



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 9

#### INSOLVENCY ETC.

##### *Bankruptcy in England and Wales*

#### **417 Modifications of the 1986 Act**

- (1) This section applies if a person is adjudged bankrupt in England and Wales.
- (2) The following property is excluded from his estate for the purposes of Part 9 of the 1986 Act—
  - (a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the order adjudging him bankrupt;
  - (b) any property in respect of which an order under section 50<sup>F1</sup>... is in force;
  - (c) any property in respect of which an order under section 128(3) is in force;
  - (d) any property in respect of which an order under section 198<sup>F2</sup>... is in force.
- (3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the order adjudging the person bankrupt.
- (4) If in the case of a debtor an interim receiver stands at any time appointed under section 286 of the 1986 Act and any property of the debtor is then subject to a restraint order made under section 41, 120 or 190 the powers conferred on the receiver by virtue of that Act do not apply to property then subject to the restraint order.

#### **Textual Amendments**

- F1** Words in s. 417(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 69(a), [Sch. 14](#); S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F2** Words in s. 417(2)(d) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 69(b), [Sch. 14](#); S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

*Status: Point in time view as at 27/03/2014.*

*Changes to legislation: Proceeds of Crime Act 2002, Part 9 is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**II** S. 417 in force at 24.3.2003 by [S.I. 2003/333](#), [art. 2](#), [Sch.](#)

### 418 Restriction of powers

- (1) If a person is adjudged bankrupt in England and Wales the powers referred to in subsection (2) must not be exercised in relation to the property referred to in subsection (3).
- (2) These are the powers—
  - (a) the powers conferred on a court by sections 41 to 67 and the powers of a receiver appointed under section 48 [<sup>F3</sup>or 50 ] ;
  - (b) the powers conferred on a court by sections 120 to 136 and Schedule 3 and the powers of an administrator appointed under section 125 or 128(3);
  - (c) the powers conferred on a court by sections 190 to 215 and the powers of a receiver appointed under section 196 [<sup>F4</sup>or 198] .
- (3) This is the property—
  - (a) property which is for the time being comprised in the bankrupt’s estate for the purposes of Part 9 of the 1986 Act;
  - (b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under section 307, 308 or 308A of the 1986 Act (after-acquired property, tools, tenancies etc);
  - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of the 1986 Act;
  - (d) in a case where a confiscation order has been made under section 6 or 156 of this Act, any sums remaining in the hands of a receiver appointed under section 50 [<sup>F5</sup>or 198] of this Act after the amount required to be paid under the confiscation order has been fully paid;
  - (e) in a case where a confiscation order has been made under section 92 of this Act, any sums remaining in the hands of an administrator appointed under section 128 of this Act after the amount required to be paid under the confiscation order has been fully paid.
- (4) But nothing in the 1986 Act must be taken to restrict (or enable the restriction of) the powers referred to in subsection (2).
- (5) In a case where a petition in bankruptcy was presented or a receiving order or adjudication in bankruptcy was made before 29 December 1986 (when the 1986 Act came into force) this section has effect with these modifications—
  - (a) for the reference in subsection (3)(a) to the bankrupt’s estate for the purposes of Part 9 of that Act substitute a reference to the property of the bankrupt for the purposes of the 1914 Act;
  - (b) omit subsection (3)(b);
  - (c) for the reference in subsection (3)(c) to section 280(2)(c) of the 1986 Act substitute a reference to section 26(2) of the 1914 Act;
  - (d) for the reference in subsection (4) to the 1986 Act substitute a reference to the 1914 Act.

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#### Textual Amendments

- F3** Words in s. 418(2)(a) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 70\(2\)\(a\)](#); [S.I. 2008/755, art. 2\(1\)\(a\)](#) (with arts. 3-14)
- F4** Words in s. 418(2)(c) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 70\(2\)\(b\)](#); [S.I. 2008/755, art. 2\(1\)\(a\)](#) (with arts. 3-14)
- F5** Words in s. 418(3)(d) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 70\(3\)](#); [S.I. 2008/755, art. 2\(1\)\(a\)](#) (with arts. 3-14)

#### Commencement Information

- I2** S. 418 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

### 419 Tainted gifts

- (1) This section applies if a person who is adjudged bankrupt in England and Wales has made a tainted gift (whether directly or indirectly).
- (2) No order may be made under section 339, 340 or 423 of the 1986 Act (avoidance of certain transactions) in respect of the making of the gift at any time when—
  - (a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, or
  - (b) there is in force in respect of such property an order under section 50, <sup>F6</sup>... 128(3) [<sup>F7</sup>or 198].
- (3) Any order made under section 339, 340 or 423 of the 1986 Act after an order mentioned in subsection (2)(a) or (b) is discharged must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.
- (4) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.
- (5) In a case where a petition in bankruptcy was presented or a receiving order or adjudication in bankruptcy was made before 29 December 1986 (when the 1986 Act came into force) this section has effect with the substitution for a reference to section 339, 340 or 423 of the 1986 Act of a reference to section 27, 42 or 44 of the 1914 Act.

#### Textual Amendments

- F6** Word in s. 419(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 71\(a\), Sch. 14](#); [S.I. 2008/755, art. 2\(1\)\(a\)\(d\)](#) (with arts. 3-14)
- F7** Words in s. 419(2)(b) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 71\(b\)](#); [S.I. 2008/755, art. 2\(1\)\(a\)](#) (with arts. 3-14)

#### Commencement Information

- I3** S. 419 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

*Status: Point in time view as at 27/03/2014.*

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## *Sequestration in Scotland*

### **420 Modifications of the 1985 Act**

- (1) This section applies if an award of sequestration is made in Scotland.
- (2) The following property is excluded from the debtor's estate for the purposes of the 1985 Act—
  - (a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the award of sequestration;
  - (b) any property in respect of which an order under section 50 <sup>F8</sup>... is in force;
  - (c) any property in respect of which an order under section 128(3) is in force;
  - (d) any property in respect of which an order under section 198 <sup>F9</sup>... is in force.
- (3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the award of sequestration.
- (4) It shall not be competent to submit a claim in relation to a confiscation order to the permanent trustee in accordance with section 48 of the 1985 Act; and the reference here to a confiscation order is to any confiscation order that has been or may be made against the debtor under Part 2, 3 or 4 of this Act.
- (5) If at any time in the period before the award of sequestration is made an interim trustee stands appointed under section 2(5) of the 1985 Act and any property in the debtor's estate is at that time subject to a restraint order made under section 41, 120 or 190, the powers conferred on the trustee by virtue of that Act do not apply to property then subject to the restraint order.

#### **Textual Amendments**

- F8** Words in s. 420(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 72(a), [Sch. 14](#); S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F9** Words in s. 420(2)(d) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 72(b), [Sch. 14](#); S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

#### **Commencement Information**

- I4** S. 420 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### **421 Restriction of powers**

- (1) If an award of sequestration is made in Scotland the powers referred to in subsection (2) must not be exercised in relation to the property referred to in subsection (3).
- (2) These are the powers—
  - (a) the powers conferred on a court by sections 41 to 67 and the powers of a receiver appointed under section 48 [<sup>F10</sup> or 50] ;
  - (b) the powers conferred on a court by sections 120 to 136 and Schedule 3 and the powers of an administrator appointed under section 125 or 128(3);
  - (c) the powers conferred on a court by sections 190 to 215 and the powers of a receiver appointed under section 196 [<sup>F11</sup> or 198] .

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- (3) This is the property—
- (a) property which is for the time being comprised in the whole estate of the debtor within the meaning of section 31(8) of the 1985 Act;
  - (b) any income of the debtor which has been ordered under section 32(2) of that Act to be paid to the permanent trustee;
  - (c) any estate which under section 31(10) or 32(6) of that Act vests in the permanent trustee;
  - (d) in a case where a confiscation order has been made under section 6 or 156 of this Act, any sums remaining in the hands of a receiver appointed under section 50 [<sup>F12</sup>or 198] of this Act after the amount required to be paid under the confiscation order has been fully paid;
  - (e) in a case where a confiscation order has been made under section 92 of this Act, any sums remaining in the hands of an administrator appointed under section 128 of this Act after the amount required to be paid under the confiscation order has been fully paid.
- (4) But nothing in the 1985 Act must be taken to restrict (or enable the restriction of) the powers referred to in subsection (2).
- (5) In a case where (despite the coming into force of the 1985 Act) the 1913 Act applies to a sequestration, subsection (3) above has effect as if for paragraphs (a) to (c) there were substituted—
- “(a) property which is for the time being comprised in the whole property of the debtor which vests in the trustee under section 97 of the 1913 Act;
  - (b) any income of the bankrupt which has been ordered under section 98(2) of that Act to be paid to the trustee;
  - (c) any estate which under section 98(1) of that Act vests in the trustee.”
- (6) In a case where subsection (5) applies, subsection (4) has effect as if for the reference to the 1985 Act there were substituted a reference to the 1913 Act.

#### Textual Amendments

- F10** Words in s. 421(2)(a) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 73\(2\)\(a\)](#); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F11** Words in s. 421(2)(c) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 73\(2\)\(b\)](#); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F12** Words in s. 421(3)(d) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 73\(3\)](#); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

#### Commencement Information

- I5** S. 421 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

## 422 Tainted gifts

- (1) This section applies if a person whose estate is sequestrated in Scotland has made a tainted gift (whether directly or indirectly).

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- (2) No decree may be granted under the Bankruptcy Act 1621 (c. 18) or section 34 or 36 of the 1985 Act (gratuitous alienations and unfair preferences), or otherwise, in respect of the making of the gift at any time when—
- (a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, or
  - (b) there is in force in respect of such property an order under section 50, <sup>F13</sup>... 128(3) [<sup>F14</sup>or 198] .
- (3) Any decree made under the Bankruptcy Act 1621 (c. 18) or section 34 or 36 of the 1985 Act, or otherwise, after an order mentioned in subsection (2)(a) or (b) is discharged must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.
- (4) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.

#### Textual Amendments

**F13** Word in s. 422(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 74(a), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)

**F14** Words in s. 422(2)(b) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 74\(b\)](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)

#### Commencement Information

**I6** S. 422 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### *Bankruptcy in Northern Ireland*

#### **423 Modifications of the 1989 Order**

- (1) This section applies if a person is adjudged bankrupt in Northern Ireland.
- (2) The following property is excluded from his estate for the purposes of Part 9 of the 1989 Order—
- (a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the order adjudging him bankrupt;
  - (b) any property in respect of which an order under section 50 <sup>F15</sup>... is in force;
  - (c) any property in respect of which an order under section 128(3) is in force;
  - (d) any property in respect of which an order under section 198 <sup>F16</sup>... is in force.
- (3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the order adjudging the person bankrupt.
- (4) If in the case of a debtor an interim receiver stands at any time appointed under Article 259 of the 1989 Order and any property of the debtor is then subject to a restraint order made under section 41, 120 or 190, the powers conferred on the receiver by virtue of that Order do not apply to property then subject to the restraint order.

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#### Textual Amendments

- F15** Words in s. 423(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 75(a), [Sch. 14](#); S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F16** Words in s. 423(2)(d) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 75(b), [Sch. 14](#); S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

#### Commencement Information

- I7** S. 423 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 424 Restriction of powers

- (1) If a person is adjudged bankrupt in Northern Ireland the powers referred to in subsection (2) must not be exercised in relation to the property referred to in subsection (3).
- (2) These are the powers—
  - (a) the powers conferred on a court by sections 41 to 67 and the powers of a receiver appointed under section 48 [<sup>F17</sup>or 50 ] ;
  - (b) the powers conferred on a court by sections 120 to 136 and Schedule 3 and the powers of an administrator appointed under section 125 or 128(3);
  - (c) the powers conferred on a court by sections 190 to 215 and the powers of a receiver appointed under section 196 [<sup>F18</sup>or 198] .
- (3) This is the property—
  - (a) property which is for the time being comprised in the bankrupt's estate for the purposes of Part 9 of the 1989 Order;
  - (b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under Article 280 or 281 of the 1989 Order (after-acquired property etc);
  - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under Article 254(2)(c) of the 1989 Order;
  - (d) in a case where a confiscation order has been made under section 6 or 156 of this Act, any sums remaining in the hands of a receiver appointed under section 50 [<sup>F19</sup>or 198] of this Act after the amount required to be paid under the confiscation order has been fully paid;
  - (e) in a case where a confiscation order has been made under section 92 of this Act, any sums remaining in the hands of an administrator appointed under section 128 of this Act after the amount required to be paid under the confiscation order has been fully paid.
- (4) But nothing in the 1989 Order must be taken to restrict (or enable the restriction of) the powers mentioned in subsection (2).
- (5) In a case where a petition in bankruptcy was presented or an adjudication in bankruptcy was made before 1 October 1991 (when the 1989 Order came into force) this section has effect with these modifications—
  - (a) for the reference in subsection (3)(a) to the bankrupt's estate for the purposes of Part 9 of that Order substitute a reference to the property of the bankrupt for the purposes of the Bankruptcy Acts (Northern Ireland) 1857 to 1980;
  - (b) omit subsection (3)(b);



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- (c) for the reference in subsection (3)(c) to Article 254(2)(c) of the 1989 Order substitute a reference to Articles 28(4), (5)(c) and (11) and 30(6)(c) of the Bankruptcy Amendment (Northern Ireland) Order 1980 (S.I. 1980/561 (N.I. 4));
- (d) for the reference in subsection (4) to the 1989 Order substitute a reference to the Bankruptcy Acts (Northern Ireland) 1857 to 1980.

#### Textual Amendments

- F17** Words in s. 424(2)(a) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 76\(2\)\(a\)](#); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F18** Words in s. 424(2)(c) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 76\(2\)\(b\)](#); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F19** Words in s. 424(3)(d) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 76\(3\)](#); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

#### Commencement Information

- I8** S. 424 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

## 425 Tainted gifts

- (1) This section applies if a person who is adjudged bankrupt in Northern Ireland has made a tainted gift (whether directly or indirectly).
- (2) No order may be made under Article 312, 313 or 367 of the 1989 Order (avoidance of certain transactions) in respect of the making of the gift at any time when—
  - (a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, or
  - (b) there is in force in respect of such property an order under section 50, <sup>F20</sup> ... 128(3) [<sup>F21</sup>or 198 ] .
- (3) Any order made under Article 312, 313 or 367 of the 1989 Order after an order mentioned in subsection (2)(a) or (b) is discharged must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.
- (4) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.
- (5) In a case where a petition in bankruptcy was presented or an adjudication in bankruptcy was made before 1 October 1991 (when the 1989 Order came into force) this section has effect with these modifications—
  - (a) for a reference to Article 312 of the 1989 Order substitute a reference to section 12 of the Bankruptcy Amendment Act (Northern Ireland) 1929 (c. 1 (N.I.));
  - (b) for a reference to Article 367 of the 1989 Order substitute a reference to section 10 of the Conveyancing Act (Ireland) 1634 (c. 3).

#### Textual Amendments

- F20** Word in s. 425(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 77\(a\), Sch. 14](#); S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)



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**F21** Words in s. 425(2)(b) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 77\(b\)](#); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

#### **Commencement Information**

**I9** S. 425 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

### *Winding up in England and Wales and Scotland*

#### **426 Winding up under the 1986 Act**

- (1) In this section “company” means any company which may be wound up under the 1986 Act.
- (2) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up, the functions of the liquidator (or any provisional liquidator) are not exercisable in relation to the following property—
  - (a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the relevant time;
  - (b) any property in respect of which an order under section 50<sup>F22</sup> ... is in force;
  - (c) any property in respect of which an order under section 128(3) is in force;
  - (d) any property in respect of which an order under section 198<sup>F23</sup> ... is in force.
- (3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the relevant time.
- (4) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up the powers referred to in subsection (5) must not be exercised in the way mentioned in subsection (6) in relation to any property—
  - (a) which is held by the company, and
  - (b) in relation to which the functions of the liquidator are exercisable.
- (5) These are the powers—
  - (a) the powers conferred on a court by sections 41 to 67 and the powers of a receiver appointed under section 48<sup>F24</sup> or 50 ] ;
  - (b) the powers conferred on a court by sections 120 to 136 and Schedule 3 and the powers of an administrator appointed under section 125 or 128(3);
  - (c) the powers conferred on a court by sections 190 to 215 and the powers of a receiver appointed under section 196<sup>F25</sup> or 198] .
- (6) The powers must not be exercised—
  - (a) so as to inhibit the liquidator from exercising his functions for the purpose of distributing property to the company’s creditors;
  - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (7) But nothing in the 1986 Act must be taken to restrict (or enable the restriction of) the exercise of the powers referred to in subsection (5).
- (8) For the purposes of the application of Parts 4 and 5 of the 1986 Act (winding up) to a company which the Court of Session has jurisdiction to wind up, a person is not

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a creditor in so far as any sum due to him by the company is due in respect of a confiscation order made under section 6, 92 or 156.

- (9) The relevant time is—
- (a) if no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
  - (b) if such an order has been made, but before the presentation of the petition for the winding up of the company by the court such a resolution has been passed by the company, the time of the passing of the resolution;
  - (c) if such an order has been made, but paragraph (b) does not apply, the time of the making of the order.
- (10) In a case where a winding up of a company commenced or is treated as having commenced before 29 December 1986, this section has effect with the following modifications—
- (a) in subsections (1) and (7) for “the 1986 Act” substitute “ the Companies Act 1985 ”;
  - (b) in subsection (8) for “Parts 4 and 5 of the 1986 Act” substitute “ Parts 20 and 21 of the Companies Act 1985 ”.

#### Textual Amendments

- F22** Words in s. 426(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 78\(2\)\(a\)](#), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F23** Words in s. 426(2)(d) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 78\(2\)\(b\)](#), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F24** Words in s. 426(5)(a) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 78\(3\)\(a\)](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)
- F25** Words in s. 426(5)(c) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 78\(3\)\(b\)](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)

#### Commencement Information

- I10** S. 426 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 427 Tainted gifts

- (1) In this section “company” means any company which may be wound up under the 1986 Act.
- (2) This section applies if—
- (a) an order for the winding up of a company is made or it passes a resolution for its voluntary winding up, and
  - (b) it has made a tainted gift (whether directly or indirectly).
- (3) No order may be made under section 238, 239 or 423 of the 1986 Act (avoidance of certain transactions) and no decree may be granted under section 242 or 243 of that Act (gratuitous alienations and unfair preferences), or otherwise, in respect of the making of the gift at any time when—
- (a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, or
  - (b) there is in force in respect of such property an order under section 50, <sup>F26</sup> ... 128(3) [<sup>F27</sup>or 198] .

*Status: Point in time view as at 27/03/2014.*

*Changes to legislation: Proceeds of Crime Act 2002, Part 9 is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) Any order made under section 238, 239 or 423 of the 1986 Act or decree granted under section 242 or 243 of that Act, or otherwise, after an order mentioned in subsection (3) (a) or (b) is discharged must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.
- (5) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.
- (6) In a case where the winding up of a company commenced or is treated as having commenced before 29 December 1986 this section has effect with the substitution—
  - (a) for references to section 239 of the 1986 Act of references to section 615 of the Companies Act 1985 (c. 6);
  - (b) for references to section 242 of the 1986 Act of references to section 615A of the Companies Act 1985;
  - (c) for references to section 243 of the 1986 Act of references to section 615B of the Companies Act 1985.

#### Textual Amendments

**F26** Word in s. 427(3)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 79(a), Sch. 14; S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)

**F27** Words in s. 427(3)(b) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), Sch. 8 para. 79(b); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

#### Commencement Information

**I11** S. 427 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, Sch.

### *Winding up in Northern Ireland*

#### **428 Winding up under the 1989 Order**

- (1) In this section “company” means any company which may be wound up under the 1989 Order.
- (2) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up, the functions of the liquidator (or any provisional liquidator) are not exercisable in relation to the following property—
  - (a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the relevant time;
  - (b) any property in respect of which an order under section 50<sup>F28</sup> ... is in force;
  - (c) any property in respect of which an order under section 128(3) is in force;
  - (d) any property in respect of which an order under section 198<sup>F29</sup> ... is in force.
- (3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the relevant time.
- (4) If an order for the winding up of a company is made or it passes a resolution for its voluntary winding up the powers referred to in subsection (5) must not be exercised in the way mentioned in subsection (6) in relation to any property—
  - (a) which is held by the company, and

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- (b) in relation to which the functions of the liquidator are exercisable.
- (5) These are the powers—
- (a) the powers conferred on a court by sections 41 to 67 and the powers of a receiver appointed under section 48 [<sup>F30</sup> or 50] ;
  - (b) the powers conferred on a court by sections 120 to 136 and Schedule 3 and the powers of an administrator appointed under section 125 or 128(3);
  - (c) the powers conferred on a court by sections 190 to 215 and the powers of a receiver appointed under section 196 [<sup>F31</sup> or 198 ] .
- (6) The powers must not be exercised—
- (a) so as to inhibit the liquidator from exercising his functions for the purpose of distributing property to the company’s creditors;
  - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (7) But nothing in the 1989 Order must be taken to restrict (or enable the restriction of) the exercise of the powers referred to in subsection (5).
- (8) The relevant time is—
- (a) if no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
  - (b) if such an order has been made, but before the presentation of the petition for the winding up of the company by the court such a resolution has been passed by the company, the time of the passing of the resolution;
  - (c) if such an order has been made, but paragraph (b) does not apply, the time of the making of the order.
- (9) In a case where a winding up of a company commenced or is treated as having commenced before 1 October 1991, this section has effect with the substitution for references to the 1989 Order of references to the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)).

#### Textual Amendments

- F28** Words in s. 428(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 80\(2\)\(a\)](#), [Sch. 14](#); S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F29** Words in s. 428(2)(d) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 80\(2\)\(b\)](#), [Sch. 14](#); S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F30** Words in s. 428(5)(a) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 80\(3\)\(a\)](#); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F31** Words in s. 428(5)(c) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 80\(3\)\(b\)](#); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)

#### Commencement Information

- I12** S. 428 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

## 429 Tainted gifts

- (1) In this section “company” means any company which may be wound up under the 1989 Order.

*Status: Point in time view as at 27/03/2014.*

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- (2) This section applies if—
- (a) an order for the winding up of a company is made or it passes a resolution for its voluntary winding up, and
  - (b) it has made a tainted gift (whether directly or indirectly).
- (3) No order may be made under Article 202, 203 or 367 of the 1989 Order (avoidance of certain transactions) in respect of the making of the gift at any time when—
- (a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, or
  - (b) there is in force in respect of such property an order under section 50, <sup>F32</sup>... 128(3) [<sup>F33</sup>or 198] .
- (4) Any order made under Article 202, 203 or 367 of the 1989 Order after an order mentioned in subsection (3)(a) or (b) is discharged must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.
- (5) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.

#### Textual Amendments

**F32** Word in s. 429(3)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 81\(a\), Sch. 14](#); [S.I. 2008/755, art. 2\(1\)\(a\)\(d\)](#) (with arts. 3-14)

**F33** Words in s. 429(3)(b) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\), s. 94\(1\), Sch. 8 para. 81\(b\)](#); [S.I. 2008/755, art. 2\(1\)\(a\)](#) (with arts. 3-14)

#### Commencement Information

**I13** S. 429 in force at 24.3.2003 by [S.I. 2003/333, art. 2, Sch.](#)

### *Floating charges*

#### **430 Floating charges**

- (1) In this section “company” means a company which may be wound up under
- (a) the 1986 Act, or
  - (b) the 1989 Order.
- (2) If a company holds property which is subject to a floating charge, and a receiver has been appointed by or on the application of the holder of the charge, the functions of the receiver are not exercisable in relation to the following property—
- (a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the appointment of the receiver;
  - (b) any property in respect of which an order under section 50 <sup>F34</sup>... is in force;
  - (c) any property in respect of which an order under section 128(3) is in force;
  - (d) any property in respect of which an order under section 198 <sup>F35</sup>... is in force.
- (3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the appointment of the receiver.

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- (4) If a company holds property which is subject to a floating charge, and a receiver has been appointed by or on the application of the holder of the charge, the powers referred to in subsection (5) must not be exercised in the way mentioned in subsection (6) in relation to any property—
- (a) which is held by the company, and
  - (b) in relation to which the functions of the receiver are exercisable.
- (5) These are the powers—
- (a) the powers conferred on a court by sections 41 to 67 and the powers of a receiver appointed under section 48 [<sup>F36</sup>or 50 ] ;
  - (b) the powers conferred on a court by sections 120 to 136 and Schedule 3 and the powers of an administrator appointed under section 125 or 128(3);
  - (c) the powers conferred on a court by sections 190 to 215 and the powers of a receiver appointed under section 196 [<sup>F37</sup>or 198 ] .
- (6) The powers must not be exercised—
- (a) so as to inhibit the receiver from exercising his functions for the purpose of distributing property to the company’s creditors;
  - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the receiver) properly incurred in the exercise of his functions in respect of the property.
- (7) But nothing in the 1986 Act or the 1989 Order must be taken to restrict (or enable the restriction of) the exercise of the powers referred to in subsection (5).
- (8) In this section “floating charge” includes a floating charge within the meaning of section 462 of the Companies Act 1985 (c. 6).

#### Textual Amendments

- F34** Words in s. 430(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 82\(2\)\(a\)](#), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F35** Words in s. 430(2)(d) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 82\(2\)\(b\)](#), [Sch. 14](#); [S.I. 2008/755](#), art. 2(1)(a)(d) (with arts. 3-14)
- F36** Words in s. 430(5)(a) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 82\(3\)\(a\)](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)
- F37** Words in s. 430(5)(c) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 82\(3\)\(b\)](#); [S.I. 2008/755](#), art. 2(1)(a) (with arts. 3-14)

#### Commencement Information

- I14** S. 430 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### *Limited liability partnerships*

#### **431 Limited liability partnerships**

- (1) In sections 426, 427 and 430 “company” includes a limited liability partnership which may be wound up under the 1986 Act.



*Status: Point in time view as at 27/03/2014.*

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- (2) A reference in those sections to a company passing a resolution for its voluntary winding up is to be construed in relation to a limited liability partnership as a reference to the partnership making a determination for its voluntary winding up.

#### Commencement Information

**I15** S. 431 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

### *Insolvency practitioners*

#### **432 Insolvency practitioners**

- (1) Subsections (2) and (3) apply if a person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because—
- it is for the time being subject to a restraint order made under section 41, 120 or 190, or
  - it is for the time being subject to [<sup>F38</sup>a property freezing order made under section 245A, an interim receiving order made under section 246, a prohibitory property order made under section 255A ] or an interim administration order made under section 256,
- and at the time of the seizure or disposal he believes on reasonable grounds that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of the property.
- (2) He is not liable to any person in respect of any loss or damage resulting from the seizure or disposal, except so far as the loss or damage is caused by his negligence.
- (3) He has a lien on the property or the proceeds of its sale—
- for such of his expenses as were incurred in connection with the liquidation, bankruptcy, sequestration or other proceedings in relation to which he purported to make the seizure or disposal, and
  - for so much of his remuneration as may reasonably be assigned to his acting in connection with those proceedings.
- (4) Subsection (2) does not prejudice the generality of any provision of the 1985 Act, the 1986 Act, the 1989 Order or any other Act or Order which confers protection from liability on him.
- (5) Subsection (7) applies if—
- property is subject to a restraint order made under section 41, 120 or 190,
  - a person acting as an insolvency practitioner incurs expenses in respect of property subject to the restraint order, and
  - he does not know (and has no reasonable grounds to believe) that the property is subject to the restraint order.
- (6) Subsection (7) also applies if—
- property is subject to a restraint order made under section 41, 120 or 190,
  - a person acting as an insolvency practitioner incurs expenses which are not ones in respect of property subject to the restraint order, and

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- (c) the expenses are ones which (but for the effect of the restraint order) might have been met by taking possession of and realising property subject to it.
- (7) Whether or not he has seized or disposed of any property, he is entitled to payment of the expenses under—
- (a) section 54(2) [<sup>F39</sup>or 55(3)] if the restraint order was made under section 41;
  - (b) section 130(3) or 131(3) if the restraint order was made under section 120;
  - (c) section 202(2) [<sup>F40</sup>or 203(3)] if the restraint order was made under section 190.
- (8) Subsection (10) applies if—
- (a) property is subject to [<sup>F41</sup>a property freezing order made under section 245A, an interim receiving order made under section 246, a prohibitory property order made under section 255A] or an interim administration order made under section 256,
  - (b) a person acting as an insolvency practitioner incurs expenses in respect of property subject to the order, and
  - (c) he does not know (and has no reasonable grounds to believe) that the property is subject to the order.
- (9) Subsection (10) also applies if—
- (a) property is subject to [<sup>F42</sup>a property freezing order made under section 245A, an interim receiving order made under section 246, a prohibitory property order made under section 255A] or an interim administration order made under section 256,
  - (b) a person acting as an insolvency practitioner incurs expenses which are not ones in respect of property subject to the order, and
  - (c) the expenses are ones which (but for the effect of the order) might have been met by taking possession of and realising property subject to it.
- (10) Whether or not he has seized or disposed of any property, he is entitled to payment of the expenses under section 280.

#### Textual Amendments

- F38** Words in s. 432(1)(b) substituted (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 6 para. 23](#); S.I. 2005/3136, art. 3(c)
- F39** Words in s. 432(7)(a) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 83\(a\)](#); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F40** Words in s. 432(7)(c) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 83\(b\)](#); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F41** Words in s. 432(8)(a) substituted (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 6 para. 23](#); S.I. 2005/3136, art. 3(c)
- F42** Words in s. 432(9)(a) substituted (1.1.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 6 para. 23](#); S.I. 2005/3136, art. 3(c)

#### Commencement Information

- I16** S. 432 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

### 433 Meaning of insolvency practitioner

- (1) This section applies for the purposes of section 432.

*Status: Point in time view as at 27/03/2014.*

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- (2) A person acts as an insolvency practitioner if he so acts within the meaning given by section 388 of the 1986 Act or Article 3 of the 1989 Order; but this is subject to subsections (3) to (5).
- (3) The expression “person acting as an insolvency practitioner” includes the official receiver acting as receiver or manager of the property concerned.
- (4) In applying section 388 of the 1986 Act under subsection (2) above—
  - (a) the reference in section 388(2)(a) to a permanent or interim trustee in sequestration must be taken to include a reference to a trustee in sequestration;
  - (b) section 388(5) (which includes provision that nothing in the section applies to anything done by the official receiver or the Accountant in Bankruptcy) must be ignored.
- (5) In applying Article 3 of the 1989 Order under subsection (2) above, paragraph (5) (which includes provision that nothing in the Article applies to anything done by the official receiver) must be ignored.

**Commencement Information**

**I17** S. 433 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

*Interpretation*

**434 Interpretation**

- (1) The following paragraphs apply to references to Acts or Orders—
  - (a) the 1913 Act is the Bankruptcy (Scotland) Act 1913 (c. 20);
  - (b) the 1914 Act is the Bankruptcy Act 1914 (c. 59);
  - (c) the 1985 Act is the Bankruptcy (Scotland) Act 1985 (c. 66);
  - (d) the 1986 Act is the Insolvency Act 1986 (c. 45);
  - (e) the 1989 Order is the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (2) An award of sequestration is made on the date of sequestration within the meaning of section 12(4) of the 1985 Act.
- (3) This section applies for the purposes of this Part.

**Commencement Information**

**I18** S. 434 in force at 24.3.2003 by S.I. 2003/333, art. 2, Sch.

**Status:**

Point in time view as at 27/03/2014.

**Changes to legislation:**

Proceeds of Crime Act 2002, Part 9 is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.