

## STATUTORY INSTRUMENTS

# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART VII

#### MISCELLANEOUS PROVISIONS APPLYING TO COMPANIES WHICH ARE INSOLVENT OR IN LIQUIDATION

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

- C1** Pt. 7 modified (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\), ss. 19, 49\(1\)](#) (with ss. 2(2), 5(2))
- C2** Pt. 7 modified by [S.R. 2004/307](#) (as amended (1.10.2006) by [Limited Liability Partnerships \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/377\), reg. 3, Sch. 2](#); (temp.) (27.4.2020 retrospective) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\), Sch. 11 para. 8\(1\)\(2\), 14](#) (with ss. 2(2), 5(2)); (26.6.2020) by [The Limited Liability Partnerships \(Amendment etc.\) Regulations 2020 \(S.I. 2020/643\), reg. 1\(1\), Sch. 2](#) (with reg. 3))

##### *Office#holders*

##### Holders of office to be qualified insolvency practitioners

**194.**—(1) <sup>F1</sup>.....

(2) Where an administrative receiver of a company is appointed, he must be a person who is so qualified.

(3) Where a company goes into liquidation, the liquidator must be a person who is so qualified.

(4) Where a provisional liquidator is appointed, he must be a person who is so qualified.

(5) Paragraphs (3) and (4) are without prejudice to any statutory provision under which the official receiver is to be, or may be, liquidator or provisional liquidator.

- F1** [Art. 194\(1\)](#) repealed (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\), arts. 1\(3\), 3\(3\), 31, Sch. 2 para. 30, Sch. 9](#) (with art. 4); [S.R. 2006/21, art. 2](#) (with [S.R. 2006/22, arts. 2 - 7](#))

##### Appointment to office of two or more persons

**195.**—(1) This Article applies if an appointment or nomination of any person to the office of<sup>ff2</sup> . . . administrative receiver, liquidator or provisional liquidator—

(a) relates to more than one person, or

(b) has the effect that the office is to be held by more than one person.

**Status:** Point in time view as at 26/06/2020.

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, PART VII is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(2) The appointment or nomination shall declare whether any act required or authorised under any statutory provision to be done by the<sup>F3</sup> . . . administrative receiver, liquidator or provisional liquidator is to be done by all or any one or more of the persons for the time being holding the office in question.

- F2** Word in art. 195(1) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 31, Sch. 9 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)
- F3** Word in art. 195(2) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 31, Sch. 9 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

### Validity of office#holder's acts

**196.** The acts of an individual as<sup>F4</sup> . . . administrative receiver, liquidator or provisional liquidator of a company are valid notwithstanding any defect in his appointment, nomination or qualifications.

- F4** Word in art. 196 repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 32, Sch. 9 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

*Management by administrators, liquidators, etc.*

### Supplies of water, electricity, etc.

**197**<sup>F5</sup>.—(1) This Article applies in the case of a company where—

- [<sup>F6</sup>(a) the company enters administration, or  
 (b) an administrative receiver is appointed, or  
<sup>F7</sup>(ba) . . . . .  
 (c) a voluntary arrangement[<sup>F8</sup> approved under Part II], has taken effect, or  
 (d) the company goes into liquidation, or  
 (e) a provisional liquidator is appointed;

and “the office#holder” means the administrator, the administrative receiver<sup>F9</sup>..., the supervisor of the voluntary arrangement, the liquidator or the provisional liquidator, as the case may be.

(2) If a request is made by or with the concurrence of the office#holder for the giving, after the effective date, of any of the supplies mentioned in paragraph (3), the supplier—

- (a) may make it a condition of the giving of the supply that the office#holder personally guarantees the payment of any charges in respect of the supply, but  
 (b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the effective date are paid.

(3) The supplies referred to in paragraph (2) are—

- (a) a supply of electricity by<sup>F10</sup> a public electricity supplier within the meaning of Part II of the Electricity (Northern Ireland) Order 1992],  
<sup>F11</sup>(aza) a supply of electricity by a class of person within Class A (small supply) or Class B (resale) of Schedule 3 to the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 2013 (S.R. 2013/93);]

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- [<sup>F12</sup>(aa) a supply of gas by the holder of a licence under Article 8 of the Gas (Northern Ireland) Order 1996;]
- [<sup>F13</sup>(b) a supply of water or sewerage services by a water or sewerage undertaker;]
- [<sup>F14</sup>(ba) a supply of water by a person who has an interest in the premises to which the supply is given;]
- [<sup>F15</sup>(c) a supply of communications services by a provider of a public electronic communications service,]
- [<sup>F16</sup>(d) a supply of communications services by a person who carries on a business which includes giving such supplies;
- (e) a supply of goods or services mentioned in paragraph (3A) by a person who carries on a business which includes giving such supplies, where the supply is for the purpose of enabling or facilitating anything to be done by electronic means;]

[<sup>F15</sup>and in this paragraph “communications services” do not include electronic communications services to the extent that they are used to broadcast or transmit programme services (within the meaning of the Communications Act 2003).]

[<sup>F17</sup>(3A) The goods and services referred to in paragraph (3)(e) are—

- (a) point of sale terminals;
- (b) computer hardware and software;
- (c) information, advice and technical assistance in connection with the use of information technology;
- (d) data storage and processing;
- (e) website hosting.]

(4) “The effective date” for the purposes of this Article is whichever is applicable of the following dates—

- [<sup>F18</sup>(a) the date on which the company entered administration]
- (b) the date on which the administrative receiver was appointed (or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed),
- [<sup>F19</sup>(ba) . . . . .]
- (c) the date on which the voluntary arrangement[<sup>F8</sup> took effect],
- (d) the date on which the company went into liquidation,
- (e) the date on which the provisional liquidator was appointed.

**F5** mod.by SR 1990/177; SR 1991/411

**F6** Art. 197(1)(a) substituted (27.3.2006) by *Insolvency (Northern Ireland) Order 2005* (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 33(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)

**F7** Art. 197(1)(ba) omitted (26.6.2020) by virtue of *Corporate Insolvency and Governance Act 2020* (c. 12), s. 49(1), **Sch. 7 para. 19(2)(a)** (with ss. 2(2), 5(2))

**F8** 2002 NI 6

**F9** Words in art. 197(1) omitted (26.6.2020) by virtue of *Corporate Insolvency and Governance Act 2020* (c. 12), s. 49(1), **Sch. 7 para. 19(2)(b)** (with ss. 2(2), 5(2))

**F10** 1992 NI 1

**F11** Art. 197(3)(aza) inserted (26.6.2020) by *Corporate Insolvency and Governance Act 2020* (c. 12), **ss. 16(3), 49(1)** (with ss. 2(2), 5(2))

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- F12** 1996 NI 2
- F13** Art. 197(3)(b) substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 27(1)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F14** Art. 197(3)(ba) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), **ss. 16(4)**, 49(1) (with ss. 2(2), 5(2))
- F15** 2003 c. 21
- F16** Art. 197(3)(d)(e) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), **ss. 16(5)**, 49(1) (with ss. 2(2), 5(2))
- F17** Art. 197(3A) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), **ss. 16(6)**, 49(1) (with ss. 2(2), 5(2))
- F18** Art. 197(4)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 33(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)
- F19** Art. 197(4)(ba) omitted (26.6.2020) by virtue of Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 7 para. 19(3)** (with ss. 2(2), 5(2))

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

- C3** Arts. 197-197B applied by S.R. 1995/225, **art. 4(3)(b)** (as amended (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 13 para. 5** (with ss. 2(2), 5(2), 18(4)))

#### [<sup>F20</sup>F] Further protection of essential supplies

**197A.**—(1) An insolvency-related term of a contract for the supply of essential goods or services to a company ceases to have effect if—

- (a) the company enters administration, or
- (b) a voluntary arrangement approved under Part 2 takes effect in relation to the company.

(2) An insolvency-related term of a contract does not cease to have effect by virtue of paragraph (1) to the extent that—

- (a) it provides for the contract or the supply to terminate, or any other thing to take place, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement;
- (b) it entitles a supplier to terminate the contract or the supply, or do any other thing, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement; or
- (c) it entitles a supplier to terminate the contract or the supply because of an event that occurs, or may occur, after the company enters administration or the voluntary arrangement takes effect.

(3) Where an insolvency-related term of a contract ceases to have effect under this Article the supplier may—

- (a) terminate the contract, if the condition in paragraph (4) is met;
- (b) terminate the supply, if the condition in paragraph (5) is met.

(4) The condition in this paragraph is that—

- (a) the insolvency office-holder consents to the termination of the contract,
- (b) the High Court grants permission for the termination of the contract, or
- (c) any charges in respect of the supply that are incurred after the company entered administration or the voluntary arrangement took effect are not paid within the period of 28 days beginning with the day on which payment is due.

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The High Court may grant permission under sub-paragraph (b) only if satisfied that the continuation of the contract would cause the supplier hardship.

- (5) The condition in this paragraph is that—
- (a) the supplier gives written notice to the insolvency office-holder that the supply will be terminated unless the office-holder personally guarantees the payment of any charges in respect of the continuation of the supply after the company entered administration or the voluntary arrangement took effect, and
  - (b) the insolvency office-holder does not give that guarantee within the period of 14 days beginning with the day the notice is received.
- (6) For the purposes of securing that the interests of suppliers are protected, where—
- (a) an insolvency-related term of a contract (the “original term”) ceases to have effect by virtue of paragraph (1), and
  - (b) the company subsequently enters administration, or a voluntary arrangement subsequently has effect in relation to it,

the contract is treated for the purposes of paragraphs (1) to (5) as if, immediately before the subsequent administration is entered into or the subsequent voluntary arrangement takes effect, it included an insolvency-related term identical to the original term.

(7) A contract for the supply of essential goods or services is a contract for a supply mentioned in Article 197(3).

(8) An insolvency-related term of a contract for the supply of essential goods or services to a company is a provision of the contract under which—

- (a) the contract or the supply would terminate, or any other thing would take place, because the company enters administration or the voluntary arrangement takes effect,
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company enters administration or the voluntary arrangement takes effect, or
  - (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the company enters administration or the voluntary arrangement takes effect.
- (9) In this Article “insolvency office-holder” means—
- (a) in a case where a company enters administration, the administrator;
  - (b) in a case where a voluntary arrangement under Part 2 takes effect in relation to a company, the supervisor of the voluntary arrangement.]

**F20** Art. 197A inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), **ss. 17(1), 49(1)** (with **ss. 2(2), 5(2), 17(3)**)

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

**C4** Arts. 197-197B applied by [S.R. 1995/225](#), **art. 4(3)(b)** (as amended (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), **s. 49(1)**, **Sch. 13 para. 5** (with **ss. 2(2), 5(2), 18(4)**))

**[<sup>F21</sup>Protection of supplies of goods and services**

**197B.**—(1) This Article applies where a company becomes subject to a relevant insolvency procedure.

(2) A company becomes subject to a relevant insolvency procedure for the purposes of this Article where—

*Status: Point in time view as at 26/06/2020.*

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- (a) a moratorium under Part 1A comes into force for the company,
  - (b) the company enters administration,
  - (c) an administrative receiver of the company is appointed (otherwise than in succession to another administrative receiver),
  - (d) a voluntary arrangement approved under Part 2 takes effect in relation to the company,
  - (e) the company goes into liquidation,
  - (f) a provisional liquidator of the company is appointed (otherwise than in succession to another provisional liquidator), or
  - (g) a court order is made under section 901C(1) of the Companies Act 2006 in relation to the company (order summoning meeting relating to compromise or arrangement).
- (3) A provision of a contract for the supply of goods or services to the company ceases to have effect when the company becomes subject to the relevant insolvency procedure if and to the extent that, under the provision—
- (a) the contract or the supply would terminate, or any other thing would take place, because the company becomes subject to the relevant insolvency procedure, or
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company becomes subject to the relevant insolvency procedure.
- (4) Where—
- (a) under a provision of a contract for the supply of goods or services to the company the supplier is entitled to terminate the contract or the supply because of an event occurring before the start of the insolvency period, and
  - (b) the entitlement arises before the start of that period,
- the entitlement may not be exercised during that period.
- (5) Where a provision of a contract ceases to have effect under paragraph (3) or an entitlement under a provision of a contract is not exercisable under paragraph (4), the supplier may terminate the contract if—
- (a) in a case where the company has become subject to a relevant insolvency procedure as specified in paragraph (2)(b), (c), (e) or (f), the office-holder consents to the termination of the contract,
  - (b) in any other case, the company consents to the termination of the contract, or
  - (c) the High Court is satisfied that the continuation of the contract would cause the supplier hardship and grants permission for the termination of the contract.
- (6) Where a provision of a contract ceases to have effect under paragraph (3) and the company becomes subject to a further relevant insolvency procedure, the supplier may terminate the contract in accordance with paragraph (5)(a) to (c).
- (7) The supplier shall not make it a condition of any supply of goods and services after the time when the company becomes subject to the relevant insolvency procedure, or do anything which has the effect of making it a condition of such a supply, that any outstanding charges in respect of a supply made to the company before that time are paid.
- (8) In this Article “the insolvency period”, in relation to a relevant insolvency procedure, means the period beginning when the company becomes subject to the relevant insolvency procedure and ending—
- (a) in the case of a moratorium under Part 1A, when the moratorium comes to an end,
  - (b) in the case of the company entering administration, when the appointment of the administrator ceases to have effect under —

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- (i) paragraphs 77 to 85 of Schedule B1, or
- (ii) an order under section 901F of the Companies Act 2006,
- (c) in the case of the appointment of an administrative receiver of the company, when the receiver or any successor to the receiver ceases to hold office without a successor being appointed,
- (d) in the case of a voluntary arrangement approved under Part 2 taking effect in relation to the company, when the arrangement ceases to have effect,
- (e) in the case of the company going into liquidation, when the liquidator has—
  - (i) pursuant to Article 80(1), laid the account of the winding up before a general meeting of the company and given an explanation of it,
  - (ii) pursuant to Article 92(1), laid the account of the winding up before a general meeting of the company and a meeting of the creditors and given an explanation of it to each meeting, or
  - (iii) pursuant to Article 124(1), given the liquidator's report of the winding up to a general meeting of the company's creditors,or when the appointment of the liquidator ceases to have effect under an order under section 901F of the Companies Act 2006,
- (f) in the case of the appointment of a provisional liquidator for the company, when the provisional liquidator or any successor to the provisional liquidator ceases to hold office without a successor being appointed, and
- (g) in the case of the making of a court order under section 901C(1) of the Companies Act 2006 in relation to the company, when—
  - (i) an order made by the High Court under section 901F of that Act takes effect, or
  - (ii) the High Court decides not to make such an order.
- (9) In this Article “office-holder”, in relation to a company which has entered into an insolvency procedure as specified in paragraph (2)(b), (c), (e) or (f), means the administrator, administrative receiver, liquidator or provisional liquidator respectively.
- (10) Schedule 2ZZA provides for exclusions from the operation of this Article.

**F21** Arts. 197B, 197C inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), **ss. 18(1), 49(1)** (with [ss. 2\(2\), 5\(2\), 18\(4\)](#))

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

**C5** Art. 197B excluded (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), **ss. 19, 49(1)** (with [ss. 2\(2\), 5\(2\)](#))

**C6** Arts. 197-197B applied by [S.R. 1995/225](#), **art. 4(3)(b)** (as amended (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), **s. 49(1), Sch. 13 para. 5** (with [ss. 2\(2\), 5\(2\), 18\(4\)](#)))

**Powers to amend Article 197B and Schedule 2ZZA**

**197C.**—(1) Regulations may omit any of sub-paragraphs (a) to (g) of Article 197B(2) (relevant insolvency procedures).

(2) Regulations may amend Schedule 2ZZA so as to—

- (a) remove or amend any exclusion from Article 197B for the time being specified there, or
- (b) add further exclusions from Article 197B.

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(3) In paragraph (2), references to exclusions from Article 197B are to circumstances in which Article 197B, or any provision of that Article, does not apply.

(4) The circumstances referred to in paragraph (3) may be framed by reference to kinds of company, supplier, contract, goods or services or in any other way.

(5) Regulations under this Article may make—

- (a) consequential provision;
- (b) transitional and supplementary provision.

(6) Regulations under this Article made by virtue of paragraph (5) may in particular make provision amending this Order or any other statutory provision whenever passed or made (including, if paragraph 1(1) or (2) of Schedule 2ZZA is omitted, provision omitting Article 197A or 197 respectively).

(7) Regulations may not be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.]

**F21** Arts. 197B, 197C inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), ss. **18(1)**, 49(1) (with ss. 2(2), 5(2), 18(4))

### Getting in the company's property

**198.**—(1) This Article applies in the case of a company where—

- [<sup>F22</sup>(a) the company enters administration, or]
- (b) an administrative receiver is appointed, or
- (c) the company goes into liquidation, or
- (d) a provisional liquidator is appointed;

and “the office#holder” means the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.

(2) Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the High Court may require that person forthwith (or within such period as the Court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office#holder.

(3) Where the office#holder—

- (a) seizes or disposes of any property which is not property of the company, and
- (b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property,

paragraph (4) has effect.

(4) In that case the office#holder—

- (a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office#holder's own negligence, and
- (b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.



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**F22** Art. 198(1)(a) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 34 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

### Duty to co-operate with officeholder

**199.**—(1) This Article applies as does Article 198; and it also applies, in the case of a company in respect of which a winding-up order has been made by the High Court, as if references to the officeholder included the official receiver, whether or not he is the liquidator.

(2) Each of the persons mentioned in paragraph (3) shall—

- (a) give to the officeholder such information concerning the company and its promotion, formation, business, dealings, affairs or property as the officeholder may at any time after the effective date reasonably require, and
- (b) attend on the officeholder at such times as the latter may reasonably require.

(3) The persons referred to in paragraph (2) are—

- (a) those who are or have at any time been officers of the company,
- (b) those who have taken part in the formation of the company at any time within one year before the effective date,
- (c) those who are in the employment of the company, or have been in its employment (including employment under a contract for services) within that year, and are in the officeholder's opinion capable of giving information which he requires,
- (d) those who are, or have within that year been, officers of, or in the employment (including employment under a contract for services) of, another company which is, or within that year was, an officer of the company in question, and
- (e) in the case of a company being wound up by the High Court, any person who has acted as administrator, administrative receiver or liquidator of the company.

(4) For the purposes of paragraphs (2) and (3), “the effective date” is whichever is applicable of the following dates—

- <sup>F23</sup>(a) the date on which the company entered administration,
- (b) the date on which the administrative receiver was appointed or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed,
- (c) the date on which the provisional liquidator was appointed, and
- (d) the date on which the company went into liquidation.

(5) If a person without reasonable excuse fails to comply with any obligation imposed by this Article, he shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

**F23** Art. 199(4)(a) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 35 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

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### **Inquiry into company's dealings, etc.**

**200.**—(1) This Article applies as does Article 198; and it also applies, in the case of a company in respect of which a winding#up order has been made by the High Court, as if references to the office#holder included the official receiver, whether or not he is the liquidator.

- (2) The High Court may, on the application of the office#holder, summon to appear before it—
- (a) any officer of the company,
  - (b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or
  - (c) any person whom the Court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company.

(3) The High Court may require any such person as is mentioned in paragraph (2)(a) to (c) to submit an affidavit to the Court containing an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in sub#paragraph (c) of that paragraph.

(4) The following applies in a case where—

- (a) a person without reasonable excuse fails to appear before the High Court when he is summoned to do so under this Article, or
- (b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the Court under this Article.

(5) The High Court may, for the purpose of bringing that person and anything in his possession before the Court, cause a warrant to be issued to a constable—

- (a) for the arrest of that person, and
- (b) for the seizure of any books, papers, records, money or goods in that person's possession.

(6) The High Court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until that person is brought before the Court under the warrant or until such other time as the Court may order.

### **High Court's enforcement powers under Article 200**

**201.**—(1) If it appears to the High Court, on consideration of any evidence obtained under Article 200 or this Article, that any person has in his possession any property of the company, the Court may, on the application of the office#holder, order that person to deliver the whole or any part of the property to the office#holder at such time, in such manner and on such terms as the Court thinks fit.

(2) If it appears to the High Court, on consideration of any evidence so obtained, that any person is indebted to the company, the Court may, on the application of the office#holder, order that person to pay to the office#holder, at such time and in such manner as the Court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the Court thinks fit.

(3) The High Court may, if it thinks fit, order that any person liable to be summoned to appear before it under Article 200 or this Article shall be examined on oath, either orally or by interrogatories, concerning the company or the matters mentioned in Article 200(2)(c).

### *Adjustment of prior transactions (administration and liquidation)*

#### **Transactions at an undervalue**

**202.**—(1) This Article applies in the case of a company where—

- [<sup>F24</sup>(a) the company enters administration, or]

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(b) the company goes into liquidation;

and “the office#holder” means the administrator or the liquidator, as the case may be.

(2) Where the company has at a relevant time (as defined in Article 204) entered into a transaction with any person at an undervalue, the office#holder may apply to the High Court for an order under this Article.

(3) Subject to paragraph (5) the High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.

(4) For the purposes of this Article and Article 205, a company enters into a transaction with a person at an undervalue if—

- (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or
- (b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.

(5) The High Court shall not make an order under this Article in respect of a transaction at an undervalue if it is satisfied—

- (a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and
- (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

**F24** Art. 202(1)(a) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 36 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

## Preferences

**203.**—(1) This Article applies as does Article 202.

(2) Where the company has at a relevant time (as defined in Article 204) given a preference to any person, the office#holder may apply to the High Court for an order under this Article.

(3) Subject to paragraph (5) and Article 205(2), the High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not given that preference.

(4) For the purposes of this Article and Article 205, a company gives a preference to a person if—

- (a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, and
- (b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.

(5) The High Court shall not make an order under this Article in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in paragraph (4)(b).

(6) A company which has given a preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless

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the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in paragraph (5).

(7) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

### “Relevant time” under Articles 202, 203

**204.**—(1) Subject to paragraph (2), the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given—

- (a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company (otherwise than by reason only of being its employee), at a time in the period of 2 years ending with the onset of insolvency,
- (b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of 6 months ending with the onset of insolvency,<sup>F25</sup> .....
- [<sup>F26</sup>(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, and
- (d) in either case, at a time between the filing with the Court of a copy of notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 and the making of an appointment under that paragraph.]

(2) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (1)(a) or (b), that time is not a relevant time for the purposes of Article 202 or 203 unless the company—

- (a) is at that time unable to pay its debts within the meaning of Article 103, or
- (b) becomes unable to pay its debts within the meaning of Article 103 in consequence of the transaction or preference;

but the requirements of this paragraph are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.

(3) For the purposes of paragraph (1), the onset of insolvency is—

- [<sup>F27</sup>(a) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,
- (b) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed under paragraph 15 or 23 of Schedule B1 following filing with the High Court of a copy of a notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,
- (c) in a case where Article 202 or 203 applies by reason of an administrator of a company being appointed otherwise than as mentioned in sub-paragraph (a) or (b), the date on which the appointment takes effect,
- (d) in a case where Article 202 or 203 applies by reason of a company going into liquidation either following conversion of administration into winding up by virtue of [<sup>F28</sup>Article 51 of the EU Regulation] or at the time when the appointment of an administrator ceases to have effect, the date on which the company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed), and

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- (e) in a case where Article 202 or 203 applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding up.]

- F25** Word after art. 204(1)(b) repealed (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), 31, Sch. 2 para. 37(3), Sch. 9 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))
- F26** Art. 204(1)(c)(d) substituted (27.3.2006) for art.204(1)(c) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 37(2) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))
- F27** Art. 204(3)(a)(b)(c)(d)(e) substituted (27.3.2006) for art. 204(3)(a)(aa)(b) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 37(4) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))
- F28** Words in art. 204(3)(d) substituted (26.6.2017) by [The Insolvency Amendment \(EU 2015/848\) Regulations 2017 \(S.I. 2017/702\)](#), reg. 1, [Sch. para. 110](#) (with reg. 3)

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

- C7** Art. 204 modified (temp.) (retrospective to 27.4.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), Sch. 11 para. 8(1)(2), [15](#) (with ss. 2(2), 5(2))

**Orders under Articles 202, 203**

**205.**—(1) Without prejudice to the generality of Articles 202(3) and 203(3), an order under either of those Articles with respect to a transaction or preference entered into or given by a company may (subject to paragraph (2))—

- (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company,
- (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred,
- (c) release or discharge (in whole or in part) any security given by the company,
- (d) require any person to pay, in respect of benefits received by him from the company, such sums to the office#holder as the High Court may direct,
- (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be under such new or revived obligations to that person as the Court thinks appropriate,
- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference, and
- (g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under Article 202 or 203 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction or (as the case may be) the person to whom the preference was given; but such an order—

- (a) shall not prejudice any interest in property which was acquired from a person other than the company and was acquired<sup>F29</sup> in good faith and for value], or prejudice any interest deriving from such an interest, and

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- (b) shall not require a person who received a benefit from the transaction or preference<sup>F29</sup> in good faith and for value] to pay a sum to the office#holder, except where that person was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the company.

<sup>F30</sup>(2A) Where a person has acquired an interest in property from a person other than the company in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or  
 (b) he was connected with, or was an associate of, either the company in question or the person with whom that company entered into the transaction or to whom that company gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of sub#paragraph (a) or (as the case may be) sub#paragraph (b) of paragraph (2) that the interest was acquired or the benefit was received otherwise than in good faith.]

<sup>F31</sup>(3) For the purposes of paragraph (2A)(a), the relevant surrounding circumstances are (as the case may require)—

- (a) the fact that the company in question entered into the transaction at an undervalue; or  
 (b) the circumstances which amounted to the giving of the preference by the company in question;

and paragraphs (3A) to (3C) have effect to determine whether, for those purposes, a person has notice of the relevant proceedings.

<sup>F32</sup>(3A) Where Article 202 or 203 applies by reason of a company's entering administration, a person has notice of the relevant proceedings if he has notice that—

- (a) an administration application has been made,  
 (b) an administration order has been made,  
 (c) a copy of a notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 has been filed, or  
 (d) notice of the appointment of an administrator has been filed under paragraph 19 or 30 of that Schedule.]

<sup>F33</sup>(3B) Where Article 202 or 203 applies by reason of a company's going into liquidation at the time when the appointment of an administrator of the company ceases to have effect, a person has notice of the relevant proceedings if he has notice that—

- (a) an administration application has been made,  
 (b) an administration order has been made,  
 (c) a copy of a notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 has been filed,  
 (d) notice of the appointment of an administrator has been filed under paragraph 19 or 30 of that Schedule, or  
 (e) the company has gone into liquidation.]

(3C) In a case where Article 202 or 203 applies by reason of the company in question going into liquidation at any other time, a person has notice of the relevant proceedings if he has notice—

- (a) where the company goes into liquidation on the making of a winding#up order, of the fact that the petition on which the winding#up order is made has been presented or of the fact that the company has gone into liquidation;  
 (b) in any other case, of the fact that the company has gone into liquidation.]

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(4) The provisions of Articles 202 to 204 and this Article apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the company had no power to enter into or give.

- F29** 1994 c.12
- F30** 1994 c.12
- F31** 1994 c.12
- F32** Art. 205(3A) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 38(2) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))
- F33** Art. 205(3B) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 38(3) (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

### Extortionate credit transactions

**206.**—(1) This Article applies as does Article 202, and where the company is, or has been, a party to a transaction for, or involving, the provision of credit to the company.

(2) The High Court may, on the application of the office#holder, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending with<sup>F34</sup> the day on which the company entered administration or went into liquidation].

(3) For the purposes of this Article a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or
- (b) it otherwise grossly contravened ordinary principles of fair dealing;

and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is or, as the case may be, was extortionate.

(4) An order under this Article with respect to any transaction may contain such one or more of the following as the High Court thinks fit, that is to say—

- (a) provision setting aside the whole or part of any obligation created by the transaction,
- (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held,
- (c) provision requiring any person who is or was a party to the transaction to pay to the office#holder any sums paid to that person, by virtue of the transaction, by the company,
- (d) provision requiring any person to surrender to the office#holder any property held by him as security for the purposes of the transaction,
- (e) provision directing accounts to be taken between any persons.

(5) The powers conferred by this Article are exercisable in relation to any transaction concurrently with any powers exercisable in relation to that transaction as a transaction at an undervalue.

- F34** Words in [art. 206\(2\)](#) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 39 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

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## **Avoidance of certain floating charges**

**207.**—(1) This Article applies as does Article 202.

(2) Subject to the following provisions of this Article, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—

- (a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge,
- (b) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company, and
- (c) the amount of such interest (if any) as is payable on the amount falling within sub-paragraph (a) or (b) in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.

(3) Subject to paragraph (4), the time at which a floating charge is created by a company is a relevant time for the purposes of this Article if the charge is created—

- (a) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of 2 years ending with the onset of insolvency,
- (b) in the case of a charge which is created in favour of any other person, at a time in the period of 12 months ending with the onset of insolvency,<sup>F35</sup> . . .
- [<sup>F36</sup>(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, or
- (d) in either case, at a time between the filing with the High Court of a copy of notice of intention to appoint an administrator under paragraph 15 or 23 of Schedule B1 and the making of an appointment under that paragraph.]

(4) Where a company creates a floating charge at a time mentioned in paragraph (3)(b) and the person in favour of whom the charge is created is not connected with the company, that time is not a relevant time for the purposes of this Article unless the company—

- (a) is at that time unable to pay its debts within the meaning of Article 103, or
- (b) becomes unable to pay its debts within the meaning of Article 103 in consequence of the transaction under which the charge is created.

(5) For the purposes of paragraph (3), the onset of insolvency is—

- [<sup>F37</sup>(a) in a case where this Article applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,
- (b) in a case where this Article applies by reason of an administrator of a company being appointed under paragraph 15 or 23 of Schedule B1 following filing with the High Court of a copy of notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,
- (c) in a case where this Article applies by reason of an administrator of a company being appointed otherwise than as mentioned in sub-paragraph (a) or (b), the date on which the appointment takes effect, and
- (d) in a case where this Article applies by reason of a company going into liquidation, the date of the commencement of the winding up.]

(6) For the purposes of paragraph (2)(a) the value of any goods or services supplied by way of consideration for a floating charge is the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary



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course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.

- F35** Word in art. 207(3)(b) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 40(2), Sch. 9 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)
- F36** Art. 207(3)(c)(d) substituted (27.3.2006) for art. 207(3)(c) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 40(3) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)
- F37** Art. 207(5)(a) - (d) substituted (27.3.2006) for art. 207(a)(b) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 40(4) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

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

- C8** Art. 207 excluded by Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 16(3) (as amended (1.10.2009) by Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), reg. 6(b))
- C9** Art. 207 modified (temp.) (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), Sch. 11 para. 8(1)(2), 16 (with ss. 2(2), 5(2))

**Unenforceability of liens on books, etc.**

**208.**—(1) This Article applies in the case of a company where—

- [<sup>F38</sup>(a) the company enters administration, or]
- (b) the company goes into liquidation, or
- (c) a provisional liquidator is appointed;

and the office#holder means the administrator, the liquidator or the provisional liquidator, as the case may be.

(2) Subject to paragraph (3), a lien or other right to retain possession of any of the books, papers or other records of the company is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the office#holder.

(3) Paragraph (2) does not apply to a lien on documents which give a title to property and are held as such.

- F38** Art. 208(1)(a) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 41 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

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