



Small Business, Enterprise and Employment Act 2015

2015 CHAPTER 26

PART 10

INSOLVENCY

Regulation of insolvency practitioners: amendments to existing regime

139 Oversight of recognised professional bodies

(1) After section 391C of the Insolvency Act 1986 (inserted by section 138) insert—

“Oversight of recognised professional bodies

391D Directions

- (1) This section applies if the Secretary of State is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to have, an adverse impact on the achievement of one or more of the regulatory objectives.
- (2) The Secretary of State may, if in all the circumstances of the case satisfied that it is appropriate to do so, direct the body to take such steps as the Secretary of State considers will counter the adverse impact, mitigate its effect or prevent its occurrence or recurrence.
- (3) A direction under this section may require a recognised professional body—
 - (a) to take only such steps as it has power to take under its regulatory arrangements;
 - (b) to take steps with a view to the modification of any part of its regulatory arrangements.

Status: Point in time view as at 01/10/2015.

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- (4) A direction under this section may require a recognised professional body—
 - (a) to take steps with a view to the institution of, or otherwise in respect of, specific regulatory proceedings;
 - (b) to take steps in respect of all, or a specified class of, such proceedings.
- (5) For the purposes of this section, a direction to take steps includes a direction which requires a recognised professional body to refrain from taking a particular course of action.
- (6) In this section “regulatory arrangements”, in relation to a recognised professional body, means the arrangements that the body has for or in connection with—
 - (a) authorising persons to act as insolvency practitioners, or
 - (b) regulating persons acting as insolvency practitioners.

391E Directions: procedure

- (1) Before giving a recognised professional body a direction under section 391D, the Secretary of State must give the body a notice accompanied by a draft of the proposed direction.
- (2) The notice under subsection (1) must—
 - (a) state that the Secretary of State proposes to give the body a direction in the form of the accompanying draft,
 - (b) specify why the Secretary of State has reached the conclusions mentioned in section 391D(1) and (2), and
 - (c) specify a period within which the body may make written representations with respect to the proposal.
- (3) The period specified under subsection (2)(c)—
 - (a) must begin with the date on which the notice is given to the body, and
 - (b) must not be less than 28 days.
- (4) On the expiry of that period, the Secretary of State must decide whether to give the body the proposed direction.
- (5) The Secretary of State must give notice of that decision to the body.
- (6) Where the Secretary of State decides to give the proposed direction, the notice under subsection (5) must—
 - (a) contain the direction,
 - (b) state the time at which the direction is to take effect, and
 - (c) specify the Secretary of State's reasons for the decision to give the direction.
- (7) Where the Secretary of State decides to give the proposed direction, the Secretary of State must publish the notice under subsection (5); but this subsection does not apply to a direction to take any step with a view to the institution of, or otherwise in respect of, regulatory proceedings against an individual.
- (8) The Secretary of State may revoke a direction under section 391D; and, where doing so, the Secretary of State—

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- (a) must give the body to which the direction was given notice of the revocation, and
- (b) must publish the notice and, if the notice under subsection (5) was published under subsection (7), must do so (if possible) in the same manner as that in which that notice was published.

391F Financial penalty

- (1) This section applies if the Secretary of State is satisfied—
 - (a) that a recognised professional body has failed to comply with a requirement to which this section applies, and
 - (b) that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the body.
- (2) This section applies to a requirement imposed on the recognised professional body—
 - (a) by a direction given under section 391D, or
 - (b) by a provision of this Act or of subordinate legislation under this Act.
- (3) The Secretary of State may impose a financial penalty, in respect of the failure, of such amount as the Secretary of State considers appropriate.
- (4) In deciding what amount is appropriate, the Secretary of State—
 - (a) must have regard to the nature of the requirement which has not been complied with, and
 - (b) must not take into account the Secretary of State's costs in discharging functions under this Part.
- (5) A financial penalty under this section is payable to the Secretary of State; and sums received by the Secretary of State in respect of a financial penalty under this section (including by way of interest) are to be paid into the Consolidated Fund.
- (6) In sections 391G to 391I, “penalty” means a financial penalty under this section.

391G Financial penalty: procedure

- (1) Before imposing a penalty on a recognised professional body, the Secretary of State must give notice to the body—
 - (a) stating that the Secretary of State proposes to impose a penalty and the amount of the proposed penalty,
 - (b) specifying the requirement in question,
 - (c) stating why the Secretary of State is satisfied as mentioned in section 391F(1), and
 - (d) specifying a period within which the body may make written representations with respect to the proposal.
- (2) The period specified under subsection (1)(d)—
 - (a) must begin with the date on which the notice is given to the body, and
 - (b) must not be less than 28 days.

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- (3) On the expiry of that period, the Secretary of State must decide—
 - (a) whether to impose a penalty, and
 - (b) whether the penalty should be the amount stated in the notice or a reduced amount.
- (4) The Secretary of State must give notice of the decision to the body.
- (5) Where the Secretary of State decides to impose a penalty, the notice under subsection (4) must—
 - (a) state that the Secretary of State has imposed a penalty on the body and its amount,
 - (b) specify the requirement in question and state—
 - (i) why it appears to the Secretary of State that the requirement has not been complied with, or
 - (ii) where, by that time, the requirement has been complied with, why it appeared to the Secretary of State when giving the notice under subsection (1) that the requirement had not been complied with, and
 - (c) specify a time by which the penalty is required to be paid.
- (6) The time specified under subsection (5)(c) must be at least three months after the date on which the notice under subsection (4) is given to the body.
- (7) Where the Secretary of State decides to impose a penalty, the Secretary of State must publish the notice under subsection (4).
- (8) The Secretary of State may rescind or reduce a penalty imposed on a recognised professional body; and, where doing so, the Secretary of State—
 - (a) must give the body notice that the penalty has been rescinded or reduced to the amount stated in the notice, and
 - (b) must publish the notice; and it must (if possible) be published in the same manner as that in which the notice under subsection (4) was published.

391H Appeal against financial penalty

- (1) A recognised professional body on which a penalty is imposed may appeal to the court on one or more of the appeal grounds.
- (2) The appeal grounds are—
 - (a) that the imposition of the penalty was not within the Secretary of State's power under section 391F;
 - (b) that the requirement in respect of which the penalty was imposed had been complied with before the notice under section 391G(1) was given;
 - (c) that the requirements of section 391G have not been complied with in relation to the imposition of the penalty and the interests of the body have been substantially prejudiced as a result;
 - (d) that the amount of the penalty is unreasonable;
 - (e) that it was unreasonable of the Secretary of State to require the penalty imposed to be paid by the time specified in the notice under section 391G(5)(c).

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- (3) An appeal under this section must be made within the period of three months beginning with the day on which the notice under section 391G(4) in respect of the penalty is given to the body.
- (4) On an appeal under this section the court may—
 - (a) quash the penalty,
 - (b) substitute a penalty of such lesser amount as the court considers appropriate, or
 - (c) in the case of the appeal ground in subsection (2)(e), substitute for the time imposed by the Secretary of State a different time.
- (5) Where the court substitutes a penalty of a lesser amount, it may require the payment of interest on the substituted penalty from such time, and at such rate, as it considers just and equitable.
- (6) Where the court substitutes a later time for the time specified in the notice under section 391G(5)(c), it may require the payment of interest on the penalty from the substituted time at such rate as it considers just and equitable.
- (7) Where the court dismisses the appeal, it may require the payment of interest on the penalty from the time specified in the notice under section 391G(5)(c) at such rate as it considers just and equitable.
- (8) In this section, “the court” means the High Court or, in Scotland, the Court of Session.

391I Recovery of financial penalties

- (1) If the whole or part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (but this is subject to any requirement imposed by the court under section 391H(5), (6) or (7)).
- (2) If an appeal is made under section 391H in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn.
- (3) Subsection (4) applies where the whole or part of a penalty has not been paid by the time it is required to be paid and—
 - (a) no appeal relating to the penalty has been made under section 391H during the period within which an appeal may be made under that section, or
 - (b) an appeal has been made under that section and determined or withdrawn.
- (4) The Secretary of State may recover from the recognised professional body in question, as a debt due to the Secretary of State, any of the penalty and any interest which has not been paid.

391J Reprimand

- (1) This section applies if the Secretary of State is satisfied that an act or omission of a recognised professional body (or a series of such acts or omissions) in discharging one or more of its regulatory functions has had, or is likely to

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have, an adverse impact on the achievement of one or more of the regulatory objectives.

- (2) The Secretary of State may, if in all the circumstances of the case satisfied that it is appropriate to do so, publish a statement reprimanding the body for the act or omission (or series of acts or omissions).

391K Reprimand: procedure

- (1) If the Secretary of State proposes to publish a statement under section 391J in respect of a recognised professional body, it must give the body a notice—
- (a) stating that the Secretary of State proposes to publish such a statement and setting out the terms of the proposed statement,
 - (b) specifying the acts or omissions to which the proposed statement relates, and
 - (c) specifying a period within which the body may make written representations with respect to the proposal.
- (2) The period specified under subsection (1)(c)—
- (a) must begin with the date on which the notice is given to the body, and
 - (b) must not be less than 28 days.
- (3) On the expiry of that period, the Secretary of State must decide whether to publish the statement.
- (4) The Secretary of State may vary the proposed statement; but before doing so, the Secretary of State must give the body notice—
- (a) setting out the proposed variation and the reasons for it, and
 - (b) specifying a period within which the body may make written representations with respect to the proposed variation.
- (5) The period specified under subsection (4)(b)—
- (a) must begin with the date on which the notice is given to the body, and
 - (b) must not be less than 28 days.
- (6) On the expiry of that period, the Secretary of State must decide whether to publish the statement as varied.”
- (2) In section 415A of the Insolvency Act 1986 (fees orders: general), after subsection (1A) (inserted by section 17 of the Deregulation Act 2015) insert—
- “(1B) In setting under subsection (1) the amount of a fee in connection with maintenance of recognition, the matters to which the Secretary of State may have regard include, in particular, the costs of the Secretary of State in connection with any functions under sections 391D, 391E, 391J, 391K and 391N.”

Commencement Information

- II** [S. 139](#) in force at 1.10.2015 immediately after 2015 c. 20, s. 17 comes into force by [S.I. 2015/1689](#), [reg. 3\(a\)](#)

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