



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART XVI

#### PROVISIONS AGAINST DEBT AVOIDANCE (ENGLAND AND WALES ONLY)

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

- C1** Pt. 16 (ss. 423-425) applied (1.12.1994) by S.I. 1994/2421, arts. 4(3)(f), 6(3)(f)  
Pt. 16 (ss. 423-425) applied (with modifications) (1.12.1994) by S.I. 1994/2421, arts. 8(4)(5)(8)(9), 10(2)(3)(6), Sch. 4 Pt. II, Sch. 7
- C2** Third Group of Parts (Pts. 12-19) 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))

#### **423 Transactions defrauding creditors.**

- (1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—
- he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;
  - he enters into a transaction with the other in consideration of marriage [<sup>F1</sup>or the formation of a civil partnership]; or
  - he enters into a transaction with the other 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 himself.
- (2) Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, 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
  - protecting the interests of persons who are victims of the transaction.

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- (3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose—
- (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or
  - (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.
- (4) In this section “the court” means the High Court or—
- (a) if the person entering into the transaction is an individual, any other court which would have jurisdiction in relation to a bankruptcy petition relating to him;
  - (b) if that person is a body capable of being wound up under Part IV or V of this Act, any other court having jurisdiction to wind it up.
- (5) In relation to a transaction at an undervalue, references here and below to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in the following two sections the person entering into the transaction is referred to as “the debtor”.

#### Textual Amendments

- F1** Words in s. 423(1)(b) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), ss. 261(1), 263, [Sch. 27 para. 121](#); S.I. 2005/3175, [art. 2\(2\)](#) (subject to [art. 2\(3\)-\(5\)](#))

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

- C3** S. 423 applied (with modifications) by S.I. 1986/1999, [art. 3](#), [Sch. 1 Pt. II](#)  
 S. 423 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](#))
- C4** S. 423 restricted by [Drug Trafficking Offences Act 1986 \(c. 32, SIF 39:1\)](#), [s. 15\(6\)\(a\)\(7\)](#)  
 S. 423 restricted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 30\(6\)](#), 34(5)(a), 47(4)(a)  
 S. 423 restricted (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), [s. 182\(4\) Sch. 22 para. 8\(1\)\(c\)](#); S.I. 1991/878, [art. 2](#), [Sch.](#)  
 S. 423 restricted by [1986 c. 32](#), [s. 15\(6\)\(a\)\(b\)](#) (as substituted (prosp.) by [1993 c. 36](#), [ss. 13\(9\)](#), 78(3) (with [s. 78\(6\)](#) (which amending provision was repealed (3.2.1995) by [1994 c. 37](#), ss. 67, 69(2), [Sch. 3](#)))  
 S. 423 restricted (3.2.1995) by [1994 c. 37](#), ss. 32(5)(a), 69(2), [Sch. 2 para. 5](#) (with [s. 66\(2\)](#))  
 S. 423 restricted (1.11.1995) by [1988 c. 33](#), [s. 84\(6\)\(a\)](#) (as substituted (1.11.1995) by [1995 c. 11](#), [s. 8\(7\)](#); S.I. 1995/2650, [art. 2](#))  
 S. 423 restricted (1.4.1996) by [1995 c. 43](#), ss. 44, 50(2), [Sch. 2 para. 2\(5\)](#)  
 S. 423 restricted (11.12.1999) by S.I. 1999/2979, [reg. 17\(1\)](#)  
 S. 423 restricted (24.3.2003) by [2002 c. 29](#), ss. 419(1)-(4), 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](#)))
- C5** S. 423 excluded (25.4.1991) by [Companies Act 1989 \(c. 40\)](#), [ss. 154](#), 155, 165(1)(c); S.I. 1991/878, [art. 2](#), [Sch.](#)
- C6** S. 423 modified (3.2.1995) by [1994 c. 37](#), ss. 32(5)(a), 69(2), [Sch. 2 para. 5](#) (with [s. 66\(2\)](#))
- C7** S. 423 amended (1.12.2001) by [2000 c. 8](#), [s. 375\(1\)](#); S.I. 2001/3538, [art. 2](#)
- C8** [Ss. 423-425](#) 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](#)
- C9** [Ss. 423-425](#) 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](#)

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#### **424 Those who may apply for an order under s. 423.**

- (1) An application for an order under section 423 shall not be made in relation to a transaction except—
  - (a) in a case where the debtor has been adjudged bankrupt or is a body corporate which is being wound up or [<sup>F2</sup>is in administration], 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 victim of the transaction;
  - (b) in a case where a victim of the transaction is bound by a voluntary arrangement approved under Part I or Part VIII of this Act, by the supervisor of the voluntary arrangement or by any person who (whether or not so bound) is such a victim; or
  - (c) in any other case, by a victim of the transaction.
- (2) An application made under any of the paragraphs of subsection (1) is to be treated as made on behalf of every victim of the transaction.

##### **Textual Amendments**

- F2** Words in s. 424(1)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 36 (with s. 249(1)-(3)(6)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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

- C10** S. 424 applied (with modifications) by S.I. 1986/1999, art. 3, Sch. 1 Pt. II  
S. 424 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, {Sch. 1 Art. 23 paras. 2, 3}
- C11** Ss. 423-425 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
- C12** Ss. 423-425 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

#### **425 Provision which may be made by order under s. 423.**

- (1) Without prejudice to the generality of section 423, an order made under that section with respect to a transaction may (subject as follows)—
  - (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 the money so transferred;
  - (c) release or discharge (in whole or in part) any security given by the debtor;
  - (d) require any person to pay to any other person in respect of benefits received from the debtor 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

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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.

- (2) An order under section 423 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor 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 debtor 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 in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.
- (3) For the purposes of this section the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under section 423 may be made in respect of the transaction.
- (4) In this section “security” means any mortgage, charge, lien or other security.

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

- C13** S. 425 applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**  
 S. 425 applied (with modifications) (4.4.2006) by The Cross Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, Sch. 1 Art. 23 paras. 2, 3
- C14** Ss. 423-425 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. 3
- C15** Ss. 423-425 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

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