



# 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
  - [<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 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
  - [<sup>F2</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>F3</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

*Status: Point in time view as at 01/01/2003. This version of this provision has been superseded.*

*Changes to legislation: Insolvency Act 1986, Section 388 is up to date with all changes known to be in force on or before 05 June 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)*

[ where a voluntary arrangement in relation to the insolvent partnership is  
<sup>F4</sup>(c) proposed or approved under Part I of the Act, as nominee or supervisor.]]

[<sup>F5</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>F6</sup>. . . to any debtor within the meaning of the <sup>M1</sup>Bankruptcy (Scotland) Act 1985.

(4) In this section—

“administrative receiver” has the meaning given by section 251 in Part VII;

[<sup>F7</sup> “company” means a company within the meaning given by section 735(1) of the 1985 Act, a company which may be wound up under Part XXI of that Act or a building society within the meaning of the Building Societies Act 1986.]

“interim trustee” and “permanent trustee” mean the same as in the Bankruptcy (Scotland) Act 1985.

[<sup>F8</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 1985).]

[<sup>F9</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.]

#### 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** Definition of “Company” substituted by virtue of Interpretation Act 1978 (c. 30, SIF 115:1), s. 17(2)(a) and Building Societies Act 1986 (c. 53, SIF 16), ss. 54(3)(a)(5)(a), 120, Sch. 18 para. 17(2) in s. 388(4) (the reference to the 1985 Act in the new definition being a reference to the Companies Act 1985)
- 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**

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**Marginal Citations**

- M1** 1985 c. 66.

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