



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART VI

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

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

- C1** Pts. 1–7 (ss. 1–251) applied (with modifications) by S.I. 1989/1276, arts. 2, 3  
Pt. 6 (ss. 230–246) modified (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 Pt. I para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3** (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), **regs. 1(3)**, 3; and (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 12 para. 4** (with ss. 2(2), 5(2), 14(4)))
- C2** Pt. 6 (ss. 230–246) extended with modifications by Building Societies Act 1986 (c. 53, SIF 16), ss. 54(3)(a)(5)(a), 90, 126(3), **Sch. 15** (as amended (13.3.2018) by S.I. 2018/208, regs. 1(3), **2(2)**; and (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 12 para. 2** (with ss. 2(2), 5(2), 14(4)))
- C3** Pt. 6 (ss. 230–246) modified by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2)**, 25  
Pt. 6 (ss. 230–246) applied (1.12.1994) by S.I. 1994/2421, **art. 6(3)(b)**  
Pt. 6 (ss. 230–246) applied (1.12.1994) by S.I. 1994/2421, **art. 10(2)(3)(6)**, Sch. 4 Pt. II  
Pt. 6 (ss. 230–246) applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 8(4)(5)(8)(9)**  
Pt. 6 (ss. 230–246) applied (with modifications) (1.12.1997) by 1986 c. 53, **Sch. 15A para. 1(1)(2)(a)** (as inserted by 1997 c. 32, s. 39(2), **Sch. 6**; S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**; and as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), **regs. 1(3)**, **2(3)**; and (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), Sch. 12 para. 3 (with ss. 2(2), 5(2), 14(4)))  
Pt. 6 (ss. 230–246) amended (1.12.2001) by S.I. 2001/3538, **art. 2(1)**
- C4** Pts. 1–4, 6, 7 applied to limited liability partnerships (with modifications) (E.W.S.) (6.4.2001) by S.I. 2001/1090, **reg. 5**, **Schs. 3**, **4** (as amended (4.3.2004) by S.I. 2004/355, **art. 10** and (1.10.2005) by S.I. 2005/1989, **reg. 3**, **Sch. 2** (with **reg. 4**))

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### Office-holders

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

- (1) Where an administration order is made in relation to a company, the administrator must be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (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) Subsections (3) and (4) are without prejudice to any enactment under which the official receiver is to be, or may be, liquidator or provisional liquidator.

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

C5 S. 230 applied (with modifications) (1.12.1994) by S.I. 1994/2421, reg. 8(3)(9), Sch. 4 Pt. II para. 26

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

- (1) This section applies if an appointment or nomination of any person to the office of administrator, 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.
- (2) The appointment or nomination shall declare whether any act required or authorised under any enactment to be done by the administrator, 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.

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

C6 S. 231 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 26  
 S. 231 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

#### 232 Validity of office-holder's acts.

The acts of an individual as administrator, administrative receiver, liquidator or provisional liquidator of a company are valid notwithstanding any defect in his appointment, nomination or qualifications.

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

C7 S. 232 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

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*Management by administrators, liquidators, etc.*

**233 Supplies of gas, water, electricity, etc.**

- (1) This section applies in the case of a company where—
- (a) an administration order is made in relation to the company, or
  - (b) an administrative receiver is appointed, or
  - (c) a voluntary arrangement under Part I, approved by meetings summoned under section 3, 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, 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 the next subsection, 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 subsection (2) are—
- (a) a public supply of gas,
  - [<sup>F1</sup>(b) a public supply of electricity,]
  - (c) a supply of water by [<sup>F2</sup>a water undertaker] or, in Scotland, a water authority,
  - (d) a supply of telecommunication services by a public telecommunications operator.
- (4) “The effective date” for the purposes of this section is whichever is applicable of the following dates—
- (a) the date on which the administration order was made,
  - (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 voluntary arrangement was approved by the meetings summoned under section 3,
  - (d) the date on which the company went into liquidation,
  - (e) the date on which the provisional liquidator was appointed.
- (5) The following applies to expressions used in subsection (3)—
- (a) “public supply of gas” means a supply of gas by the British Gas Corporation or a public gas supplier within the meaning of Part I of the <sup>M1</sup>Gas Act 1986,
  - [<sup>F3</sup>(b) “public supply of electricity” means a supply of electricity by a public electricity supplier within the meaning of Part I of the Electricity Act 1989;]
  - (c) “water authority” means the same as in the <sup>M2</sup>Water (Scotland) Act 1980, and

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- (d) “telecommunication services” and “public telecommunications operator” mean the same as in the <sup>M3</sup>Telecommunications Act 1984, except that the former does not include [<sup>F4</sup>local delivery services within the meaning of Pt.II of the Broadcasting Act 1990.]

#### Textual Amendments

- F1** S. 233(3)(b) substituted by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 35(1)(2) (a), Sch. 17 paras. 33, **35(1)**
- F2** Words substituted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 78(1)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F3** S. 233(5)(b) substituted by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 35(1)(2) (b), Sch. 17 paras. 33, **35(1)**
- F4** Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 43**

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

- C8** S. 233 applied (1.12.1994) by S.I. 1994/2421, **art. 4(3)(a)**

#### Marginal Citations

- M1** 1986 c. 44.  
**M2** 1980 c. 45.  
**M3** 1984 c. 12.

### 234 Getting in the company’s property.

- (1) This section applies in the case of a company where—
- (a) an administration order is made in relation to the company, 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 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 court or otherwise) to seize or dispose of that property,
- the next subsection 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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**Modifications etc. (not altering text)**

- C9** S. 234 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 7(3), **Sch. 3 Pt. II para. 9**  
S. 234 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), **Sch. 4 Pt. II para. 27**
- C10** S. 234 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

**235 Duty to co-operate with office-holder.**

- (1) This section applies as does section 234; and it also applies, in the case of a company in respect of which a winding-up order has been made by the court in England and Wales, as if references to the office-holder included the official receiver, whether or not he is the liquidator.
- (2) Each of the persons mentioned in the next subsection shall—
- (a) give to the office-holder such information concerning the company and its promotion, formation, business, dealings, affairs or property as the office-holder may at any time after the effective date reasonably require, and
  - (b) attend on the office-holder at such times as the latter may reasonably require.
- (3) The persons referred to above 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 office-holder'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 court, any person who has acted as administrator, administrative receiver or liquidator of the company.
- (4) For the purposes of subsections (2) and (3), “the effective date” is whichever is applicable of the following dates—
- (a) the date on which the administration order was made,
  - (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 section, he is liable to a fine and, for continued contravention, to a daily default fine.

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

- C11** S. 235 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

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

- (1) This section applies as does section 234; and it also applies in the case of a company in respect of which a winding-up order has been made by the court in England and Wales as if references to the office-holder included the official receiver, whether or not he is the liquidator.
- (2) The 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 court may require any such person as is mentioned in subsection (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 paragraph (c) of the subsection.
- (4) The following applies in a case where—
  - (a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, 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 section.
- (5) The 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 or prescribed officer of the court—
  - (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 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.

### Modifications etc. (not altering text)

- C12** S. 236 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#) (as amended (1.10.2009) by [S.S.I. 2009/310, reg. 3, Sch. 1 para. 1\(c\)](#))
- C13** S. 236 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](#)
- C14** S. 236 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296, arts. 2, 3, Sch. para. 3](#)

## 237 Court's enforcement powers under s. 236.

- (1) If it appears to the court, on consideration of any evidence obtained under section 236 or this section, 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

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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 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.

the court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under section 236 or this section shall be examined in any part of the United Kingdom where he may for the time being be, or in a place outside the United Kingdom.

- (4) Any person who appears or is brought before the court under section 236 or this section may be examined on oath, either orally or (except in Scotland) by interrogatories, concerning the company or the matters mentioned in section 236(2)(c).

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

- C15** S. 237 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#) (as amended (1.10.2009) by [S.S.I. 2009/310, reg. 3, Sch. 1 para. 1\(c\)](#))
- C16** S. 237 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](#)
- C17** S. 237 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\), ss. 145, 263\(1\)\(2\)](#) (with s. 247); [S.I. 2009/296, arts. 2, 3, Sch. para. 3](#)

*Adjustment of prior transactions (administration and liquidation)*

**238 Transactions at an undervalue (England and Wales).**

- (1) This section applies in the case of a company where—
- (a) an administration order is made in relation to the company, 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 (defined in section 240) entered into a transaction with any person at an undervalue, the office-holder may apply to the court for an order under this section.
- (3) Subject as follows, the 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 section and section 241, 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



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the value, in money or money's worth, of the consideration provided by the company.

- (5) The court shall not make an order under this section 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.

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

- C18** S. 238 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 165(1)(a); S.I. 1991/878, art. 2, Sch. .
- C19** S. 238 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), Sch. 22 para. 8(1)(a); S.I. 1991/878, art. 2, Sch.
- S. 238 restricted (31.3.1996) by 1995 c. 20, s. 110(1), Sch. 4 para. 3(5)(a); S.I. 1996/517, art. 3(2) (subject to transitional provisions and savings in arts. 4-6, Sch. 2) (which amending Act was itself repealed (1.4.1996) by 1995 c. 40, ss. 6(1), 7(2), Sch. 5 (with Sch. 3 paras. 3, 16))
- S. 238 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), Sch. 2 para. 3(5)
- S. 238 restricted (11.12.1999) by S.I. 1999/2979, reg. 17(1)(a)
- S. 238 restricted (24.3.2003) by 2002 c. 29, ss. 427(1)-(5), 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))

**239 Preferences (England and Wales).**

- (1) This section applies as does section 238.
- (2) Where the company has at a relevant time (defined in the next section) given a preference to any person, the office-holder may apply to the court for an order under this section.
- (3) Subject as follows, the 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 section and section 241, 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 court shall not make an order under this section 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 subsection (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



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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 subsection (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)**

- C20** S. 239 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154, 155, 165(1)(b)**; S.I. 1991/878, **art. 2, Sch. .**
- C21** S. 239 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 8(1)(b)**; S.I. 1991/878, **art. 2, Sch. .**  
S. 239 restricted (31.3.1996) by 1995 c. 20, s. 110(1), **Sch. 4 para. 3(5)(a)**; S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, Sch. 2) (which amending Act was itself repealed (1.4.1996) by 1995 c. 40, ss. 6(1), 7(2), Sch. 5 (with Sch. 3 paras. 3, 16))  
S. 239 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 3(5)**  
S. 239 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(1)(b)**  
S. 239 restricted (24.3.2003) by 2002 c. 29, ss. 427(1)-(5), 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))
- C22** S. 239 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), **reg. 2, Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)
- C23** S. 239 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**
- C24** S. 239 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by Banking Act 2009 (c. 1), **ss. 145, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3, Sch. para. 3**

#### **240 “Relevant time” under ss. 238, 239.**

- (1) Subject to the next subsection, 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—
- 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 (which expression is defined below),
  - 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, and
  - in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.
- (2) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (1)(a) or (b), that time is not a relevant time for the purposes of section 238 or 239 unless the company—
- is at that time unable to pay its debts within the meaning of section 123 in Chapter VI of Part IV, or
  - becomes unable to pay its debts within the meaning of that section in consequence of the transaction or preference;

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but the requirements of this subsection 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 subsection (1), the onset of insolvency is—
- (a) in a case where section 238 or 239 applies by reason of the making of an administration order or of a company going into liquidation immediately upon the discharge of an administration order, the date of the presentation of the petition on which the administration order was made, and
  - (b) in a case where the section applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding up.

## **241 Orders under ss. 238, 239.**

- (1) Without prejudice to the generality of sections 238(3) and 239(3), an order under either of those sections with respect to a transaction or preference entered into or given by a company may (subject to the next subsection)—
- (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 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 section 238 or 239 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 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 the transaction or preference in good faith, for value and without notice of the relevant circumstances to pay a sum to the office-holder, except where that person was

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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.

- (3) For the purposes of this section the relevant circumstances, in relation to a transaction or preference, are—
- (a) the circumstances by virtue of which an order under section 238 or (as the case may be) 239 could be made in respect of the transaction or preference if the company were to go into liquidation, or an administration order were made in relation to the company, within a particular period after the transaction is entered into or the preference given, and
  - (b) if that period has expired, the fact that the company has gone into liquidation or that such an order has been made.
- (4) The provisions of sections 238 to 241 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.

## **242 Gratuitous alienations (Scotland).**

- (1) Where this subsection applies and—
- (a) the winding up of a company has commenced, an alienation by the company is challengeable by—
    - (i) any creditor who is a creditor by virtue of a debt incurred on or before the date of such commencement, or
    - (ii) the liquidator;
  - (b) an administration order is in force in relation to a company, an alienation by the company is challengeable by the administrator.
- (2) Subsection (1) applies where—
- (a) by the alienation, whether before or after 1st April 1986 (the coming into force of section 75 of the <sup>M4</sup>Bankruptcy (Scotland) Act 1985), any part of the company's property is transferred or any claim or right of the company is discharged or renounced, and
  - (b) the alienation takes place on a relevant day.
- (3) For the purposes of subsection (2)(b), the day on which an alienation takes place is the day on which it becomes completely effectual; and in that subsection “relevant day” means, if the alienation has the effect of favouring—
- (a) a person who is an associate (within the meaning of the Bankruptcy (Scotland) Act 1985) of the company, a day not earlier than 5 years before the date on which—
    - (i) the winding up of the company commences, or
    - (ii) as the case may be, the administration order is made; or
  - (b) any other person, a day not earlier than 2 years before that date.
- (4) On a challenge being brought under subsection (1), the court shall grant decree of reduction or for such restoration of property to the company's assets or other redress as may be appropriate; but the court shall not grant such a decree if the person seeking to uphold the alienation establishes—
- (a) that immediately, or at any other time, after the alienation the company's assets were greater than its liabilities, or
  - (b) that the alienation was made for adequate consideration, or

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- (c) that the alienation—
- (i) was a birthday, Christmas or other conventional gift, or
  - (ii) was a gift made, for a charitable purpose, to a person who is not an associate of the company,
- which, having regard to all the circumstances, it was reasonable for the company to make:

Provided that this subsection is without prejudice to any right or interest acquired in good faith and for value from or through the transferee in the alienation.

- (5) In subsection (4) above, “charitable purpose” means any charitable, benevolent or philanthropic purpose, whether or not it is charitable within the meaning of any rule of law.
- (6) For the purposes of the foregoing provisions of this section, an alienation in implementation of a prior obligation is deemed to be one for which there was no consideration or no adequate consideration to the extent that the prior obligation was undertaken for no consideration or no adequate consideration.
- (7) A liquidator and an administrator have the same right as a creditor has under any rule of law to challenge an alienation of a company made for no consideration or no adequate consideration.
- (8) This section applies to Scotland only.

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

- C25** S. 242 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), **ss. 154, 155, 165(2)(a)**; S.I. 1991/878, **art. 2, Sch.**
- C26** S. 242 restricted (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), s. 182(4), **Sch. 22 para. 8(2)(a)**; S.I. 1991/878, **art. 2, Sch.**
- S. 242 restricted (31.3.1996) by 1995 c. 20, s. 110, **Sch. 4**, para. 3(5)(a); S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, **Sch. 2**) (which amending Act was itself repealed (1.4.1996) by 1995 c. 40, ss. 6(1), 7(2), **Sch. 5** (with **Sch. 3** paras. 3, 6))
- S. 242 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 3(5)**
- S. 242 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(2)(a)**
- S. 242 restricted (24.3.2003) by 2002 c. 29, ss. 427(1)-(5), 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))
- C27** S. 242 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, **reg. 4(1), Sch. 2**

#### Marginal Citations

- M4** 1985 c. 66.

## 243 Unfair preferences (Scotland).

- (1) Subject to subsection (2) below, subsection (4) below applies to a transaction entered into by a company, whether before or after 1st April 1986, which has the effect of creating a preference in favour of a creditor to the prejudice of the general body of creditors, being a preference created not earlier than 6 months before the commencement of the winding up of the company or the making of an administration order in relation to the company.
- (2) Subsection (4) below does not apply to any of the following transactions—

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- (a) a transaction in the ordinary course of trade or business;
  - (b) a payment in cash for a debt which when it was paid had become payable, unless the transaction was collusive with the purpose of prejudicing the general body of creditors;
  - (c) a transaction whereby the parties to it undertake reciprocal obligations (whether the performance by the parties of their respective obligations occurs at the same time or at different times) unless the transaction was collusive as aforesaid;
  - (d) the granting of a mandate by a company authorising an arrestee to pay over the arrested funds or part thereof to the arrester where—
    - (i) there has been a decree for payment or a warrant for summary diligence, and
    - (ii) the decree or warrant has been preceded by an arrestment on the dependence of the action or followed by an arrestment in execution.
- (3) For the purposes of subsection (1) above, the day on which a preference was created is the day on which the preference became completely effectual.
- (4) A transaction to which this subsection applies is challengeable by—
- (a) in the case of a winding up—
    - (i) any creditor who is a creditor by virtue of a debt incurred on or before the date of commencement of the winding up, or
    - (ii) the liquidator; and
  - (b) in the case of an administration order, the administrator.
- (5) On a challenge being brought under subsection (4) above, the court, if satisfied that the transaction challenged is a transaction to which this section applies, shall grant decree of reduction or for such restoration of property to the company's assets or other redress as may be appropriate;
- Provided that this subsection is without prejudice to any right or interest acquired in good faith and for value from or through the creditor in whose favour the preference was created.
- (6) A liquidator and an administrator have the same right as a creditor has under any rule of law to challenge a preference created by a debtor.
- (7) This section applies to Scotland only.

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

- C28** S. 243 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), **ss. 154**, 155, 165(2)(a); S.I. 1991/878, **art. 2**, **Sch.**
- C29** S. 243 restricted (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), s. 182(4), **Sch. 22 para. 8(2)(a)**; S.I. 1991/878, **art. 2**, **Sch.**
- S. 243 restricted (31.3.1996) by 1995 c. 20, s. 110, **Sch. 4 para. 3(5)(a)**; S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in **arts. 4-6**, **Sch. 2**) (which amending Act was itself repealed (1.4.1996) by 1995 c. 40, s. 6(1), 7(2), **Sch. 5** (with **Sch. 3 paras. 3, 16**))
- S. 243 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 3(5)**
- S. 243 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(2)(a)**
- S. 243 restricted (24.3.2003) by 2002 c. 29, ss. 427(1)-(5), 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**))
- C30** S. 243 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, **reg. 4(1)**, **Sch. 2**

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S. 243 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, **Sch. 1 Art. 23 paras. 1-3** (subject to Sch. 1 Art. 23 paras. 6-9)

#### **244 Extortionate credit transactions.**

- (1) This section applies as does section 238, 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 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 the day on which the administration order was made or (as the case may be) the company went into liquidation.
- (3) For the purposes of this section 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 section is or, as the case may be, was extortionate.
- (4) An order under this section with respect to any transaction may contain such one or more of the following as the 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 section are exercisable in relation to any transaction concurrently with any powers exercisable in relation to that transaction as a transaction at an undervalue or under section 242 (gratuitous alienations in Scotland).

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

**C31** S. 244 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**

#### **245 Avoidance of certain floating charges.**

- (1) This section applies as does section 238, but applies to Scotland as well as to England and Wales.
- (2) Subject as follows, 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—

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- (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 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 the next subsection, the time at which a floating charge is created by a company is a relevant time for the purposes of this section 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, or
  - (c) in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.
- (4) Where a company creates a floating charge at a time mentioned in subsection (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 section unless the company—
- (a) is at that time unable to pay its debts within the meaning of section 123 in Chapter VI of Part IV, or
  - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction under which the charge is created.
- (5) For the purposes of subsection (3), the onset of insolvency is—
- (a) in a case where this section applies by reason of the making of an administration order, the date of the presentation of the petition on which the order was made, and
  - (b) in a case where this section applies by reason of a company going into liquidation, the date of the commencement of the winding up.
- (6) For the purposes of subsection (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.

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

C32 S. 245 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2

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

- (1) This section applies in the case of a company where—



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- (a) an administration order is made in relation to the company, 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 as follows, 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) This does not apply to a lien on documents which give a title to property and are held as such.

**Status:**

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