



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART XIII

#### INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

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

#### **[<sup>F1</sup>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.
- (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, 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,
  - (b) he is subject to a disqualification order made or a disqualification undertaking accepted under the <sup>M1</sup>Company Directors Disqualification Act 1986 or to a disqualification order made under Part II of the <sup>M2</sup>Companies (Northern Ireland) Order 1989 [<sup>F2</sup>or a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002], <sup>F3</sup> . . .
  - (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

*Status: Point in time view as at 01/10/2007. This version of this provision has been superseded.*

*Changes to legislation: Insolvency Act 1986, Section 389A is up to date with all changes known to be in force on or before 02 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)*

- (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

- F1** 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)
- F2** Words in s. 389A(3)(b) inserted (1.9.2004 with application as mentioned in art. 1(2)) by The Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941), art. 3, Sch. para. 2
- F3** Word in s. 389A(3) repealed (1.10.2007) by Mental Capacity Act 2005 (c. 9), ss. 67(1)(2), 68, Sch. 6 para. 31(2)(a), Sch. 7 (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)
- F4** 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)
- F5** 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)
- F6** 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)

#### Marginal Citations

- M1** 1986 c. 46.
- M2** S.I. 1989/2404 (N.I. 18).

**Status:**

Point in time view as at 01/10/2007. This version of this provision has been superseded.

**Changes to legislation:**

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