



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART XIII

#### INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

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

#### **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.
- [<sup>F1</sup>(2) A person is not qualified to act as an insolvency practitioner at any time unless at that time the person is appropriately authorised under section 390A.]
- (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 [<sup>F2</sup>made] bankrupt [<sup>F3</sup>under this Act or the Insolvency (Northern Ireland) Order 1989] or sequestration of his estate has been awarded and (in either case) he has not been discharged,
  - [<sup>F4</sup>(aa) a moratorium period under a debt relief order [<sup>F5</sup>under this Act or the Insolvency (Northern Ireland) Order 1989] applies in relation of him,]
  - [<sup>F6</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>F7</sup>. . . [<sup>F8</sup>section 329(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003][<sup>F9</sup>or has had a guardian appointed to him under the Adults with Incapacity (Scotland) Act 2000 (asp 4).][<sup>F10</sup>, or

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- (d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as an insolvency practitioner.]

[<sup>F11</sup>(5) A person is not qualified to act as an insolvency practitioner while there is in force in respect of that person—

- (a) a bankruptcy restrictions order under this Act, the Bankruptcy (Scotland) Act 1985 [<sup>F12</sup>or the Bankruptcy (Scotland) Act 2016] or the Insolvency (Northern Ireland) Order 1989, or
- (b) a debt relief restrictions order under this Act or that Order.]

### Textual Amendments

- F1** S. 390(2) substituted (1.10.2015) by [Deregulation Act 2015 \(c. 20\)](#), **ss. 17(2)**, 115(7); S.I. 2015/1732, **art. 2(c)**
- F2** Word in s. 390(4)(a) substituted (6.4.2016) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 19 para. 58**; S.I. 2016/191, **art. 2** (with **art. 3**)
- F3** Words in s. 390(4)(a) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), **ss. 115(a)(i)**, 164(1); S.I. 2015/1689, **reg. 2(i)** (with **Sch. para. 13**)
- F4** 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**
- F5** Words in s. 390(4)(aa) inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), **ss. 115(a)(ii)**, 164(1); S.I. 2015/1689, **reg. 2(i)** (with **Sch. para. 13**)
- F6** 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**)
- F7** 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)**
- F8** 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)**
- F9** 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**
- F10** 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)**
- F11** S. 390(5) substituted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), **ss. 115(b)**, 164(1); S.I. 2015/1689, **reg. 2(i)** (with **Sch. para. 13**)
- F12** Words in s. 390(5)(a) inserted (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(8)**

### 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.390 applied with modifications by S.I. 1986/1999, **art. 3**, **Sch. 1 Pt. II**
- C5** 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** (as amended (7.4.2017) by [The Deregulation Act 2015](#), the [Small Business, Enterprise and Employment Act 2015](#)

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and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(4)**

- C6** 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 (as amended (7.4.2017) by The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **5(10)**)
- C7** S. 390(2)(3) modified by S.I. 1990/1392, **art. 7**

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