



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART VI

#### MISCELLANEOUS PROVISIONS APPLYING TO COMPANIES WHICH ARE INSOLVENT OR IN LIQUIDATION

##### Modifications etc. (not altering text)

- C1** Pts. 1–7 (ss. 1–251) applied (with modifications) by S.I. 1989/1276, arts. 2, 3  
Pt. 6 (ss. 230–246) modified (1.2.1993) by Friendly Societies Act 1992 (c. 40), s. 23, **Sch. 10 Pt. I para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3** (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), **regs. 1(3)**, 3; and (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 12 para. 4** (with ss. 2(2), 5(2), 14(4)))
- C2** Pt. 6 (ss. 230–246) extended with modifications by Building Societies Act 1986 (c. 53, SIF 16), ss. 54(3)(a)(5)(a), 90, 126(3), **Sch. 15** (as amended (13.3.2018) by S.I. 2018/208, regs. 1(3), **2(2)**; and (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 12 para. 2** (with ss. 2(2), 5(2), 14(4)))
- C3** Pt. 6 (ss. 230–246) modified by Company Directors Disqualification Act 1986 (c. 46, SIF 27), **ss. 21(2)**, 25  
Pt. 6 (ss. 230–246) applied (1.12.1994) by S.I. 1994/2421, **art. 6(3)(b)**  
Pt. 6 (ss. 230–246) applied (1.12.1994) by S.I. 1994/2421, **art. 10(2)(3)(6)**, Sch. 4 Pt. II  
Pt. 6 (ss. 230–246) applied (with modifications) (1.12.1994) by S.I. 1994/2421, **art. 8(4)(5)(8)(9)**  
Pt. 6 (ss. 230–246) applied (with modifications) (1.12.1997) by 1986 c. 53, **Sch. 15A para. 1(1)(2)(a)** (as inserted by 1997 c. 32, s. 39(2), **Sch. 6**); S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**; and as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), **regs. 1(3)**, **2(3)**; and (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), Sch. 12 para. 3 (with ss. 2(2), 5(2), 14(4)))  
Pt. 6 (ss. 230–246) amended (1.12.2001) by S.I. 2001/3538, **art. 2(1)**
- C4** Pts. 1–4, 6, 7 applied to limited liability partnerships (with modifications) (E.W.S.) (6.4.2001) by S.I. 2001/1090, **reg. 5**, **Schs. 3**, **4** (as amended (4.3.2004) by S.I. 2004/355, **art. 10** and (1.10.2005) by S.I. 2005/1989, **reg. 3**, **Sch. 2** (with **reg. 4**))

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- C5** First Group of Parts (Pts. 1-7) applied (with modifications) (15.12.2006) by [The Banks \(Former Authorised Institutions\) \(Insolvency\) Order 2006 \(S.I. 2006/3107\)](#), art. 3, **Sch.** (as amended (1.4.2013) by [S.I. 2013/472](#), art. 1(1), **Sch. 2 para. 117**; and (13.3.2018) by [S.I. 2018/208](#), regs. 1(3), **11**)
- C6** Pt. VI applied in part (with modifications) (2.1.2013) by [The Charitable Incorporated Organisations \(Insolvency and Dissolution\) Regulations 2012 \(S.I. 2012/3013\)](#), reg. 1, Sch. paras. 1(2)(b), **(3)-(7)**
- C7** Pt. 6 applied (with modifications) (6.4.2014) by [The Industrial and Provident Societies and Credit Unions \(Arrangements, Reconstructions and Administration\) Order 2014 \(S.I. 2014/229\)](#), arts. 1, 4(a), **Sch. 3** (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **15(4)(a)**)

### *Office-holders*

#### **230 Holders of office to be qualified insolvency practitioners.**

- (1) <sup>F1</sup> . . . . .
- (2) Where an administrative receiver of a company is appointed, he must be a person who is so qualified.
- (3) Where a company goes into liquidation, the liquidator must be a person who is so qualified.
- (4) Where a provisional liquidator is appointed, he must be a person who is so qualified.
- (5) Subsections (3) and (4) are without prejudice to any enactment under which the official receiver is to be, or may be, liquidator or provisional liquidator.

#### **Textual Amendments**

- F1** S. 230(1) repealed (15.9.2003) by [2002 c. 40](#), ss. 248(3), 278, 279, [Sch. 17 para. 19](#), [Sch. 26](#) (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)**

- C8** S. 230 applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), reg. 8(3)(9), **Sch. 4 Pt. II para. 26**
- C9** S. 230 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)

#### **231 Appointment to office of two or more persons.**

- (1) This section applies if an appointment or nomination of any person to the office of <sup>F2</sup> . . . administrative receiver, liquidator or provisional liquidator—
- (a) relates to more than one person, or
  - (b) has the effect that the office is to be held by more than one person.
- (2) The appointment or nomination shall declare whether any act required or authorised under any enactment to be done by the <sup>F2</sup> . . . administrative receiver, liquidator or provisional liquidator is to be done by all or any one or more of the persons for the time being holding the office in question.

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#### Textual Amendments

- F2** Words in s. 231(1)(2) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 20, Sch. 26 (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)

- C10** S. 231 applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(9), Sch. 4 Pt. II para. 26  
S. 231 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
- C11** S. 231 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
- C12** S. 231 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)

### 232 Validity of office-holder's acts.

The acts of an individual as <sup>F3</sup> . . . administrative receiver, liquidator or provisional liquidator of a company are valid notwithstanding any defect in his appointment, nomination or qualifications.

#### Textual Amendments

- F3** Word in s. 232 repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 21, Sch. 26 (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)

- C13** S. 232 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
- C14** S. 232 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
- C15** S. 232 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)

*Management by administrators, liquidators, etc.*

### 233 Supplies of gas, water, electricity, etc.

- (1) This section applies in the case of a company where—
- [<sup>F4</sup>(a) the company enters administration,]
  - (b) an administrative receiver is appointed, or
  - [<sup>F5</sup>(ba) a moratorium under section 1A is in force, or]
  - (c) a voluntary arrangement [<sup>F6</sup>approved under Part I], has taken effect, or
  - (d) the company goes into liquidation, or
  - (e) a provisional liquidator is appointed;

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and “the office-holder” means the administrator, the administrative receiver, [<sup>F7</sup>the nominee,] the supervisor of the voluntary arrangement, the liquidator or the provisional liquidator, as the case may be.

(2) If a request is made by or with the concurrence of the office-holder for the giving, after the effective date, of any of the supplies mentioned in the next subsection, the supplier—

- (a) may make it a condition of the giving of the supply that the office-holder personally guarantees the payment of any charges in respect of the supply, but
- (b) shall not make it a condition of the giving of the supply, or do anything which has the effect of making it a condition of the giving of the supply, that any outstanding charges in respect of a supply given to the company before the effective date are paid.

(3) The supplies referred to in subsection (2) are—

- [<sup>F8</sup>(a) a supply of gas by a gas supplier within the meaning of Part I of the Gas Act 1986;]
- [<sup>F9</sup>(aa) a supply of gas by a person within paragraph 1 of Schedule 2A to the Gas Act 1986 (supply by landlords etc.);]
- [<sup>F10</sup>(b) a supply of electricity by an electricity supplier within the meaning of Part I of the Electricity Act 1989;]
- [<sup>F11</sup>(ba) a supply of electricity by a class of person within Class A (small suppliers) or Class B (resale) of Schedule 4 to the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (S.I. 2001/3270);]
- (c) a supply of water by [<sup>F12</sup>a water undertaker] or, in Scotland, [<sup>F13</sup>Scottish Water],
- [<sup>F14</sup>(ca) a supply of water by a water supply licensee within the meaning of the Water Industry Act 1991;
- (cb) a supply of water by a water services provider within the meaning of the Water Services etc. (Scotland) Act 2005;
- (cc) a supply of water by a person who has an interest in the premises to which the supply is given;]
- [<sup>F15</sup>(d) a supply of communications services by a provider of a public electronic communications service.]
- [<sup>F16</sup>(e) a supply of communications services by a person who carries on a business which includes giving such supplies;
- (f) a supply of goods or services mentioned in subsection (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.]

[<sup>F17</sup>(3A) The goods and services referred to in subsection (3)(f) 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.]

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- (4) “The effective date” for the purposes of this section is whichever is applicable of the following dates—
- [<sup>F18</sup>(a) the date on which the company entered administration]
  - (b) the date on which the administrative receiver was appointed (or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed),
  - [<sup>F19</sup>(ba) the date on which the moratorium came into force]
  - (c) the date on which the voluntary arrangement [<sup>F20</sup>took effect],
  - (d) the date on which the company went into liquidation,
  - (e) the date on which the provisional liquidator was appointed.
- (5) The following applies to expressions used in subsection (3)—
- (a) <sup>F21</sup> .....
  - (b) <sup>F22</sup> .....
  - (c) <sup>F23</sup> .....
  - [<sup>F24</sup>(d) “communications services” do not include electronic communications services to the extent that they are used to broadcast or otherwise transmit programme services (within the meaning of the Communications Act 2003).]

#### Textual Amendments

- F4** S. 233(1)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 22(a) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F5** S. 233(1)(ba) inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 8(2)(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F6** Words in s. 233(1)(c) inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 8(2)(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F7** Words in s. 233(1) inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 8(2)(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F8** S. 233(3)(a) substituted (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 14(1)**; S.I. 1996/218, **art. 2**
- F9** S. 233(3)(aa) inserted (1.10.2015) by The Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989), arts. 1(1), **2(2)(a)**
- F10** S. 233(3)(b) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 para. 47(2)(a)**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to arts. 3-20)
- F11** S. 233(3)(ba) inserted (1.10.2015) by The Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989), arts. 1(1), **2(2)(b)**
- F12** Words substituted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 78(1)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F13** Words in s. 233(3)(c) substituted (14.7.2004) by The Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/1822), art. 2, **Sch. Pt. 1 para. 14(a)**
- F14** S. 233(3)(ca)-(cc) inserted (1.10.2015) by The Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989), arts. 1(1), **2(2)(c)** (with art. 2(4))
- F15** S. 233(3)(d) substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by Communications Act 2003 (c. 21), ss. 406, 408, 411, **Sch. 17 para. 82(a)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1) (with art. 3(2) (as amended (8.12.2003) by 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F16** S. 233(3)(e)(f) inserted (1.10.2015) by The Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989), arts. 1(1), **2(2)(d)**
- F17** S. 233(3A) inserted (1.10.2015) by The Insolvency (Protection of Essential Supplies) Order 2015 (S.I. 2015/989), arts. 1(1), **2(3)**

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- F18** S. 233(4)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 22(b) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2, Sch. 1** (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F19** S. 233(4)(ba) inserted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 8(3)(a)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F20** Words in s. 233(4)(c) substituted (1.1.2003) by 2000 c. 39, s. 1, **Sch. 1 para. 8(3)(b)**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F21** S. 233(5)(a) repealed (1.3.1996) by 1995 c. 45, ss. 16(1), 17(5), Sch. 4 para. 14(2), **Sch. 6**; S.I. 1996/218, **art. 2**
- F22** S. 233(5)(b) repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 6 para. 47(2)(b), **Sch. 8**; S.I. 2001/3266, arts. 1(2), 2, **Sch.** (subject to arts. 3-20)
- F23** S. 233(5)(c) repealed (14.7.2004) by The Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/1822), art. 2, **Sch. Pt. 1 para. 14(b)**
- F24** S. 233(5)(d) substituted (25.7.2003 for specified purposes, 29.12.2003 for specified purposes) by Communications Act 2003 (c. 21), ss. 406, 408, 411, **Sch. 17 para. 82(b)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1) (with art. 3(2) (as amended (8.12.2003) by 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)** (with art. 11)

#### Modifications etc. (not altering text)

- C16** S. 233 applied (1.12.1994) by S.I. 1994/2421, **art. 4(3)(a)**  
 S. 233 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**
- C17** S. 233 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**
- C18** S. 233 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**
- C19** S. 233: power to amend conferred (25.4.2013) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 92(1)**, 103(1)(g)
- C20** S. 233(1)(4) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3** (which reference to s. 233 in Sch. 3 of the modifying S.S.I. was omitted (1.10.2009) by virtue of S.S.I. 2009/310, reg. 4, **Sch. 2 para. 1(b)**)
- C21** S. 233(1)(4) modified (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(2), **Sch. 3**

### [<sup>F25</sup>233A 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 1 takes effect in relation to the company.
- (2) An insolvency-related term of a contract does not cease to have effect by virtue of subsection (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.

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- (3) Where an insolvency-related term of a contract ceases to have effect under this section the supplier may—
- (a) terminate the contract, if the condition in subsection (4) is met;
  - (b) terminate the supply, if the condition in subsection (5) is met.
- (4) The condition in this subsection is that—
- (a) the insolvency office-holder consents to the termination of the contract,
  - (b) the 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 court may grant permission under paragraph (b) only if satisfied that the continuation of the contract would cause the supplier hardship.
- (5) The condition in this subsection 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 subsection (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 subsections (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 section 233(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 section “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 1 takes effect in relation to a company, the supervisor of the voluntary arrangement.

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- (10) Subsection (1) does not have effect in relation to a contract entered into before 1st October 2015.]

#### Textual Amendments

**F25** S. 233A inserted (1.10.2015) by [The Insolvency \(Protection of Essential Supplies\) Order 2015 \(S.I. 2015/989\)](#), arts. 1(1), 4

### 234 Getting in the company's property.

- (1) This section applies in the case of a company where—
- [<sup>F26</sup>(a) the company enters administration,]
  - (b) an administrative receiver is appointed, or
  - (c) the company goes into liquidation, or
  - (d) a provisional liquidator is appointed;
- and “the office-holder” means the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.
- (2) Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the court may require that person forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder.
- (3) Where the office-holder—
- (a) seizes or disposes of any property which is not property of the company, and
  - (b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,
- the next subsection has effect.
- (4) In that case the office-holder—
- (a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office-holder's own negligence, and
  - (b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

#### Textual Amendments

**F26** S. 234(1)(a) substituted (15.9.2003) by [2002 c. 40, ss. 248\(3\), 279, Sch. 17 para. 23](#) (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)

- C22** S. 234 applied (with modifications) (1.12.1994) by [S.I. 1994/2421, art. 7\(3\), Sch. 3 Pt. II para. 9](#)  
 S. 234 applied (with modifications) (1.12.1994) by [S.I. 1994/2421, art. 8\(3\)\(9\), Sch. 4 Pt. II para. 27](#)
- C23** S. 234 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#) (as amended (1.10.2009) by [S.S.I. 2009/310, reg. 3, Sch. 1 para. 1\(a\)](#))
- C24** S. 234 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](#)



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- C25** S. 234 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](#)
- C26** S. 234 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)

### **235 Duty to co-operate with office-holder.**

- (1) This section applies as does section 234; and it also applies, in the case of a company in respect of which a winding-up order has been made by the court in England and Wales, as if references to the office-holder included the official receiver, whether or not he is the liquidator.
- (2) Each of the persons mentioned in the next subsection shall—
- give to the office-holder such information concerning the company and its promotion, formation, business, dealings, affairs or property as the office-holder may at any time after the effective date reasonably require, and
  - attend on the office-holder at such times as the latter may reasonably require.
- (3) The persons referred to above are—
- those who are or have at any time been officers of the company,
  - those who have taken part in the formation of the company at any time within one year before the effective date,
  - those who are in the employment of the company, or have been in its employment (including employment under a contract for services) within that year, and are in the office-holder's opinion capable of giving information which he requires,
  - those who are, or have within that year been, officers of, or in the employment (including employment under a contract for services) of, another company which is, or within that year was, an officer of the company in question, and
  - in the case of a company being wound up by the court, any person who has acted as administrator, administrative receiver or liquidator of the company.
- (4) For the purposes of subsections (2) and (3), “the effective date” is whichever is applicable of the following dates—
- <sup>F27</sup>(a) the date on which the company entered administration,]
  - the date on which the administrative receiver was appointed or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed,
  - the date on which the provisional liquidator was appointed, and
  - the date on which the company went into liquidation.
- (5) If a person without reasonable excuse fails to comply with any obligation imposed by this section, he is liable to a fine and, for continued contravention, to a daily default fine.

#### **Textual Amendments**

- F27** S. 235(4)(a) substituted (15.9.2003) by [2002 c. 40, ss. 248\(3\), 279, Sch. 17 para. 24](#) (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](#)))

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#### **Modifications etc. (not altering text)**

- C27** S. 235 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2 (as amended (1.10.2009) by S.S.I. 2009/310, reg. 3, Sch. 1 para. 1(b))
- C28** S. 235 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
- C29** S. 235 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
- C30** S. 235 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)

### **236 Inquiry into company's dealings, etc.**

- (1) This section applies as does section 234; and it also applies in the case of a company in respect of which a winding-up order has been made by the court in England and Wales as if references to the office-holder included the official receiver, whether or not he is the liquidator.
- (2) The court may, on the application of the office-holder, summon to appear before it—
  - (a) any officer of the company,
  - (b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or
  - (c) any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company.
- (3) The court may require any such person as is mentioned in subsection (2)(a) to (c) to submit [<sup>F28</sup>to the court] an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in paragraph (c) of the subsection.
- [<sup>F29</sup>(3A) An account submitted to the court under subsection (3) must be contained in—
  - (a) a witness statement verified by a statement of truth (in England and Wales), and
  - (b) an affidavit (in Scotland).]
  - (4) The following applies in a case where—
    - (a) a person without reasonable excuse fails to appear before the court when he is summoned to do so under this section, or
    - (b) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding his appearance before the court under this section.
  - (5) The court may, for the purpose of bringing that person and anything in his possession before the court, cause a warrant to be issued to a constable or prescribed officer of the court—
    - (a) for the arrest of that person, and
    - (b) for the seizure of any books, papers, records, money or goods in that person's possession.
  - (6) The court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules,

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until that person is brought before the court under the warrant or until such other time as the court may order.

#### Textual Amendments

- F28** Words in s. 236(3) substituted (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), [art. 5\(6\)\(a\)](#)
- F29** S. 236(3A) inserted (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010 \(S.I. 2010/18\)](#), [art. 5\(6\)\(b\)](#)

#### Modifications etc. (not altering text)

- C31** S. 236 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#) (as amended (1.10.2009) by [S.S.I. 2009/310, reg. 3, Sch. 1 para. 1\(c\)](#))
- C32** S. 236 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](#)
- C33** S. 236 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](#)
- C34** S. 236 applied (with modifications) (6.6.2013) by [The Collective Investment in Transferable Securities \(Contractual Scheme\) Regulations 2013 \(S.I. 2013/1388\), Pt. 3 reg. 1, Sch. 2 paras. 3, 5 Table](#) (with reg. 24)

### 237 Court's enforcement powers under s. 236.

- (1) If it appears to the court, on consideration of any evidence obtained under section 236 or this section, that any person has in his possession any property of the company, the court may, on the application of the office-holder, order that person to deliver the whole or any part of the property to the office-holder at such time, in such manner and on such terms as the court thinks fit.
- (2) If it appears to the court, on consideration of any evidence so obtained, that any person is indebted to the company, the court may, on the application of the office-holder, order that person to pay to the office holder, at such time and in such manner as the court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the court thinks fit.

the court may, if it thinks fit, order that any person who if within the jurisdiction of the court would be liable to be summoned to appear before it under section 236 or this section shall be examined in any part of the United Kingdom where he may for the time being be, or in a place outside the United Kingdom.

- (4) Any person who appears or is brought before the court under section 236 or this section may be examined on oath, either orally or (except in Scotland) by interrogatories, concerning the company or the matters mentioned in section 236(2)(c).

#### Modifications etc. (not altering text)

- C35** S. 237 applied (with modifications) (S.) (6.4.2001) by [S.S.I. 2001/128, reg. 4\(1\), Sch. 2](#) (as amended (1.10.2009) by [S.S.I. 2009/310, reg. 3, Sch. 1 para. 1\(c\)](#))
- C36** S. 237 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](#)
- C37** S. 237 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](#)

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**C38** S. 237 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)

*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—
- [<sup>F30</sup>(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.
- (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**

**F30** 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)**

**C39** 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. .](#)

**C40** 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](#)))

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- 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)
- C41** 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)
- C42** 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**
- C43** 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**
- C44** 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)

### **239 Preferences (England and Wales).**

- (1) This section applies as does section 238.
- (2) Where the company has at a relevant time (defined in the next section) given a preference to any person, 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 given that preference.
- (4) For the purposes of this section and section 241, a company gives a preference to a person if—
  - (a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, and
  - (b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.
- (5) The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b).
- (6) A company which has given a preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (5).
- (7) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

#### **Modifications etc. (not altering text)**

- C45** S. 239 excluded (25.4.1991) by Companies Act 1989 (c. 40), **ss. 154, 155, 165(1)(b)**; S.I. 1991/878, **art. 2, Sch. .**

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- C46** S. 239 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), **Sch. 22 para. 8(1)(b)**; S.I. 1991/878, art. 2, **Sch. .**  
 S. 239 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. 239 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), **Sch. 2 para. 3(5)**  
 S. 239 restricted (11.12.1999) by S.I. 1999/2979, **reg. 17(1)(b)**  
 S. 239 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, arts. 3, 4))
- C47** S. 239 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**)
- C48** S. 239 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**
- C49** S. 239 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**
- C50** S. 239 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)

## 240 “Relevant time” under ss. 238, 239.

- (1) Subject to the next subsection, the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given—
- (a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company (otherwise than by reason only of being its employee), at a time in the period of 2 years ending with the onset of insolvency (which expression is defined below),
  - (b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of 6 months ending with the onset of insolvency,<sup>F31</sup> . . .
  - [<sup>F32</sup>(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, and
  - (d) in either case, at a time between the filing with the court of a copy of notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 and the making of an appointment under that paragraph.]
- (2) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in subsection (1)(a) or (b), that time is not a relevant time for the purposes of section 238 or 239 unless the company—
- (a) is at that time unable to pay its debts within the meaning of section 123 in Chapter VI of Part IV, or
  - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction or preference;
- but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.
- (3) For the purposes of subsection (1), the onset of insolvency is—

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- [<sup>F33</sup>(a) in a case where section 238 or 239 applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,
- (b) in a case where section 238 or 239 applies by reason of an administrator of a company being appointed under paragraph 14 or 22 of Schedule B1 following filing with the court of a copy of a notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,
- (c) in a case where section 238 or 239 applies by reason of an administrator of a company being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect,
- (d) in a case where section 238 or 239 applies by reason of a company going into liquidation either following conversion of administration into winding up by virtue of Article 37 of the EC Regulation or at the time when the appointment of an administrator ceases to have effect, the date on which the company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed), and
- (e) in a case where section 238 or 239 applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding up.]

#### Textual Amendments

- F31** Word in s. 240(1)(b) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 26(3), Sch. 26 (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))
- F32** S. 240(1)(c)(d) substituted (15.9.2003) for s. 240(1)(c) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 26(2) (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))
- F33** S. 240(3)(a)-(e) substituted (15.9.2003) for s. 240(3)(a)(aa)(b) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 26(4) (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)

- C51** S. 240 applied (with modifications) (4.4.2006) by The Cross Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, Sch. 1 Art. 23 paras. 2, 3
- C52** S. 240 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
- C53** S. 240 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
- C54** S. 240 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)

## 241 Orders under ss. 238, 239.

- (1) Without prejudice to the generality of sections 238(3) and 239(3), an order under either of those sections with respect to a transaction or preference entered into or given by a company may (subject to the next subsection)—
- (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company,

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- (b) require any property to be so vested if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred,
  - (c) release or discharge (in whole or in part) any security given by the company,
  - (d) require any person to pay, in respect of benefits received by him from the company, such sums to the office-holder as the court may direct,
  - (e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be under such new or revived obligations to that person as the court thinks appropriate,
  - (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference, and
  - (g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.
- (2) An order under section 238 or 239 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction or (as the case may be) the person to whom the preference was given; but such an order—
- (a) shall not prejudice any interest in property which was acquired from a person other than the company and was acquired [<sup>F34</sup>in good faith and for value], or prejudice any interest deriving from such an interest, and
  - (b) shall not require a person who received a benefit from the transaction or preference [<sup>F34</sup>in good faith and for value] to pay a sum to the office-holder, except where that person was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the company.
- <sup>F35</sup>[(2A) Where a person has acquired an interest in property from a person other than the company in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—
- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or
  - (b) he was connected with, or was an associate of, either the company in question or the person with whom that company entered into the transaction or to whom that company gave the preference,
- then, unless the contrary is shown, it shall be presumed for the purposes of paragraph (a) or (as the case may be) paragraph (b) of subsection (2) that the interest was acquired or the benefit was received otherwise than in good faith.]
- <sup>F36</sup>(3) For the purposes of subsection (2A)(a), the relevant surrounding circumstances are (as the case may require)—
- (a) the fact that the company in question entered into the transaction at an undervalue; or
  - (b) the circumstances which amounted to the giving of the preference by the company in question;



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and subsections (3A) to (3C) have effect to determine whether, for those purposes, a person has notice of the relevant proceedings.

[ Where section 238 or 239 applies by reason of a company's entering administration,  
<sup>F37</sup>(3A) a person has notice of the relevant proceedings if he has notice that—

- (a) an administration application has been made,
- (b) an administration order has been made,
- (c) a copy of a notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 has been filed, or
- (d) notice of the appointment of an administrator has been filed under paragraph 18 or 29 of that Schedule.]

[ Where section 238 or 239 applies by reason of a company's going into liquidation  
<sup>F38</sup>(3B) at the time when the appointment of an administrator of the company ceases to have effect, a person has notice of the relevant proceedings if he has notice that—

- (a) an administration application has been made,
- (b) an administration order has been made,
- (c) a copy of a notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 has been filed,
- (d) notice of the appointment of an administrator has been filed under paragraph 18 or 29 of that Schedule, or
- (e) the company has gone into liquidation.]

(3C) In a case where section 238 or 239 applies by reason of the company in question going into liquidation at any other time, a person has notice of the relevant proceedings if he has notice—

- (a) where the company goes into liquidation on the making of a winding-up order, of the fact that the petition on which the winding-up order is made has been presented or of the fact that the company has gone into liquidation;
- (b) in any other case, of the fact that the company has gone into liquidation.]

(4) The provisions of sections 238 to 241 apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the company had no power to enter into or give.

#### Textual Amendments

- F34** Words in s. 241(2)(a)(b) substituted (26.7.1994) by 1994 c. 12, ss. 1(1), 5, 6(2) (with ss. 5, 6(3))
- F35** S. 241(2A) inserted (26.7.1994) by 1994 c. 12, ss. 1(2), 5, 6(2) (with ss. 5, 6(3))
- F36** S. 241(3)(3A)(3B)(3C) substituted (26.7.1994) for s. 241(3) by 1994 c. 12, ss. 1(3), 5, 6(2) (with ss. 5, 6(3))
- F37** S. 241(3A) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 27(2) (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))
- F38** S. 241(3B) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 27(3) (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)

- C55** S. 241 applied (with modifications) (4.4.2006) by The Cross-Border Insolvency Regulations 2006 (S.I. 2006/1030), reg. 2, {Sch. 1 Art. 23 paras. 2, 3}
- C56** S. 241 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

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- C57** S. 241 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](#)
- C58** S. 241 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)

## 242 Gratuitous alienations (Scotland).

- (1) Where this subsection applies and—
- (a) the winding up of a company has commenced, an alienation by the company is challengeable by—
    - (i) any creditor who is a creditor by virtue of a debt incurred on or before the date of such commencement, or
    - (ii) the liquidator;
  - (b) [<sup>F39</sup>a company enters administration], an alienation by the company is challengeable by the administrator.
- (2) Subsection (1) applies where—
- (a) by the alienation, whether before or after 1st April 1986 (the coming into force of section 75 of the <sup>M1</sup>Bankruptcy (Scotland) Act 1985), any part of the company’s property is transferred or any claim or right of the company is discharged or renounced, and
  - (b) the alienation takes place on a relevant day.
- (3) For the purposes of subsection (2)(b), the day on which an alienation takes place is the day on which it becomes completely effectual; and in that subsection “relevant day” means, if the alienation has the effect of favouring—
- (a) a person who is an associate (within the meaning of the Bankruptcy (Scotland) Act [<sup>F40</sup>2016]) of the company, a day not earlier than 5 years before the date on which—
    - (i) the winding up of the company commences, or
    - (ii) as the case may be, [<sup>F41</sup>the company enters administration]; or
  - (b) any other person, a day not earlier than 2 years before that date.
- (4) On a challenge being brought under subsection (1), the court shall grant decree of reduction or for such restoration of property to the company’s assets or other redress as may be appropriate; but the court shall not grant such a decree if the person seeking to uphold the alienation establishes—
- (a) that immediately, or at any other time, after the alienation the company’s assets were greater than its liabilities, or
  - (b) that the alienation was made for adequate consideration, or
  - (c) that the alienation—
    - (i) was a birthday, Christmas or other conventional gift, or
    - (ii) was a gift made, for a charitable purpose, to a person who is not an associate of the company,
 which, having regard to all the circumstances, it was reasonable for the company to make:

Provided that this subsection is without prejudice to any right or interest acquired in good faith and for value from or through the transferee in the alienation.

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- (5) In subsection (4) above, “charitable purpose” means any charitable, benevolent or philanthropic purpose, whether or not it is charitable within the meaning of any rule of law.
- (6) For the purposes of the foregoing provisions of this section, an alienation in implementation of a prior obligation is deemed to be one for which there was no consideration or no adequate consideration to the extent that the prior obligation was undertaken for no consideration or no adequate consideration.
- (7) A liquidator and an administrator have the same right as a creditor has under any rule of law to challenge an alienation of a company made for no consideration or no adequate consideration.
- (8) This section applies to Scotland only.

#### Textual Amendments

- F39** Words in s. 242(1)(b) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 28(2) (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))
- F40** Word in s. 242(3)(a) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 4(5)
- F41** Words in s. 242(3)(a)(ii) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 28(3) (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)

- C59** S. 242 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 165(2)(a); S.I. 1991/878, art. 2, Sch.
- C60** S. 242 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), Sch. 22 para. 8(2)(a); S.I. 1991/878, art. 2, Sch.  
S. 242 restricted (31.3.1996) by 1995 c. 20, s. 110, 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, 6))  
S. 242 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), Sch. 2 para. 3(5)  
S. 242 restricted (11.12.1999) by S.I. 1999/2979, reg. 17(2)(a)  
S. 242 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, arts. 3, 4))
- C61** S. 242 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2  
S. 242 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)
- C62** S. 242 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
- C63** S. 242 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
- C64** S. 242 applied (with modifications) (6.6.2013) by The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 (S.I. 2013/1388), Pt. 3 reg. 1, Sch. 2 paras. 3, 5 Table (with reg. 24)

#### Marginal Citations

- M1** 1985 c. 66.

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## 243 Unfair preferences (Scotland).

- (1) Subject to subsection (2) below, subsection (4) below applies to a transaction entered into by a company, whether before or after 1st April 1986, which has the effect of creating a preference in favour of a creditor to the prejudice of the general body of creditors, being a preference created not earlier than 6 months before the commencement of the winding up of the company or [<sup>F42</sup>the company enters administration].
- (2) Subsection (4) below does not apply to any of the following transactions—
- (a) a transaction in the ordinary course of trade or business;
  - (b) a payment in cash for a debt which when it was paid had become payable, unless the transaction was collusive with the purpose of prejudicing the general body of creditors;
  - (c) a transaction whereby the parties to it undertake reciprocal obligations (whether the performance by the parties of their respective obligations occurs at the same time or at different times) unless the transaction was collusive as aforesaid;
  - (d) the granting of a mandate by a company authorising an arrestee to pay over the arrested funds or part thereof to the arrester where—
    - (i) there has been a decree for payment or a warrant for summary diligence, and
    - (ii) the decree or warrant has been preceded by an arrestment on the dependence of the action or followed by an arrestment in execution.
- (3) For the purposes of subsection (1) above, the day on which a preference was created is the day on which the preference became completely effectual.
- (4) A transaction to which this subsection applies is challengeable by—
- (a) in the case of a winding up—
    - (i) any creditor who is a creditor by virtue of a debt incurred on or before the date of commencement of the winding up, or
    - (ii) the liquidator; and
  - (b) [<sup>F43</sup>where the company has entered administration], the administrator.
- (5) On a challenge being brought under subsection (4) above, the court, if satisfied that the transaction challenged is a transaction to which this section applies, shall grant decree of reduction or for such restoration of property to the company's assets or other redress as may be appropriate;
- Provided that this subsection is without prejudice to any right or interest acquired in good faith and for value from or through the creditor in whose favour the preference was created.
- (6) A liquidator and an administrator have the same right as a creditor has under any rule of law to challenge a preference created by a debtor.
- (7) This section applies to Scotland only.

### Textual Amendments

**F42** Words in s. 243(1) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 29(2) (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))

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**F43** Words in s. 243(4)(b) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 29(3) (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)**

- C65** S. 243 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 165(2)(a); S.I. 1991/878, art. 2, Sch.
- C66** S. 243 restricted (25.4.1991) by Companies Act 1989 (c. 40), s. 182(4), Sch. 22 para. 8(2)(a); S.I. 1991/878, art. 2, Sch.
- S. 243 restricted (31.3.1996) by 1995 c. 20, s. 110, 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, s. 6(1), 7(2), Sch. 5 (with Sch. 3 paras. 3, 16))
- S. 243 restricted (1.4.1996) by 1995 c. 43, ss. 44, 50(2), Sch. 2 para. 3(5)
- S. 243 restricted (11.12.1999) by S.I. 1999/2979, reg. 17(2)(a)
- S. 243 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, arts. 3, 4))
- C67** S. 243 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2
- S. 243 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)
- C68** S. 243 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
- C69** S. 243 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
- C70** S. 243 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)

#### **244 Extortionate credit transactions.**

- (1) This section applies as does section 238, and where the company is, or has been, a party to a transaction for, or involving, the provision of credit to the company.
- (2) The court may, on the application of the office-holder, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending with <sup>F44</sup>the day on which the company entered administration or went into liquidation].
- (3) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—
  - (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or
  - (b) it otherwise grossly contravened ordinary principles of fair dealing;and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this section is or, as the case may be, was extortionate.
- (4) An order under this section with respect to any transaction may contain such one or more of the following as the court thinks fit, that is to say—
  - (a) provision setting aside the whole or part of any obligation created by the transaction,

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- (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held,
  - (c) provision requiring any person who is or was a party to the transaction to pay to the office-holder any sums paid to that person, by virtue of the transaction, by the company,
  - (d) provision requiring any person to surrender to the office-holder any property held by him as security for the purposes of the transaction,
  - (e) provision directing accounts to be taken between any persons.
- (5) The powers conferred by this section are exercisable in relation to any transaction concurrently with any powers exercisable in relation to that transaction as a transaction at an undervalue or under section 242 (gratuitous alienations in Scotland).

#### Textual Amendments

**F44** Words in s. 244(2) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 30 (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)

- C71** S. 244 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), Sch. 2 (as amended (1.10.2009) by S.S.I. 2009/310, reg. 3, Sch. 1 para. 1(d))
- C72** S. 244 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)
- C73** S. 244 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
- C74** S. 244 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

## 245 Avoidance of certain floating charges.

- (1) This section applies as does section 238, but applies to Scotland as well as to England and Wales.
- (2) Subject as follows, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—
  - (a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge,
  - (b) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company, and
  - (c) the amount of such interest (if any) as is payable on the amount falling within paragraph (a) or (b) in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.
- (3) Subject to the next subsection, the time at which a floating charge is created by a company is a relevant time for the purposes of this section if the charge is created—

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- (a) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of 2 years ending with the onset of insolvency,
  - (b) in the case of a charge which is created in favour of any other person, at a time in the period of 12 months ending with the onset of insolvency,<sup>F45</sup> . . .
  - [<sup>F46</sup>(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, or
  - (d) in either case, at a time between the filing with the court of a copy of notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 and the making of an appointment under that paragraph.]
- (4) Where a company creates a floating charge at a time mentioned in subsection (3)(b) and the person in favour of whom the charge is created is not connected with the company, that time is not a relevant time for the purposes of this section unless the company—
- (a) is at that time unable to pay its debts within the meaning of section 123 in Chapter VI of Part IV, or
  - (b) becomes unable to pay its debts within the meaning of that section in consequence of the transaction under which the charge is created.
- (5) For the purposes of subsection (3), the onset of insolvency is—
- [<sup>F47</sup>(a) in a case where this section applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,
  - (b) in a case where this section applies by reason of an administrator of a company being appointed under paragraph 14 or 22 of Schedule B1 following filing with the court of a copy of notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,
  - (c) in a case where this section applies by reason of an administrator of a company being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect, and
  - (d) in a case where this section applies by reason of a company going into liquidation, the date of the commencement of the winding up.]
- (6) For the purposes of subsection (2)(a) the value of any goods or services supplied by way of consideration for a floating charge is the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.

#### Textual Amendments

- F45** Word in s. 245(3)(b) repealed (15.9.2003) by 2002 c. 40, ss. 248(3), 278, 279, Sch. 17 para. 31(2), Sch. 26 (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))
- F46** S. 245(3)(c)(d) substituted (15.9.2003) for s. 245(3)(c) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 31(3) (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))
- F47** S. 245(5)(a)-(d) substituted (15.9.2003) for s. 245(5)(a)(b) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 31(4) (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))

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#### Modifications etc. (not altering text)

- C75** S. 245 applied (with modifications) (S.) (6.4.2001) by S.S.I. 2001/128, reg. 4(1), **Sch. 2**  
 S. 245 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)
- C76** S. 245 excluded (26.12.2003) by The Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226), **reg. 10(5)**
- C77** S. 245 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**
- C78** S. 245 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**
- C79** S. 245 excluded by The Financial Market and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 16(3) (as amended (2.2.2006) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2006 (S.I. 2006/50), **reg. 2(8)(10)** and as amended (1.10.2009) by The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 6(a)**)

## 246 Unenforceability of liens on books, etc.

(1) This section applies in the case of a company where—

- [<sup>F48</sup>(a) the company enters administration,]  
 (b) the company goes into liquidation, or  
 (c) a provisional liquidator is appointed;

and “the office-holder” means the administrator, the liquidator or the provisional liquidator, as the case may be.

(2) Subject as follows, a lien or other right to retain possession of any of the books, papers or other records of the company is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the office-holder.

(3) This does not apply to a lien on documents which give a title to property and are held as such.

#### Textual Amendments

- F48** S. 246(1)(a) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 32 (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)

- C80** S. 246 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**
- C81** S. 246 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**
- C82** S. 246 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)



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*[F<sup>49</sup> Administration: penalisation of directors etc*

**Textual Amendments**

**F49** Ss. 246ZA-246ZC and cross-heading inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), **ss. 117(2)**, 164(1); S.I. 2015/1689, reg. 2(j) (with Sch. para. 15)

**246ZA Fraudulent trading: administration**

- (1) If while a company is in administration it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.
- (2) The court, on the application of the administrator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in subsection (1) are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.

**246ZB Wrongful trading: administration**

- (1) Subject to subsection (3), if while a company is in administration it appears that subsection (2) applies in relation to a person who is or has been a director of the company, the court, on the application of the administrator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the court thinks proper.
- (2) This subsection applies in relation to a person if—
  - (a) the company has entered insolvent administration,
  - (b) at some time before the company entered administration, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid entering insolvent administration or going into insolvent liquidation, and
  - (c) the person was a director of the company at that time.
- (3) The court must not make a declaration under this section with respect to any person if it is satisfied that, after the condition specified in subsection (2)(b) was first satisfied in relation to the person, the person took every step with a view to minimising the potential loss to the company's creditors as (on the assumption that the person had knowledge of the matter mentioned in subsection (2)(b)) the person ought to have taken.
- (4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which the director ought to reach and the steps which the director ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—
  - (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and
  - (b) the general knowledge, skill and experience that that director has.

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- (5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any functions which the director does not carry out but which have been entrusted to the director.
- (6) For the purposes of this section—
- (a) a company enters insolvent administration if it enters administration at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration;
  - (b) a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.
- (7) In this section “director” includes shadow director.
- (8) This section is without prejudice to section 246ZA.

### 246ZC Proceedings under section 246ZA or 246ZB

Section 215 applies for the purposes of an application under section 246ZA or 246ZB as it applies for the purposes of an application under section 213 but as if the reference in subsection (1) of section 215 to the liquidator was a reference to the administrator.]

*<sup>F50</sup>Power to assign certain causes of action*

#### Textual Amendments

**F50** S. 246ZD and cross-heading inserted (1.10.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), **ss. 118**, 164(1); S.I. 2015/1689, reg. 2(j) (with Sch. para. 16)

### 246ZD Power to assign

- (1) This section applies in the case of a company where—
- (a) the company enters administration, or
  - (b) the company goes into liquidation;
- and “the office-holder” means the administrator or the liquidator, as the case may be.
- (2) The office-holder may assign a right of action (including the proceeds of an action) arising under any of the following—
- (a) section 213 or 246ZA (fraudulent trading);
  - (b) section 214 or 246ZB (wrongful trading);
  - (c) section 238 (transactions at an undervalue (England and Wales));
  - (d) section 239 (preferences (England and Wales));
  - (e) section 242 (gratuitous alienations (Scotland));
  - (f) section 243 (unfair preferences (Scotland));
  - (g) section 244 (extortionate credit transactions).]

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## <sup>F51</sup>Decisions by creditors and contributories

### Textual Amendments

**F51** Ss. 246ZE-246ZG and cross-heading inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), [ss. 122\(2\), 164\(1\)](#); [S.I. 2015/1329, reg. 3\(d\)](#); [S.I. 2016/1020, reg. 4\(a\)](#) (with [reg. 5](#)) (as amended by [S.I. 2017/363, reg. 3](#))

### **246ZE Decisions by creditors and contributories: general**

- (1) This section applies where, for the purposes of this Group of Parts, a person (“P”) seeks a decision about any matter from a company's creditors or contributories.
- (2) The decision may be made by any qualifying decision procedure P thinks fit, except that it may not be made by a creditors' meeting or (as the case may be) a contributories' meeting unless subsection (3) applies.
- (3) This subsection applies if at least the minimum number of creditors or (as the case may be) contributories make a request to P in writing that the decision be made by a creditors' meeting or (as the case may be) a contributories' meeting.
- (4) If subsection (3) applies P must summon a creditors' meeting or (as the case may be) a contributories' meeting.
- (5) Subsection (2) is subject to any provision of this Act, the rules or any other legislation, or any order of the court—
  - (a) requiring a decision to be made, or prohibiting a decision from being made, by a particular qualifying decision procedure (other than a creditors' meeting or a contributories' meeting);
  - (b) permitting or requiring a decision to be made by a creditors' meeting or a contributories' meeting.
- (6) Section 246ZF provides that in certain cases the deemed consent procedure may be used instead of a qualifying decision procedure.
- (7) For the purposes of subsection (3) the “minimum number” of creditors or contributories is any of the following—
  - (a) 10% in value of the creditors or contributories;
  - (b) 10% in number of the creditors or contributories;
  - (c) 10 creditors or contributories.
- (8) The references in subsection (7) to creditors are to creditors of any class, even where a decision is sought only from creditors of a particular class.
- (9) In this section references to a meeting are to a meeting where the creditors or (as the case may be) contributories are invited to be present together at the same place (whether or not it is possible to attend the meeting without being present at that place).
- (10) Except as provided by subsection (8), references in this section to creditors include creditors of a particular class.
- (11) In this Group of Parts “qualifying decision procedure” means a procedure prescribed or authorised under paragraph 8A of Schedule 8.

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#### **Modifications etc. (not altering text)**

**C83** Ss. 246ZE, 246ZF modified by The Insolvent Partnerships Order 1994 (S.I. 1994/2421), Sch. 7A (as inserted (6.4.2017) by [The Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) \(Savings\) Regulations 2017](#) (S.I. 2017/540), reg. 1, [Sch. 2 para. 10](#) (with reg. 4))

### **246ZF Deemed consent procedure**

- (1) The deemed consent procedure may be used instead of a qualifying decision procedure where a company's creditors or contributories are to make a decision about any matter, unless—
  - (a) a decision about the matter is required by virtue of this Act, the rules, or any other legislation to be made by a qualifying decision procedure, or
  - (b) the court orders that a decision about the matter is to be made by a qualifying decision procedure.
- (2) If the rules provide for a company's creditors or contributories to make a decision about the remuneration of any person, they must provide that the decision is to be made by a qualifying decision procedure.
- (3) The deemed consent procedure is that the relevant creditors (other than opted-out creditors) or (as the case may be) the relevant contributories are given notice of—
  - (a) the matter about which they are to make a decision,
  - (b) the decision that the person giving the notice proposes should be made (the “proposed decision”),
  - (c) the effect of subsections (4) and (5), and
  - (d) the procedure for objecting to the proposed decision.
- (4) If less than the appropriate number of relevant creditors or (as the case may be) relevant contributories object to the proposed decision in accordance with the procedure set out in the notice, the creditors or (as the case may be) the contributories are to be treated as having made the proposed decision.
- (5) Otherwise—
  - (a) the creditors or (as the case may be) the contributories are to be treated as not having made a decision about the matter in question, and
  - (b) if a decision about that matter is again sought from the creditors or (as the case may be) the contributories, it must be sought using a qualifying decision procedure.
- (6) For the purposes of subsection (4) the “appropriate number” of relevant creditors or relevant contributories is 10% in value of those creditors or contributories.
- (7) “Relevant creditors” means the creditors who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.
- (8) “Relevant contributories” means the contributories who, if the decision were to be made by a qualifying decision procedure, would be entitled to vote in the procedure.
- (9) In this section references to creditors include creditors of a particular class.
- (10) The rules may make further provision about the deemed consent procedure.

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#### **Modifications etc. (not altering text)**

**C83** Ss. 246ZE, 246ZF modified by The Insolvent Partnerships Order 1994 (S.I. 1994/2421), Sch. 7A (as inserted (6.4.2017) by [The Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) \(Savings\) Regulations 2017](#) (S.I. 2017/540), reg. 1, [Sch. 2 para. 10](#) (with reg. 4))

#### **246ZG Power to amend sections 246ZE and 246ZF**

- (1) The Secretary of State may by regulations amend section 246ZE so as to change the definition of—
  - (a) the minimum number of creditors;
  - (b) the minimum number of contributories.
- (2) The Secretary of State may by regulations amend section 246ZF so as to change the definition of—
  - (a) the appropriate number of relevant creditors;
  - (b) the appropriate number of relevant contributories.
- (3) Regulations under this section may define the minimum number or the appropriate number by reference to any one or more of—
  - (a) a proportion in value,
  - (b) a proportion in number,
  - (c) an absolute number,and the definition may include alternative, cumulative or relative requirements.
- (4) Regulations under subsection (1) may define the minimum number of creditors or contributories by reference to all creditors or contributories, or by reference to creditors or contributories of a particular description.
- (5) Regulations under this section may make provision that will result in section 246ZE or 246ZF having different definitions for different cases, including—
  - (a) for creditors and for contributories,
  - (b) for different kinds of decisions.
- (6) Regulations under this section may make transitional provision.
- (7) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument.
- (8) 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.]

*[<sup>F52</sup>Remote attendance at meetings*

#### **Textual Amendments**

**F52** Ss. 246A, 246B and cross-headings inserted (6.4.2010) by [The Legislative Reform \(Insolvency\) \(Miscellaneous Provisions\) Order 2010](#) (S.I. 2010/18), [art. 3\(1\)](#)

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## 246A Remote attendance at meetings

- (1) Subject to subsection (2), this section [<sup>F53</sup>applies to any meeting of the members of a company summoned by the office-holder under this Act or the rules, other than a meeting of the members of the company in a members' voluntary winding up.]
- (2) This section does not apply where—
  - (a) a company is being wound up in Scotland, or
  - (b) a receiver is appointed under section 51 in Chapter 2 of Part 3.
- (3) Where the person summoning a meeting (“the convener”) considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.
- (4) Where a meeting is conducted and held in the manner referred to in subsection (3), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.
- (5) For the purposes of this section—
  - (a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and
  - (b) a person is able to exercise the right to vote at a meeting when—
    - (i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
    - (ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (6) The convener of a meeting which is to be conducted and held in the manner referred to in subsection (3) shall make whatever arrangements the convener considers appropriate to—
  - (a) enable those attending the meeting to exercise their rights to speak or vote, and
  - (b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.
- (7) Where in the reasonable opinion of the convener—
  - (a) a meeting will be attended by persons who will not be present together at the same place, and
  - (b) it is unnecessary or inexpedient to specify a place for the meeting,
 any requirement under this Act or the rules to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.
- (8) In making the arrangements referred to in subsection (6) and in forming the opinion referred to in subsection (7)(b), the convener must have regard to the legitimate interests of the [<sup>F54</sup>members] and others attending the meeting in the efficient despatch of the business of the meeting.
- (9) If—
  - (a) the notice of a meeting does not specify a place for the meeting,
  - (b) the convener is requested in accordance with the rules to specify a place for the meeting, and

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- (c) that request is [<sup>F55</sup>made] by members representing not less than ten percent of the total voting rights of all the members having at the date of the request a right to vote at the meeting,  
it shall be the duty of the convener to specify a place for the meeting.
- (10) In this section, “the office-holder”, in relation to a company, means—
- (a) its liquidator, provisional liquidator, administrator, or administrative receiver, or
  - (b) where a voluntary arrangement in relation to the company is proposed or has taken effect under Part 1, the nominee or the supervisor of the voluntary arrangement.

#### Textual Amendments

- F53** Words in s. 246A(1) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 54\(2\)](#); S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)
- F54** Word in s. 246A(8) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 54\(3\)](#); S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)
- F55** Word in s. 246A(9)(c) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), s. 164\(1\), Sch. 9 para. 54\(4\)](#); S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3)

#### Modifications etc. (not altering text)

- C84** S. 246A 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)

*[<sup>F56</sup>Giving of notices etc by office-holders]*

#### Textual Amendments

- F56** S. 246B cross-heading substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\), ss. 124\(2\), 164\(1\); S.I. 2015/1329, reg. 3\(d\); S.I. 2016/1020, reg. 4\(c\)](#)

### 246B Use of websites

- (1) Subject to subsection (2), where any provision of this Act or the rules requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website—
- (a) in accordance with the rules, and
  - (b) in such circumstances as may be prescribed.

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- (2) [<sup>F57</sup>This section does not apply where—
- (a) a company is being wound up in Scotland, or
  - (b) a receiver is appointed under section 51 in Chapter 2 of Part 3.]
- (3) In this section, “the office-holder” means—
- (a) the liquidator, provisional liquidator, administrator, [<sup>F58</sup>receiver (appointed under section 51),] or administrative receiver of a company, or
  - (b) where a voluntary arrangement in relation to a company is proposed or has taken effect under Part 1, the nominee or the supervisor of the voluntary arrangement.]

#### Textual Amendments

**F57** S. 246B(2) repealed (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by [The Public Services Reform \(Insolvency\) \(Scotland\) Order 2016 \(S.S.I. 2016/141\)](#), **art. 12(a)** (with arts. 14, 15)

**F58** Words in s. 246B(3)(a) inserted (S.) (coming into force in accordance with art. 1(3)(4) of the amending S.S.I.) by [The Public Services Reform \(Insolvency\) \(Scotland\) Order 2016 \(S.S.I. 2016/141\)](#), **art. 12(b)** (with arts. 14, 15)

#### Modifications etc. (not altering text)

**C85** S. 246B 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)

### [<sup>F59</sup>246C Creditors' ability to opt out of receiving certain notices

- (1) Any provision of the rules which requires an office-holder of a company to give a notice to creditors of the company does not apply, in circumstances prescribed by the rules, in relation to opted-out creditors.
- (2) Subsection (1)—
  - (a) does not apply in relation to a notice of a distribution or proposed distribution to creditors;
  - (b) is subject to any order of the court requiring a notice to be given to all creditors (or all creditors of a particular category).
- (3) Except as provided by the rules, a creditor may participate and vote in a qualifying decision procedure or a deemed consent procedure even though, by virtue of being an opted-out creditor, the creditor does not receive notice of it.
- (4) In this section—
 

“give” includes deliver, furnish or send;

“notice” includes any document or information in any other form;

“office-holder”, in relation to a company, means—

  - (a) a liquidator, provisional liquidator, administrator or administrative receiver of the company,
  - (b) a receiver appointed under section 51 in relation to any property of the company, or



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- (c) the supervisor of a voluntary arrangement which has taken effect under Part 1 in relation to the company.]

**Textual Amendments**

**F59** S. 246C inserted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), [ss. 124\(3\)](#), 164(1); [S.I. 2015/1329](#), [reg. 3\(d\)](#); [S.I. 2016/1020](#), [reg. 4\(c\)](#)

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