



Insolvency Act 1986

1986 CHAPTER 45

PART IV

WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

CHAPTER VIII

PROVISIONS OF GENERAL APPLICATION IN WINDING UP

Execution, attachment and the Scottish equivalents

183 Effect of execution or attachment (England and Wales).

- (1) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to it, and the company is subsequently wound up, he is not entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the commencement of the winding up.
- (2) However—
 - (a) if a creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which he had notice is substituted, for the purpose of subsection (1), for the date of commencement of the winding up;
 - (b) a person who purchases in good faith under a sale by the [^{F1}enforcement officer or other officer charged with the execution of the writ] any goods of a company on which execution has been levied in all cases acquires a good title to them against the liquidator; and
 - (c) the rights conferred by subsection (1) on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.
- (3) For purposes of this Act—

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- (a) an execution against goods is completed by seizure and sale, or by making of a charging order under section 1 of the ^{M1}Charging Orders Act 1979;
 - (b) an attachment of a debt is completed by receipt of the debt; and
 - (c) an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order under section 1 of the Act above-mentioned.
- (4) In this section “goods” includes all chattels personal; and [^{F2}“enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act2003].
- (5) This section does not apply in the case of a winding up in Scotland.

Textual Amendments

- F1** Words in s. 183(2)(b) substituted (15.3.2004) by [Courts Act 2003 \(c. 39\)](#), ss. 109(1), 110, **Sch. 8 para. 295(2)**; [S.I. 2004/401](#), **art. 2** (with [art. 3](#))
- F2** Words in s. 183(4) substituted (15.3.2004) by [Courts Act 2003 \(c. 39\)](#), ss. 109(1), 110, **Sch. 8 para. 295(3)**; [S.I. 2004/401](#), **art. 2** (with [art. 3](#))

Modifications etc. (not altering text)

- C1** S. 183 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103, 263(1)(2)** (with [s. 247](#)); [S.I. 2009/296](#), **arts. 2, 3, Sch. para. 2**

Marginal Citations

- M1** [1979 c. 53](#).

184 Duties of [^{F3}officers charged with execution of writs and other processes] (England and Wales).

- (1) The following applies where a company’s goods are taken in execution and, before their sale or the completion of the execution (by the receipt or recovery of the full amount of the levy), notice is served on the [^{F4}enforcement officer, or other officer, charged with execution of the writ or other process,] that a provisional liquidator has been appointed or that a winding-up order has been made, or that a resolution for voluntary winding up has been passed.
- (2) The [^{F5}enforcement officer or other officer] shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator; but the costs of execution are a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part of them for the purpose of satisfying the charge.
- (3) If under an execution in respect of a judgement for a sum exceeding [^{F6}£500] a company’s goods are sold or money is paid in order to avoid sale, the [^{F7}enforcement officer or other officer] shall deduct the costs of the execution from the proceeds of sale or the money paid and retain the balance for 14 days.
- (4) If within that time notice is served on the [^{F7}enforcement officer or other officer] of a petition for the winding up of the company having been presented, or of a meeting having been called at which there is to be proposed a resolution for voluntary winding up, and an order is made or a resolution passed (as the case may be), the [^{F7}enforcement

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officer or other officer] shall pay the balance to the liquidator, who is entitled to retain it as against the execution creditor.

- (5) The rights conferred by this section on the liquidator may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court thinks fit.
- (6) In this section, “goods” includes all chattels personal; and [^{F8}“enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003.]
- (7) The money sum for the time being specified in subsection (3) is subject to increase or reduction by order under section 416 in Part XV.
- (8) This section does not apply in the case of a winding up in Scotland.

Textual Amendments

- F3** Words in s. 184 heading substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 296(5)**; S.I. 2004/401, **art. 2** (with art. 3)
- F4** Words in s. 184(1) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 296(2)**; S.I. 2004/401, **art. 2** (with art. 3)
- F5** Words in s. 184(2) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 296(3)**; S.I. 2004/401, **art. 2** (with art. 3)
- F6** “£500” substituted by virtue of S.I. 1986/1996, **art. 2(1)**, **Sch. Pt. I** (by art. 2(2) of that S.I. the new amount is not to affect any case where the goods are sold or payment to avoid sale is made, before the coming into force of the increase)
- F7** Words in s. 184(3)(4) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 296(3)**; S.I. 2004/401, **art. 2** (with art. 3)
- F8** Words in s. 184(6) substituted (15.3.2004) by Courts Act 2003 (c. 39), ss. 109(1), 110, **Sch. 8 para. 296(4)**; S.I. 2004/401, **art. 2** (with art. 3)

Modifications etc. (not altering text)

- C2** S. 184 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), ss. **103**, 263(1)(2) (with s. 247); S.I. 2009/296, **arts. 2, 3**, **Sch. para. 2**

185 Effect of diligence (Scotland)

- (1) In the winding up of a company registered in Scotland, the following provisions of the ^{M2}Bankruptcy (Scotland) Act 1985—
 - (a) subsections (1) to (6) of section 37 (effect of sequestration on diligence); and
 - (b) subsections (3), (4), (7) and (8) of section 39 (realisation of estate),apply so far as consistent with this Act, in like manner as they apply in the sequestration of a debtor’s estate, with the substitutions specified below and with any other necessary modifications.
- (2) The substitutions to be made in those sections of the Act of 1985 are as follows—
 - (a) for references to the debtor, substitute references to the company;
 - (b) for references to the sequestration, substitute references to the winding up;
 - (c) for references to the date of sequestration, substitute references to the commencement of the winding up of the company; and
 - (d) for references to the [^{F9}permanent] trustee, substitute references to the liquidator.

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- (3) In this section, “the commencement of the winding up of the company” means, where it is being wound up by the court, the day on which the winding-up order is made.
- (4) This section, so far as relating to any estate or effects of the company situated in Scotland, applies in the case of a company registered in England and Wales as in the case of one registered in Scotland.

Textual Amendments

- F9** Word in s. 185(2)(d) repealed (S.) (1.4.2008) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 226(2), 227(3), [Sch. 6](#) (with s. 223); S.S.I. 2008/115, [art. 3\(2\)](#), [Sch. 2](#) (subject to [art. 3\(3\)](#)) (with arts. 5, 6, 10) (as amended by S.S.I. 2011/31, [art. 5](#))

Modifications etc. (not altering text)

- C3** S. 185 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), [ss. 154](#), 155, 161(4); S.I. 1991/878, [art. 2](#), [Sch. .](#)
 S. 185 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, [reg. 4\(1\)](#), [Sch. 2](#)
- C4** S. 185 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 103](#), 263(1)(2) (with s. 247); S.I. 2009/296, [arts. 2](#), 3, [Sch. para. 2](#)
- C5** S. 185(1)(a)(2) applied by [Administration of Justice Act 1956 \(c. 46\)](#), s. 47G(3) (as inserted (S.) (1.7.2010) by [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#), ss. 213, 227(3), [Sch. 4 para. 12](#) (with s. 223)); S.S.I. 2010/249, [art. 2](#) (with [art. 3](#))

Marginal Citations

- M2** 1985 c. 66.

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