



# 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)*

#### **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—
  - (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>F1</sup> . . .

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- [<sup>F2</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>F3</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

- F1** 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))
- F2** 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))
- F3** 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))

#### 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)

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- C2** 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)
- C3** S. 245 excluded (26.12.2003) by The Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226), **reg. 10(5)**
- C4** 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
- C5** 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
- C6** 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)**)
- C7** S. 245 modified (temp.) (retrospective to 27.4.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), Sch. 10 paras. 8(1)(2), **18** (with ss. 2(2), 5(2))
- C8** S. 245 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** S. 245 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. 245 applied (with modifications) (E.W.) (15.3.2024) by The Water Industry (Special Administration) Regulations 2024 (S.I. 2024/205), regs. 2(2), **5(1)**, 47 (with reg. 64)

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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 extended (N.I.) for specified purposes (except for ss. 13-15) by [2024 c. 3 Sch. 13 para. 4\(3\)](#)
- 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. 21(5) inserted by [2024 c. 3 Sch. 13 para. 2\(12\)\(b\)](#)
- s. 22(2B) inserted by [2024 c. 3 Sch. 13 para. 2\(13\)](#)
- s. 22H(1)(a) words inserted by [2024 c. 3 Sch. 13 para. 2\(14\)\(a\)](#)
- s. 22H(1)(aa) inserted by [2024 c. 3 Sch. 13 para. 2\(14\)\(b\)](#)
- s. 22H(4)(j) words inserted by [2024 c. 3 Sch. 13 para. 2\(14\)\(c\)](#)
- s. 22H(4)(k) inserted by [2024 c. 3 Sch. 13 para. 2\(14\)\(d\)](#)
- s. 41HB(2) words substituted by [2018 c. 14 s. 1\(3\)\(b\)](#)