



# Corporate Insolvency and Governance Act 2020

## 2020 CHAPTER 12

### *Termination clauses in supply contracts*

#### **14 Protection of supplies of goods and services: Great Britain**

(1) In the Insolvency Act 1986, after section 233A insert—

##### **“233B Protection of supplies of goods and services**

- (1) This section applies where a company becomes subject to a relevant insolvency procedure.
- (2) A company becomes subject to a relevant insolvency procedure for the purposes of this section where—
  - (a) a moratorium under Part A1 comes into force for the company,
  - (b) the company enters administration,
  - (c) an administrative receiver of the company is appointed (otherwise than in succession to another administrative receiver),
  - (d) a voluntary arrangement approved under Part 1 takes effect in relation to the company,
  - (e) the company goes into liquidation,
  - (f) a provisional liquidator of the company is appointed (otherwise than in succession to another provisional liquidator), or
  - (g) a court order is made under section 901C(1) of the Companies Act 2006 in relation to the company (order summoning meeting relating to compromise or arrangement).
- (3) A provision of a contract for the supply of goods or services to the company ceases to have effect when the company becomes subject to the relevant insolvency procedure if and to the extent that, under the provision—

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- (a) the contract or the supply would terminate, or any other thing would take place, because the company becomes subject to the relevant insolvency procedure, or
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company becomes subject to the relevant insolvency procedure.
- (4) Where—
- (a) under a provision of a contract for the supply of goods or services to the company the supplier is entitled to terminate the contract or the supply because of an event occurring before the start of the insolvency period, and
  - (b) the entitlement arises before the start of that period,  
the entitlement may not be exercised during that period.
- (5) Where a provision of a contract ceases to have effect under subsection (3) or an entitlement under a provision of a contract is not exercisable under subsection (4), the supplier may terminate the contract if—
- (a) in a case where the company has become subject to a relevant insolvency procedure as specified in subsection (2)(b), (c), (e) or (f), the office-holder consents to the termination of the contract,
  - (b) in any other case, the company consents to the termination of the contract, or
  - (c) the court is satisfied that the continuation of the contract would cause the supplier hardship and grants permission for the termination of the contract.
- (6) Where a provision of a contract ceases to have effect under subsection (3) and the company becomes subject to a further relevant insolvency procedure, the supplier may terminate the contract in accordance with subsection (5)(a) to (c).
- (7) The supplier shall not make it a condition of any supply of goods and services after the time when the company becomes subject to the relevant insolvency procedure, or do anything which has the effect of making it a condition of such a supply, that any outstanding charges in respect of a supply made to the company before that time are paid.
- (8) In this section “the insolvency period”, in relation to a relevant insolvency procedure, means the period beginning when the company becomes subject to the relevant insolvency procedure and ending—
- (a) in the case of a moratorium under Part A1, when the moratorium comes to an end,
  - (b) in the case of the company entering administration, when the appointment of the administrator ceases to have effect—
    - (i) paragraphs 76 to 84 of Schedule B1, or
    - (ii) an order under section 901F of the Companies Act 2006,
  - (c) in the case of the appointment of an administrative receiver of the company, when the receiver or any successor to the receiver ceases to hold office without a successor being appointed,

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- (d) in the case of a voluntary arrangement approved under Part 1 taking effect in relation to the company, when the arrangement ceases to have effect,
  - (e) in the case of the company going into liquidation, when—
    - (i) the liquidator complies with section 94(2), 106(2) or 146(3) (duties relating to final account), or
    - (ii) the appointment of the liquidator ceases to have effect under an order under section 901F of the Companies Act 2006,
  - (f) in the case of the appointment of a provisional liquidator for the company, when the provisional liquidator or any successor to the provisional liquidator ceases to hold office without a successor being appointed, and
  - (g) in the case of the making of a court order under section 901C(1) of the Companies Act 2006 in relation to the company, when—
    - (i) an order made by the court under section 901F of that Act takes effect, or
    - (ii) the court decides not to make such an order.
- (9) In this section “office-holder”, in relation to a company which has entered into an insolvency procedure as specified in subsection (2)(b), (c), (e) or (f), means the administrator, administrative receiver, liquidator or provisional liquidator respectively.
- (10) Schedule 4ZZA provides for exclusions from the operation of this section.

### **233C Powers to amend section 233B and Schedule 4ZZA**

- (1) The Secretary of State may by regulations omit any of paragraphs (a) to (g) of section 233B(2) (relevant insolvency procedures).
- (2) The Secretary of State may by regulations amend Schedule 4ZZA so as to—
  - (a) remove or amend any exclusion from section 233B for the time being specified there, or
  - (b) add further exclusions from section 233B.
- (3) In subsection (2), references to exclusions from section 233B are to circumstances in which section 233B, or any provision of that section, does not apply.
- (4) The circumstances referred to in subsection (3) may be framed by reference to kinds of company, supplier, contract, goods or services or in any other way.
- (5) Regulations under this section may make—
  - (a) different provision for different purposes;
  - (b) consequential provision;
  - (c) transitional and supplementary provision.
- (6) Regulations under this section made by virtue of subsection (5) may in particular make provision amending this Act or any other enactment whenever passed or made (including, if paragraph 1(1) or (2) of Schedule 4ZZA is omitted, provision omitting section 233A or 233 respectively).

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- (7) Regulations under subsection (1) may not omit section 233B(2)(c) unless the Secretary of State has first consulted the Scottish Ministers.
- (8) In this section “enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act.
- (9) Regulations under this section are to be made by statutory instrument.
- (10) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- (2) In the Insolvency Act 1986, in section 434 (Crown application), before “bind” insert “and sections 233A and 233B and Schedule 4ZZA ”.
- (3) Schedule 12—
  - (a) inserts a new Schedule into the Insolvency Act 1986 which provides for exclusions from the operation of section 233B of that Act, and
  - (b) contains consequential amendments.
- (4) The amendments made by this section and Schedule 12 have effect in relation to a company which becomes subject to a relevant insolvency procedure on or after the day on which this section comes into force (but in respect of contracts entered into before, as well as those entered into on or after, that day).

## **15 Temporary exclusion for small suppliers: Great Britain**

- (1) Section 233B of the Insolvency Act 1986 does not apply in relation to a contract for the supply of goods or services to a company where—
  - (a) the company becomes subject to a relevant insolvency procedure during the relevant period, and
  - (b) the supplier is a small entity at the time the company becomes subject to the procedure.
- (2) In subsection (1)(a) “relevant period” means the period which—
  - (a) begins with the day on which this section comes into force, and
  - (b) ends with 30 September 2020.
- (3) For the purposes of subsection (1)(b), whether the supplier is a “small entity” at the time the company becomes subject to a relevant insolvency procedure (the “relevant time”) is to be determined under subsections (4) to (10).
- (4) Where the supplier is not in its first financial year at the relevant time, the supplier is a small entity at the relevant time if at least two of the following conditions were met in relation to its most recent financial year—
  - Condition 1: the supplier's turnover was not more than £10.2 million;
  - Condition 2: the supplier's balance sheet total was not more than £5.1 million;
  - Condition 3: the number of the supplier's employees was not more than 50.
- (5) For the purposes of Condition 1 in subsection (4), if the supplier's most recent financial year was not 12 months, the maximum figure for turnover must be proportionately adjusted.

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- (6) For the purposes of Condition 2 in subsection (4), the supplier's balance sheet total means the aggregate of the amounts shown as assets in the supplier's balance sheet.
- (7) For the purposes of Condition 3 in subsection (4), the number of the supplier's employees means the average number of persons employed by the supplier in its most recent financial year, determined as follows—
- (a) find for each month in that financial year the number of persons employed under contracts of service by the supplier in that month (whether throughout the month or not),
  - (b) add together the monthly totals, and
  - (c) divide by the number of months in the financial year.
- (8) In subsections (4) to (7) the supplier's "most recent financial year" is the financial year of the supplier which, at the relevant time, has ended most recently.
- (9) Where the supplier is in its first financial year at the relevant time, the supplier is a small entity at the relevant time if at least two of the following conditions are met—
- Condition 1: the supplier's average turnover for each complete month in the supplier's first financial year is not more than £850,000;
  - Condition 2: the aggregate of amounts which would be shown in a balance sheet of the supplier drawn up at the relevant time is not more than £5.1 million;
  - Condition 3: the average number of persons employed by the supplier in the supplier's first financial year (determined as specified in subsection (7)) is not more than 50.
- (10) In this section—
- "entity" means—
    - (a) a company,
    - (b) a limited liability partnership,
    - (c) any other association or body of persons, whether or not incorporated, and
    - (d) an individual carrying on a trade or business;
  - "relevant insolvency procedure" has the same meaning as in section 233B of the Insolvency Act 1986.
- (11) This section has effect as if it were included in Part 6 of the Insolvency Act 1986.

## **16 Protection of supplies of electricity, gas, water, etc: Northern Ireland**

- (1) Article 197 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) is amended as follows.
- (2) Paragraph (3) is amended in accordance with subsections (3) to (5).
- (3) After sub-paragraph (a) insert—
- "(aza) a supply of electricity by a class of person within Class A (small supply) or Class B (resale) of Schedule 3 to the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 2013 (S.R. 2013/93);".
- (4) After sub-paragraph (b) insert—

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“(ba) a supply of water by a person who has an interest in the premises to which the supply is given;”.

(5) After sub-paragraph (c) (and before the words “and in this paragraph”) insert—

- “(d) a supply of communications services by a person who carries on a business which includes giving such supplies;
- (e) a supply of goods or services mentioned in paragraph (3A) by a person who carries on a business which includes giving such supplies, where the supply is for the purpose of enabling or facilitating anything to be done by electronic means;”.

(6) After paragraph (3) insert—

“(3A) The goods and services referred to in paragraph (3)(e) are—

- (a) point of sale terminals;
- (b) computer hardware and software;
- (c) information, advice and technical assistance in connection with the use of information technology;
- (d) data storage and processing;
- (e) website hosting.”

## **17 Further protection of essential supplies: Northern Ireland**

(1) After Article 197 of the Insolvency (Northern Ireland) Order 1989 insert—

### **“197A Further protection of essential supplies**

- (1) An insolvency-related term of a contract for the supply of essential goods or services to a company ceases to have effect if—
  - (a) the company enters administration, or
  - (b) a voluntary arrangement approved under Part 2 takes effect in relation to the company.
- (2) An insolvency-related term of a contract does not cease to have effect by virtue of paragraph (1) to the extent that—
  - (a) it provides for the contract or the supply to terminate, or any other thing to take place, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement;
  - (b) it entitles a supplier to terminate the contract or the supply, or do any other thing, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement; or
  - (c) it entitles a supplier to terminate the contract or the supply because of an event that occurs, or may occur, after the company enters administration or the voluntary arrangement takes effect.
- (3) Where an insolvency-related term of a contract ceases to have effect under this Article the supplier may—
  - (a) terminate the contract, if the condition in paragraph (4) is met;
  - (b) terminate the supply, if the condition in paragraph (5) is met.
- (4) The condition in this paragraph is that—

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- (a) the insolvency office-holder consents to the termination of the contract,
- (b) the High Court grants permission for the termination of the contract, or
- (c) any charges in respect of the supply that are incurred after the company entered administration or the voluntary arrangement took effect are not paid within the period of 28 days beginning with the day on which payment is due.

The High Court may grant permission under sub-paragraph (b) only if satisfied that the continuation of the contract would cause the supplier hardship.

- (5) The condition in this paragraph is that—
  - (a) the supplier gives written notice to the insolvency office-holder that the supply will be terminated unless the office-holder personally guarantees the payment of any charges in respect of the continuation of the supply after the company entered administration or the voluntary arrangement took effect, and
  - (b) the insolvency office-holder does not give that guarantee within the period of 14 days beginning with the day the notice is received.
- (6) For the purposes of securing that the interests of suppliers are protected, where—
  - (a) an insolvency-related term of a contract (the “original term”) ceases to have effect by virtue of paragraph (1), and
  - (b) the company subsequently enters administration, or a voluntary arrangement subsequently has effect in relation to it,the contract is treated for the purposes of paragraphs (1) to (5) as if, immediately before the subsequent administration is entered into or the subsequent voluntary arrangement takes effect, it included an insolvency-related term identical to the original term.
- (7) A contract for the supply of essential goods or services is a contract for a supply mentioned in Article 197(3).
- (8) An insolvency-related term of a contract for the supply of essential goods or services to a company is a provision of the contract under which—
  - (a) the contract or the supply would terminate, or any other thing would take place, because the company enters administration or the voluntary arrangement takes effect,
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company enters administration or the voluntary arrangement takes effect, or
  - (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the company enters administration or the voluntary arrangement takes effect.
- (9) In this Article “insolvency office-holder” means—
  - (a) in a case where a company enters administration, the administrator;
  - (b) in a case where a voluntary arrangement under Part 2 takes effect in relation to a company, the supervisor of the voluntary arrangement.”

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- (2) In Schedule 5 to the Investment Bank Special Administration Regulations 2011 (S.I. 2011/245), in the Table, after the entry for section 233 insert—

“Section 233A	Article 197A	”.
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- (3) The amendments made by this section have effect in relation to a company which enters administration or has a voluntary arrangement take effect in relation to it on or after the day on which this section comes into force (but in respect of contracts entered into before, as well as those entered into on or after, that day).

## 18 Protection of supplies of goods and services: Northern Ireland

- (1) After Article 197A of the Insolvency (Northern Ireland) Order 1989 insert—

### “197B Protection of supplies of goods and services

- (1) This Article applies where a company becomes subject to a relevant insolvency procedure.
- (2) A company becomes subject to a relevant insolvency procedure for the purposes of this Article where—
- (a) a moratorium under Part 1A comes into force for the company,
  - (b) the company enters administration,
  - (c) an administrative receiver of the company is appointed (otherwise than in succession to another administrative receiver),
  - (d) a voluntary arrangement approved under Part 2 takes effect in relation to the company,
  - (e) the company goes into liquidation,
  - (f) a provisional liquidator of the company is appointed (otherwise than in succession to another provisional liquidator), or
  - (g) a court order is made under section 901C(1) of the Companies Act 2006 in relation to the company (order summoning meeting relating to compromise or arrangement).
- (3) A provision of a contract for the supply of goods or services to the company ceases to have effect when the company becomes subject to the relevant insolvency procedure if and to the extent that, under the provision—
- (a) the contract or the supply would terminate, or any other thing would take place, because the company becomes subject to the relevant insolvency procedure, or
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company becomes subject to the relevant insolvency procedure.
- (4) Where—
- (a) under a provision of a contract for the supply of goods or services to the company the supplier is entitled to terminate the contract or the supply because of an event occurring before the start of the insolvency period, and
  - (b) the entitlement arises before the start of that period,
- the entitlement may not be exercised during that period.



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- (5) Where a provision of a contract ceases to have effect under paragraph (3) or an entitlement under a provision of a contract is not exercisable under paragraph (4), the supplier may terminate the contract if—
- (a) in a case where the company has become subject to a relevant insolvency procedure as specified in paragraph (2)(b), (c), (e) or (f), the office-holder consents to the termination of the contract,
  - (b) in any other case, the company consents to the termination of the contract, or
  - (c) the High Court is satisfied that the continuation of the contract would cause the supplier hardship and grants permission for the termination of the contract.
- (6) Where a provision of a contract ceases to have effect under paragraph (3) and the company becomes subject to a further relevant insolvency procedure, the supplier may terminate the contract in accordance with paragraph (5)(a) to (c).
- (7) The supplier shall not make it a condition of any supply of goods and services after the time when the company becomes subject to the relevant insolvency procedure, or do anything which has the effect of making it a condition of such a supply, that any outstanding charges in respect of a supply made to the company before that time are paid.
- (8) In this Article “the insolvency period”, in relation to a relevant insolvency procedure, means the period beginning when the company becomes subject to the relevant insolvency procedure and ending—
- (a) in the case of a moratorium under Part 1A, when the moratorium comes to an end,
  - (b) in the case of the company entering administration, when the appointment of the administrator ceases to have effect —
    - (i) paragraphs 77 to 85 of Schedule B1, or
    - (ii) an order under section 901F of the Companies Act 2006,
  - (c) in the case of the appointment of an administrative receiver of the company, when the receiver or any successor to the receiver ceases to hold office without a successor being appointed,
  - (d) in the case of a voluntary arrangement approved under Part 2 taking effect in relation to the company, when the arrangement ceases to have effect,
  - (e) in the case of the company going into liquidation, when the liquidator has—
    - (i) pursuant to Article 80(1), laid the account of the winding up before a general meeting of the company and given an explanation of it,
    - (ii) pursuant to Article 92(1), laid the account of the winding up before a general meeting of the company and a meeting of the creditors and given an explanation of it to each meeting, or
    - (iii) pursuant to Article 124(1), given the liquidator's report of the winding up to a general meeting of the company's creditors,or when the appointment of the liquidator ceases to have effect under an order under section 901F of the Companies Act 2006,
  - (f) in the case of the appointment of a provisional liquidator for the company, when the provisional liquidator or any successor to the

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provisional liquidator ceases to hold office without a successor being appointed, and

- (g) in the case of the making of a court order under section 901C(1) of the Companies Act 2006 in relation to the company, when—
  - (i) an order made by the High Court under section 901F of that Act takes effect, or
  - (ii) the High Court decides not to make such an order.

(9) In this Article “office-holder”, in relation to a company which has entered into an insolvency procedure as specified in paragraph (2)(b), (c), (e) or (f), means the administrator, administrative receiver, liquidator or provisional liquidator respectively.

(10) Schedule 2ZZA provides for exclusions from the operation of this Article.

#### **197C Powers to amend Article 197B and Schedule 2ZZA**

(1) Regulations may omit any of sub-paragraphs (a) to (g) of Article 197B(2) (relevant insolvency procedures).

(2) Regulations may amend Schedule 2ZZA so as to—

- (a) remove or amend any exclusion from Article 197B for the time being specified there, or
- (b) add further exclusions from Article 197B.

(3) In paragraph (2), references to exclusions from Article 197B are to circumstances in which Article 197B, or any provision of that Article, does not apply.

(4) The circumstances referred to in paragraph (3) may be framed by reference to kinds of company, supplier, contract, goods or services or in any other way.

(5) Regulations under this Article may make—

- (a) consequential provision;
- (b) transitional and supplementary provision.

(6) Regulations under this Article made by virtue of paragraph (5) may in particular make provision amending this Order or any other statutory provision whenever passed or made (including, if paragraph 1(1) or (2) of Schedule 2ZZA is omitted, provision omitting Article 197A or 197 respectively).

(7) Regulations may not be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”

(2) In the Insolvency (Northern Ireland) Order 1989, in Article 2(2), in the definition of “regulations”, before “Article 359(2)” insert “ Article 197C and ”.

(3) Schedule 13—

- (a) inserts a new Schedule into the Insolvency (Northern Ireland) Order 1989 which provides for exclusions from the operation of Article 197B of that Order, and
- (b) contains consequential amendments.

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- (4) The amendments made by this section and Schedule 13 have effect in relation to a company which becomes subject to a relevant insolvency procedure on or after the day on which this section comes into force (but in respect of contracts entered into before, as well as those entered into on or after, that day).

## **19 Temporary exclusion for small suppliers: Northern Ireland**

- (1) Article 197B of the Insolvency (Northern Ireland) Order 1989 does not apply in relation to a contract for the supply of goods or services to a company where—
- the company becomes subject to a relevant insolvency procedure during the relevant period, and
  - the supplier is a small entity at the time the company becomes subject to the procedure.
- (2) In subsection (1)(a) “relevant period” means the period which—
- begins with the day on which this section comes into force, and
  - ends with 30 September 2020.
- (3) For the purposes of subsection (1)(b), whether the supplier is a “small entity” at the time the company becomes subject to a relevant insolvency procedure (the “relevant time”) is to be determined under subsections (4) to (10).
- (4) Where the supplier is not in its first financial year at the relevant time, the supplier is a small entity at the relevant time if at least two of the following conditions were met in relation to its most recent financial year—
- Condition 1: the supplier's turnover was not more than £10.2 million;
  - Condition 2: the supplier's balance sheet total was not more than £5.1 million;
  - Condition 3: the number of the supplier's employees was not more than 50.
- (5) For the purposes of Condition 1 in subsection (4), if the supplier's most recent financial year was not 12 months, the maximum figure for turnover must be proportionately adjusted.
- (6) For the purposes of Condition 2 in subsection (4), the supplier's balance sheet total means the aggregate of the amounts shown as assets in the supplier's balance sheet.
- (7) For the purposes of Condition 3 in subsection (4), the number of the supplier's employees means the average number of persons employed by the supplier in its most recent financial year, determined as follows—
- find for each month in that financial year the number of persons employed under contracts of service by the supplier in that month (whether throughout the month or not),
  - add together the monthly totals, and
  - divide by the number of months in the financial year.
- (8) In subsections (4) to (7) the supplier's “most recent financial year” is the financial year of the supplier which, at the relevant time, has ended most recently.
- (9) Where the supplier is in its first financial year at the relevant time, the supplier is a small entity at the relevant time if at least two of the following conditions are met—
- Condition 1: the supplier's average turnover for each complete month in the supplier's first financial year is not more than £850,000;

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Condition 2: the aggregate of amounts which would be shown in a balance sheet of the supplier drawn up at the relevant time is not more than £5.1 million;

Condition 3: the average number of persons employed by the supplier in the supplier's first financial year (determined as specified in subsection (7)) is not more than 50.

(10) In this section—

“entity” means—

- (a) a company,
- (b) a limited liability partnership,
- (c) any other association or body of persons, whether or not incorporated,  
and
- (d) an individual carrying on a trade or business;

“relevant insolvency procedure” has the same meaning as in Article 197B of the Insolvency (Northern Ireland) Order 1989.

(11) This section has effect as if it were included in Part 7 of the Insolvency (Northern Ireland) Order 1989.

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