



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART IV

#### WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ACTS

### CHAPTER X

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

##### *Investigation and prosecution of malpractice*

#### **219 Obligations arising under s. 218.**

- (1) For the purpose of an investigation by the Secretary of State [<sup>F1</sup>in consequence of a report made to him under section 218(4)], any obligation imposed on a person by any provision of [<sup>F2</sup>the Companies Act 1985] to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in [<sup>F1</sup>section 218(5)] is to be regarded as an obligation similarly to assist the Secretary of State in his investigation.
  - (2) An answer given by a person to a question put to him in exercise of the powers conferred by section 218(5) may be used in evidence against him.
- [<sup>F3</sup>(2A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—
- (a) no evidence relating to the answer may be adduced, and
  - (b) no question relating to it may be asked,
- by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.
- (2B) Subsection (2A) applies to any offence other than—

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*Changes to legislation: Insolvency Act 1986, Section 219 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (a) an offence under section 2 or 5 of the <sup>M1</sup>Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or
  - (b) an offence under section 44(1) or (2) of the <sup>M2</sup>Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).]
- (3) Where criminal proceedings are instituted by [<sup>F4</sup>the Director of Public Prosecutions, the Lord Advocate] or the Secretary of State following any report or reference under section 218, it is the duty of the liquidator and every officer and agent of the company past and present (other than the defendant or defender) to give to [<sup>F4</sup>the Director of Public Prosecutions, the Lord Advocate] or the Secretary of State (as the case may be) all assistance in connection with the prosecution which he is reasonably able to give.

For this purpose “agent” includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

- (4) If a person fails or neglects to give assistance in the manner required by subsection (3), the court may, on the application of the [<sup>F5</sup>Director of Public Prosecutions, the Lord Advocate] or the Secretary of State (as the case may be) direct the person to comply with that subsection; and if the application is made with respect to a liquidator, the court may (unless it appears that the failure or neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him to do so) direct that the costs shall be borne by the liquidator personally.

#### Textual Amendments

- F1** Words in s. 219(1) substituted (2.4.2001) by 2000 c. 39, s. 10(7)(a); S.I. 2001/766, art. 2(1)(b) (subject to art. 3)
- F2** Words in s. 219(1) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, Sch. 1 para. 75(24) (with art. 10, Sch. 1 para. 84)
- F3** S. 219(2A)(2B) inserted (2.4.2001) by 2000 c. 39, s. 11; S.I. 2001/766, art. 2(1)(b); (subject to art. 3)
- F4** Words in s. 219(3) substituted (2.4.2001) by 2000 c. 39, s. 10(7)(b); S.I. 2001/766, art. 2(1)(b) (subject to art. 3)
- F5** Words in s. 219(4) substituted (2.4.2001) by 2000 c. 39, s. 10(7)(c); S.I. 2001/766, art. 2(1)(b) (subject to art. 3)

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

- C1** Pts. 1–4 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), reg. 2, Sch. 1 para. 3 (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), 4)
- C2** S. 219 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
- C3** S. 219 amendment to earlier amending provision S.I. 2009/805, Sch. 1 para. 13(6) (1.4.2013) by The Financial Services Act 2012 (Mutual Societies) Order 2013 (S.I. 2013/496), art. 1(1), Sch. 11 para. 16(3)(b) (with Sch. 12)
- C4** S. 219 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)

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**C5** S. 219 applied (with modifications) (8.7.2021) by [The Payment and Electronic Money Institution Insolvency Regulations 2021 \(S.I. 2021/716\)](#), regs. 2, **37** (with reg. 5) (as amended (4.1.2024) by [S.I. 2023/1399](#), regs. 1(2), **4**, **11**)

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**Marginal Citations**

**M1** 1911 c. 6.

**M2** 1995 c. 39.

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

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

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

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