



# Deregulation Act 2015

## 2015 CHAPTER 20

### *Companies and insolvency*

#### **17 Authorisation of insolvency practitioners**

- (1) Part 13 of the Insolvency Act 1986 (insolvency practitioners and their qualification) is amended in accordance with subsections (2) to (4).
- (2) In section 390 (persons not qualified to act as insolvency practitioners), for subsection (2) substitute—
  - “(2) A person is not qualified to act as an insolvency practitioner at any time unless at that time the person is appropriately authorised under section 390A.”
- (3) After section 390 insert—

#### **“390A Authorisation**

- (1) In this Part—
  - “partial authorisation” means authorisation to act as an insolvency practitioner—
    - (a) only in relation to companies, or
    - (b) only in relation to individuals;
  - “full authorisation” means authorisation to act as an insolvency practitioner in relation to companies, individuals and insolvent partnerships;
  - “partially authorised” and “fully authorised” are to be construed accordingly.
- (2) A person is fully authorised under this section to act as an insolvency practitioner—
  - (a) by virtue of being a member of a professional body recognised under section 391(1) and being permitted to act as an insolvency practitioner for all purposes by or under the rules of that body, or

- (b) by holding an authorisation granted by the Department of Enterprise, Trade and Investment in Northern Ireland under Article 352 of the Insolvency (Northern Ireland) Order 1989.
- (3) A person is partially authorised under this section to act as an insolvency practitioner—
- (a) by virtue of being a member of a professional body recognised under section 391(1) and being permitted to act as an insolvency practitioner in relation only to companies or only to individuals by or under the rules of that body, or
  - (b) by virtue of being a member of a professional body recognised under section 391(2) and being permitted to act as an insolvency practitioner by or under the rules of that body.

### **390B Partial authorisation: acting in relation to partnerships**

- (1) A person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not accept an appointment to act in relation to a company if at the time of the appointment the person is aware that the company—
- (a) is or was a member of a partnership, and
  - (b) has outstanding liabilities in relation to the partnership.
- (2) A person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not accept an appointment to act in relation to an individual if at the time of the appointment the person is aware that the individual—
- (a) is or was a member of a partnership other than a Scottish partnership, and
  - (b) has outstanding liabilities in relation to the partnership.
- (3) Subject to subsection (9), a person who is partially authorised to act as an insolvency practitioner in relation to companies may nonetheless not continue to act in relation to a company if the person becomes aware that the company—
- (a) is or was a member of a partnership, and
  - (b) has outstanding liabilities in relation to the partnership,
- unless the person is granted permission to continue to act by the court.
- (4) Subject to subsection (9), a person who is partially authorised to act as an insolvency practitioner in relation to individuals may nonetheless not continue to act in relation to an individual if the person becomes aware that the individual—
- (a) is or was a member of a partnership other than a Scottish partnership, and
  - (b) has outstanding liabilities in relation to the partnership,
- unless the person is granted permission to continue to act by the court.
- (5) The court may grant a person permission to continue to act for the purposes of subsection (3) or (4) if it is satisfied that the person is competent to do so.

- (6) A person who is partially authorised and becomes aware as mentioned in subsection (3) or (4) may alternatively apply to the court for an order (a “replacement order”) appointing in his or her place a person who is fully authorised to act as an insolvency practitioner in relation to the company or (as the case may be) the individual.
- (7) A person may apply to the court for permission to continue to act or for a replacement order under—
- (a) where acting in relation to a company, this section or, if it applies, section 168(5B) (member of insolvent partnership: England and Wales);
  - (b) where acting in relation to an individual, this section or, if it applies, section 303(2C) (member of insolvent partnership: England and Wales).
- (8) A person who acts as an insolvency practitioner in contravention of any of subsections (1) to (4) is guilty of an offence under section 389 (acting without qualification).
- (9) A person does not contravene subsection (3) or (4) by continuing to act as an insolvency practitioner during the permitted period if, within the period of 7 business days beginning with the day after the day on which the person becomes aware as mentioned in the subsection, the person—
- (a) applies to the court for permission to continue to act, or
  - (b) applies to the court for a replacement order.
- (10) For the purposes of subsection (9)—
- “business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in any part of Great Britain;
  - “permitted period” means the period beginning with the day on which the person became aware as mentioned in subsection (3) or (4) and ending on the earlier of—
    - (a) the expiry of the period of 6 weeks beginning with the day on which the person applies to the court as mentioned in subsection (9)(a) or (b), and
    - (b) the day on which the court disposes of the application (by granting or refusing it);
  - “replacement order” has the meaning given by subsection (6).”
- (4) For section 391 (recognised professional bodies) substitute—

**“391 Recognised professional bodies**

- (1) The Secretary of State may by order declare a body which appears to the Secretary of State to meet the requirements of subsection (4) to be a recognised professional body which is capable of providing its insolvency specialist members with full authorisation or partial authorisation.
- (2) The Secretary of State may by order declare a body which appears to the Secretary of State to meet the requirements of subsection (4) to be a recognised

professional body which is capable of providing its insolvency specialist members with partial authorisation only.

- (3) An order under subsection (2) must state whether the partial authorisation relates to companies or to individuals.
  - (4) The requirements are that the body—
    - (a) regulates the practice of a profession, and
    - (b) maintains and enforces rules for securing that its insolvency specialist members—
      - (i) are fit and proper persons to act as insolvency practitioners, and
      - (ii) meet acceptable requirements as to education and practical training and experience.
  - (5) The Secretary of State may make an order revoking an order under subsection (1) or (2) in relation to a professional body if it appears to the Secretary of State that the body no longer meets the requirements of subsection (4).
  - (6) The Secretary of State may make an order revoking an order under subsection (1) and replacing it with an order under subsection (2) in relation to a professional body if it appears to the Secretary of State that the body is capable of providing its insolvency specialist members with partial authorisation only.
  - (7) An order of the Secretary of State under this section has effect from such date as is specified in the order.
  - (8) An order revoking an order made under subsection (1) or (2) may make provision whereby members of the body in question continue to be treated as fully or partially authorised to act as insolvency practitioners (as the case may be) for a specified period after the revocation takes effect.
  - (9) In this section—
    - (a) references to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question (and the references in section 390A to members of a recognised professional body are to be read accordingly);
    - (b) references to insolvency specialist members of a professional body are to members who are permitted by or under the rules of the body to act as insolvency practitioners.”
- (5) In section 415A of the Insolvency Act 1986 (fees orders (general))—
- (a) in subsection (1) (fees for grant or maintenance of recognition of professional body), in paragraph (b) (power to refuse recognition, or revoke order of recognition, where fee not paid), after “391(1)” insert “or (2)”;
  - (b) after subsection (1) (fees for grant or maintenance of recognition of professional body) insert—

“(1A) Fees under subsection (1) may vary according to whether the body is recognised under section 391(1) (body providing full and

partial authorisation) or under section 391(2) (body providing partial authorisation).”

- (6) An order under section 391(1) of the Insolvency Act 1986 (recognised professional bodies) made before the coming into force of this section is, following the coming into force of this section, to be treated as if it were made under section 391(1) as substituted by subsection (4) of this section.