



Insolvency Act 1985

1985 CHAPTER 65

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

212 Transactions defrauding creditors

(1) Where—

- (a) a person (" the relevant person ") has entered into a transaction with any other person at an undervalue; and
- (b) the court is satisfied that the transaction was entered into for the purpose of putting assets beyond the reach of a person who is making, or may at some time make, a claim against the relevant person or of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make,

the court may make such order as it thinks fit for restoring the position to what it would have been if the transaction had not been entered into and of protecting the interests of the persons on whose behalf the application is treated as made.

(2) An application for an order under this section shall not be made in relation to a transaction except—

- (a) in a case where the relevant person has been adjudged bankrupt or is a body corporate which is being wound up or in relation to which an administration order is in force, by the official receiver, by the trustee of the bankrupt's estate or the liquidator or administrator of the body corporate or, with the leave of the court, by a person who is, or is capable of being, prejudiced by the transaction;
- (b) in a case where a person who is, or is capable of being, prejudiced by the transaction is bound by a composition or scheme approved under Chapter II of Part II or Chapter I of Part III of this Act, by the supervisor of the composition or scheme or by any person who (whether or not so bound) is, or is capable of being, so prejudiced; or

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- (c) in any other case, by a person who is, or is capable of being, so prejudiced ; and an application made under any of the preceding paragraphs in relation to a transaction shall be treated as made on behalf of every person who is, or is capable of being, prejudiced by the transaction.
- (3) For the purposes of this section a person enters into a transaction with another person at an undervalue if—
- (a) he makes a gift to that other person or he otherwise enters into a transaction with that other person on terms that provide for him to receive no consideration ;
 - (b) he enters into a transaction with that other person in consideration of marriage ; or
 - (c) he enters into a transaction with that other 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 relevant person.
- (4) Without prejudice to the generality of the preceding provisions of this section, an order made under this section with respect to any transaction may, subject to subsection (5) below—
- (a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;
 - (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 relevant person ;
 - (d) require any person to pay to any other person in respect of benefits received from the relevant person such sums as the 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 to be under such new or revived obligations 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 such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.
- (5) An order under this section may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the relevant person entered into the transaction ; but such an order—
- (a) shall not prejudice any interest in property which was acquired from a person other than the relevant person and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest; and
 - (b) shall not require a person who received a benefit from that transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.
- (6) For the purposes of this section the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under this section may be made in respect of the transaction.

(7) In this section—

" the court" means the High Court or—

- (a) if the relevant person is an individual, any other court which would have jurisdiction in relation to a bankruptcy petition relating to the relevant person ;
- (b) if the relevant person is not an individual, any other court having jurisdiction to wind up the relevant person under Part XX or XXI of the 1985 Act;

" security" means any mortgage, charge, lien or other security.

213 Co-operation between courts exercising jurisdiction in relation to insolvency law

- (1) An order made by a court in any part of the United Kingdom in the exercise of jurisdiction in relation to insolvency law shall be enforced in any other part of the United Kingdom as if it were made by a court exercising the corresponding jurisdiction in that other part; but, without prejudice to the following provisions of this section, nothing in this subsection shall require a court in any part of the United Kingdom to enforce, in relation to property situated in that part, any order made by a court in any other part of the United Kingdom.
- (2) The Secretary of State, with the concurrence in relation to property situated in England and Wales of the Lord Chancellor, may by order make provision for securing that a trustee or assignee under the insolvency law of any part of the United Kingdom has, with such modifications as may be specified in the order, the same rights in relation to any property situated in another part of the United Kingdom as he would have in the corresponding circumstances if he were a trustee or assignee under the insolvency law of that other part.
- (3) The courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory.
- (4) For the purposes of subsection (3) above a request made to a court in any part of the United Kingdom by a court in any other part of the United Kingdom or in a relevant country or territory shall be authority for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction ; and in exercising its discretion under this subsection, a court shall have regard in particular to the rules of private international law.
- (5) Where a person who is a trustee or assignee under the insolvency law of any part of the United Kingdom claims property situated in any other part of the United Kingdom (whether by virtue of an order under subsection (2) above or otherwise), the submission of that claim to the court exercising jurisdiction in relation to insolvency law in that other part shall be treated in the same manner as a request made by a court for the purposes of subsection (3) above.
- (6) Section 38 of the Criminal Law Act 1977 (execution of warrant of arrest throughout the United Kingdom) shall apply to a warrant which, in exercise of any jurisdiction in relation to insolvency law, is issued in any part of the United Kingdom for the arrest of a person as it applies to a warrant issued in that part of the United Kingdom for the arrest of a person charged with an offence.

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- (7) Without prejudice to any power to make rules of court, any power to make provision by subordinate legislation for the purpose of giving effect in relation to companies or individuals to the insolvency law of any part of the United Kingdom shall include power to make provision for the purpose of giving effect in that part to any provision made by or under the preceding provisions of this section.
- (8) An order under subsection (2) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) In this section " insolvency law " means—
- (a) in relation to England and Wales, provision extending to England and Wales and made by or under this Act or Parts XIX to XXI of the 1985 Act;
 - (b) in relation to Scotland, provision extending to Scotland and made by or under this Act, Parts XVIII to XXI of the 1985 Act or the Bankruptcy (Scotland) Act 1985 ;
 - (c) in relation to Northern Ireland, provision made by or under the Bankruptcy Acts (Northern Ireland) 1857 to 1980, Part V, VI or IX of the Companies Act (Northern Ireland) 1960 or Part IV of the Companies (Northern Ireland) Order 1978;
 - (d) in relation to any relevant country or territory, so much of the law of that country or territory as corresponds to provisions falling within any of the foregoing paragraphs ;
- and references in this subsection to any enactment include, in relation to any time before the coming into force of that enactment, references to the corresponding enactment in force at that time.
- (10) In this section " relevant country or territory " means—
- (a) any of the Channel Islands or the Isle of Man; or
 - (b) any country or territory designated for the purposes of this section by the Secretary of State by order made by statutory instrument.

214 Parliamentary disqualification etc.

- (1) Where a court in England and Wales or Northern Ireland adjudges an individual bankrupt or a court in Scotland awards sequestration of an individual's estate, the individual shall be disqualified—
- (a) for sitting or voting in the House of Lords ;
 - (b) for being elected to, or sitting or voting in, the House of Commons; and
 - (c) for sitting or voting in a committee of either House.
- (2) Where an individual is disqualified under this section, the disqualification shall cease—
- (a) except where the adjudication is annulled or the award recalled or reduced without the individual having been first discharged, on the discharge of the individual; and
 - (b) in the said excepted case, on the annulment, recall or reduction, as the case may be.
- (3) No writ of summons shall be issued to any lord of Parliament who is for the time being disqualified under this section for sitting and voting in the House of Lords.

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- (4) Where a member of the House of Commons who is disqualified under this section continues to be so disqualified until the end of the period of six months beginning with the day of the adjudication or award, his seat shall be vacated at the end of that period.
- (5) A court which makes an adjudication or award such as is mentioned in subsection (1) above in relation to any lord of Parliament or member of the House of Commons shall forthwith certify the adjudication or award to the Speaker of the House of Lords or, as the case may be, to the Speaker of the House of Commons.
- (6) Where a court has certified an adjudication or award to the Speaker of the House of Commons under subsection (5) above, then, immediately after it becomes apparent which of the following certificates is applicable, the court shall certify to the Speaker of the House of Commons—
 - (a) that the period of six months beginning with the day of the adjudication or award has expired without the adjudication or award having been annulled, recalled or reduced; or
 - (b) that the adjudication or award has been annulled, recalled or reduced before the end of that period.
- (7) Subject to the preceding provisions of this section, so much of this Act and of any other enactment (whenever passed) and of any subordinate legislation (whenever made) as—
 - (a) makes provision for or in connection with bankruptcy in one or more parts of the United Kingdom ; or
 - (b) makes provision conferring a power of arrest in connection with the winding up or insolvency of companies in one or more parts of the United Kingdom,shall apply in relation to persons having privilege of Parliament or peerage as it applies in relation to persons not having such privilege.

215 Power to inspect Land Register etc.

After section 112A of the Land Registration Act 1925 (inspection in connection with criminal proceedings) there shall be inserted the following section—

“112AA Inspection in connection with insolvency.

- (1) If an official receiver or the official assignee, the liquidator or administrator of a company or the trustee of a bankrupt's estate—
 - (a) applies to the registrar for permission to make an inspection under this section in relation to a person specified in the application or to property so specified ; and
 - (b) gives the registrar an appropriate certificate,the registrar shall permit him to inspect and make copies of and extracts from any register or document kept in the custody of the registrar so far as it relates to the person or property so specified.
- (2) In subsection (1) above " appropriate certificate " means a certificate that there is reason to believe that the register may contain information which would be of assistance to the person giving the certificate in the carrying out of his functions as official receiver or official assignee, as liquidator or administrator of a company or as trustee of a bankrupt's estate.

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(3) In this section—

- (a) references to an official receiver are references to an official receiver for the purpose of the Insolvency Act 1985 or the Companies Act 1985 or a person acting as a deputy to such an official receiver;
- (b) references to the trustee of a bankrupt's estate include references to a permanent or interim trustee in the sequestration of a debtor's estate in Scotland;
- (c) references to the official assignee are references to the Official Assignee for bankruptcy for Northern Ireland or the Official Assignee for company liquidations for Northern Ireland ; and
- (d) references to a company include references to a company registered or incorporated in Northern Ireland and references to a bankrupt include references to a person adjudged bankrupt in Northern Ireland.”

216 Repeal of section 152(4) of Social Security Act 1975

Section 152(4) of the Social Security Act 1975 (liability of directors in respect of unpaid National Insurance contributions) shall cease to have effect.

217 Amendments of Restrictive Trade Practices Act 1976

- (1) No restriction in respect of any of the matters specified in subsection (2) below shall, after the coming into force of this section, be regarded as a restriction by virtue of which the Restrictive Trade Practices Act 1976 applies to any agreement (whenever made).
- (2) The said matters are—
 - (a) the charges to be made, quoted or paid for insolvency services supplied, offered or obtained ;
 - (b) the terms or conditions on or subject to which insolvency services are to be supplied or obtained ;
 - (c) the extent (if any) to which, or the scale (if any) on which, insolvency services are to be made available, supplied or obtained ;
 - (d) the form or manner in which insolvency services are to be made available, supplied or obtained ;
 - (e) the persons or classes of persons for whom or from whom, or the areas or places in or from which, insolvency services are to be made available or supplied or are to be obtained.
- (3) In this section " insolvency services " means the services of persons acting as insolvency practitioners or carrying out under the law of Northern Ireland functions corresponding to those mentioned in section 1(2) or (3) above, in their capacity as such; and expressions which are also used in the said Act of 1976 have the same meanings as in that Act.
- (4) In Schedule 1 to the said Act of 1976 (services excluded from designated services), after paragraph 9 there shall be inserted the following paragraph—
 - “9A Insolvency services within the meaning of section 217 of the Insolvency Act 1985.”

218 Amendments of Employment Protection (Consolidation) Act 1978

- (1) Section 122 of the Employment Protection (Consolidation) Act 1978 (employee's right on the insolvency of his employer to be paid certain debts out of the Redundancy Fund) shall be amended as follows.
- (2) In subsection (1) (conditions of payment), after paragraph (a) there shall be inserted the following paragraph—
 - “(aa) that the employment of the employee has been terminated ; and”.
- (3) For subsection (2) (date for determining debts payable out of Fund) there shall be substituted the following subsection—
 - “(2) In this section ' the relevant date '—
 - (a) in relation to arrears of pay (not being remuneration under a protective award made under section 101 of the Employment Protection Act 1975) and to holiday pay, means the date on which the employer became insolvent;
 - (b) in relation to such an award and to a basic award of compensation for unfair dismissal, means whichever is the latest of—
 - (i) the date on which the employer became insolvent;
 - (ii) the date of the termination of the employee's employment;and
 - (iii) the date on which the award was made ;
 - (c) in relation to any other debt to which this section applies, means whichever is the later of the dates mentioned in sub-paragraphs (i) and (ii) of paragraph (b)”
- (4) For subsection (4) (debts to be treated as arrears of pay) there shall be substituted the following subsection—
 - “(4) For the purposes of this section, the following amounts shall be treated as arrears of pay, namely—
 - (a) a guarantee payment;
 - (b) remuneration on suspension on medical grounds under section 19;
 - (c) any payment for time off under section 27(3) or 31(3) or 31A(4);
 - (d) remuneration under a protective award made under section 101 of the Employment Protection Act 1975;
 - (e) statutory sick pay, payable under Part I of the Social Security and Housing Benefits Act 1982.”
- (5) In subsection (7) (reasonable payments to apprentices and articled clerks), for the words from " section 34 " onwards there shall be substituted the words " section 181 of the Insolvency Act 1985 (effect of bankruptcy on apprenticeships etc.), whether as originally enacted or as applied to the winding up of a company by rules under section 106 of that Act ".
- (6) In subsection (9) (provisions applying on appointment of certain officers)—
 - (a) after the words " a liquidator," there shall be inserted the words " an administrator, " ; and
 - (b) for the words from " ' liquidator ' and " onwards there shall be substituted the words " ' trustee ', in relation to a composition or arrangement, includes the supervisor of a composition or scheme proposed for the purposes of, and

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approved under, Chapter II of Part II or Chapter I of Part III of the Insolvency Act 1985 ”.

219 Amendments of Banking Act 1979

- (1) For subsections (1) and (2) of section 18 of the Banking Act 1979 (grounds on which a recognised bank or licensed institution may be wound up on the petition of the Bank of England), there shall be substituted the following subsections—

“(1) On a petition presented by the Bank by virtue of this section, the court having jurisdiction under the Companies Act 1985 may wind up a recognised bank or licensed institution under that Act if—

- (a) the institution is unable to pay its debts within the meaning of section 518 of that Act; or
- (b) the court is of the opinion that it is just and equitable that the institution should be wound up ;

and for the purposes of such a petition an institution which defaults in an obligation to pay any sum due and payable to a depositor shall be deemed to be unable to pay its debts as mentioned in paragraph (a) above.

- (2) If a petition is presented by the Bank by virtue of this section for the winding up of a recognised bank or licensed institution which is a partnership (whether limited or not), the court has jurisdiction, and the Companies Act 1985 has effect, as if the institution concerned were an unregistered company within the meaning of Part XXI of that Act.”

- (2) For subsection (4) of that section there shall be substituted the following subsection—

“(4) In its application to Northern Ireland, this section shall have effect—

- (a) with the substitution of a reference to the Companies Act (Northern Ireland) 1960 for any reference to the Companies Act 1985 ;
- (b) with the substitution of a reference to section 211 of the said Act of 1960 for the reference to section 518 of the said Act of 1985 ;
- (c) with the substitution of a reference to Part IX of the said Act of 1960 for the reference to Part XXI of the said Act of 1985 ; and
- (d) with the insertion in subsection (2) after the words ' (whether limited or not)' of the words ' then, notwithstanding section 348(d) of the Companies Act (Northern Ireland) 1960 (exclusion of partnerships etc. having less than eight members)'.”

- (3) In subsection (2) of section 19 of that Act (cases in which the Bank of England may disclose information obtained under or for the purposes of that Act), after paragraph (b) there shall be inserted the following paragraph—

“(ba) in connection with any proceedings under any provision of Parts XVIII to XXI of the Companies Act 1985 or any provision (other than section 100) of Part II of the Insolvency Act 1985 ; or”.

- (4) In subsection (8) of that section, for paragraph (a) there shall be substituted the following paragraphs—

“(a) for the reference in subsection (2) to Parts XVIII to XXI of the Companies Act 1985 there shall be substituted a reference to Parts V, VI and IX of the Companies Act (Northern Ireland) 1960 ;

- (aa) for any reference in subsection (5) to section 432 or 442 of the said Act of 1985 there shall be substituted respectively a reference to section 159 or 165A of the said Act of 1960;”.

220 Amendments of County Courts Act 1984

- (1) The County Courts Act 1984 shall be amended as follows.
- (2) In section 112(4) (b) (minimum amount which must be owed to creditor presenting, or joining in, a bankruptcy petition while administration order is in force), for " £400 " there shall be substituted " £1500 ".
- (3) In subsection (1) of section 115 (execution while administration order is in force if debtor's property exceeds £10 in value), for "£10" there shall be substituted the words " the minimum amount ".
- (4) After subsection (1) of the said section 115 there shall be inserted the following subsection—
 - “(1A) In subsection (1) above 'the minimum amount' means £50 or such other amount as the Lord Chancellor may by order specify instead of that amount or the amount for the time being specified in such an order; and an order under this subsection shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

221 Disabilities on revocation of administration order against individual

- (1) Where a person fails to make any payment which he is required to make by virtue of an administration order under Part VI of the County Courts Act 1984, the court which is administering the estate of that person under that order may, if it thinks fit, revoke the administration order and make an order directing that this section shall apply to that person for such period, not exceeding two years, as may be specified in the order.
- (2) A person to whom this section applies by virtue of an order under subsection (1) above shall not, except with the leave of the court which made that order, act as director or liquidator of, or directly or indirectly take part or be concerned in the promotion, formation or management of, a company (within the meaning of section 1 above).
- (3) A person to whom this section so applies shall not—
 - (a) either alone or jointly with another person, obtain credit to the extent of the amount prescribed for the purposes of section 189(1)(a) above or more ; or
 - (b) enter into any transaction in the course of or for the purposes of any business in which he is directly or indirectly engaged,without disclosing the fact that this section applies to him to the person from whom he obtains the credit or, as the case may be, with whom the transaction is entered into.
- (4) The reference in subsection (3) above to a person obtaining credit includes a reference to—
 - (a) a case where goods are bailed or hired to him under a hire-purchase agreement or agreed to be sold to him under a conditional sale agreement; and
 - (b) a case where he is paid in advance (whether in money or otherwise) for the supply of goods or services.
- (5) A person who contravenes this section shall be guilty of an offence and liable—

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- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both ;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.