



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART V

#### WINDING UP OF UNREGISTERED COMPANIES

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

- C1** Pt. V (ss. 220-229) modified by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2), 25**  
Pt. V modified by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 30(6), 35(4), 47(4)(a)**  
Pt. V modified by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 86(5), 123, **Sch. 8 para. 16**  
Pt. V modified by S.I. 1989/638, **regs. 8(1), 21**  
Pt. V modified by S.I. 1989/1806, art. 2, **Sch. 1**, section 47(1)  
Pt. V modified (31.3.1996) by 1995 c. 20, s. 110(1), **Sch. 4 para. 3(4)**; S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, Sch. 2) (which modifying Act was itself repealed (1.4.1996) by 1995 c. 40, ss. 6(1), 7(2), Sch. 5 (with s. 4, Sch. 3 paras. 3, 16))  
Pt. V modified (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 3(4)**  
Pt. V modified (24.3.2003) by 2002 c. 29, ss. 426(8), 458(1)(3); S.I. 2003/333, **art. 2**, Sch. (subject to arts. 3-13 (as amended by S.I. 2003/531, arts. 3, 4))
- C2** Pt. V (ss. 220-229) excluded by S.I. 1986/2142, **arts. 1(2), 13(1), 15**
- C3** Pts. I-VII (ss. 1-251) applied (with modifications) by S.I. 1989/1276, **arts. 2, 3**  
Pt. V (ss. 220-229) applied (7.2.1994) by 1993 c. 48, **s. 119(8)** (with s. 6(8)); S.I. 1994/86, **art. 2**  
Pt. V applied (with modifications) (1.11.1994) by S.I. 1994/2759, reg. 3, Sch. 3 paras. 91, 91A, **91B**  
Pt. V applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(1)(2), **Sch. 3 Pt. I**  
Pt. V (except ss. 223, 224) applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(1)(2), **Sch. 4 Pt. I** (as amended (1.7.2005) by S.I. 2005/1516, **art. 9**)
- C4** Pt. V (ss. 220-229) extended (13.1.1993 for purposes of regulation of business of incorporated friendly societies and 28.4.1993 otherwise) by Friendly Societies Act 1992 (c. 40), **s. 52(1)(9)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch. 3**; S.I. 1993/1186, art. 2(2), **Sch. 2**
- C5** First Group of Parts (Pts. 1-7) applied (with modifications) (15.12.2006) by The Banks (Former Authorised Institutions) (Insolvency) Order 2006 (S.I. 2006/3107), **art. 3**, Sch.
- C6** Pt. V (ss. 220-229) amended (1.12.2001) by 2000 c. 8, **s. 371(2)(b)**; S.I. 2001/3538 art. 2(1)

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- C7** Pt. 5 extended by S.I. 2001/1228, **reg. 33C(3)** (as inserted (21.12.2011) by The Open-Ended Investment Companies (Amendment) Regulations 2011 (S.I. 2011/3049), **reg. 3(5)** (with regs. 4, 10(1))

## [<sup>F1</sup>220 Meaning of “unregistered company”.

For the purposes of this Part “unregistered company” includes any association and any company, with the exception of a company registered under the Companies Act 2006 in any part of the United Kingdom.]

### Textual Amendments

- F1** S. 220 substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 76(2)} (with art. 10, Sch. 1 para. 84)

### Modifications etc. (not altering text)

- C8** S. 220 applied (with modifications) (1.12.1994) by S.I. 1994/2124, arts. 8, 10(1)(b), Sch. 4 Pt. I paras. 1(1), 2  
 ss. 220-222 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(1)(2)(9), **Sch. 4 Pt. I**  
 ss. 220-223 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(1)(2), 9, **Sch. 3 Pt. I**
- C9** S. 220 extended by **Banking Act 1987** (c. 22, SIF 10), **s. 92(2)**

## 221 Winding up of unregistered companies.

- (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act; and all the provisions of this Act <sup>F2</sup> . . . about winding up apply to an unregistered company with the exceptions and additions mentioned in the following subsections.
- (2) If an unregistered company has a principal place of business situated in Northern Ireland, it shall not be wound up under this Part unless it has a principal place of business situated in England and Wales or Scotland, or in both England and Wales and Scotland.
- (3) For the purpose of determining a court’s winding-up jurisdiction, an unregistered company is deemed—
  - (a) to be registered in England and Wales or Scotland, according as its principal place of business is situated in England and Wales or Scotland, or
  - (b) if it has a principal place of business situated in both countries, to be registered in both countries;
 and the principal place of business situated in that part of Great Britain in which proceedings are being instituted is, for all purposes of the winding up, deemed to be the registered office of the company.
- (4) No unregistered company shall be wound up under this Act voluntarily [<sup>F3</sup>, except in accordance with the EC Regulation].
- (5) The circumstances in which an unregistered company may be wound up are as follows—
  - (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

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- (b) if the company is unable to pay its debts;
  - (c) if the court is of opinion that it is just and equitable that the company should be wound up.
- (6) A petition for winding up a trustee savings bank may be presented by the Trustee Savings Banks Central Board or by a commissioner appointed under section 35 of the <sup>M1</sup>Trustee Savings Banks Act 1981 as well as by any person authorised under Part IV of this Act to present a petition for the winding up of a company.

On such day as the Treasury appoints by order under section 4(3) of the <sup>M2</sup>Trustee Savings Banks Act 1985, this subsection ceases to have effect and is hereby repealed.

- (7) In Scotland, an unregistered company which the Court of Session has jurisdiction to wind up may be wound up by the court if there is subsisting a floating charge over property comprised in the company's property and undertaking, and the court is satisfied that the security of the creditor entitled to the benefit of the floating charge is in jeopardy.

For this purpose a creditor's security is deemed to be in jeopardy if the court is satisfied that events have occurred or are about to occur which render it unreasonable in the creditor's interests that the company should retain power to dispose of the property which is subject to the floating charge.

#### Textual Amendments

- F2** Words in s. 221(1) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 76(3)} (with art. 10, Sch. 1 para. 84)
- F3** Words in s. 221(4) inserted (31.5.2002) by S.I. 2002/1240, **reg. 9**

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

- C10** S. 221 applied (with modifications) by S.I. 1986/2142, **arts. 1(2)**, 8(1), 12, 15  
S. 221 applied (with modifications) by S.I. 1986/2142, arts. 1(2), 7, 15, **Sch. 1 para. 2**  
S. 221 applied (with modifications) (1.11.1994) by S.I. 1994/2759, **reg. 3**, **Sch. 3 para. 91A(4)**  
S. 221 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 9(a), **Sch. 5**  
S. 221 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 10(1)(a), **Sch. 6 para. 4**  
Ss. 220-223 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 7(1)(2), 9, **Sch. 3 Pt. I**
- C11** S. 221 restricted (20.4.2003) by The Insurers (Reorganisation and Winding Up) Regulations 2003 (S.I. 2003/1102), **reg. 4(1)(a)** (with **reg. 3**)
- C12** S. 221(1) applied (10.8.2005) by The Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005 (S.I. 2005/1998), **regs. 2(3)**, **29(2)**
- C13** S. 221(5)(b) extended (1.4.1992) by S.I. 1992/613, **reg. 49(2)**
- C14** S. 221(5)(b) modified (6.4.2010) by The Community Infrastructure Levy Regulations 2010 (S.I. 2010/948), **reg. 105(2)**

#### Marginal Citations

- M1** 1981 c. 65.  
**M2** 1985. c. 58.

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## 222 Inability to pay debts: unpaid creditor for £750 or more.

- (1) An unregistered company is deemed (for the purposes of section 221) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £750 then due and—
- (a) the creditor has served on the company, by leaving at its principal place of business, or by delivering to the secretary or some director, manager or principal officer of the company, or by otherwise serving in such manner as the court may approve or direct, a written demand in the prescribed form requiring the company to pay the sum due, and
  - (b) the company has for 3 weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the creditor's satisfaction.
- (2) The money sum for the time being specified in subsection (1) is subject to increase or reduction by regulations under section 417 in Part XV; but no increase in the sum so specified affects any case in which the winding-up petition was presented before the coming into force of the increase.

### Modifications etc. (not altering text)

**C15** S. 222 applied with modifications by S.I. 1986/2421, arts. 1(2), 7, 15, **Sch. 1 para. 3**  
 ss. 220-223 applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 7(1)(2), 9, **Sch. 3, Pt. I**

## 223 Inability to pay debts: debt remaining unsatisfied after action brought.

An unregistered company is deemed (for the purposes of section 221) unable to pay its debts if an action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and—

- (a) notice in writing of the institution of the action or proceeding has been served on the company by leaving it at the company's principal place of business (or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving it in such manner as the court may approve or direct), and
- (b) the company has not within 3 weeks after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed or sisted, or indemnified the defendant or defender to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him because of it.

### Modifications etc. (not altering text)

**C16** Ss. 220-223 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(1)(2), art. 9, **Sch. 3, Pt. I**  
 s. 223 excluded (1.11.1994) by S.I. 1994/2759, reg. 3, **Sch. 3 para. 91A(5)**

## 224 Inability to pay debts: other cases.

- (1) An unregistered company is deemed (for purposes of section 221) unable to pay its debts—

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- (a) if in England and Wales execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member of it as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
  - (b) if in Scotland the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;
  - (c) if in Northern Ireland a certificate of unenforceability has been granted in respect of any judgment, decree or order obtained as mentioned in paragraph (a);
  - (d) if it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.
- (2) An unregistered company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

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

C17 S. 224 applied (with modifications) by S.I. 1994/2759, reg. 3, Sch. 3 para. 91A(6)

**225 [F4]Company incorporated outside Great Britain] may be wound up though dissolved.**

[F5(1)] Where a company incorporated outside Great Britain which has been carrying on business in Great Britain ceases to carry on business in Great Britain, it may be wound up as an unregistered company under this Act, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

[F5(2) This section is subject to the EC Regulation.]

**Textual Amendments**

F4 Words in s. 225 heading substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 76(4)} (with art. 10, Sch. 1 para. 84)

F5 S. 225 renumbered as s. 225(1) and s. 225(2) inserted (31.5.2002) by S.I. 2002/1240, reg. 10

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

C18 S. 225 applied (1.12.1994) by S.I. 1994/2421, art. 10(1)(b)

Ss. 225-229 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(1)(2)(9), Sch. 4 Pt. I

**226 Contributories in winding up of unregistered company.**

- (1) In the event of an unregistered company being wound up, every person is deemed a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of members among themselves, or to pay or contribute to the payment of the expenses of winding up the company.

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- (2) Every contributory is liable to contribute to the company's assets all sums due from him in respect of any such liability as is mentioned above.
- (3) In the case of an unregistered company engaged in or formed for working mines within the stannaries, a past member is not liable to contribute to the assets if he has ceased to be a member for 2 years or more either before the mine ceased to be worked or before the date of the winding-up order.
- (4) <sup>F6</sup> .....

#### Textual Amendments

- F6** S. 226(4) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 76(5)} (with art. 10, Sch. 1 para. 84)

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

- C19** Ss. 225-229 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(1)(2)(9), **Sch. 4 Pt. I**
- C20** S. 226 excluded by S.I. 2001/1228, **reg. 33C(2)** (as inserted (21.12.2011) by The Open-Ended Investment Companies (Amendment) Regulations 2011 (S.I. 2011/3049), **reg. 3(5)** (with regs. 4, 10(1))

### 227 Power of court to stay, sist or restrain proceedings.

The provisions of this Part with respect to staying, sisting or restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding-up order extend, in the case of an unregistered company, where the application to stay, sist or restrain is presented by a creditor, to actions and proceedings against any contributory of the company.

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

- C21** Ss. 227-229 applied (1.12.1994) by S.I. 1994/2421, **art. 10(1)(b)**  
 ss. 225-229 applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 8(1)(2)(9)**, Sch. 4 Pt. I
- C22** S. 227 excluded by S.I. 2001/1228, **reg. 33C(2)** (as inserted (21.12.2011) by The Open-Ended Investment Companies (Amendment) Regulations 2011 (S.I. 2011/3049), **reg. 3(5)** (with regs. 4, 10(1))

### 228 Actions stayed on winding-up order.

Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.

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

- C23** Ss. 227-229 applied (1.12.1994) by S.I. 1994/2421, **art. 10(1)(b)**  
 ss. 225-229 applied (with modifications) (1.12.1995) by S.I. 1994/2421, art. 8(1)(2)(9), **Sch. 4 Pt. I**

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**C24** S. 228 excluded by S.I. 2001/1228, **reg. 33C(2)** (as inserted (21.12.2011) by The Open-Ended Investment Companies (Amendment) Regulations 2011 (S.I. 2011/3049), **reg. 3(5)** (with regs. 4, 10(1))

## **229 Provisions of this Part to be cumulative.**

(1) The provisions of this Part with respect to unregistered companies are in addition to and not in restriction of any provisions in Part IV with respect to winding up companies by the court; and the court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up [<sup>F7</sup>companies registered under the Companies Act 2006 in England and Wales or Scotland].

(2) <sup>F8</sup> .....

### **Textual Amendments**

**F7** Words in s. 229(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 76(6)(a)} (with art. 10, Sch. 1 para. 84)

**F8** S. 229(2) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, (S.I. 2009/1941) arts. 2(1), 8, {Sch. 1 para. 76(6)(b)} (with art. 10, Sch. 1 para. 84)

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

**C25** Ss. 227-229 applied (1.12.1994) by S.I. 1994/2421, **art. 10(1)(b)**  
ss. 225-229 applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 8(1)(2)(9)**, **Sch. 4 Pt. I**

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**Changes to legislation:**

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