



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXIV

#### INSOLVENCY

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

- C1 Pt. 24 applied (with modifications) (8.12.2017) by [The Risk Transformation Regulations 2017](#) (S.I. 2017/1212), regs. 1(2), 166(2), 167(2), Sch. 2, **Sch. 3** (with regs. 168, 189)
- C2 Pt. 24 applied in part (with modifications) (8.7.2021) by [S.I. 2017/752](#), **Sch. 6 para. 9** (as substituted by [The Payment and Electronic Money Institution Insolvency Regulations 2021](#) (S.I. 2021/716), regs. 2, **48(1)**)
- C3 Pt. 24 applied in part (with modifications) (8.7.2021) by [S.I. 2011/99](#), **Sch. 3 para. 7** (as substituted by [The Payment and Electronic Money Institution Insolvency Regulations 2021](#) (S.I. 2021/716), regs. 2, **48(2)**)

#### *Interpretation*

### 355 Interpretation of this Part.

(1) In this Part—

<sup>F1</sup>  
...

“the 1986 Act” means the <sup>M1</sup>Insolvency Act 1986;

“the 1989 Order” means the <sup>M2</sup>Insolvency (Northern Ireland) Order 1989;

[<sup>F2</sup>“the 2016 Act” means the Bankruptcy (Scotland) Act 2016;]

“body” means a body of persons—

(a) over which the court has jurisdiction under any provision of, or made under, the 1986 Act (or the 1989 Order); but

(b) which is not a building society, a friendly society or [<sup>F3</sup>a registered society]; and

“court” means—

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(a) the court having jurisdiction for the purposes of the 1985 Act or the 1986 Act; or

(b) in Northern Ireland, the High Court.

[<sup>F4</sup>“creditors’ decision procedure” has the meaning given by section 379ZA(11) of the 1986 Act;]

[<sup>F5</sup>“PRA-regulated person” means a person who—

(a) is or has been a PRA-authorized person,

(b) is or has been an appointed representative whose principal (or one of whose principals) is, or was, a PRA-authorized person, or

(c) is carrying on or has carried on a PRA-regulated activity in contravention of the general prohibition.]

[<sup>F6</sup>“qualifying decision procedure” has the meaning given by section 246ZE(11) of the 1986 Act.]

(2) In this Part “insurer” has such meaning as may be specified in an order made by the Treasury.

#### Textual Amendments

- F1** Words in s. 355(1) omitted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034, art. 1, **Sch. 1 para. 20(4)(a)**)
- F2** Words in s. 355(1) 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. 20(4)(b)**)
- F3** Words in s. 355(1) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, **Sch. 4 para. 70** (with Sch. 5)
- F4** Words in s. 355(1) inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **4(2)(a)** (with reg. 17)
- F5** Words in s. 355(1) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 2** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F6** Words in s. 355(1) inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **4(2)(b)** (with reg. 17)

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

- C4** S. 355 modified (21.2.2009) by The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), **art. 5(1)(3)**

#### Marginal Citations

- M1** 1986 c. 45.
- M2** S.I. 1989/2405 (N.I. 19).

<sup>F7</sup>*Arrangements and reconstructions: companies in financial difficulty*

#### Textual Amendments

- F7** Ss. 355A, 355B and cross-heading inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 9 para. 20(2)** (with ss. 2(2), 5(2))

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### **355A Powers of FCA and PRA to participate in proceedings**

- (1) This section applies where Part 26A of the Companies Act 2006 (“the 2006 Act”) (arrangements and reconstructions: companies in financial difficulty) applies in relation to a company which—
  - (a) is, or has been, an authorised person or recognised investment exchange;
  - (b) is, or has been, any of the following—
    - (i) an electronic money institution;
    - (ii) an authorised payment institution;
    - (iii) a small payment institution;
    - (iv) a registered account information service provider;
  - (c) is, or has been, an appointed representative; or
  - (d) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) A relevant applicant must give notice to the appropriate regulator of—
  - (a) any application which the relevant applicant intends to make under section 901C(1) of the 2006 Act, and
  - (b) any application which the relevant applicant believes a creditor or member of the company has made, or intends to make, under section 901C(1) of that Act in relation to the company.
- (3) A relevant applicant may not make an application under section 901C(1) of the 2006 Act in relation to a company that is a PRA-regulated person without the consent of the PRA.
- (4) In this section “relevant applicant”, in relation to a company, means—
  - (a) the company;
  - (b) if the company is being wound up, the liquidator;
  - (c) if the company is in administration, the administrator.
- (5) The appropriate regulator is entitled to be heard at any hearing of an application made under section 901C or 901F of the 2006 Act in relation to the company.
- (6) Any notice or other document required to be sent to a creditor of the company must also be sent to the appropriate regulator.
- (7) A person appointed for the purpose by the appropriate regulator is entitled—
  - (a) to attend any meeting of creditors of the company summoned under section 901C of the 2006 Act;
  - (b) to make representations as to any matter for decision at such a meeting.
- (8) In this section—

“the appropriate regulator” means—

  - (a) where the company is a PRA-regulated person, each of the FCA and the PRA, except that the reference in subsection (7) to a person appointed by the appropriate regulator is to be read as a reference to a person appointed by either the FCA or the PRA;
  - (b) in any other case, the FCA;

“authorised payment institution”, “small payment institution” and “registered account information service provider” have the same meaning as

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in the Payment Services Regulations 2017 (S.I. 2017/752) (see regulation 2 of those Regulations);

“electronic money institution” has the same meaning as in the Electronic Money Regulations 2011 (S.I. 2011/99) (see regulation 2 of those Regulations).

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

**C5** S. 355A applied (with modifications) by S.I. 2014/229, art. 5A (as inserted (E.W.S.) (18.7.2020) by [The Co-operative and Community Benefit Societies and Credit Unions \(Arrangements, Reconstructions and Administration\) \(Amendment\) and Consequential Amendments Order 2020 \(S.I. 2020/744\)](#), arts. 1, 9)

**355B Enforcement of requirements imposed by section 355A**

- (1) For the purpose of enforcing a requirement imposed on a company by section 355A(2) or (3), the appropriate regulator may exercise any of the following powers (so far as it would not otherwise be exercisable)—
  - (a) the power to publish a statement under section 205 (public censure);
  - (b) the power to impose a financial penalty under section 206.
- (2) Accordingly, sections 205 and 206, and so much of this Act as relates to either of those sections, have effect in relation to a requirement imposed by section 355A(2) or (3) as if—
  - (a) any reference to an authorised person included (so far as would not otherwise be the case) a reference to a company falling within any of paragraphs (a) to (d) of section 355A(1),
  - (b) any reference to a relevant requirement included (so far as would not otherwise be the case) a reference to a requirement imposed by section 355A(2) or (3), and
  - (c) “the appropriate regulator” had the same meaning as in section 355A.
- (3) In this section “the appropriate regulator” has the same meaning as in section 355A.]

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

**C6** S. 355B applied (with modifications) by S.I. 2014/229, art. 5A (as inserted (E.W.S.) (18.7.2020) by [The Co-operative and Community Benefit Societies and Credit Unions \(Arrangements, Reconstructions and Administration\) \(Amendment\) and Consequential Amendments Order 2020 \(S.I. 2020/744\)](#), arts. 1, 9)

*Voluntary arrangements*

**356** [<sup>F8</sup>Powers of FCA and PRA] to participate in proceedings: company voluntary arrangements.

- [<sup>F9</sup>(1) Where a voluntary arrangement has effect under Part I of the 1986 Act in respect of a company or insolvent partnership which is an authorised person, [<sup>F10</sup>or recognised investment exchange, the appropriate regulator] may apply to the court under section 6 or 7 of that Act.]

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- [<sup>F11</sup>(2) Where a voluntary arrangement has been approved under Part II of the 1989 Order in respect of a company or insolvent partnership which is an authorised person, [<sup>F12</sup>or recognised investment exchange, the appropriate regulator] may apply to the court under Article 19 or 20 of that Order.]
- (3) If a person other than [<sup>F13</sup>a regulator] makes an application to the court in relation to the company or insolvent partnership under [<sup>F14</sup>any] of those provisions, [<sup>F15</sup>the appropriate regulator] is entitled to be heard at any hearing relating to the application.
- [<sup>F16</sup>(4) "The appropriate regulator" means—
- (a) in the case of a PRA-authorised person—
    - (i) for the purposes of subsections (1) and (2), the FCA or the PRA, and
    - (ii) for the purposes of subsection (3), each of the FCA and the PRA;
  - (b) in any other case, the FCA.
- (5) If either regulator makes an application to the court under any of those provisions in relation to a PRA-authorised person, the other regulator is entitled to be heard at any hearing relating to the application.]

#### Textual Amendments

- F8** Words in s. 356 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 3\(5\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F9** S. 356(1) substituted (1.1.2003 subject to transitional provisions in arts. 3-5 of the commencing S.I.) by [2000 c. 39](#), s. 15(3)(a); S.I. 2002/2711, [art. 2](#)
- F10** Words in s. 356(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 3\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F11** S. 356(2) substituted (1.1.2003 subject to transitional provisions in arts. 3-5 of the commencing S.I.) by [2000 c. 39](#), s. 15(3)(b); S.I. 2002/2711, [art. 2](#)
- F12** Words in s. 356(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 3\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F13** Words in s. 356(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 3\(3\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F14** Word in s. 356(3) substituted (1.1.2003 subject to transitional provisions in arts. 3-5 of the commencing S.I.) by [2000 c. 39](#), s. 15(3)(c); S.I. 2002/2711, [art. 2](#)
- F15** Words in s. 356(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 3\(3\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F16** S. 356(4)(5) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 3\(4\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)

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

- C7** S. 356 applied (with modifications) (6.4.2001) by S.I. 2001/1090, [regs. 1, 6](#)
- C8** S. 356 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), [reg. 6](#)
- C9** S. 356 applied (with modifications) (E.W.S.) (6.4.2014) by [The Industrial and Provident Societies and Credit Unions \(Arrangements, Reconstructions and Administration\) Order 2014 \(S.I. 2014/229\)](#), arts. 1, 6 (with art. 10)

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**357 [F<sup>17</sup>Powers of FCA and PRA] to participate in proceedings: individual voluntary arrangements.**

- (1) The [F<sup>18</sup>appropriate regulator] is entitled to be heard on an application by an individual who is an authorised person under section 253 of the 1986 Act (or Article 227 of the 1989 Order).
- (2) Subsections [F<sup>19</sup>(2A)] to (6) apply if such an order is made on the application of such a person.
- [F<sup>20</sup>(2A) Where under section 257 of the 1986 Act the individual’s creditors are asked to decide whether to approve the proposed voluntary arrangement—
  - (a) notice of the creditors’ decision procedure must be given to the appropriate regulator; and
  - (b) the appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) the creditors’ decision procedure by which the decision is made.
- (2B) Notice of the decision made by the creditors’ decision procedure is to be given to the appropriate regulator by the nominee or the nominee’s replacement under section 256(3) or 256A(4) of the 1986 Act.]
- (3) A person appointed for the purpose by the [F<sup>18</sup>appropriate regulator] is entitled to attend any meeting of creditors of the debtor summoned under [F<sup>21</sup>Article 231 of the 1989 Order].
- (4) Notice of the result of a meeting so summoned is to be given to the [F<sup>18</sup>appropriate regulator] by the chairman of the meeting.
- (5) The [F<sup>18</sup>appropriate regulator] may apply to the court—
  - (a) under section 262 of the 1986 Act (or Article 236 of the 1989 Order); or
  - (b) under section 263 of the 1986 Act (or Article 237 of the 1989 Order).
- (6) If a person other than [F<sup>22</sup>a regulator] makes an application to the court under any provision mentioned in subsection (5), [F<sup>23</sup>the appropriate regulator] is entitled to be heard at any hearing relating to the application.
- [F<sup>24</sup>(7) "The appropriate regulator" means—
  - [F<sup>25</sup>(a) in the case of a PRA-authorised person, each of the FCA and the PRA, except that the references in subsections (2A)(b) and (3) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;]
  - (b) in any other case, the FCA.
- (8) If either regulator makes an application to the court under any of the provisions mentioned in subsection (5) in relation to a PRA-authorised person, the other regulator is entitled to be heard at any hearing relating to the application.]

**Textual Amendments**

- F17** Words in s. 357 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 4\(5\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.
- F18** Words in s. 357(1)-(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 4\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

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- F19** Word in s. 357(2) substituted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **4(3)(a)** (with reg. 17)
- F20** S. 357(2A)(2B) inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **4(3)(b)** (with reg. 17)
- F21** Words in s. 357(3) substituted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **4(3)(c)** (with reg. 17)
- F22** Words in s. 357(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 4(3)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F23** Words in s. 357(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 4(3)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F24** S. 357(7)(8) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 4(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F25** S. 357(7)(a) substituted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **4(3)(d)** (with reg. 17)

**358** [<sup>F26</sup>**Powers of FCA and PRA] to participate in proceedings: trust deeds for creditors in Scotland.**

- (1) This section applies where a trust deed has been granted by or on behalf of a debtor who is an authorised person [<sup>F27</sup>or recognised investment exchange].
- (2) The trustee must, as soon as practicable after he becomes aware that the debtor is an authorised person [<sup>F28</sup>or recognised investment exchange], send to the [<sup>F29</sup>appropriate regulator]—
  - (a) in every case, a copy of the trust deed;
  - (b) where any other document or information is sent to every creditor known to the trustee in pursuance of [<sup>F30</sup>section 170 of the 2016] Act, a copy of such document or information.

<sup>F31</sup>(3) .....

- (4) The [<sup>F29</sup>appropriate regulator] must be given the same notice as the creditors of any meeting of creditors held in relation to the trust deed.
- (5) A person appointed for the purpose by [<sup>F32</sup>the appropriate regulator] is entitled to attend and participate in (but not to vote at) any such meeting of creditors as if [<sup>F33</sup>that regulator] were a creditor under the deed.
- (6) This section does not affect any right [<sup>F34</sup>a regulator] has as a creditor of a debtor who is an authorised person [<sup>F35</sup>or recognised investment exchange].

[<sup>F36</sup>(6A) "The appropriate regulator" means—

- (a) in the case of a PRA-authorised person—
  - (i) for the purposes of subsections (2) <sup>F37</sup>... and (4), each of the FCA and the PRA, and
  - (ii) for the purposes of subsection (5), the FCA or the PRA;
- (b) in any other case, the FCA.]

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- (7) Expressions used in this section and in the <sup>F38</sup>2016] Act have the same meaning in this section as in that Act.

#### Textual Amendments

- F26** Words in s. 358 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 5\(7\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F27** Words in s. 358(1) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 5\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F28** Words in s. 358(2) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 5\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F29** Words in s. 358(2)-(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 5\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F30** Words in s. 358(2)(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. 20\(5\)\(a\)](#)
- F31** S. 358(3) omitted (30.11.2016) by virtue of [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\), art. 1, Sch. 1 para. 20\(5\)\(b\)](#)
- F32** Words in s. 358(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 5\(4\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F33** Words in s. 358(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 5\(4\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F34** Words in s. 358(6) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 5\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F35** Words in s. 358(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 5\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F36** S. 358(6A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 5\(6\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F37** Word in s. 358(6A)(a)(i) omitted (30.11.2016) by virtue of [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\), art. 1, Sch. 1 para. 20\(5\)\(c\)](#)
- F38** Word in s. 358(7) 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. 20\(5\)\(d\)](#)

#### *Administration orders*

#### <sup>F39</sup>359 Administration order

- (1) The <sup>F40</sup>FCA] may make an administration application under Schedule B1 to the 1986 Act <sup>F41</sup>or Schedule B1 to the 1989 Order] in relation to a company or insolvent partnership which—
- is or has been an authorised person <sup>F42</sup>[or recognised investment exchange],
  - is or has been an appointed representative, or
  - is carrying on or has carried on a regulated activity in contravention of the general prohibition.

<sup>F43</sup>(1A) The PRA may make an administration application under Schedule B1 to the 1986 Act or Schedule B1 to the 1989 Order in relation to a company or insolvent partnership which is a PRA-regulated person.]

- (2) Subsection (3) applies in relation to an administration application made (or a petition presented) by <sup>F44</sup>[a regulator] by virtue of this section.



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- (3) Any of the following shall be treated for the purpose of paragraph 11(a) of Schedule B1 to the 1986 Act [<sup>F45</sup> or paragraph 12(a) of Schedule B1 to the 1989 Order] as unable to pay its debts—
- (a) a company or partnership in default on an obligation to pay a sum due and payable under an agreement, <sup>F46</sup> . . .
  - (b) an authorised deposit taker in default on an obligation to pay a sum due and payable in respect of a relevant deposit. [<sup>F47</sup>, and—
  - (c) an authorised reclaim fund in default on an obligation to pay a sum payable as a result of a claim made by virtue of section 1(2)(b) or 2(2)(b) of the Dormant Bank and Building Society Accounts Act 2008.]
- (4) In this section—
- “agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the company or partnership,
- “authorised deposit taker” means a person with a [<sup>F48</sup>Part 4A] permission to accept deposits (but not a person who has a [<sup>F48</sup>Part 4A] permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission),
- [<sup>F49</sup>“authorised reclaim fund” [<sup>F50</sup> has the same meaning as in the Dormant Assets Acts 2008 to 2022 (see section 26 of the Dormant Assets Act 2022);]
- “company” means a company—
- (a) in respect of which an administrator may be appointed under Schedule B1 to the 1986 Act, or
  - (b) [<sup>F51</sup>in respect of which an administrator may be appointed under Schedule B1 to the 1989 Order,]
- “relevant deposit” shall, ignoring any restriction on the meaning of deposit arising from the identity of the person making the deposit, be construed in accordance with—
- (a) section 22,
  - (b) any relevant order under that section, and
  - (c) Schedule 2.
- (5) The definition of “authorised deposit taker” in subsection (4) shall be construed in accordance with—
- (a) section 22,
  - (b) any relevant order under that section, and
  - (c) Schedule 2.]

#### Textual Amendments

- F39** S. 359 substituted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 248(3), 279, [Sch. 17 para. 55](#) (with s. 249(1)-(3)); S.I. 2003/2093, [art. 2\(1\)](#), [Sch. 1](#) (subject to [arts. 1\(3\)-\(5\)](#), 3-8 (as amended by S.I. 2003/2332, [art. 2](#)))
- F40** Word in s. 359(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 6\(2\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 3](#), [Sch.](#)
- F41** Words in s. 359(1) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), [arts. 1\(3\)](#), 3(3), [Sch. 2 para. 58\(2\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, [arts. 2-7](#))

*Status: Point in time view as at 06/06/2022.*

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- F42** Words in s. 359(1)(a) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 6(2)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F43** S. 359(1A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 6(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F44** Words in s. 359(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 6(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F45** Words in s. 359(3) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 58(3)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F46** Word in s. 359(3)(a) omitted (12.3.2009) by virtue of Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1), **Sch. 2 para. 6(2)**; S.I. 2009/490, **art. 2** (with art. 3)
- F47** S. 359(3)(c) and preceding word inserted (12.3.2009) by Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1), **Sch. 2 para. 6(2)**; S.I. 2009/490, **art. 2** (with art. 3)
- F48** Words in s. 359(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 6(5)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F49** S. 359(4): definition of "authorised reclaim fund" inserted (12.3.2009) by Dormant Bank and Building Society Accounts Act 2008 (c. 31), ss. 15, 31(1), **Sch. 2 para. 6(3)**; S.I. 2009/490, **art. 2** (with art. 3)
- F50** Words in s. 359(4) substituted (6.6.2022) by Dormant Assets Act 2022 (c. 5), s. 34(3), **Sch. 1 para. 2(2)**; S.I. 2022/582, reg. 2
- F51** S. 359(4): in the definition of "company", paragraph (b) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 58(4)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)

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

- C10** S. 359 applied (with modifications) (1.11.2009) by The Payment Services Regulations 2009 (S.I. 2009/209), regs. 1(2)(c), 95, **Sch. 5 para. 6** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 155(6)(f)** (with Sch. 2 para. 156))
- C11** S. 359 applied (with modifications) (30.4.2011) by The Electronic Money Regulations 2011 (S.I. 2011/99), regs. 1(2)(b), 62, **Sch. 3 para. 7** (with reg. 3) (as amended (1.4.2013) by The Financial Services Act 2012 (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), **Sch. 2 para. 196(5)(g)**)
- C12** S. 359 applied (with modifications) (E.W.S.) (6.4.2014) by The Industrial and Provident Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (S.I. 2014/229), arts. 1, 7 (with art. 10)
- C13** S. 359 applied (with modifications) (13.1.2018) by The Payment Services Regulations 2017 (S.I. 2017/752), reg. 1(6), **Sch. 6 para. 9** (with reg. 3)
- C14** S. 359(1)-(4) applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

## 360 Insurers.

- (1) The Treasury may by order provide that such provisions of Part II of the 1986 Act (or Part III of the 1989 Order) as may be specified are to apply in relation to insurers with such modifications as may be specified.
- (2) An order under this section—
  - (a) may provide that such provisions of this Part as may be specified are to apply in relation to the administration of insurers in accordance with the order with such modifications as may be specified; and
  - (b) requires the consent of the Secretary of State.

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(3) “Specified” means specified in the order.

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

**C15** S. 360 excluded (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005 \(S.I. 2005/1998\)](#), **reg. 2(4)**

**[<sup>F53</sup>361 Administrator’s duty to report to [<sup>F52</sup>FCA and PRA]**

(1) This section applies where a company or partnership is—

- (a) in administration within the meaning of Schedule B1 to the 1986 Act, or
- [<sup>F54</sup>(b) in administration within the meaning of Schedule B1 to the 1989 Order.]

[<sup>F55</sup>(2) If the administrator thinks that the company or partnership is carrying on, or has carried on—

- (a) a regulated activity in contravention of the general prohibition, or
- (b) a credit-related regulated activity in contravention of section 20,

the administrator must report the matter to the appropriate regulator without delay.]

[<sup>F56</sup>(2A) “The appropriate regulator” means—

- (a) where the regulated activity is a PRA-regulated activity, the FCA and the PRA;
- (b) in any other case, the FCA.]

[<sup>F57</sup>(3) Subsection (2) does not apply where—

- (a) the administration arises out of an administration order made on an application made or petition presented by a regulator, and
- (b) the regulator's application or petition depended on a contravention by the company or partnership of the general prohibition.]]

**Textual Amendments**

**F52** Words in s. 361 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 7(5)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

**F53** S. 361 substituted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 248(3), 279, **Sch. 17 para. 56** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**))

**F54** S. 361(1)(b) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), **Sch. 2 para. 59**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)

**F55** S. 361(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 7(2)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

**F56** S. 361(2A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 7(3)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

**F57** S. 361(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 7(4)** (with [Sch. 20](#)); S.I. 2013/423, art. 3, Sch.

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

**C16** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), **reg. 6**

*Status: Point in time view as at 06/06/2022.*

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- C17** S. 361 modified (21.2.2009) by [The Banking Act 2009 \(Parts 2 and 3 Consequential Amendments\) Order 2009 \(S.I. 2009/317\)](#), [art. 5\(1\)\(4\)](#)
- C18** S. 361 applied (with modifications) (E.W.S.) (6.4.2014) by [The Industrial and Provident Societies and Credit Unions \(Arrangements, Reconstructions and Administration\) Order 2014 \(S.I. 2014/229\)](#), arts. 1, 8 (with art. 10)

### 362 <sup>[F58]</sup>**Powers of FCA and PRA] to participate in proceedings.**

- (1) This section applies if a person <sup>F59</sup>... <sup>[F60]</sup> makes an administration application under Schedule B1 to the 1986 Act <sup>[F61]</sup> or Schedule B1 to the 1989 Order]] in relation to a company or partnership which—
- is, or has been, an authorised person <sup>[F62]</sup> or recognised investment exchange];
  - is, or has been, an appointed representative; or
  - is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- <sup>[F63]</sup>(1A) This section also applies in relation to—
- the appointment under paragraph 14 or 22 of Schedule B1 to the 1986 Act <sup>[F64]</sup> or paragraph 15 or 23 of Schedule B1 to the 1989 Order] of an administrator of a company of a kind described in subsection (1)(a) to (c), or
  - the filing with the court of a copy of notice of intention to appoint an administrator under <sup>[F65]</sup> any] of those paragraphs.]
- <sup>[F66]</sup>(1B) This section also applies in relation to—
- the appointment under paragraph 22 of Schedule B1 to the 1986 Act (as applied by order under section 420 of the 1986 Act), or under paragraph 23 of Schedule B1 to the 1989 Order (as applied by order under Article 364 of the 1989 Order), of an administrator of a partnership of a kind described in subsection (1)(a) to (c), or
  - the filing with the court of a copy of notice of intention to appoint an administrator under either of those paragraphs (as so applied).]
- (2) The <sup>[F67]</sup> appropriate regulator] is entitled to be heard—
- at the hearing of the <sup>[F68]</sup> administration application <sup>[F69]</sup> or the petition]]]; and
  - at any other hearing of the court in relation to the company or partnership under Part II of the 1986 Act (or Part III of the 1989 Order).
- (3) Any notice or other document required to be sent to a creditor of the company or partnership must also be sent to the <sup>[F67]</sup> appropriate regulator].
- <sup>[F70]</sup>(4) The <sup>[F67]</sup> appropriate regulator] may apply to the court under paragraph 74 of Schedule B1 to the 1986 Act <sup>[F71]</sup> or paragraph 75 of Schedule B1 to the 1989 Order].
- (4A) In respect of an application under subsection (4)—
- paragraph 74(1)(a) and (b) shall have effect as if for the words “harm the interests of the applicant (whether alone or in common with some or all other members or creditors)” there were substituted the words “harm the interests of some or all members or creditors”, and
  - <sup>[F72]</sup>(b) paragraph 75(1)(a) and (b) of Schedule B1 to the 1989 Order shall have effect as if for the words “harm the interests of the applicant (whether alone or in common with some or all other members or creditors)” there were substituted the words harm the interests of some or all members or creditors.]]

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- (5) A person appointed for the purpose by the [<sup>F67</sup>appropriate regulator] is entitled—
- (a) to attend any meeting of creditors of the company or partnership summoned under any enactment;
  - (b) to attend any meeting of a committee established under [<sup>F73</sup>paragraph 57 of Schedule B1 to the 1986 Act] (or [<sup>F74</sup>paragraph 58 of Schedule B1 to the 1989 Order]; and
  - (c) to make representations as to any matter for decision at such a meeting.
- [<sup>F75</sup>(5A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a qualifying decision procedure by which a decision about any matter is sought from the creditors of the company or partnership.]
- (6) If, during the course of the administration of a company, a compromise or arrangement [<sup>F76</sup>in relation to which Part 26 of the Companies Act 2006 applies] is proposed between the company and its creditors, or any class of them, the [<sup>F67</sup>appropriate regulator] may apply to the court under [<sup>F77</sup>section 896 or 899 of [<sup>F78</sup>that Act]].
- [<sup>F79</sup>(6A) If, during the course of the administration of a company, a compromise or arrangement in relation to which Part 26A of the Companies Act 2006 applies is proposed between the company and its creditors, or any class of them, the appropriate regulator may apply to the court under section 901C or 901F of that Act.]
- [<sup>F80</sup>[<sup>F81</sup>(7) “The appropriate regulator” means—
- (a) where the company or partnership is a PRA-regulated person, each of the FCA and the PRA, except that the references in subsections (5) and (5A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;
  - (b) in any other case, the FCA.]
- (8) But where the administration application was made by a regulator “the appropriate regulator” does not include that regulator.]

#### Textual Amendments

- F58** Words in s. 362 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 8\(6\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F59** Words in s. 362(1) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 8\(2\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F60** Words in s. 362(1) substituted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 248(3), 279, [Sch. 17 para. 57\(a\)](#) (with s. 249(1)-(3)); S.I. 2003/2093, [art. 2\(1\)](#), [Sch. 1](#) (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, [art. 2](#)))
- F61** Words in s. 362(1) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 60\(2\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, arts. 2-7)
- F62** Words in s. 362(1)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 8\(2\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F63** S. 362(1A) inserted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 248(3), 279, [Sch. 17 para. 57\(b\)](#) (with s. 249(1)-(3)); S.I. 2003/2093, [art. 2\(1\)](#), [Sch. 1](#) (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, [art. 2](#)))
- F64** Words in s. 362(1A)(a) inserted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 60\(3\)\(a\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, [arts. 2-7](#)))

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- F65** Word in s. 362(1A)(b) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 60(3)(b)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F66** S. 362(1B) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 8(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F67** Words in s. 362(2)-(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 8(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F68** Words in s. 362(2)(a) substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(c)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**))
- F69** Words in s. 362(2)(a) repealed (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 60(4), **Sch. 9**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F70** S. 362(4)(4A) substituted (15.9.2003) for s. 362(4) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(d)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**))
- F71** Words in s. 362(4) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 60(5)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F72** S. 362(4A)(b) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 60(6)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F73** Words in s. 362(5)(b) substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(e)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**))
- F74** Words in s. 362(5)(b) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 60(7)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F75** S. 362(5A) inserted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **4(4)(a)** (with reg. 17)
- F76** Words in s. 362(6) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 9 para. 20(3)(a)(i)** (with ss. 2(2), 5(2))
- F77** Words in s. 362(6) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1), **Sch. 1 para. 211(4)** (with arts. 6, 11, 12)
- F78** Words in s. 362(6) substituted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 9 para. 20(3)(a)(ii)** (with ss. 2(2), 5(2))
- F79** S. 362(6A) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 9 para. 20(3)(b)** (with ss. 2(2), 5(2))
- F80** S. 362(7) substituted (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **4(4)(b)** (with reg. 17)
- F81** S. 362(7)(8) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 8(5)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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

- C19** S. 362 applied (with modifications) (6.4.2001) by S.I. 2001/1090, **regs. 1, 6**
- C20** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**
- C21** S. 362 modified (21.2.2009) by The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), **art. 5(1)(5)**

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- C22** S. 362 applied (with modifications) (E.W.S.) (6.4.2014) by [The Industrial and Provident Societies and Credit Unions \(Arrangements, Reconstructions and Administration\) Order 2014 \(S.I. 2014/229\)](#), arts. 1, 9 (with art. 10)
- C23** S. 362(6) applied (with modifications) (8.2.2011 with application in accordance with reg. 27(a) of the applying S.I.) by [The Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), regs. 1, 27(a), **Sch. 6 para. 3(4)**

## **[<sup>F82</sup>362A Administrator appointed by company or directors**

(1) This section applies in relation to a company [<sup>F83</sup>or partnership] of a kind described in section 362(1)(a) to (c).

[<sup>F84</sup>2) An administrator of the company or partnership may not be appointed under a provision specified in subsection (2A) without the consent of the appropriate regulator.

(2A) Those provisions are—

- (a) paragraph 22 of Schedule B1 to the 1986 Act (including that paragraph as applied in relation to partnerships by order under section 420 of that Act);
- (b) paragraph 23 of Schedule B1 to the 1989 Order (including that paragraph as applied in relation to partnerships by order under article 364 of that Order).

(2B) “The appropriate regulator” means—

- (a) where the company or partnership is a PRA-regulated person, the PRA, and
- (b) in any other case, the FCA.]

(3) Consent under subsection (2)—

- (a) must be in writing, and
- (b) must be filed with the court along with the notice of intention to appoint under paragraph 27 of [<sup>F85</sup>Schedule B1 to the 1986 Act or paragraph 28 of Schedule B1 to the 1989 Order].

(4) In a case where no notice of intention to appoint is required—

- (a) subsection (3)(b) shall not apply, but
- (b) consent under subsection (2) must accompany the notice of appointment filed under paragraph 29 of [<sup>F86</sup>Schedule B1 to the 1986 Act or paragraph 30 of Schedule B1 to the 1989 Order].]

### **Textual Amendments**

- F82** S. 362A inserted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 248(3), 279, **Sch. 17 para. 58** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**))
- F83** Words in s. 362A(1) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 9(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F84** S. 362A(2)-(2B) substituted for s. 362A(2) (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 9(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F85** Words in s. 362A(3)(b) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), **Sch. 2 para. 61(3)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F86** Words in s. 362A(4) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), **Sch. 2 para. 61(4)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)

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

- C24** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), [reg. 6](#)
- C25** S. 362A applied (with modifications) (E.W.S.) (6.4.2014) by [The Industrial and Provident Societies and Credit Unions \(Arrangements, Reconstructions and Administration\) Order 2014 \(S.I. 2014/229\)](#), arts. 1, [9](#) (with art. 10)

### Receivership

#### 363 [F87 Powers of FCA and PRA] to participate in proceedings.

- (1) This section applies if a receiver has been appointed in relation to a company which—
  - (a) is, or has been, an authorised person [F88 or recognised investment exchange];
  - (b) is, or has been, an appointed representative; or
  - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) The [F89 appropriate regulator] is entitled to be heard on an application made under section 35 or 63 of the 1986 Act (or Article 45 of the 1989 Order).
- (3) The [F89 appropriate regulator] is entitled to make an application under section 41(1) (a) or 69(1)(a) of the 1986 Act (or Article 51(1)(a) of the 1989 Order).
- (4) A report under section 48(1) or 67(1) of the 1986 Act (or Article 58(1) of the 1989 Order) must be sent by the person making it to the [F89 appropriate regulator].
- (5) A person appointed for the purpose by the [F89 appropriate regulator] is entitled—
  - (a) to attend any meeting of creditors of the company summoned under any enactment;
  - (b) to attend any meeting of a committee established under section 49 or 68 of the 1986 Act (or Article 59 of the 1989 Order); and
  - (c) to make representations as to any matter for decision at such a meeting.
- [F90(6) "The appropriate regulator" means—
  - (a) for the purposes of subsections (2) to (4)—
    - (i) where the company is a PRA-regulated person, each of the FCA and the PRA, and
    - (ii) in any other case, the FCA;
  - (b) for the purposes of subsection (5)—
    - (i) where the company is a PRA-regulated person, the FCA or the PRA, and
    - (ii) in any other case, the FCA.]

#### Textual Amendments

- F87** Words in s. 363 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 10\(5\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F88** Words in s. 363(1)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 10\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)



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**F89** Words in s. 363(2)-(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 10\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

**F90** S. 363(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 10\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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

**C26** S. 363 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, regs. 1, 6](#)

**C27** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\), reg. 6](#)

**364 Receiver’s duty to report to <sup>[F91]</sup>FCA and PRA**

If—

- (a) a receiver has been appointed in relation to a company, and
- (b) it appears to the receiver that the company is carrying on, or has carried on, a regulated activity in contravention of the general prohibition <sup>[F92]</sup>or a credit-related regulated activity in contravention of section 20],

the receiver must report the matter <sup>[F93]</sup>without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA].

**Textual Amendments**

**F91** Words in s. 364 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 11\(c\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

**F92** Words in s. 364(b) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 11\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

**F93** Words in s. 364 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 11\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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

**C28** S. 364 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, regs. 1, 6](#)

**C29** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\), reg. 6](#)

*Voluntary winding up*

**365 <sup>[F94]</sup>Powers of FCA and PRA to participate in proceedings.**

- (1) This section applies in relation to a company which—
  - (a) is being wound up voluntarily;
  - (b) is an authorised person <sup>[F95]</sup>or recognised investment exchange]; and
  - (c) is not an insurer effecting or carrying out contracts of long-term insurance.
- (2) The <sup>[F96]</sup>appropriate regulator] may apply to the court under section 112 of the 1986 Act (or Article 98 of the 1989 Order) in respect of the company.
- (3) The <sup>[F96]</sup>appropriate regulator] is entitled to be heard at any hearing of the court in relation to the voluntary winding up of the company.

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- (4) Any notice or other document required to be sent to a creditor of the company must also be sent to the [<sup>F96</sup>appropriate regulator].
- (5) A person appointed for the purpose by the [<sup>F96</sup>appropriate regulator] is entitled—
- (a) to attend any meeting of creditors of the company summoned under any enactment;
  - (b) to attend any meeting of a committee established under section 101 of the 1986 Act (or Article 87 of the 1989 Order); and
  - (c) to make representations as to any matter for decision at such a meeting.
- [<sup>F97</sup>(5A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a qualifying decision procedure by which a decision about any matter is sought from the creditors of the company.]
- (6) The voluntary winding up of the company does not bar the right of the [<sup>F96</sup>appropriate regulator] to have it wound up by the court.
- (7) If, during the course of the winding up of the company, a compromise or arrangement [<sup>F98</sup>in relation to which Part 26 of the Companies Act 2006 applies] is proposed between the company and its creditors, or any class of them, the [<sup>F96</sup>appropriate regulator] may apply to the court under [<sup>F99</sup>section 896 or 899 of [<sup>F100</sup>that Act]].
- [<sup>F101</sup>(7A) If, during the course of the winding up of the company, a compromise or arrangement in relation to which Part 26A of the Companies Act 2006 applies is proposed between the company and its creditors, or any class of them, the appropriate regulator may apply to the court under section 901C or 901F of that Act.]
- [<sup>F102</sup>(8) “The appropriate regulator” means—
- (a) where the company is a PRA-authorised person, each of the FCA and the PRA, except that the references in subsections (5) and (5A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;
  - (b) in any other case, the FCA.]

### Textual Amendments

- F94** Words in s. 365 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 12\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F95** Words in s. 365(1)(b) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 12\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F96** Words in s. 365(2)-(7) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 12\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F97** S. 365(5A) inserted (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\), regs. 1\(3\), 4\(5\)\(a\)](#) (with [reg. 17](#))
- F98** Words in s. 365(7) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\), s. 49\(1\), Sch. 9 para. 20\(4\)\(a\)\(i\)](#) (with [ss. 2\(2\), 5\(2\)](#))
- F99** Words in s. 365(7) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\), arts. 2\(2\), 3\(1\), Sch. 1 para. 211\(4\)](#) (with [arts. 6, 11, 12](#))
- F100** Words in s. 365(7) substituted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\), s. 49\(1\), Sch. 9 para. 20\(4\)\(a\)\(ii\)](#) (with [ss. 2\(2\), 5\(2\)](#))
- F101** S. 365(7A) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\), s. 49\(1\), Sch. 9 para. 20\(4\)\(b\)](#) (with [ss. 2\(2\), 5\(2\)](#))

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**F102** S. 365(8) substituted (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **4(5)(b)** (with reg. 17)

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

**C30** S. 365 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), **regs. 1, 6**

**C31** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), **reg. 6**

**366 Insurers effecting or carrying out long-term contracts or insurance.**

- (1) An insurer effecting or carrying out contracts of long-term insurance may not be wound up voluntarily without the consent of the [<sup>F103</sup>PRA].
- (2) If notice of a general meeting of such an insurer is given, specifying the intention to propose a resolution for voluntary winding up of the insurer, a director of the insurer must notify the [<sup>F104</sup>PRA] as soon as practicable after he becomes aware of it.
- (3) A person who fails to comply with subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- [<sup>F105</sup>(4) A winding up resolution may not be passed—
  - (a) as a written resolution (in accordance with Chapter 2 of Part 13 of the Companies Act 2006), or
  - (b) at a meeting called in accordance with section 307(4) to (6) or 337(2) of that Act (agreement of members to calling of meeting at short notice).]
  - (5) A copy of a winding-up resolution forwarded to the registrar of companies in accordance with [<sup>F106</sup>section 30 of the Companies Act 2006] must be accompanied by a certificate issued by the [<sup>F107</sup>PRA] stating that it consents to the voluntary winding up of the insurer.
  - (6) If subsection (5) is complied with, the voluntary winding up is to be treated as having commenced at the time the resolution was passed.
  - (7) If subsection (5) is not complied with, the resolution has no effect.
  - (8) “Winding-up resolution” means a resolution for voluntary winding up of an insurer effecting or carrying out contracts of long-term insurance.
  - [<sup>F108</sup>(9) Before giving or refusing consent under subsection (1), the PRA must consult the FCA.
  - (10) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a PRA-regulated activity—
    - (a) references to the PRA in subsections (1), (2) and (5) are to be read as references to the FCA, and
    - (b) subsection (9) does not apply.]

**Textual Amendments**

**F103** Word in s. 366(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 13(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

**F104** Word in s. 366(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 13(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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- F105** S. 366(4) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), **Sch. 4 para. 93(2)**
- F106** Words in s. 366(5) substituted (1.10.2007) by [The Companies Act 2006 \(Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/2194\)](#), art. 10(1), **Sch. 4 para. 93(3)**
- F107** Word in s. 366(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 13(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F108** S. 366(9)(10) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 14 para. 13(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

### *Winding up by the court*

#### **367 Winding-up petitions.**

- (1) The [<sup>F109</sup>FCA] may present a petition to the court for the winding up of a body which—
- is, or has been, an authorised person [<sup>F110</sup>or recognised investment exchange];
  - is, or has been, an appointed representative; or
  - is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

[<sup>F111</sup>(1A) The PRA may present a petition to the court for the winding up of a body which is a PRA-regulated person.]

- (2) In [<sup>F112</sup>subsections (1) and (1A)] “body” includes any partnership.
- (3) On such a petition, the court may wind up the body if—
- [<sup>F113</sup>(za) in the case of an insurance undertaking or reinsurance undertaking, the PRA has cancelled the body’s Part 4A permission pursuant to section 55J(7C);]
- the body is unable to pay its debts within the meaning of section 123 or 221 of the 1986 Act (or Article 103 or 185 of the 1989 Order); or
  - the court is of the opinion that it is just and equitable that it should be wound up.
- (4) If a body is in default on an obligation to pay a sum due and payable under an agreement, it is to be treated for the purpose of subsection (3)(a) as unable to pay its debts.
- (5) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the body concerned.
- (6) Subsection (7) applies if a petition is presented under subsection (1) [<sup>F114</sup>or (1A)] for the winding up of a partnership—
- on the ground mentioned in subsection (3)(b); or
  - in Scotland, on a ground mentioned in subsection (3)(a) or (b).
- (7) The court has jurisdiction, and the 1986 Act (or the 1989 Order) has effect, as if the partnership were an unregistered company as defined by section 220 of that Act (or Article 184 of that Order).

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#### Textual Amendments

- F109** Word in s. 367(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 14\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F110** Words in s. 367(1)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 14\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F111** S. 367(1A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 14\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F112** Words in s. 367(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 14\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F113** S. 367(3)(za) inserted (1.1.2016) by [The Solvency 2 Regulations 2015 \(S.I. 2015/575\), reg. 1\(2\), Sch. 1 para. 13](#)
- F114** Words in s. 367(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 14\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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

- C32** S. 367 applied (with modifications) (6.4.2001) by [S.I. 2001/1090, regs. 1, 6](#)  
S. 367 amended (1.12.2001) by [S.I. 2001/2657, arts. 1\(1\), 12](#) (which was revoked (8.10.2001) by [S.I. 2001/3083, arts. 1\(2\), 23](#)); [S.I. 2001/3538, art. 2\(1\)](#)  
S. 367 amended (1.12.2001) by [S.I. 2001/3083, arts. 1\(2\), 12](#); [S.I. 2001/3538, art. 2\(1\)](#)
- C33** S. 367 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\), reg. 6](#)
- C34** S. 367 applied (with modifications) (1.11.2009) by [The Payment Services Regulations 2009 \(S.I. 2009/209\), regs. 1\(2\)\(c\), 95, Sch. 5 para. 6](#) (with [reg. 3](#)) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\), Sch. 2 para 155\(6\)\(f\)](#) (with [Sch. 2 para. 156](#)))
- C35** S. 367 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\), regs. 1\(2\)\(b\), 62, Sch. 3 para. 7](#) (with [reg. 3](#)) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\), Sch. 2 para. 196\(5\)\(g\)](#))
- C36** S. 367 applied (with modifications) (13.1.2018) by [The Payment Services Regulations 2017 \(S.I. 2017/752\), reg. 1\(6\), Sch. 6 para. 9](#) (with [reg. 3](#))
- C37** S. 367(3)(a) modified (1.12.2001) by [S.I. 2001/3650, arts. 1\(a\), 15](#)
- C38** S. 367(5) modified (1.12.2001) by [S.I. 2001/3650, arts. 1\(a\), 14](#)

#### <sup>F115</sup>368 Winding-up petitions: EEA and Treaty firms.

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#### Textual Amendments

- F115** S. 368 omitted (31.12.2020) by virtue of [The EEA Passport Rights \(Amendment, etc., and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1149\), reg. 1\(3\), Sch. para. 19](#) (with [reg. 4](#)); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

#### 369 Insurers: service of petition etc. on [<sup>F116</sup>FCA and PRA].

- (1) If a person other than [<sup>F117</sup>a regulator] presents a petition for the winding up of an authorised person with permission to effect or carry out contracts of insurance, the petitioner must serve a copy of the petition [<sup>F118</sup>on the appropriate regulator].

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- (2) If a person other than [<sup>F119</sup>a regulator] applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised person with permission to effect or carry out contracts of insurance, the applicant must serve a copy of the application [<sup>F120</sup>on the appropriate regulator].
- [<sup>F121</sup>(3) "The appropriate regulator" means—
- (a) in relation to a PRA-authorised person, the FCA and the PRA, and
  - (b) in any other case, the FCA.
- (4) If either regulator—
- (a) presents a petition for the winding up of a PRA-authorised person with permission to effect or carry out contracts of insurance, or
  - (b) applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of a PRA-authorised person with permission to effect or carry out contracts of insurance,
- that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.]

#### Textual Amendments

- F116** Words in s. 369 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 16\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F117** Words in s. 369(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 16\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F118** Words in s. 369(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 16\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F119** Words in s. 369(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 16\(3\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F120** Words in s. 369(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 16\(3\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F121** S. 369(3)(4) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 16\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

#### [<sup>F122</sup>369A Reclaim funds: service of petition etc on [<sup>F123</sup>FCA and PRA]

- (1) If a person [<sup>F124</sup>other than a regulator] presents a petition for the winding up of an authorised reclaim fund, the petitioner must serve a copy of the petition [<sup>F125</sup>on the appropriate regulator].
  - (2) If a person [<sup>F126</sup>other than a regulator] applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised reclaim fund, the applicant must serve a copy of the application [<sup>F127</sup>on the appropriate regulator].
  - (3) In this section “authorised reclaim fund” [<sup>F128</sup>has the same meaning as in the Dormant Assets Acts 2008 to 2022 (see section 26 of the Dormant Assets Act 2022)].
- [ "The appropriate regulator" means—
- <sup>F129</sup>(4) (a) in relation to an authorised reclaim fund that is a PRA-authorised person, the FCA and the PRA, and
- (b) in relation to any other authorised reclaim fund, the FCA.

*Status: Point in time view as at 06/06/2022.*

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- (5) If either regulator—
- (a) presents a petition for the winding up of an authorised reclaim fund that is a PRA-authorized person, or
  - (b) applies to have a provisional liquidator appointed under section 135 of the 1986 Act (or Article 115 of the 1989 Order) in respect of an authorised reclaim fund that is a PRA-authorized person,
- that regulator must serve a copy of the petition or application (as the case requires) on the other regulator.]]

#### Textual Amendments

- F122** S. 369A inserted (12.3.2009) by [Dormant Bank and Building Society Accounts Act 2008 \(c. 31\)](#), ss. 15, 31(1), [Sch. 2 para. 7](#); S.I. 2009/490, [art. 2](#) (with [art. 3](#))
- F123** Words in s. 369A heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 17\(5\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 3](#), [Sch.](#)
- F124** Words in s. 369A(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 17\(2\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 3](#), [Sch.](#)
- F125** Words in s. 369A(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 17\(2\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 3](#), [Sch.](#)
- F126** Words in s. 369A(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 17\(3\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 3](#), [Sch.](#)
- F127** Words in s. 369A(2) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 17\(3\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 3](#), [Sch.](#)
- F128** Words in s. 369A(3) substituted (6.6.2022) by [Dormant Assets Act 2022 \(c. 5\)](#), s. 34(3), [Sch. 1 para. 2\(3\)](#); S.I. 2022/582, [reg. 2](#)
- F129** S. 369A(4)(5) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 17\(4\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 3](#), [Sch.](#)

#### [<sup>F130</sup>370 Liquidator's duty to report to FCA and PRA

- (1) If—
- (a) a company is being wound up voluntarily or a body is being wound up on a petition presented by any person, and
  - (b) it appears to the liquidator that the company or body is carrying on, or has carried on—
    - (i) a regulated activity in contravention of the general prohibition, or
    - (ii) a credit-related regulated activity in contravention of section 20,
- the liquidator must report the matter without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA.
- (2) Subsection (1) does not apply where—
- (a) a body is being wound up on a petition presented by a regulator, and
  - (b) the regulator's petition depended on a contravention by the body of the general prohibition.]

#### Textual Amendments

- F130** S. 370 substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 18](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 3](#), [Sch.](#)

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

**C39** S. 370 modified (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\)](#), regs. 1, **17(14)** (with reg. 24)

**371** [<sup>F131</sup>**Powers of FCA and PRA] to participate in proceedings.**

- (1) This section applies if a person <sup>F132</sup>... presents a petition for the winding up of a body which—
- (a) is, or has been, an authorised person [<sup>F133</sup>or recognised investment exchange];
  - (b) is, or has been, an appointed representative; or
  - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (2) The [<sup>F134</sup>appropriate regulator] is entitled to be heard—
- (a) at the hearing of the petition; and
  - (b) at any other hearing of the court in relation to the body under or by virtue of Part IV or V of the 1986 Act (or Part V or VI of the 1989 Order).
- (3) Any notice or other document required to be sent to a creditor of the body must also be sent to the [<sup>F134</sup>appropriate regulator].
- (4) A person appointed for the purpose by the [<sup>F134</sup>appropriate regulator] is entitled—
- (a) to attend any meeting of creditors of the body;
  - (b) to attend any meeting of a committee established for the purposes of Part IV or V of the 1986 Act under section 101 of that Act or under section 141 or 142 of that Act;
  - (c) to attend any meeting of a committee established for the purposes of Part V or VI of the 1989 Order under Article 87 of that Order or under Article 120 of that Order; and
  - (d) to make representations as to any matter for decision at such a meeting.
- <sup>F135</sup>(4A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a qualifying decision procedure by which a decision about any matter is sought from the creditors of the body.]
- (5) If, during the course of the winding up of a company, a compromise or arrangement [<sup>F136</sup>in relation to which Part 26 of the Companies Act 2006 applies] is proposed between the company and its creditors, or any class of them, the [<sup>F134</sup>appropriate regulator] may apply to the court under [<sup>F137</sup>section 896 or 899 of [<sup>F138</sup>that Act]].
- <sup>F139</sup>(5A) If, during the course of the winding up of a company, a compromise or arrangement in relation to which Part 26A of the Companies Act 2006 applies is proposed between the company and its creditors, or any class of them, the appropriate regulator may apply to the court under section 901C or 901F of that Act.]
- <sup>F140</sup>(6) “The appropriate regulator” means—
- (a) where the body is a PRA-regulated person, each of the FCA and the PRA, except that the references in subsections (4) and (4A) to a person appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;
  - (b) in any other case, the FCA.]



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(7) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.

#### Textual Amendments

- F131** Words in s. 371 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 19\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F132** Words in s. 371(1) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 19\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F133** Words in s. 371(1)(a) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 19\(2\)\(b\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F134** Words in s. 371(2)-(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 19\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F135** S. 371(4A) inserted (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), [4\(6\)\(a\)](#) (with [reg. 17](#))
- F136** Words in s. 371(5) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 9 para. 20\(5\)\(a\)\(i\)](#) (with ss. 2(2), 5(2))
- F137** Words in s. 371(5) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1), [Sch. 1 para. 211\(4\)](#) (with arts. 6, 11, 12)
- F138** Words in s. 371(5) substituted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 9 para. 20\(5\)\(a\)\(ii\)](#) (with ss. 2(2), 5(2))
- F139** S. 371(5A) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 9 para. 20\(5\)\(b\)](#) (with ss. 2(2), 5(2))
- F140** S. 371(6) substituted (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), [4\(6\)\(b\)](#) (with [reg. 17](#))

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

- C40** S. 371 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [regs. 1, 6](#)
- C41** S. 371 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), [reg. 6](#)

### *Bankruptcy*

#### **372 Petitions.**

- (1) The <sup>F141</sup>[FCA] may present a petition to the court—
- (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual; or
  - (b) under section <sup>F142</sup>[2 or 5 of the 2016] Act for the sequestration of the estate of an individual.

<sup>F143</sup>(1A) The PRA may present a petition to the court—

- (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual who is a PRA-regulated person;
- (b) under section <sup>F144</sup>[2 or 5 of the 2016] Act for the sequestration of the estate of an individual who is a PRA-regulated person.]

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- (2) But <sup>F145</sup>a petition may be presented by virtue of subsection (1) or (1A)] only on the ground that—
- (a) the individual appears to be unable to pay a regulated activity debt; or
  - (b) the individual appears to have no reasonable prospect of being able to pay a regulated activity debt.
- (3) An individual appears to be unable to pay a regulated activity debt if he is in default on an obligation to pay a sum due and payable under an agreement.
- (4) An individual appears to have no reasonable prospect of being able to pay a regulated activity debt if—
- (a) <sup>F146</sup>a regulator] has served on him a demand requiring him to establish to the satisfaction of <sup>F147</sup>that regulator] that there is a reasonable prospect that he will be able to pay a sum payable under an agreement when it falls due;
  - (b) at least three weeks have elapsed since the demand was served; and
  - (c) the demand has been neither complied with nor set aside in accordance with rules.
- (5) A demand made under subsection (4)(a) is to be treated for the purposes of the 1986 Act (or the 1989 Order) as if it were a statutory demand under section 268 of that Act (or Article 242 of that Order).
- (6) For the purposes of a petition presented in accordance with subsection (1)(b) <sup>F148</sup>or (1A)(b)]—
- (a) <sup>F149</sup>the regulator by which the petition is presented] is to be treated as a qualified creditor; and
  - (b) a ground mentioned in subsection (2) constitutes apparent insolvency.
- (7) “Individual” means an individual—
- (a) who is, or has been, an authorised person; or
  - (b) who is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (8) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the individual concerned.
- (9) “Rules” means—
- (a) in England and Wales, rules made under section 412 of the 1986 Act;
  - (b) in Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and
  - (c) in Northern Ireland, rules made under Article 359 of the 1989 Order.

#### Textual Amendments

- F141** Word in s. 372(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 20\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F142** Words in s. 372(1)(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. 20\(6\)](#)
- F143** S. 372(1A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 20\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F144** Words in s. 372(1A)(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. 20\(6\)](#)

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- F145** Words in s. 372(2) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 20(4)** (with **Sch. 20**); S.I. 2013/423, art. 3, Sch.
- F146** Words in s. 372(4)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 20(5)(a)** (with **Sch. 20**); S.I. 2013/423, art. 3, Sch.
- F147** Words in s. 372(4)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 20(5)(b)** (with **Sch. 20**); S.I. 2013/423, art. 3, Sch.
- F148** Words in s. 372(6) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 20(6)(a)** (with **Sch. 20**); S.I. 2013/423, art. 3, Sch.
- F149** Words in s. 372(6)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 20(6)(b)** (with **Sch. 20**); S.I. 2013/423, art. 3, Sch.

#### Commencement Information

- II** S. 372 wholly in force at 1.12.2001; s. 372 not in force at Royal Assent see s. 431(2); s. 372 in force for certain purposes at 20.7.2001 by S.I. 2001/2632, art. 2(1), **Sch. Pt. 1**; s. 372 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

### 373 Insolvency practitioner’s duty to report <sup>F150</sup>to FCA and PRA].

- (1) If—
- (a) a bankruptcy order or sequestration award is in force in relation to an individual <sup>F151</sup>..., and
  - (b) it appears to the insolvency practitioner that the individual is carrying on, or has <sup>F152</sup>carried on—
    - (i) a regulated activity in contravention of the general prohibition, or
    - (ii) a credit-related regulated activity in contravention of section 20,]
- the insolvency practitioner must report the matter <sup>F153</sup>without delay to the FCA and, if the regulated activity concerned is a PRA-regulated activity, to the PRA].

<sup>F154</sup>(1A) Subsection (1) does not apply where—

- (a) the bankruptcy order or sequestration award is in force by virtue of a petition presented by a regulator, and
  - (b) the regulator’s petition depended on a contravention by the individual of the general prohibition.]
- (2) “Bankruptcy order” means a bankruptcy order under Part IX of the 1986 Act (or Part IX of the 1989 Order).
- (3) “Sequestration award” means an award of sequestration under section <sup>F155</sup>22 of the 2016] Act.
- (4) “Individual” includes an entity mentioned in section 374(1)(c).

#### Textual Amendments

- F150** Words in s. 373 heading substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 21(4)** (with **Sch. 20**); S.I. 2013/423, art. 3, Sch.
- F151** Words in s. 373(1)(a) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 21(2)(a)** (with **Sch. 20**); S.I. 2013/423, art. 3, Sch.
- F152** Words in s. 373(1)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 21(2)(b)** (with **Sch. 20**); S.I. 2013/423, art. 3, Sch.
- F153** Words in s. 373(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 14 para. 21(2)(c)** (with **Sch. 20**); S.I. 2013/423, art. 3, Sch.

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**F154** S. 373(1A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 21\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

**F155** Words in s. 373(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. 20\(7\)](#)

### 374 <sup>F156</sup>**Powers of FCA or PRA] to participate in proceedings.**

- (1) This section applies if a person <sup>F157</sup>... presents a petition to the court—
- (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual;
  - (b) under section <sup>F158</sup>2 or 5 of the 2016] Act for the sequestration of the estate of an individual; or
  - (c) under section 6 of the <sup>F159</sup>2016] Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.

- (2) The <sup>F160</sup>appropriate regulator] is entitled to be heard—
- (a) at the hearing of the petition; and
  - (b) at any other hearing in relation to the individual or entity under—
    - (i) Part IX of the 1986 Act;
    - (ii) Part IX of the 1989 Order; or
    - (iii) the <sup>F161</sup>2016] Act.

- (3) <sup>F162</sup>In the case of a petition presented under Article 238 of the 1989 Order, a copy of the report prepared under Article 248 of that Order] must also be sent to the <sup>F160</sup>appropriate regulator].

- (4) A person appointed for the purpose by the <sup>F160</sup>appropriate regulator] is entitled—
- (a) to attend any meeting of creditors of the individual or entity;
  - (b) to attend any meeting of a committee established under section 301 of the 1986 Act (or Article 274 of the 1989 Order);
  - (c) to attend any meeting of commissioners held under paragraph <sup>F163</sup>26 or 27 of schedule 6 to the 2016] Act; and
  - (d) to make representations as to any matter for decision at such a meeting.

<sup>F164</sup>(4A) The appropriate regulator or a person appointed by the appropriate regulator is entitled to participate in (but not vote in) a creditors' decision procedure by which a decision about any matter is sought from the creditors of the individual or entity.]

- (5) “Individual” means an individual who—
- (a) is, or has been, an authorised person; or
  - (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

- (6) “Entity” means an entity which—
- (a) is, or has been, an authorised person; or
  - (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

<sup>F165</sup><sup>F166</sup>(7) “The appropriate regulator” means—

- (a) where the individual or entity is a PRA-regulated person, each of the FCA and the PRA, except that the references in subsections (4) and (4A) to a person

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appointed by the appropriate regulator are to be read as references to a person appointed by either the FCA or the PRA;

(b) in any other case, the FCA.]

(8) But where the petition was presented by a regulator “the appropriate regulator” does not include the regulator which presented the petition.]

#### Textual Amendments

- F156** Words in s. 374 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 22\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F157** Words in s. 374(1) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 22\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F158** Words in s. 374(1)(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. 20\(8\)\(a\)\(i\)](#)
- F159** Word in s. 374(1)(c) 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. 20\(8\)\(a\)\(ii\)](#)
- F160** Words in s. 374(2)-(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 22\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.
- F161** Word in s. 374(2)(b)(iii) 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. 20\(8\)\(b\)](#)
- F162** Words in s. 374(3) substituted (6.4.2016) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Bankruptcy\) and the Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/481\)](#), reg. 1, [Sch. 1 para. 13](#)
- F163** Words in s. 374(4)(c) 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. 20\(8\)\(c\)](#)
- F164** S. 374(4A) inserted (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), [4\(7\)\(a\)](#) (with reg. 17)
- F165** S. 374(7) substituted (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), [4\(7\)\(b\)](#) (with reg. 17)
- F166** S. 374(7)(8) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 22\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

#### *Provisions against debt avoidance*

#### **375** [<sup>F167</sup>**Right of FCA and PRA] to apply for an order.**

- (1) The [<sup>F168</sup>FCA] may apply for an order under section 423 of the 1986 Act (or Article 367 of the 1989 Order) in relation to a debtor if—
- at the time the transaction at an undervalue was entered into, the debtor was carrying on a regulated activity (whether or not in contravention of the general prohibition); and
  - a victim of the transaction is or was party to an agreement entered into with the debtor, the making or performance of which constituted or was part of a regulated activity carried on by the debtor.

[<sup>F169</sup>(1A) The PRA may apply for an order under section 423 of the 1986 Act (or Article 367 of the 1989 Order) in relation to a debtor if—

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- (a) at the time the transaction at an undervalue was entered into, the debtor was carrying on a PRA-regulated activity (whether or not in contravention of the general prohibition); and
  - (b) a victim of the transaction is or was party to an agreement entered into with the debtor, the making or performance of which constituted or was part of a PRA-regulated activity carried on by the debtor.]
- (2) An application made under this section is to be treated as made on behalf of every victim of the transaction to whom subsection (1)(b) [<sup>F170</sup>or subsection (1A)(b) (as the case may be)] applies.
- (3) Expressions which are given a meaning in Part XVI of the 1986 Act (or Article 367, 368 or 369 of the 1989 Order) have the same meaning when used in this section.

#### Textual Amendments

- F167** Words in s. 375 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 23\(5\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F168** Word in s. 375(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 23\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F169** S. 375(1A) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 23\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F170** Words in s. 375(2) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 23\(4\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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

- C42** S. 375 modified (21.2.2009) by [The Banking Act 2009 \(Parts 2 and 3 Consequential Amendments\) Order 2009 \(S.I. 2009/317\), art. 5\(1\)\(7\)](#)
- C43** S. 375 applied (with modifications) (8.2.2011 with application in accordance with reg. 27(a) of the applying S.I.) by [The Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\), regs. 1, 27\(a\), Sch. 6 para. 3\(5\)](#) (as amended (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\), Sch. 2 para. 198\(s\)\(ii\)](#) (with [Sch. 2 para. 213](#)))

### *Supplemental provisions concerning insurers*

#### **376 Continuation of contracts of long-term insurance where insurer in liquidation.**

- (1) This section applies in relation to the winding up of an insurer which effects or carries out contracts of long-term insurance.
- (2) Unless the court otherwise orders, the liquidator must carry on the insurer's business so far as it consists of carrying out the insurer's contracts of long-term insurance with a view to its being transferred as a going concern to a person who may lawfully carry out those contracts.
- (3) In carrying on the business, the liquidator—
  - (a) may agree to the variation of any contracts of insurance in existence when the winding up order is made; but
  - (b) must not effect any new contracts of insurance.

*Status: Point in time view as at 06/06/2022.*

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- (4) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to contracts of long-term insurance effected by it require the appointment of a special manager, he may apply to the court.
  - (5) On such an application, the court may appoint a special manager to act during such time as the court may direct.
  - (6) The special manager is to have such powers, including any of the powers of a receiver or manager, as the court may direct.
  - (7) Section 177(5) of the 1986 Act (or Article 151(5) of the 1989 Order) applies to a special manager appointed under subsection (5) as it applies to a special manager appointed under section 177 of the 1986 Act (or Article 151 of the 1989 Order).
  - (8) If the court thinks fit, it may reduce the value of one or more of the contracts of long-term insurance effected by the insurer.
  - (9) Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.
  - (10) The court may, on the application of an official, appoint an independent actuary to investigate the insurer's business so far as it consists of carrying out its contracts of long-term insurance and to report to the official—
    - (a) on the desirability or otherwise of that part of the insurer's business being continued; and
    - (b) on any reduction in the contracts of long-term insurance effected by the insurer that may be necessary for successful continuation of that part of the insurer's business.
  - (11) "Official" means—
    - (a) the liquidator;
    - (b) a special manager appointed under subsection (5); or
    - (c) the <sup>F171</sup>PRA].
- <sup>F172</sup>(11A) The PRA must—
  - (a) consult the FCA before making an application under subsection (10), and
  - (b) provide the FCA with a copy of any actuary's report made to the PRA under that subsection.
- (11B) In the event that the activity of effecting or carrying out long-term contracts of insurance as principal is not to any extent a <sup>F173</sup>PRA-regulated] activity—
  - (a) the reference in subsection (11)(c) to the PRA is to be read as a reference to the FCA, and
  - (b) subsection (11A) does not apply.]
- (12) The liquidator may make an application in the name of the insurer and on its behalf under Part VII without obtaining the permission that would otherwise be required by <sup>F174</sup>Article 142 of, and Schedule 2 to, the 1989 Order.]

#### Textual Amendments

**F171** Word in s. 376(11)(c) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 14 para. 24\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

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- F172** S. 376(11A)(11B) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 14 para. 24\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F173** Words in s. 376(11B) substituted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\), s. 148\(5\), Sch. 10 para. 2](#); [S.I. 2014/377, art. 2\(1\)\(a\), Sch. Pt. 1](#)
- F174** Words in s. 376(12) substituted (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\(2\), 4](#)

### 377 Reducing the value of contracts instead of winding up.

- (1) This section applies in relation to an insurer which has been proved to be unable to pay its debts.
- (2) If the court thinks fit, it may reduce the value of one or more of the insurer's contracts instead of making a winding up order.
- (3) Any reduction is to be on such terms and subject to such conditions (if any) as the court thinks fit.

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

- C44** S. 377 excluded (20.4.2003) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2003 \(S.I. 2003/1102\), reg. 4\(6\)](#) (with [reg. 3](#))
- C45** S. 377 excluded (18.2.2004) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2004 \(S.I. 2004/353\), reg. 4\(7\)](#) (with [reg. 3](#))

### 378 Treatment of assets on winding up.

- (1) The Treasury may by regulations provide for the treatment of the assets of an insurer on its winding up.
- (2) The regulations may, in particular, provide for—
  - (a) assets representing a particular part of the insurer's business to be available only for meeting liabilities attributable to that part of the insurer's business;
  - (b) separate general meetings of the creditors to be held in respect of liabilities attributable to a particular part of the insurer's business.

### 379 Winding-up rules.

- (1) Winding-up rules may include provision—
  - (a) for determining the amount of the liabilities of an insurer to policyholders of any class or description for the purpose of proof in a winding up; and
  - (b) generally for carrying into effect the provisions of this Part with respect to the winding up of insurers.
- (2) Winding-up rules may, in particular, make provision for all or any of the following matters—
  - (a) the identification of assets and liabilities;
  - (b) the apportionment, between assets of different classes or descriptions, of—
    - (i) the costs, charges and expenses of the winding up; and



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- (ii) any debts of the insurer of a specified class or description;
  - (c) the determination of the amount of liabilities of a specified description;
  - (d) the application of assets for meeting liabilities of a specified description;
  - (e) the application of assets representing any excess of a specified description.
- (3) “Specified” means specified in winding-up rules.
- (4) “Winding-up rules” means rules made under section 411 of the 1986 Act (or Article 359 of the 1989 Order).
- (5) Nothing in this section affects the power to make winding-up rules under the 1986 Act or the 1989 Order.

### *<sup>F175</sup>Settlement finality*

#### **Textual Amendments**

**F175** S. 379A and cross-heading inserted (27.4.2017) by [Digital Economy Act 2017 \(c. 30\)](#), **ss. 112, 118(1)**

#### **379A Power to apply settlement finality regime to payment institutions**

- (1) The Treasury may by regulations made by statutory instrument provide for the application to payment institutions, as participants in payment or securities settlement systems, of provision in subordinate legislation—
- (a) modifying the law of insolvency or related law in relation to such systems, or
  - (b) relating to the securing of rights and obligations.
- (2) “Payment institution” means—
- (a) an authorised payment institution or small payment institution within the meaning of the Payment Services Regulations [<sup>F176</sup>2017], or
  - (b) a person whose head office, registered office or place of residence, as the case may be, is outside the United Kingdom and whose functions correspond to those of an institution within paragraph (a).
- (3) “Payment or securities settlement system” means arrangements between a number of participants for or in connection with the clearing or execution of instructions by participants relating to any of the following—
- (a) the placing of money at the disposal of a recipient;
  - (b) the assumption or discharge of a payment obligation;
  - (c) the transfer of the title to, or an interest in, securities.
- (4) “Subordinate legislation” has the same meaning as in the Interpretation Act 1978.
- (5) Regulations under this section may—
- (a) make consequential, supplemental or transitional provision;
  - (b) amend subordinate legislation.
- (6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.]

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#### **Textual Amendments**

**F176** Word in s. 379A(2)(a) substituted (13.8.2017) by [The Payment Services Regulations 2017 \(S.I. 2017/752\)](#), reg. 1(2)(c)(i), **Sch. 8 para. 2(6)** (with reg. 3)

**Status:**

Point in time view as at 06/06/2022.

**Changes to legislation:**

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