 Pt. 2 by [S.I. 2017/1119 Sch. 3 para. 1](#)
- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172 Regulations](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 41HB(2) words substituted by [2018 c. 14 s. 1\(3\)\(b\)](#)