



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 9

#### INSOLVENCY ETC.

##### *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.

[<sup>F1</sup>(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) property for the time being detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P;
- (c) property in respect of which an order under section 50, 128(3) or 198 is in force;
- (d) property in respect of which an order under section 67A, 131A or 215A 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.

**Changes to legislation:** *Proceeds of Crime Act 2002, Section 428 is up to date with all changes known to be in force on or before 23 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) View outstanding changes*

- (5) These are the powers—
- (a) the powers conferred on a court by sections 41 to [F<sup>2</sup>67B, the powers conferred on an appropriate officer by section 47C] and the powers of a receiver appointed under section 48 [F<sup>3</sup> or 50] ;
  - (b) the powers conferred on a court by sections 120 to 136 and Schedule 3 [F<sup>4</sup>, the powers conferred on an appropriate officer by section 127C] and the powers of an administrator appointed under section 125 or 128(3);
  - (c) the powers conferred on a court by sections 190 to [F<sup>5</sup>215B, the powers conferred on an appropriate officer by section 195C] and the powers of a receiver appointed under section 196 [F<sup>6</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

- F1** S. 428(2) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 90\(2\)](#); S.I. 2015/983, arts. 2(2)(e), 3(aa); S.I. 2016/147, art. 3(i)
- F2** Words in s. 428(5)(a) substituted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 90\(3\)\(a\)](#); S.I. 2015/983, arts. 2(2)(e), 3(aa)
- F3** 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)
- F4** Words in s. 428(5)(b) inserted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 90\(3\)\(b\)](#); S.I. 2015/983, arts. 2(2)(e), 3(aa)
- F5** Words in s. 428(5)(c) substituted (1.3.2016) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 90\(3\)\(c\)](#); S.I. 2016/147, art. 3(i)
- F6** 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)

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#### **Commencement Information**

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

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 13(5)(a)(iia) inserted by [2015 c. 30 Sch. 5 para. 15\(3\)\(d\)](#)
- s. 323(1)(hc) inserted by [2023 c. 20 Sch. para. 45\(2\)](#)
- s. 323(4)(ec) inserted by [2023 c. 20 Sch. para. 45\(3\)](#)
- s. 323(5)(ec) inserted by [2023 c. 20 Sch. para. 45\(4\)](#)