



Insolvency Act 1986

1986 CHAPTER 45

PART VI

MISCELLANEOUS PROVISIONS APPLYING TO COMPANIES WHICH ARE INSOLVENT OR IN LIQUIDATION

Adjustment of prior transactions (administration and liquidation)

238 Transactions at an undervalue (England and Wales).

- (1) This section applies in the case of a company where—
 - [^{F1}(a) the company enters administration,]
 - (b) the company goes into liquidation;and “the office-holder” means the administrator or the liquidator, as the case may be.
- (2) Where the company has at a relevant time (defined in section 240) entered into a transaction with any person at an undervalue, the office-holder may apply to the court for an order under this section.
- (3) Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.
- (4) For the purposes of this section and section 241, a company enters into a transaction with a person at an undervalue if—
 - (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or
 - (b) the company enters into a transaction with that person for a consideration the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the consideration provided by the company.

Changes to legislation: Insolvency Act 1986, Section 238 is up to date with all changes known to be in force on or before 10 April 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) The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied—
- (a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and
 - (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

Textual Amendments

- F1** S. 238(1)(a) substituted (15.9.2003) by [2002 c. 40, ss. 248\(3\), 279, Sch. 17 para. 25](#) (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)

- C1** Pt. 6 applied (with modifications) (8.7.2021) by [The Payment and Electronic Money Institution Insolvency Regulations 2021](#) (S.I. 2021/716), [reg. 2, Sch. 1 para. 3](#) (with [reg. 5](#)) (as amended (4.1.2024) by [S.I. 2023/1399, regs. 1\(2\), 4](#))
- C2** S. 238 excluded (25.4.1991) by [Companies Act 1989](#) (c. 40), [ss. 154, 155, 165\(1\)\(a\)](#); [S.I. 1991/878, art. 2, Sch. .](#)
- C3** S. 238 restricted (25.4.1991) by [Companies Act 1989](#) (c. 40), s. 182(4), [Sch. 22 para. 8\(1\)\(a\)](#); [S.I. 1991/878, art. 2, Sch. .](#)
 S. 238 restricted (31.3.1996) by [1995 c. 20, s. 110\(1\), Sch. 4 para. 3\(5\)\(a\)](#); [S.I. 1996/517, art. 3\(2\)](#) (subject to transitional provisions and savings in [arts. 4-6, Sch. 2](#)) (which amending Act was itself repealed (1.4.1996) by [1995 c. 40, ss. 6\(1\), 7\(2\), Sch. 5](#) (with [Sch. 3 paras. 3, 16](#)))
 S. 238 restricted (1.4.1996) by [1995 c. 43, ss. 44, 50\(2\), Sch. 2 para. 3\(5\)](#)
 S. 238 restricted (11.12.1999) by [S.I. 1999/2979, reg. 17\(1\)\(a\)](#)
 S. 238 restricted (24.3.2003) by [2002 c. 29, ss. 427\(1\)-\(5\), 458\(1\)\(3\)](#); [S.I. 2003/333, art. 2, Sch.](#) (subject to [arts. 3-13](#) as amended by [S.I. 2003/531](#))
- C4** S. 238 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](#))
- C5** S. 238 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](#)
- C6** S. 238 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](#)
- C7** S. 238 applied (with modifications) (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013](#) (S.I. 2013/1388), Pt. 3reg. 1, [Sch. 2 paras. 3, 5 Table](#) (with [reg. 24](#))
- C8** Ss. 238-241 applied (with modifications) (31.1.2019) by [Technical and Further Education Act 2017](#) (c. 19), s. 47(2), [Sch. 3](#); [S.I. 2018/1161, reg. 3\(c\)](#)
- C9** Ss. 238-241 applied (with modifications) (31.1.2019) by [Technical and Further Education Act 2017](#) (c. 19), s. 47(2), [Sch. 4](#); [S.I. 2018/1161, reg. 3\(d\)](#)
- C10** S. 238 applied (with modifications) (8.7.2021) by [The Payment and Electronic Money Institution Insolvency Regulations 2021](#) (S.I. 2021/716), [regs. 2, 37](#) (with [reg. 5](#)) (as amended (4.1.2024) by [S.I. 2023/1399, regs. 1\(2\), 4, 11](#))
- C11** Ss. 238-241 applied (with modifications) (15.3.2024) by [The Water Industry \(Special Administration\) Regulations 2024](#) (S.I. 2024/205), [regs. 2\(2\), 5\(1\)](#) (with [reg. 64](#))

Changes to legislation:

Insolvency Act 1986, Section 238 is up to date with all changes known to be in force on or before 10 April 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.

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

- Act amendment to earlier affecting provision S.I. 1986/1999, art. 3, Sch. 1 Pt. 2 by [S.I. 2017/1119 Sch. 3 para. 1](#)
- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172 Regulations](#)

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

- s. 41HB(2) words substituted by [2018 c. 14 s. 1\(3\)\(b\)](#)