
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PART V

WINDING UP OF COMPANIES REGISTERED

UNDER [F1the Companies Act 2006]

CHAPTER X

**MALPRACTICE BEFORE AND DURING LIQUIDATION; PENALISATION OF
COMPANIES AND COMPANY OFFICERS; INVESTIGATIONS AND PROSECUTIONS**

Offences of fraud, deception, etc.

Fraud, etc., in anticipation of winding up

170.—(1) ^{F1} When a company is ordered to be wound up by the High Court, or passes a resolution for voluntary winding up, any person who, being a past or present officer of the company, has, within the 12 months immediately preceding the commencement of the winding up—

- (a) concealed any part of the company's property to the value of £500 or more, or concealed any debt due to or from the company, or
- (b) fraudulently removed any part of the company's property to the value of £500 or more, or
- (c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the company's property or affairs, or
- (d) made any false entry in any book or paper affecting or relating to the company's property or affairs, or
- (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's property or affairs, or
- (f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business),

shall be guilty of an offence.

(2) Such a person as is mentioned in paragraph (1) shall be guilty of an offence if within the period mentioned in that paragraph he has been privy to the doing by others of any of the things mentioned in sub#paragraphs (c), (d) and (e) of that paragraph; and he shall be guilty of an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in sub#paragraphs (a) to (f) of that paragraph, or is privy to the doing by others of any of the things mentioned in sub#paragraphs (c) to (e) of that paragraph.

(3) For the purposes of this Article, “officer” includes a shadow director.

(4) It is a defence—

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- (a) for a person charged under sub#paragraph (a) or (f) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub#paragraphs) to prove that he had no intent to defraud, and
- (b) for a person charged under sub#paragraph (c) or (d) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub#paragraphs) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.
- (5) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (1)(f), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in such circumstances, shall be guilty of an offence and shall, on conviction on indictment, be liable to the same penalty as if he had been convicted of handling stolen goods.
- (6) The money sums specified in sub#paragraphs (a) and (b) of paragraph (1) are subject to increase or reduction by order under Article 362(1)(a).

F1 mod. by SR 2004/307

Modifications etc. (not altering text)

- C1** Pts. 1-5 applied (with modifications) (4.1.2024) by S.I. 2021/716, **Sch. 1A para. 3** (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023](#) (S.I. 2023/1399), reg. 1(2), **Sch. 1**)
- C2** Art. 170 modified (temp.) (retrospective to 27.4.2020) by [Corporate Insolvency and Governance Act 2020](#) (c. 12), Sch. 11 para. 8(1)(2), **11** (with ss. 2(2), 5(2))
- C3** Art. 170 applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023](#) (S.I. 2023/1399), regs. 1(2), **12**)

Transactions in fraud of creditors

171.—(1) ^{F2} When a company is ordered to be wound up by the High Court or passes a resolution for voluntary winding up, a person who, being at the time an officer of the company,—

- (a) within the 5 years immediately preceding the commencement of the winding up, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the enforcement of a judgment against, the company's property, or
- (b) has concealed or removed any part of the company's property since, or within the 2 months immediately preceding, the date of any unsatisfied judgment or order for the payment of money obtained against the company,

shall be guilty of an offence.

(2) It is a defence for a person charged under paragraph (1) to prove that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

F2 mod. by SR 2004/307

Modifications etc. (not altering text)

- C4** Art. 171 applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023](#) (S.I. 2023/1399), regs. 1(2), **12**)
- C5** Art. 171(1)(a) modified (temp.) (retrospective to 27.4.2020) by [Corporate Insolvency and Governance Act 2020](#) (c. 12), Sch. 11 para. 8(1)(2), **12** (with ss. 2(2), 5(2))

Misconduct in course of winding up

172.—(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company,—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company's property, and how and to whom and for what consideration and when the company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the company's business), or
- (b) does not deliver up to the liquidator (or as he directs) all such part of the company's property as is in his custody or under his control, and which he is required by law to deliver up, or
- (c) does not deliver up to the liquidator (or as he directs) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up, or
- (d) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the liquidator as soon as practicable, or
- (e) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the company's property or affairs,

shall be guilty of an offence.

(2) Any person mentioned in paragraph (1) who, after the commencement of the winding up, attempts to account for any part of the company's property by fictitious losses or expenses shall be guilty of an offence; and if he so attempts at any meeting of the company's creditors within the 12 months immediately preceding the commencement of the winding up he shall be guilty of an offence.

(3) For the purposes of this Article, “officer” includes a shadow director.

(4) It is a defence—

- (a) for a person charged under sub#paragraph (a), (b) or (c) of paragraph (1) to prove that he had no intent to defraud, and
- (b) for a person charged under sub#paragraph (e) of that paragraph to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

Modifications etc. (not altering text)

- C6 Art. 172 applied (with modifications) (4.1.2024) by S.I. 2021/716, reg. 37A (as inserted by The Payment and Electronic Money Institution Insolvency (Amendment) Regulations 2023 (S.I. 2023/1399), regs. 1(2), 12)
- C7 Art. 172(2) modified (temp.) (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), Sch. 11 para. 8(1)(2), 13 (with ss. 2(2), 5(2))

Falsification of company's books

173. When a company is being wound up, an officer or contributory of the company who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, accounting records or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence.

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Modifications etc. (not altering text)

- C8** Art. 173 applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023](#) (S.I. 2023/1399), regs. 1(2), **12**)

Material omissions from statement relating to company's affairs

174.—(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company, makes any material omission in any statement relating to the company's affairs shall be guilty of an offence.

(2) ^{F3} When a company has been ordered to be wound up by the High Court, or has passed a resolution for voluntary winding up, any person mentioned in paragraph (1) who, prior to the winding up, has made any material omission in any such statement shall be guilty of an offence.

(3) For the purposes of this Article, “officer” includes a shadow director.

(4) It is a defence for a person charged under this Article to prove that he had no intent to defraud.

F3 mod. by SR 2004/307

Modifications etc. (not altering text)

- C9** Art. 174 applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023](#) (S.I. 2023/1399), regs. 1(2), **12**)

False representations to creditors

175.—(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company,—

(a) makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the winding up; or

(b) prior to the winding up, has made any false representation, or committed any other fraud, for the purpose mentioned in sub#paragraph (a);

shall be guilty of an offence.

(2) For the purposes of this Article, “officer” includes a shadow director.

Modifications etc. (not altering text)

- C10** Art. 175 applied (with modifications) (4.1.2024) by S.I. 2021/716, **reg. 37A** (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023](#) (S.I. 2023/1399), regs. 1(2), **12**)
- C11** Art. 175 applied (with modifications) (4.1.2024) by S.I. 2021/716, **Sch. 2A para. 6** (as inserted by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023](#) (S.I. 2023/1399), reg. 1(2), **Sch. 2**)

Changes to legislation:

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Changes and effects yet to be applied to :

- Instrument amended by [1998 c. 11 s. 23 Sch. 5 Pt.1 Ch. 3 para. 40](#)
- Instrument amended (prosp) by [S.I. 1994/279 \(N.I.\) art. 26\(1\)Sch. 2 para. 15](#)

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

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

- Sch. 9 Pt. 2 para. 66 revoked by [1996 c. 23 s. 107\(2\)Sch. 4](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov.uk](#))
- art. 2B inserted by [2016 c. 2 \(N.I.\) s. 2\(1\)](#)
- art. 208ZA applied (with modifications) by S.I. 2021/716, reg. 37A (as inserted) by [S.I. 2023/1399 reg. 12](#) (This amendment not applied to [Legislation.gov.uk](#). S. 208ZA is inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 1(1) which is currently prospective.)
- art. 208ZA-208ZB inserted by [2016 c. 2 \(N.I.\) s. 1\(1\)](#)
- art. 208ZB applied (with modifications) by S.I. 2021/716, reg. 37A (as inserted) by [S.I. 2023/1399 reg. 12](#) (This amendment not applied to [Legislation.gov.uk](#). S. 208ZB is inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 1(1) which is currently prospective.)
- art. 345A-345B inserted by [2016 c. 2 \(N.I.\) s. 1\(2\)](#)