



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART XIII **E+W+S**

#### INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

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

#### **388** Meaning of “act as insolvency practitioner” **E+W+S**

- (1) A person acts as an insolvency practitioner in relation to a company by acting—
- (a) as its liquidator, provisional liquidator, administrator [<sup>F1</sup>, administrative receiver or monitor], or
  - [<sup>F2</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>F3</sup>trustee (or interim trustee)] in the sequestration of his estate; or
  - (b) as trustee under a deed which is <sup>F4</sup>..., in Scotland, a trust deed for his creditor; or
  - [<sup>F5</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>F6</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

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[ where a voluntary arrangement in relation to the insolvent partnership is  
F7(c) proposed or approved under Part I of the Act, as nominee or supervisor.]]

[F8(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>F9</sup> . . . to any debtor within the meaning of the Bankruptcy (Scotland) Act [F102016].

(4) In this section—

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

[F11“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).]

[F12“monitor” has the same meaning as in Part A1 (moratorium);]

[F13“sequestration” means sequestration under the Bankruptcy (Scotland) Act 2016]

[F14(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 [F152016]).]

F16(6) . . . . .

#### Textual Amendments

- F1** Words in s. 388(1)(a) substituted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\), s. 49\(1\), Sch. 3 para. 21\(2\)](#) (with ss. 2(2), 5(2))
- F2** 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](#))
- F3** 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\(6\)\(a\)](#)
- F4** 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\(e\)\(i\)](#)
- F5** 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](#))
- F6** S. 388(2A) inserted (1.12.1994) by S.I. 1994/2421, [arts. 1\(2\), 15\(1\)](#)
- F7** S. 388(2A)(c) substituted (1.1.2003) by S.I. 2002/2708, [art. 3](#) (with [art. 11\(1\)\(3\)](#))
- F8** 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](#))
- F9** Words in s. 388(3) omitted (1.12.1994) by virtue of S.I. 1994/2421, [art. 15\(2\)](#)
- F10** 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\(6\)\(b\)](#)
- F11** 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](#))
- F12** Words in s. 388(4) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\), s. 49\(1\), Sch. 3 para. 21\(3\)](#) (with ss. 2(2), 5(2))

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- F13** 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)**
- F14** 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)
- F15** 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)**
- F16** S. 388(6) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 36** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

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

- C1** Pt. 13 applied (with modifications) (7.4.2017) by Building Societies Act 1986 (1986 c. 53), **Sch. 15A** (as amended by S.I. 2017/400, regs. 1(2), 2(4))
- C2** Pt. 13 applied (with modifications) (7.4.2017) by Friendly Societies Act 1992 (1992 c. 40), **Sch. 10** (as amended by S.I. 2017/400, regs. 1(2), 3)
- C3** Pt. 13 applied (with modifications) (7.4.2017) by Building Societies Act 1986 (1986 c. 53), **Sch. 15** (as amended by S.I. 2017/400, regs. 1(2), 2(3))
- C4** 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))
- C5** 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)**
- C6** S. 388 excluded (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 8**
- C7** 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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**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\(3\)\(b\)](#)