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STATUTORY INSTRUMENTS

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**1989 No. 2405**

**The Insolvency (Northern Ireland) Order 1989**

**PART VII**

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

*Adjustment of prior transactions (administration and liquidation)*

**Transactions at an undervalue**

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

- [<sup>F1</sup>(a) the company enters administration, or]
- (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.

**F1** [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](#))

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

- C1** Pt. 7 applied (with modifications) (4.1.2024) by [S.I. 2021/716, Sch. 1A para. 3](#) (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), reg. 1(2), [Sch. 1](#))
- C2** Art. 202 applied (with modifications) (4.1.2024) by [S.I. 2021/716, reg. 37A](#) (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), regs. 1(2), [12](#))

**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 officeholder 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 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.

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

- C3** Art. 203 applied (with modifications) (4.1.2024) by [S.I. 2021/716, reg. 37A](#) (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), regs. 1(2), [12](#))

**“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,

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- (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>F2</sup> .....
- [<sup>F3</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>F4</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<sup>F5</sup> ... 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
- (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.]

**F2** 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](#))

**F3** [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](#))

**F4** [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](#))

**F5** Words in [art. 204\(3\)\(d\)](#) omitted (31.12.2020) by virtue of [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), [Sch. para. 175](#) (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

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

- C4** 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))
- C5** Art. 204 applied (with modifications) (4.1.2024) by [S.I. 2021/716, reg. 37A](#) (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\), regs. 1\(2\), 12](#))

### 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>F6</sup>in good faith and for value], or prejudice any interest deriving from such an interest, and
- (b) shall not require a person who received a benefit from the transaction or preference [<sup>F6</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>F7</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

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- (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>F8</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>F9</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>F10</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.]

(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.

**F6** 1994 c.12  
**F7** 1994 c.12  
**F8** 1994 c.12

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- F9** 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**)
- F10** 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**)

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

- C6** Art. 205 applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), regs. 1(2), **12**)

**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 [F11]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.

- F11** 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**)

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

- C7 [Art. 206](#) applied (with modifications) (4.1.2024) by [S.I. 2021/716](#), [reg. 37A](#) (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023](#) (S.I. 2023/1399), [regs. 1\(2\), 12](#))

**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>F12</sup> . . .
- <sup>F13</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>F14</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

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

- F12** 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](#))
- F13** 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](#))
- F14** 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))
- C10** Art. 207 applied (with modifications) (4.1.2024) by [S.I. 2021/716](#), [reg. 37A](#) (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), regs. 1(2), [12](#))

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

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

- [<sup>F15</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.

- F15** 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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**Modifications etc. (not altering text)**

- C11** [Art. 208](#) applied (with modifications) (4.1.2024) by [S.I. 2021/716](#), **reg. 37A** (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023](#) (S.I. 2023/1399), regs. 1(2), **12**)

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