

Status: Law In Force

Small Business, Enterprise and Employment Act 2015 c. 26

Part 10 INSOLVENCY

Administration

This version in force from: **May 26, 2015** to **present**

(version 1 of 1)

129 Administration: sales to connected persons

- (1) [Schedule B1](#) to the [Insolvency Act 1986](#) (administration) is amended as follows.
- (2) [Paragraph 60](#) (power of administrators) becomes [sub-paragraph \(1\)](#) of that paragraph.
- (3) After that sub-paragraph insert—

“(2) But the power to sell, hire out or otherwise dispose of property is subject to any regulations that may be made under paragraph 60A.”

- (4) After [paragraph 60](#) insert—

“60A

- (1) The Secretary of State may by regulations make provision for—

- (a) prohibiting, or
- (b) imposing requirements or conditions in relation to,

the disposal, hiring out or sale of property of a company by the administrator to a connected person in circumstances specified in the regulations.

- (2) Regulations under this paragraph may in particular require the approval of, or provide for the imposition of requirements or conditions by—

- (a) creditors of the company,
- (b) the court, or
- (c) a person of a description specified in the regulations.

- (3) In sub-paragraph (1), “*connected person*”, in relation to a company, means—

- (a) a relevant person in relation to the company, or
- (b) a company connected with the company.

(4) For the purposes of sub-paragraph (3)—

(a) “*relevant person*”, in relation to a company, means—

(i) a director or other officer, or shadow director, of the company;

(ii) a non-employee associate of such a person;

(iii) a non-employee associate of the company;

(b) a company is connected with another if any relevant person of one is or has been a relevant person of the other.

(5) In sub-paragraph (4), “*non-employee associate*” of a person means a person who is an associate of that person otherwise than by virtue of employing or being employed by that person.

(6) Subsection (10) of section 435 (extended definition of company) applies for the purposes of sub-paragraphs (3) to (5) as it applies for the purposes of that section.

(7) Regulations under this paragraph may—

(a) make different provision for different purposes;

(b) make incidental, consequential, supplemental and transitional provision.

(8) Regulations under this paragraph are to be made by statutory instrument.

(9) Regulations under this paragraph may not be made unless a draft of the statutory instrument containing the regulations has been laid before Parliament and approved by a resolution of each House of Parliament.

(10) This paragraph expires at the end of the period of 5 years beginning with the day on which it comes into force unless the power conferred by it is exercised during that period.”

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Subject: Banking and finance **Other related subjects:** Company law; Employment; Insolvency

Annotation

Section 129

Introduction

The Government's Explanatory Notes to the Bill for this Act (see Key Legal Concept: [Explanatory Notes](#)) say as follows (clause numbering may not match final section numbering; the Notes as re-issued after Royal Assent are shown at the end of the Act on Westlaw UK):

"743. The clause creates a power for the Secretary of State to make regulations prohibiting or imposing conditions on sales, disposals or, hiring out of the assets or business of the company in administration to connected parties.

"744. The power to make regulations will enable the Secretary of State to:

- i. prohibit sales.
- ii. allow sales to take place subject to the imposition of restrictions or conditions.
- iii. provide for the requirement to obtain approval from the court, the creditors of the company, or other person of a description specified in the regulations.

"745. The clause targets the restriction on 'connected persons' — which is where a person or the company purchasing the business has a relationship with the insolvent company. This includes directors, shadow directors or their associates. Associate captures, amongst other connections, where the person buying the company is the spouse, civil partner, relation of, or in business partnership with those acting as directors of the insolvent company.

"746. The clause also captures where common individuals exercise control over both companies. The existing legislative definition of 'control' of a company includes those persons who are not directors but whom the directors are accustomed to acting in accordance with their instructions."

Navigation Note (General):

For consequential amendments see [s.159](#); for repeals see [s.159](#); for transitional provisions see [s.160](#); for money provided by Parliament see [s.162](#); for extent see [s.163](#); for commencement see [s.164](#).

Definitions Note (General):

For statutory definitions of "small business" and "micro business" see [s.33](#); for Secretary of State's power to make further provision about the meanings of these expressions see [s.33\(4\)](#) and [s.34](#).

Subordinate Legislation Note (General):

For supplementary powers and procedure for subordinate legislation under this Act see [s.161](#).

Background Note:

For information about the background to this Act (including Ministerial Statements) see the annotations to the [Long Title / preamble](#).

Legislative Intention Note (see Key Legal Concept: [Pepper v Hart](#)): In the Public Bill Committee on

the Bill for this Act in the House of Commons the Minister said as follows:

“Clause 117 gives the Secretary of State a power to introduce regulations to address problems in relation to sales in administration to connected parties. As hon. Members know, administration is the main way in which we attempt business rescue here in the UK. Sale to a connected party is where an insolvent business is sold to a purchaser that was previously involved with the business. The most common type of connection is where someone is a director of both the insolvent business and the business that is buying it.” ([Hansard, 4 November, 2014.](#))

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