



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART VI

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

##### *Adjustment of prior transactions (administration and liquidation)*

#### **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>[<sup>F1</sup></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.

*Changes to legislation: Insolvency Act 1986, Section 243 is up to date with all changes known to be in force on or before 16 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*

- (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>F2</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

- F1** 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))
- F2** 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)

- C1** Pt. 6 applied (with modifications) (8.7.2021) by The Payment and Electronic Money Institution Insolvency Regulations 2021 (S.I. 2021/716), reg. 2, Sch. 1 para. 3 (with reg. 5) (as amended (4.1.2024) by S.I. 2023/1399, regs. 1(2), 4)
- C2** S. 243 excluded (25.4.1991) by Companies Act 1989 (c. 40), ss. 154, 155, 165(2)(a); S.I. 1991/878, art. 2, Sch.
- C3** 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))
- C4** 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)
- C5** 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

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- C6** 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
- C7** 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)
- C8** S. 243 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**)
- C9** **Ss. 242-243** applied (with modifications) (4.1.2024) by S.I. 2021/716, Sch. 1 para. 3 (as amended by [The Payment and Electronic Money Institution Insolvency \(Amendment\) Regulations 2023 \(S.I. 2023/1399\)](#), regs. 1(2), **20**)
- C10** S. 243(1) modified (temp.) (retrospective to 27.4.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), Sch. 10 paras. 8(1)(2), **17** (with ss. 2(2), 5(2))

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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\(3\)\(b\)](#)