

STATUTORY INSTRUMENTS

1989 No. 2405 (N.I. 19)

The Insolvency (Northern Ireland) Order 1989

19th December 1989

Modifications etc. (not altering text)

- C1** Order modified (1.1.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006](#) (S.I. 2006/3336 (N.I. 21)), arts. 1(3)(e), **271(5)** (with arts. 8(8), 121(3), 307)
- C2** Order modified (8.1.2007) by [S.R. 1995/225](#) (as amended by [Insolvent Partnerships \(Amendment\) Order \(Northern Ireland\) 2006](#) (S.R. 2006/515), art. 4 (with **art. 2**))
- C3** Order: power to amend conferred (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005](#) (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 21(2) (with art. 4); [S.R. 2006/21](#), **art. 2** (with [S.R. 2006/22](#), **arts. 2-7**)
- C4** Order applied (with modifications) (6.4.2008) by [Serious Crime Act 2007](#) (c. 27), **ss. 28(2)-(4)**, 94(1); [S.I. 2008/755](#), **art. 15(1)(f)**
- C5** Order modified (1.8.2007) by [European Grouping of Territorial Cooperation Regulations 2007](#) (S.I. 2007/1949), reg. 7, **Sch. Pt. 2**
- C6** Order applied (with modifications) (12.4.2007) by [Cross-Border Insolvency Regulations \(Northern Ireland\) 2007](#) (S.R. 2007/115), **reg. 4**
- C7** Order excluded (6.4.2009) by [Energy Act 2008](#) (c. 32), **ss. 56(5)**, 110(2); [S.I. 2009/45](#), **art. 4(b)(i)**
- C8** Order excluded (26.1.2009) by [1998](#) (c.17), s. 38A(6) (as inserted by [Energy Act 2008](#) (c. 32), **ss. 74**, 110(2)); [S.I. 2009/45](#), **art. 2(b)(i)**
- C9** Order applied in part (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009](#) (c. 1), **ss. 103**, 134, 263(1) (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, Sch.
- C10** Order applied in part (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009](#) (c. 1), **ss. 145**, 167, 263(1) (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, Sch.
- C11** Order power to amend conferred (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009](#) (c. 1), **ss. 158(2)(b)**, 159(2)(b), 263(1) (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, Sch.
- C12** Order applied (with modifications) (1.10.2009) by [Industrial and Provident Societies Act \(Northern Ireland\) 1969](#) (c. 24), **s. 64(1)(2)** (as substituted by [S.I. 2009/1941](#), arts. 2(1), 8, **Sch. 1 para. 21(8)** (with art. 10))
- C13** Order applied (with modifications) (1.10.2009) by [Credit Unions \(Northern Ireland\) Order 1985](#) (S.I. 1985/1205 (N.I. 12)), **art. 68(1)(2)** (as substituted by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009](#) (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 66** (with art. 10))
- C14** Order applied (with modifications) (23.11.2009) by [Scottish and Northern Ireland Banknote Regulations 2009](#) (S.I. 2009/3056), reg. 29, **Sch. 1 para. 2**
- C15** Order applied (with modifications) (8.2.2011) by [Investment Bank Special Administration Regulations 2011](#) (S.I. 2011/245), regs. 1, 8(7), 9, **15**, 16-21, 24-26, Schs. 1-5
- C16** Order modified (1.10.2011) by [Postal Services Act 2011](#) (c. 5), ss. 73(1), 87(1)(2), 93(3), **Sch. 10 para. 40**, **Sch. 10 para. 41**; [S.I. 2011/2329](#), **art. 3(1)**

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

C17 Order power to modify conferred (1.10.2011) by [Postal Services Act 2011 \(c. 5\), ss. 73\(1\), 87\(1\)\(2\), 93\(3\)](#), [Sch. 10 para. 46](#); S.I. 2011/2329, [art. 3\(1\)](#)

^{F1}PART I INTRODUCTORY

F1 Pts. I-V modified by [S.R. 2004/307](#) (as amended (1.10.2006) by [Limited Liability Partnerships \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/377\)](#), [reg. 3](#), [Sch. 2](#))

Title and commencement

- 1.—(1) This Order may be cited as the Insolvency (Northern Ireland) Order 1989.
- (2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint^{F2}.
- (3) An order under paragraph (2) may contain such transitional and supplementary provisions as appear to the Head of the Department to be necessary or expedient.

F2 partly exercised, SRs 1990/177; 1991/294, 300, 411; 2002/126

General interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^{F3} shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) ^{F4} In this Order—

[^{F5}“the Bankruptcy Acts” means the Bankruptcy Acts (Northern Ireland) 1857 to 1980;]

“business” includes a trade or profession;

“the Companies Order” means the Companies (Northern Ireland) Order 1986;

^{F6}“conditional sale agreement” and “hire#purchase agreement” have the same meanings as in the Consumer Credit Act 1974^{F7};

[^{F5}“corporate member” means an insolvent member which is a company;]

“the Department” means the Department of Economic Development;

[^{F8}“the EC Regulation” means Council Regulation (EC) No. 1346/2000;]

[^{F5}“individual member” means an insolvent member who is an individual;

“insolvent member” means a member of an insolvent partnership, against whom an insolvency petition is being or has been presented;

“insolvency order” means—

- (a) in the case of an insolvent partnership or a corporate member, a winding-up order; and
- (b) in the case of an individual member, a bankruptcy order;

“insolvency petition” means—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) in the case of a petition presented against a corporate member, a petition for its winding up by the High Court; and
- (b) in the case of a petition presented against an individual member, a petition to the Court for a bankruptcy order to be made against the individual,

where the petition is presented in conjunction with a petition for the winding up of the partnership by the Court as an unregistered company under the Order;]

“liability” means (subject to paragraph (4)) a liability to pay money or money's worth, including any liability under a statutory provision, any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation to make restitution;

“modifications” includes additions, alterations and omissions;

“office copy”, in relation to a document of the High Court, means a copy purporting to be sealed with the seal of the Court;

“the official receiver” means, in relation to any bankruptcy^{F9} or winding up, any officer of the Department who by virtue of Article 355 or 357 is authorised to act as the official receiver in relation to that bankruptcy^{F9} or winding up;

“prescribed”

- (a) in Articles 48(3), 95(1), 212(h) and 222 and in Part XII, means prescribed by regulations; and
- (b) except as provided in sub#paragraph (a)^{F10} and in paragraph 3 of Schedule 4, means prescribed by rules;

“property” includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

“records” includes computer records and other non#documentary records;

“regulations” means regulations made by the Department subject (except in^{F11} Article 359(5) [^{F12}and paragraph 16 of Schedule A1]) to negative resolution;

[^{F5}“responsible insolvency practitioner” means—

- (a) in winding up, the liquidator; and
- (b) in bankruptcy, the trustee,

and in either case includes the official receiver when so acting.]

“rules”, except in Article 350, means rules made under Article 359;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954^{F13};

“transaction” includes a gift, agreement or arrangement, and references to entering into a transaction shall be construed accordingly.

(3) In determining for the purposes of any provision in this Order whether any liability in tort is a debt provable in the winding up of a company or a bankruptcy debt, the company or, as the case may be, the bankrupt is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action accrued.

(4) For the purposes of references in any provision of this Order to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed criteria or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(5) In this Order (except Article 355(1)) references to the official receiver include an officer of the Department appointed under Article 357(1) as deputy official receiver.

(6) For the purposes of any provision in this Order whereby an officer of a company who is in default shall be guilty of an offence, “officer who is in default” means an officer of the company who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the provision.

- F3 1954 c. 33 (NI)
- F4 mod. by SR 2004/307
- F5 SR 1991/366
- F6 1986 NI 6
- F7 1974 c. 39
- F8 SR 2002/223
- F9 prosp. subst. by 2005 NI 10
- F10 prosp. insertion by 2005 NI 10
- F11 prosp. subst. by 1999 c. 23 never in force now repealed
- F12 2002 NI 6
- F13 1954 c. 33 (NI)

[^{F14}Proceedings under EC Regulation: modified definition of property

2A. In the application of this Order to proceedings by virtue of Article 3 of the EC Regulation, a reference to property is a reference to property which may be dealt with in the proceedings.]

- F14 SR 2002/334

“Act as insolvency practitioner”

- 3.—(1)** A person acts as an insolvency practitioner in relation to a company by acting—
- (a) as its liquidator, provisional liquidator, administrator or administrative receiver, or
 - [^{F15}(b) where a voluntary arrangement in relation to the company is proposed or approved under Part II, as nominee or supervisor.]
- (2) [^{F16} A person acts as an insolvency practitioner in relation to an individual by acting—
- (a) as his trustee in bankruptcy or interim receiver of his property; or
 - (b) as trustee under a deed which is a deed of arrangement made for the benefit of his creditors; or
 - [^{F15}(c) where a voluntary arrangement in relation to the individual is proposed or approved under Part VIII, as nominee or supervisor;]
 - (d) in the case of a deceased individual to the administration of whose estate this Article applies by virtue of an order under Article 365 (application of provisions of this Order to insolvent estates of deceased persons), as administrator of that estate.
- [^{F17}(3) [^{F16} A person acts as an insolvency practitioner in relation to an insolvent partnership by acting—
- (a) as its liquidator, provisional liquidator or administrator, or
 - (b) as trustee of the partnership under Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, or

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

[where a voluntary arrangement in relation to the insolvent partnership is proposed or ^{F18}(c) approved under Part II, as nominee or supervisor.]]

[^{F15}(3A) In relation to a voluntary arrangement proposed under Part II or VIII, a person acts as nominee if he performs any of the functions conferred on nominees under the Part in question.]

(4 ^{F16} In this Article—

“administrative receiver” has the meaning given by Article 5(1);

“company” means a company within the meaning given by Article 3(1) of the Companies Order or a company which may be wound up under Part VI of this Order (unregistered companies) or a building society within the meaning of the Building Societies Act 1986^{F19}.

(5) Nothing in this Article applies to anything done by the official receiver.

[^{F20}(6) Nothing in this Article applies to anything done (whether in the United Kingdom or elsewhere) in relation to insolvency proceedings under the EC Regulation in a member State other than the United Kingdom.]

F15 [2002 NI 6](#)

F16 mod. by SR 2004/307

F17 SR 1995/225

F18 SR 2003/550

F19 [1986 c. 53](#)

F20 SR 2002/334

Modifications etc. (not altering text)

C18 [Art. 3](#) excluded (12.4.2007) by [Cross-Border Insolvency Regulations \(Northern Ireland\) 2007 \(S.R. 2007/115\)](#), [reg. 7](#)

“Associate”

4.—(1) For the purposes of this Order any question whether a person is an associate of another person is to be determined in accordance with the following provisions of this Article (any provision that a person is an associate of another person being taken to mean that they are associates of each other).

[^{F21}(2) A person is an associate of an individual if that person is—

- (a) the individual's husband or wife or civil partner,
- (b) a relative of—
 - (i) the individual, or
 - (ii) the individual's husband or wife or civil partner, or
- (c) the husband or wife or civil partner of a relative of—
 - (i) the individual, or
 - (ii) the individual's husband or wife or civil partner.]

(3) A person is an associate of any person with whom he is in partnership, and of the husband or wife^{F21} or civil partner] or a relative of any individual with whom he is in partnership; and a Scottish firm is an associate of any person who is a member of the firm.

^{F22}(4) A person is an associate of any person whom he employs or by whom he is employed.

(5) A person in his capacity as trustee of a trust other than—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) a trust arising under Parts VIII to X (other than Chapter I of Part VIII) of this Order, Parts VIII to IX of the Insolvency Act 1986^{F23} or the Bankruptcy (Scotland) Act 1985^{F24}, or
- (b) a pension scheme or an employees' share scheme (within the meaning of the Companies Order),

is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that other person or an associate of that other person.

(6) A company is an associate of another company—

- (a) if the same person has control of both, or a person has control of one and persons who are his associates, or he and persons who are his associates, have control of the other, or
- (b) if a group of 2 or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(7) A company is an associate of another person if that person has control of it or if that person and persons who are his associates together have control of it.

(8) For the purposes of this Article a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating—

- (a) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child, and
- (b) an illegitimate child as the legitimate child of his mother and reputed father;

and references in this Article to a husband and wife include a former husband or wife and reputed husband or wife^{F21} and references to a civil partner include a former civil partner^{F25} and a reputed civil partner].

(9) For the purposes of this Article any director of other officer of a company is to be treated as employed by that company.

(10) For the purposes of this Article a person is to be taken as having control of a company if—

- (a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions, or
- (b) he is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting of the company or of another company which has control of it;

and where 2 or more persons together satisfy either of the conditions mentioned in sub-paragraph (a) or (b), they are to be taken as having control of the company.

(11)^{F22} In this Article “company” includes any body corporate (whether incorporated in Northern Ireland or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company have effect with any necessary modifications.

F21 2004 c. 33

F22 mod. by SR 2004/307

F23 1986 c. 45

F24 1985 c. 66

F25 SR 2005/479

Modifications etc. (not altering text)

- C19** Art. 4 applied (6.4.2006) by Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 2006 (S.R. 2006/148), **reg. 1(1)(4)**

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

C20 Art. 4 applied by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), art. 234(8) (as substituted (30.12.2007) by Transfer of Undertakings and Service Provision Change (Protection of Employment) (Consequential Amendments etc.) Regulations (Northern Ireland) 2007 (S.R. 2007/494), reg. 2(5))

Interpretation for Parts II to VII

Interpretation

5.—(1 ^{F26} In Parts II to VII—

^{F27}“administrator” means a person appointed as defined in Article 21(2);

^{F27}“administration order” means an order of the High Court under Article 21;

“administrative receiver” means—

- (a) a receiver or manager of the whole (or substantially the whole) of a company's property appointed by or on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; or
- (b) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the company's property;

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971^{F28};

“chattel leasing agreement” means an agreement for the bailment of goods which is capable of subsisting for more than 3 months;

“debt”, in relation to the winding up of a company, means (subject to Article 2(3)) any of the following—

- (a) any debt or liability to which the company is subject at the date on which it goes into liquidation;
- (b) any debt or liability to which the company may become subject after that date by reason of any obligation incurred before that date; and
- (c) any interest on a debt proved in the liquidation which bears interest, except in so far as it is payable in respect of any period after the company went into liquidation;

“director” includes any person occupying the position of director, by whatever name called;

“floating charge” means a charge which, as created, was a floating charge;

“nominee” means a person acting as defined in Article 15(2);

“the official rate”, in relation to interest, means the rate payable under Article 160(4);

“the registrar” means the registrar of companies appointed under Article 653 of the Companies Order and, for the purpose of this Order, includes an assistant registrar;

“a resolution for voluntary winding up” means a resolution passed under any of the sub# paragraphs of Article 70(1);

“retention of title agreement” means an agreement for the sale of goods to a company being an agreement—

- (a) which does not constitute a charge on the goods, but

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(b) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company as respects the goods or any property representing the goods;

“secured creditor”, in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and “unsecured creditor” is to be read accordingly;

“security” means any mortgage, charge, lien or other security;

“shadow director”, in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act (but so that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity);

“supervisor” means a person acting as defined in Article 20(2);

“voluntary arrangement” means an arrangement as defined in Article 14(1).

(2) Any expression for whose interpretation provision is made by Part I of the Companies Order, other than an expression defined in this Article, is to be construed in accordance with that provision.

F26 mod. by SR 2004/307

F27 prosp. rep. by 2005 NI 10

F28 1971 c. 80

“Insolvency” and “go into liquidation”

6.—(1) In Parts II to VII, “insolvency”, in relation to a company, includes the approval of a voluntary arrangement under Part II,^{F29} the making of an administration order or the appointment of an administrative receiver.

(2)^{F30} For the purposes of any provision in Parts II to VII, a company goes into liquidation if it passes a resolution for voluntary winding up or an order for its winding up is made by the High Court at a time when it has not already gone into liquidation by passing such a resolution.

[^{F31F29}(3) The reference to a resolution for voluntary winding up in paragraph (2) includes a resolution deemed to occur by virtue of an order made following conversion of a voluntary arrangement or administration into winding up under Article 37 of the EC Regulation.]

F29 prosp. subst. by 2005 NI 10

F30 mod. by SR 2004/307

F31 SR 2002/334

“Connected with a company”

^{F32}7. For the purposes of any provision in Parts II to VII, a person is connected with a company if—

(a) he is a director or shadow director of the company or an associate of such a director or shadow director, or

(b) he is an associate of the company.

F32 mod. by SR 2004/307

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Modifications etc. (not altering text)

C21 Art. 7 applied (6.4.2006) by Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 2006 (S.R. 2006/148), **reg. 1(1)(4)**

“Member of a company”

8^{F33}. For the purposes of any provision in Parts II to VII, a person who is not a member of a company but to whom shares in the company have been transferred, or transmitted by operation of law, is to be regarded as a member of the company, and references to a member or members are to be read accordingly.

F33 mod. by SR 2004/307

Interpretation for Parts VIII to X

Interpretation

9^{F34}.—(1) In Parts VIII to X—

“bankrupt” means an individual who has been adjudged bankrupt and, in relation to a bankruptcy order, it means the individual adjudged bankrupt by that order;

“bankruptcy debt”, in relation to a bankrupt, means (subject to Article 2(3)) any of the following—

- (a) any debt or liability to which he is subject at the commencement of the bankruptcy,
- (b) any debt or liability to which he may become subject after the commencement of the bankruptcy (including after his discharge from bankruptcy) by reason of any obligation incurred before the commencement of the bankruptcy, and
- (c) any interest provable as mentioned in Article 295(2);

and “debt” shall be construed accordingly;

“bankruptcy order” means an order adjudging an individual bankrupt;

“bankruptcy petition” means a petition to the High Court for a bankruptcy order;

“creditor”

- (a) in relation to a bankrupt, means a person to whom any of the bankruptcy debts is owed, and
- (b) in relation to an individual to whom a bankruptcy petition relates, means a person who would be a creditor in the bankruptcy if a bankruptcy order were made on that petition;

“creditors generally” includes all creditors who may assent to, or take the benefit of, a deed of arrangement;

“creditor's petition” means a bankruptcy petition under Article 238(1)(a);

“the debtor”

- (a) in relation to a proposal for the purposes of Part VIII, means the individual making or intending to make that proposal, and
- (b) in relation to a bankruptcy petition, means the individual to whom the petition relates;

“debtor's petition” means a bankruptcy petition presented by the debtor himself under Article 238(1)(b);

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

“deed of arrangement”, except in Article 343(1)(c), means a deed of arrangement as defined in Article 209;

“dwelling house” includes any building or part of a building which is occupied as a dwelling and any yard, garden, garage or outhouse belonging to the dwelling house and occupied with it;

“family” in relation to a bankrupt, means the persons (if any) who are living with him and are dependent on him;

[^{F35}“insolvency administration” means the administration in bankruptcy of the insolvent estate of a deceased person;

“insolvency administration order” means an order for the administration in bankruptcy of the insolvent estate of a deceased debtor (being an individual at the date of his death);

“insolvency administration petition” means a petition for an insolvency administration order;]

“interim order” means an order under Article 226;

[^{F35}“the Judgments Enforcement Order” means the Judgments Enforcement (Northern Ireland) Order 1981;

“the Land Registration Act” means the Land Registration Act (Northern Ireland) 1970;]

“nominee” means a person acting as defined in Article 227(2);

“the registrar” means the registrar appointed under Article 210(1);

[^{F35}“the Registration of Deeds Act” means the Registration of Deeds Act (Northern Ireland) 1970; and

“the Rules” means the Insolvency Rules (Northern Ireland) 1999;]

“the trustee” in relation to a bankruptcy and the bankrupt, means the trustee of the bankrupt's estate;

“voluntary arrangement” means an arrangement as defined in Article 227(1).

(2) References in Parts VIII to X to a person's affairs include his business, if any.

(3) In Chapter I of Part VIII references to the registrar include an officer of the Department appointed under Article 210(2) to act as his deputy.

F34 mod. by SR 2004/307

F35 SR 1991/365

“Security”, etc.

10^{F36}.—(1) Subject to paragraphs (2) and (3) and any provision of the rules requiring a creditor to give up his security for the purposes of proving a debt, a debt is secured for the purposes of Parts VIII to X to the extent that the person to whom the debt is owed holds any security for the debt (whether a mortgage, charge, lien or other security) over any property of the person by whom the debt is owed.

(2) Where a statement such as is mentioned in Article 243(1)(a) has been made by a secured creditor for the purposes of any bankruptcy petition and a bankruptcy order is subsequently made on that petition, the creditor is deemed for the purposes of Parts VIII to X to have given up the security specified in the statement.

(3) In paragraph (1) the reference to a security does not include a lien on books, papers or other records, except to the extent that they consist of documents which give a title to property and are held as such.

F36 mod. by SR 2004/307

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

“Bankrupt's estate”

11^{F37}.—(1) Subject to the following provisions of this Article, a bankrupt's estate for the purposes of any of Parts VIII to X comprises—

- (a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy, and
- (b) any property which by virtue of any of the provisions of Part IX of this Order or Article 88(3) or 90(3) of the Judgments Enforcement (Northern Ireland) Order 1981^{F38} (effect of bankruptcy or winding up on enforcement of judgments and proceeds of such enforcement) is comprised in that estate or is treated as falling within sub#paragraph (a).

(2) Subject to Article 281 (certain excluded property reclaimable by trustee), paragraph (1) does not apply to—

- (a) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment, business or vocation;
- (b) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family.

(3) Paragraph (1) does not apply to property held by the bankrupt on trust for any other person.

(4) References in any of Parts VIII to X to property, in relation to a bankrupt, include references to any power exercisable by him over or in respect of property except in so far as the power is exercisable over or in respect of property not for the time being comprised in the bankrupt's estate and—

- (a) is so exercisable at a time after either the official receiver has had his release in respect of that estate under Article 272(2) or a meeting summoned by the trustee of that estate under Article 304 has been held, or
- (b) cannot be so exercised for the benefit of the bankrupt;

and a power exercisable over or in respect of property is deemed for the purposes of any of Parts VIII to X to vest in the person entitled to exercise it at the time of the transaction or event by virtue of which it is exercisable by that person (whether or not it becomes so exercisable at that time).

(5) For the purposes of any such provision in Parts VIII to X, property comprised in a bankrupt's estate is so comprised subject to the rights of any person other than the bankrupt (whether as a secured creditor of the bankrupt or otherwise) in relation thereto, but disregarding—

- (a) any rights in relation to which a statement such as is required by Article 243(1)(a) was made in the petition on which the bankrupt was adjudged bankrupt, and
- (b) any rights which have been otherwise given up in accordance with the rules.

^{F39}(6) This Article has effect subject to the provisions of any statutory provision not contained in this Order under which any property is to be excluded from a bankrupt's estate.

F37 mod. by SR 2004/307

F38 1981 NI 6

F39 prosp. insertion by 2005 NI 10

Interpretation for this Order and the Companies Order

“Receiver or manager”

12. In this Order or the Companies Order—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) any reference to a receiver or manager of the property of a company, or to a receiver of it, includes a receiver or manager, or (as the case may be) a receiver of part only of that property and a receiver only of the income arising from the property or from part of it; and
- (b) any reference to the appointment of a receiver or manager under powers contained in an instrument includes an appointment made under powers which, by virtue of any statutory provision are implied in and have effect as if contained in an instrument.

“Contributory”

13.—(1 ^{F40} In this Order and the Companies Order “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

(2 ^{F40} The reference in paragraph (1) to persons liable to contribute to the assets does not include a person so liable by virtue of a declaration by the High Court under Article 177 (imputed responsibility for company's fraudulent trading) or Article 178 (wrongful trading).

(3 ^{F40} A reference in a company's articles to a contributory does not (unless the context requires) include a person who is a contributory only by virtue of Article 63 (liability of past directors and shareholders).

(4 ^{F40} Paragraph (3) is deemed included in Chapter VII of Part VI of the Companies Order for the purposes of the Department's power to make regulations under Article 189 of that Order.

F40 mod. by SR 2004/307

PARTS II TO VII

COMPANY INSOLVENCY; COMPANIES WINDING UP

^{F41}PART II

COMPANY VOLUNTARY ARRANGEMENTS

F41 Pts. I-V modified by [S.R. 2004/307](#) (as amended (1.10.2006) by [Limited Liability Partnerships \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/377\)](#), reg. 3, [Sch. 2](#))

Modifications etc. (not altering text)

C22 Pts. II, III and IV applied (with modifications) by 1986 c. 53, [Sch. 15A](#), Pt. III (as inserted (1.12.1997) by 1997 c. 32, s. 39(2), [Sch. 6](#)); S.I. 1997/2668, art. 2, [Sch. Pt. I\(i\)](#))

C23 Pts. II, III applied (with modifications) (14.11.2008) by [Insolvency \(Company Arrangement or Administration Provisions for an Industrial and Provident Society\) Order \(Northern Ireland\) 2008 \(S.R. 2008/445\)](#), [art. 2](#)

C24 Pt. II (arts. 14-20B) applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), [ss. 113\(6\)-\(9\)](#), 134, 263(1) (with s. 247); S.I. 2009/296, [arts. 2, 3](#), [Sch.](#)

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

The proposal

Those who may propose an arrangement

14.—(1)^{F42} The directors of a company^{F43} (other than one for which an administration order is in force, or which is being wound up) may make a proposal under this Part to the company and to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs (referred to, in either case, as a “voluntary arrangement”).

(2) A proposal under this Part is one which provides for some person (“the nominee”) to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation; and the nominee must be a person who is qualified to act as an insolvency practitioner^{F44} or authorised to act as nominee, in relation to the voluntary arrangement].

(3)^{F42} Such a proposal may also be made—

^{F43}(a) where an administration order is in force in relation to the company, by the administrator, and

(b) where the company is being wound up, by the liquidator.

^{F45}(4) In this Part a reference to a company includes a reference to a company in relation to which a proposal for a voluntary arrangement may be made by virtue of Article 3 of the EC Regulation.]

F42 mod. by SR 2004/307

F43 prosp. subst. by 2005 NI 10

F44 2002 NI 6

F45 SR 2002/334

^{F46}Moratorium

14A.—(1)^{F47} Where the directors of an eligible company intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the company.

(2) The provisions of Schedule A1 have effect with respect to—

(a) companies eligible for a moratorium under this Article,

(b) the procedure for obtaining such a moratorium,

(c) the effects of such a moratorium, and

(d) the procedure applicable (in place of Articles 15 to 19 and 20) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.]

F46 2002 NI 6

F47 mod. by SR 2004/307

Procedure where nominee is not the liquidator or administrator

15.—(1)^{F48} This Article applies where the nominee under Article 14 is not the liquidator or administrator of the company^{F49} and the directors do not propose to take steps to obtain a moratorium under Article 14A for the company].

(2) The nominee shall, within 28 days (or such longer period as the High Court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the Court stating—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) [^{F50}whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,]
- [^{F50}(aa)] ^{F48}whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal, and
 - (b) ^{F48} if in his opinion such meetings should be summoned, the date on which, and time and place at which, he proposes the meetings should be held.
- (3) ^{F48} For the purposes of enabling the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee—
 - (a) a document setting out the terms of the proposed voluntary arrangement, and
 - (b) a statement of the company's affairs containing—
 - (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and
 - (ii) such other information as may be prescribed.
- [^{F51}(4) The High Court may—
 - (a) ^{F48} on an application made by the person intending to make the proposal, in a case where the nominee has failed to submit the report required by this Article or has died, or
 - (b) ^{F48} on an application made by that person or the nominee, in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.]

F48 mod. by SR 2004/307
F49 2002 NI 6
F50 2002 NI 6
F51 2002 NI 6

Summoning of meetings

16.—(1) ^{F52} Where the nominee under Article 14 is not the liquidator or administrator, and it has been reported to the High Court that such meetings as are mentioned in Article 15(2) should be summoned, the person making the report shall (unless the Court otherwise directs) summon those meetings for the time, date and place proposed in the report.

(2) ^{F52} Where the nominee is the liquidator or administrator, he shall summon meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit.

(3) The persons to be summoned to a creditors' meeting under this Article are every creditor of the company of whose claim and address the person summoning the meeting is aware.

F52 mod. by SR 2004/307

Consideration and implementation of proposal

Decisions of meetings

17.—(1) ^{F53} The meetings summoned under Article 16 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner^{F54} or authorised to act as nominee, in relation to the voluntary arrangement]; but shall not include any modification by virtue of which the proposal ceases to be a proposal such as is mentioned in Article 14.

(3) A meeting so summoned shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(4) A meeting so summoned shall not, except with the concurrence of the preferential creditor concerned, approve any proposal or modification under which—

- (a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, or
- (b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(5)^{F53} Subject to paragraphs (3) and (4), each of the meetings shall be conducted in accordance with the rules.

^{F53}(6)^{F53} After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the High Court, and, immediately after reporting to the Court, shall give notice of the result of the meeting to such persons as may be prescribed.

(7) In this Article “preferential debts” has the meaning given by Article 346; and “preferential creditor” is to be construed accordingly.

F53 mod. by SR 2004/307

F54 2002 NI 6

^{F55}**Approval of arrangement**

17A.—(1) This Article applies to a decision, under Article 17, with respect to the approval of a proposed voluntary arrangement.

(2)^{F56} The decision has effect if, in accordance with the rules—

- (a) it has been taken by both meetings summoned under Article 16, or
- (b) (subject to any order made under paragraph (4)) it has been taken by the creditors' meeting summoned under that Article.

(3)^{F56} If the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company may apply to the High Court.

(4)^{F56} An application under paragraph (3) shall not be made after the end of the period of 28 days beginning with—

- (a) the day on which the decision was taken by the creditors' meeting, or
- (b) where the decision of the company meeting was taken on a later day, that day.

(5)^{F56} Where a member of a regulated company, within the meaning given by paragraph 54 of Schedule A1, applies to the High Court under paragraph (3), the Financial Services Authority is entitled to be heard on the application.

(6)^{F56} On an application under paragraph (3), the High Court may—

- (a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(b) make such other order as it thinks fit.]

F55 2002 NI 6

F56 mod. by SR 2004/307

Effect of approval

18.—^{F57}(1) This Article applies where a decision approving a voluntary arrangement has effect under Article 17A.]

(2) The^{F58} . . . voluntary arrangement—

(a) takes effect as if made by the company at the creditors' meeting, and

^{F57}(b) binds every person who in accordance with the rules—

(i) was entitled to vote at that meeting (whether or not he was present or represented at it), or

(ii) would have been so entitled if he had had notice of it,]

^{F57}as if he were a party to the voluntary arrangement.]

^{F57}(2A) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of paragraph (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement.]

(3) Subject to paragraph (4), if the company is being wound up or^{F59} an administration order is in force, the High Court may do one or both of the following, namely—

(a) by order stay all proceedings in the winding up or^{F59} discharge the administration order;

(b) give such directions with respect to the conduct of the winding up or the administration as it thinks appropriate for facilitating the implementation of the^{F58} . . . voluntary arrangement.

(4) The High Court shall not make an order under paragraph (3)(a)—

(a)^{F60} at any time before the expiration of 28 days from the day on which each of the reports required by Article 17(6) has been made to the Court, or

(b) at any time when an application under Article 19 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

F57 2002 NI 6

F58 2002 NI 6

F59 prosp. subst. by 2005 NI 10

F60 mod. by SR 2004/307

Challenge of decisions

19.—(1) Subject to this Article, an application to the High Court may be made, by any of the persons specified in paragraph (2), on one or both of the following grounds, namely—

(a) that a voluntary arrangement^{F61} which has effect under Article 17A] unfairly prejudices the interests of a creditor, member or contributory of the company;

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (b)^{F62} that there has been some material irregularity at or in relation to either of the meetings.
- (2) The persons who may apply under this Article are—
- (a)^{F62} a person entitled, in accordance with the rules, to vote at either of the meetings;
- [^{F63}(aa) a person who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if he had had notice of it;]
- ^{F62}(b) the nominee or any person who has replaced him under Article 15(4) or 17(2); and
^{F62}
- (c)^{F62} if the company is being wound up or^{F64} an administration order is in force, the liquidator or administrator.
- (3) An application under this Article shall not be made
- [^{F63}(a)]^{F62} after the expiration of 28 days from the day on which each of the reports required by Article 17(6) has been made to the High Court[^{F63} or]
- [^{F63}(b) in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,]
- [^{F63}but (subject to that) an application made by a person within paragraph (2)(aa) on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.]
- .
- (4)^{F62} Where on such an application the High Court is satisfied as to either of the grounds mentioned in paragraph (1), it may do one or both of the following, namely—
- (a) revoke or suspend[^{F61} any decision approving the voluntary arrangement which has effect under Article 17A] or, in a case falling within paragraph (1)(b), any[^{F61} decision taken by the meeting in question which has effect under that Article];
- (b) give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in a case falling within paragraph (1)(b), a further company or (as the case may be) creditors' meeting to reconsider the original proposal.
- (5)^{F62} Where at any time after giving a direction under paragraph (4)(b) for the summoning of meetings to consider a revised proposal the High Court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any[^{F61} decision approving the voluntary arrangement which has effect under Article 17A].
- (6) In a case where the High Court, on an application under this Article with respect to any meeting—
- (a) gives a direction under paragraph (4)(b), or
- (b) revokes or suspends an approval under paragraph (4)(a) or (5),
- the Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to things done[^{F61} under the voluntary arrangement since it took effect].
- (7) Except in pursuance of the preceding provisions of this Article,[^{F61} a decision taken] at a meeting summoned under Article 16 is not invalidated by any irregularity at or in relation to the meeting.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F62 mod. by SR 2004/307
F63 2002 NI 6
F64 prosp. subst. by 2005 NI 10

[^{F65}False representations, etc.

19A.—(1)^{F66} If, for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement, a person who is an officer of the company—

- (a) makes any false representation, or
- (b) fraudulently does, or omits to do, anything,

he shall be guilty of an offence.

- (2) Paragraph (1) applies even if the proposal is not approved.
- (3) For purposes of this Article "officer" includes a shadow director.]

F65 2002 NI 6
F66 mod. by SR 2004/307

Implementation of proposal

20.—(1) This Article applies where a voluntary arrangement[^{F67} has effect under Article 17A].

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—

[^{F67}(a)^{F68} on the nominee by virtue of the approval given at one or both of the meetings summoned under Article 16]

(b) by virtue of Article 15(4) or 17(2) on a person other than the nominee, shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the High Court; and on the application the Court may—

- (a) confirm, reverse or modify any act or decision of the supervisor,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(4) The supervisor—

- (a) may apply to the High Court for directions in relation to any particular matter arising under the voluntary arrangement, and
- (b) is included among the persons who may apply to the High Court for the winding up of the company or for an administration order to be made in relation to it.

(5) The High Court may, whenever—

- (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
- (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner[^{F67} or authorised to act as supervisor, in relation to the voluntary arrangement], either in substitution for the existing supervisor or to fill a vacancy.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(6) The power conferred by paragraph (5) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

F67 2002 NI 6

F68 mod. by SR 2004/307

[^{F69} Prosecution of delinquent officers of company

20A.—(1) This Article applies where a moratorium under Article 14A has been obtained for a company or the approval of a voluntary arrangement in relation to a company has taken effect under Article 17A or paragraph 46 of Schedule A1.

(2) If it appears to the nominee or supervisor that any past or present officer of the company has been guilty of any offence in connection with the moratorium or, as the case may be, voluntary arrangement for which he is criminally liable, the nominee or supervisor shall forthwith—

- (a) report the matter to the Department, and
- (b) provide the Department with such information and give the Department such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the nominee or supervisor and relating to the matter in question) as the Department requires.

(3) Where a report is made to the Department under paragraph (2), the Department may, for the purpose of investigating the matter reported to it and such other matters relating to the affairs of the company as appear to it to require investigation, exercise any of the powers which are exercisable by inspectors appointed under Article 424 or 425 of the Companies Order to investigate a company's affairs.

(4) For the purpose of such an investigation any obligation imposed on a person by any provision of the Companies Order to produce documents or give information to, or otherwise to assist, inspectors so appointed is to be regarded as an obligation similarly to assist the Department in its investigation.

(5) An answer given by a person to a question put to him in exercise of the powers conferred by paragraph (3) may be used in evidence against him.

(6) However, in criminal proceedings in which that person is charged with an offence to which this paragraph 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.

(7) Paragraph (6) applies to any offence other than an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).

(8) Where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings following any report under paragraph (2), the nominee or supervisor, and every officer and agent of the company past and present (other than the defendant), shall give the Director 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.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(9) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct any person referred to in paragraph (8) to comply with that paragraph if he has failed to do so.]

F69 2002 NI 6

Arrangements coming to an end prematurely

20B. For the purposes of this Part, a voluntary arrangement the approval of which has taken effect under Article 17A or paragraph 46 of Schedule A1 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of Article 18(2)(b)(i) or, as the case may be, paragraph 47(2)(b)(i) of Schedule A1.

F70F71F72 PART III

ADMINISTRATION ORDERS

- F70** Pt. III art. 21 substituted (27.3.2006) for Pt. III arts. 21 - 39 by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(1) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22**arts. 2 - 7**); specified substituted provisions amended (1.10.2009) by S.I. 2009/1941, arts. 2(1), 8, **Sch. 1 para. 109** (with art. 10); and by S.I. 2009/1972, **regs. 4(d)(iii), 7(b)**
- F71** mod. by S.I. 2005/1644
- F72** Pts. I-V modified by S.R. 2004/307 (as amended (1.10.2006) by [Limited Liability Partnerships \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/377\)](#), reg. 3, **Sch. 2**)

Making, etc., of administration order

Power of High Court to make order

21.—(1) Subject to this Article, if the High Court—

- (a) is satisfied that a company is or is likely to become unable to pay its debts (within the meaning of Article 103), and
- (b) considers that the making of an order under this Article would be likely to achieve one or more of the purposes mentioned in paragraph (3),

the Court may make an administration order in relation to the company.

[^{F73}(1A) For the purposes of a petition presented by the Financial Services Authority alone or together with any other party, an authorised deposit taker who defaults in an obligation to pay any sum due and payable in respect of a relevant deposit is deemed to be unable to pay its debts as mentioned in paragraph (1).

(1B) In paragraph (1A)—

- (a) “authorised deposit taker” means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits, but excludes a person who has such permission only for the purpose of carrying on another regulated activity in accordance with that permission; and
- (b) “relevant deposit” must be read with—
 - (i) section 22 of the Financial Services and Markets Act 2000,
 - (ii) any relevant order under that section, and

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(iii) Schedule 2 to that Act,

but any restriction on the meaning of deposit which arises from the identity of the person making it is to be disregarded.]

(2) An administration order is an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed by a person (“the administrator”) appointed for the purpose by the High Court.

(3) The purposes for whose achievement an administration order may be made are—

- (a) the survival of the company, and the whole or any part of its undertaking, as a going concern;
- (b) the approval of a voluntary arrangement under Part II;
- (c)^{F74} the sanctioning under Article 418 of the Companies Order of a compromise or arrangement between the company and any such persons as are mentioned in that Article; and
- (d) a more advantageous realisation of the company's assets than would be effected on a winding up;

and the order shall specify the purpose or purposes for which it is made.

[^{F73}(4)^{F75} An administration order shall not be made in relation to a company after it has gone into liquidation.

(5)^{F75} An administration order shall not be made against a company if—

[it effects or carries out contracts of insurance, but is not—

- ^{F76}(a) (i) exempt from the general prohibition, within the meaning of section 19 of the Financial Services and Markets Act 2000, in relation to effecting or carrying out contracts of insurance, or
- (ii) an authorised deposit taker within the meaning given by paragraph (1B), and effecting or carrying out contracts of insurance in the course of a banking business;]
- (b) it continues to have a liability in respect of a deposit which was held by it in accordance with the Banking Act 1979 or the Banking Act 1987^{F77}, but is not an authorised deposit taker, within the meaning given by paragraph (1B)].

(6)^{F75} Paragraph (5)(a) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

[^{F78}(7) In this Part a reference to a company includes a reference to a company in relation to which an administration order may be made by virtue of Article 3 of the EC Regulation.]

F73 SI 2001/3649

F74 mod. by 1997 c. 32

F75 mod. by SR 2004/307

F76 SI 2004/355

F77 SI 2002/1555

F78 SR 2002/334

Application for order

22.—(1)^{F79} An application to the High Court for an administration order shall be by petition presented either by the company or the directors, or by a creditor or creditors (including any

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

contingent or prospective creditor or creditors),^[F80] or by the chief clerk in exercise of the power conferred by section 35(4A) of the Criminal Justice Act (Northern Ireland) 1945 (enforcement of fines imposed on companies) or a clerk of petty sessions in exercise of the power conferred by Article 92A of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of fines imposed on companies)] or by all or any of those parties, together or separately.

(2) Where a petition is presented to the High Court—

- (a) notice of the petition shall be given forthwith to any person who has appointed, or is or may be entitled to appoint, an administrative receiver of the company, and to such other persons as may be prescribed, and
- (b) the petition shall not be withdrawn except with the leave of the Court.

(3) Where the High Court is satisfied that there is an administrative receiver of the company, the Court shall dismiss the petition unless it is also satisfied either—

- (a) that the person by whom or on whose behalf the receiver was appointed has consented to the making of the order, or
- (b) that, if an administration order were made, any security by virtue of which the receiver was appointed would—

^{F81}(i) be liable to be released or discharged under Articles 202 to 204 (transactions at an undervalue and preferences), or

(ii) be avoided under Article 207 (avoidance of floating charges).

(4) Subject to paragraph (3), on hearing a petition the High Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

(5) Without prejudice to the generality of paragraph (4), an interim order under that paragraph may restrict the exercise of any powers of the directors or of the company (whether by reference to the consent of the High Court or of a person qualified to act as an insolvency practitioner in relation to the company, or otherwise).

F79 mod. by SR 2004/307

F80 1994 NI 15

F81 prosp. inserted and renumbered 1990 NI 10

Effect of application

23.—(1) During the period beginning with the presentation of a petition for an administration order and ending with the making of such an order or the dismissal of the petition—

- (a) ^{F82} no resolution may be passed or order made for the winding up of the company;
- ^[F83](aa) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the High Court and subject to such terms as the Court may impose]
- (b) no steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire#purchase agreement, except with the leave of the High Court and subject to such terms as the Court may impose;
- (c) no other proceedings and no legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the Court and subject to such terms as aforesaid.

(2) Nothing in paragraph (1) requires the leave of the High Court—

- (a) for the presentation of a petition for the winding up of the company,

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (b)^{F84} for the appointment of an administrative receiver of the company, or
 - (c)^{F84} for the carrying out by such a receiver (whenever appointed) of any of his functions.
- (3)^{F85} Where—
- (a) a petition for an administration order is presented at a time when there is an administrative receiver of the company, and
 - (b) the person by or on whose behalf the receiver was appointed has not consented to the making of the order,

the period mentioned in paragraph (1) is deemed not to begin unless and until that person so consents.

(4) References in this Article and Article 24 to hire#purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

F82 mod. by SR 2004/307
F83 2002 NI 6
F84 mod. by 1997 c. 32
F85 mod. by 1997 c. 32

Effect of order

- 24.**—(1) On the making of an administration order—
- (a) any petition for the winding up of the company shall be dismissed, and
 - (b)^{F86} any administrative receiver of the company shall vacate office.
- (2) Where an administration order has been made, any receiver of part of the company's property shall vacate office on being required to do so by the administrator.
- (3) During the period for which an administration order is in force—
- (a)^{F87} no resolution may be passed or order made for the winding up of the company;
 - (b)^{F88} no administrative receiver of the company may be appointed;
- [^{F89}(ba) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the consent of the administrator or the leave of the High Court and subject (where the Court gives leave) to such terms as the Court may impose;]
- (c) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire#purchase agreement, except with the consent of the administrator or the leave of the High Court and subject (where the Court gives leave) to such terms as the Court may impose; and
 - (d) no other proceedings and no legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the administrator or the leave of the High Court and subject (where the Court gives leave) to such terms as aforesaid.
- (4)^{F86} Where at any time an administrative receiver of the company has vacated office under paragraph (1)(b), or a receiver of part of the company's property has vacated office under paragraph (2)—
- (a) his remuneration and any expenses properly incurred by him, and
 - (b) any indemnity to which he is entitled out of the assets of the company,

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

shall be charged on and (subject to paragraph (3)) paid out of any property of the company which was in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.

(5^{F90} Neither an administrative receiver who vacates office under paragraph (1)(b) nor a receiver who vacates office under paragraph (2) is required on or after so vacating office to take any steps for the purpose of complying with any duty imposed on him by Article 50 (duty to pay preferential creditors).

F86 mod.by 1997 c. 32
F87 mod. by SR 2004/307
F88 mod. by 1997 c. 32
F89 2002 NI 6
F90 mod.by 1997 c. 32

Notification of order

25.—(1) Every invoice, order for goods or business letter which, at a time when an administration order is in force in relation to a company, is issued by or on behalf of the company or the administrator, being a document on or in which the company's name appears, shall also contain the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator.

(2) If default is made in complying with this Article, the company and any of the following persons who without reasonable excuse authorises or permits the default, namely, the administrator and any officer of the company, shall be guilty of an offence.

Administrators

Appointment of administrator

26.—(1) The administrator of a company shall be appointed either by the administration order or by an order under paragraph (2).

(2) If a vacancy occurs by death, resignation or otherwise in the office of the administrator, the High Court may by order fill the vacancy.

(3) An application for an order under paragraph (2) may be made—

- (a) by any continuing administrator of the company; or
- (b) where there is no such administrator, by a creditors' committee established under Article 38; or
- (c^{F91} where there is no such administrator and no such committee, by the company or the directors or by any creditor or creditors of the company.

F91 mod. by SR 2004/307

General powers

27.—(1) The administrator of a company—

- (a) may do all such things as may be necessary for the management of the affairs, business and property of the company, and

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(b) without prejudice to the generality of sub#paragraph (a), has the powers specified in Schedule 1;

and in the application of that Schedule to the administrator of a company the words “he” and “him” refer to the administrator.

(2)^{F92} The administrator also has power—

(a)^{F92} to remove any director of the company and to appoint any person to be a director of it, whether to fill a vacancy or otherwise, and

(b) to call any meeting of the members or creditors of the company.

(3) The administrator may apply to the High Court for directions in relation to any particular matter arising in connection with the carrying out of his functions.

(4) Any power conferred on the company or its officers, whether by this Order or the Companies Order or by the memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the administrator of his powers is not exercisable except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(5) In exercising his powers the administrator is deemed to act as the company's agent.

(6) A person dealing with the administrator in good faith and for value is not concerned to inquire whether the administrator is acting within his powers.

F92 mod. by SR 2004/307

Power to deal with charged property, etc.

28.—(1)^{F93} The administrator of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this paragraph applies as if the property were not subject to the security.

(2) Where, on an application by the administrator, the High Court is satisfied that the disposal (with or without other assets) of—

(a) any property of the company subject to a security to which this paragraph applies, or

(b) any goods in the possession of the company under a hire#purchase agreement,

would be likely to promote the purpose or one or more of the purposes specified in the administration order, the Court may by order authorise the administrator to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire#purchase agreement were vested in the company.

(3)^{F94} Paragraph (1) applies to any security which, as created, was a floating charge; and paragraph (2) applies to any other security.

(4) Where property is disposed of under paragraph (1), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) It shall be a condition of an order under paragraph (2) that—

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be determined by the High Court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire#purchase agreement.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(6) Where a condition imposed in pursuance of paragraph (5) relates to 2 or more securities, that condition requires the net proceeds of the disposal and, where sub#paragraph (b) of that paragraph applies, the sums mentioned in that sub#paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(7) An office copy of an order under paragraph (2) shall, within 14 days from the making of the order, be sent by the administrator to the registrar.

(8) If the administrator without reasonable excuse contravenes paragraph (7), he shall be guilty of an offence and for continued contravention, he shall be guilty of a continuing offence.

(9) References in this Article to hire#purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

F93 mod.by 1997 c. 32

F94 mod.by 1997 c. 32

General duties

29.—(1) The administrator of a company shall, on his appointment, take into his custody or under his control all the property to which the company is or appears to be entitled.

- (2) The administrator shall manage the affairs, business and property of the company—
- (a) at any time before proposals have been approved (with or without modifications) under Article 36, in accordance with any directions given by the High Court, and
 - (b) at any time after proposals have been so approved, in accordance with those proposals as revised, whether by him or a predecessor of his.
- (3) The administrator shall summon a meeting of the company's creditors if—
- (a) he is requested, in accordance with the rules, to do so by one#tenth, in value, of the company's creditors, or
 - (b) he is directed to do so by the High Court.

Discharge or variation of administration order

30.—(1) The administrator of a company may at any time apply to the High Court for the administration order to be discharged, or to be varied so as to specify an additional purpose.

- (2) The administrator shall make an application under this Article if—
- (a) it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement, or
 - (b) he is required to do so by a meeting of the company's creditors summoned for the purpose in accordance with the rules.

(3) On the hearing of an application under this Article, the High Court may by order discharge or vary the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it thinks fit.

(4) Where the administration order is discharged or varied the administrator shall, within 14 days from the making of the order effecting the discharge or variation, send an office copy of that order to the registrar.

(5) If the administrator without reasonable excuse contravenes paragraph (4), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Vacation of office

31.—(1) The administrator of a company may at any time be removed from office by order of the High Court and may, in the prescribed circumstances, resign his office by giving notice of his resignation to the Court.

(2) The administrator shall vacate office if—

- (a) he ceases to be qualified to act as an insolvency practitioner in relation to the company, or
- (b) the administration order is discharged.

(3) Where at any time a person ceases to be administrator,^{F95} the following paragraphs] apply.

(4)^{F96} His remuneration and any expenses properly incurred by him shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security to which Article 28(1) then applies.

(5) Any sums payable in respect of debts or liabilities incurred, while he was administrator, under contracts entered into^{F97} . . . by him or a predecessor of his in the carrying out of his or the predecessor's functions shall be charged on and paid out of any such property as is mentioned in paragraph (4) in priority to any charge arising under that paragraph;^{F97} . . .

^{F98}(6) Any sums payable in respect of liabilities incurred, while he was administrator, under contracts of employment adopted by him or a predecessor of his in the carrying out of his or the predecessor's functions shall, to the extent that the liabilities are qualifying liabilities, be charged on and paid out of any such property as is mentioned in paragraph (4) and enjoy the same priority as any sums to which paragraph (5) applies; and for the purpose of this paragraph the administrator is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days from his appointment.

(7) For the purposes of paragraph (6), a liability under a contract of employment is a qualifying liability if—

- (a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme, and
- (b) it is in respect of services rendered wholly or partly after the adoption of the contract.

(8) There shall be disregarded for the purposes of paragraph (6) so much of any qualifying liability as represents payment in respect of services rendered before the adoption of the contract.

(9) For the purposes of paragraphs (7) and (8)—

- (a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and
- (b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(10) In paragraph (9)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the statutory provisions relating to social security as earnings in respect of that period.]

F95 1994 c.7

F96 mod.by 1997 c. 32

F97 1994 c.7

F98 1994 c.7

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Release of administrator

32.—(1) A person who has ceased to be the administrator of a company has his release with effect from the following time, that is to say—

- (a) in the case of a person who has died, the time at which notice is given to the High Court in accordance with the rules that he has ceased to hold office;
- (b) in any other case, such time as the High Court may determine.

(2) Where a person has his release under this Article, he is, with effect from the time specified in paragraph (1), discharged from all liability both in respect of acts or omissions of his in the administration and otherwise in relation to his conduct as administrator.

(3) However, nothing in this Article prevents the exercise, in relation to a person who has had his release under this Article, of the High Court's powers under Article 176 (summary remedy against delinquent directors, liquidators, etc.).

Ascertainment and investigation of company's affairs

Information to be given by administrator

33.—(1) Where an administration order has been made, the administrator shall—

- (a) forthwith send to the company and publish in the prescribed manner a notice of the order, and
- (b) within 28 days from the making of the order, unless the High Court otherwise directs, send such a notice to all creditors of the company (so far as he is aware of their addresses).

(2) Where an administration order has been made, the administrator shall also, within 14 days from the making of the order, send an office copy of the order to the registrar and to such other persons as may be prescribed.

(3) If the administrator without reasonable excuse contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Statement of affairs to be submitted to administrator

34.—(1) Where an administration order has been made, the administrator shall forthwith require some or all of the persons mentioned in paragraph (3) to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) The statement shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

(3) The persons referred to in paragraph (1) are—

- (a) those who are or have been officers of the company;
- (b) those who have taken part in the company's formation at any time within one year before the date of the administration order;
- (c) those who are in the company's employment or have been in its employment within that year, and are in the administrator's opinion capable of giving the information required;

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company;
and in this paragraph “employment” includes employment under a contract for services.

(4) Where any persons are required under this Article to submit a statement of affairs to the administrator, they shall do so (subject to paragraph (5)) before the expiration of 21 days from the day after that on which the prescribed notice of the requirement is given to them by the administrator.

(5) The administrator, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under paragraph (1) or (2), or
- (b) either when giving notice under paragraph (4) or subsequently, extend the period so mentioned;

and where the administrator has refused to exercise a power conferred by this paragraph, the High Court, if it thinks fit, may exercise it.

(6) If a person without reasonable excuse contravenes any obligation imposed under this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Administrator's proposals

Statement of proposals

35.—(1) Where an administration order has been made, the administrator shall, within 3 months (or such longer period as the High Court may allow) after the making of the order—

- (a) send to the registrar and (so far as he is aware of their addresses) to all creditors a statement of his proposals for achieving the purpose or purposes specified in the order, and
- (b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice.

(2) The administrator shall also, within 3 months (or such longer period as the High Court may allow) from the making of the order, either—

- (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company, or
- (b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

(3) If the administrator without reasonable excuse contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Consideration of proposals by creditors' meeting

36.—(1) A meeting of creditors summoned under Article 35 shall decide whether to approve the administrator's proposals.

(2) The meeting may approve the proposals with modifications, but shall not do so unless the administrator consents to each modification.

(3) Subject to paragraph (2), the meeting shall be conducted in accordance with the rules.

(4) After the conclusion of the meeting in accordance with the rules, the administrator shall report the result of the meeting to the High Court and shall give notice of that result to the registrar and to such persons as may be prescribed.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(5) If a report is given to the High Court under paragraph (4) that the meeting has declined to approve the administrator's proposals (with or without modifications), the Court may by order discharge the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

(6) Where the administration order is discharged, the administrator shall, within 14 days from the making of the order effecting the discharge, send an office copy of that order to the registrar.

(7) If the administrator without reasonable excuse contravenes paragraph (6), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Approval of substantial revisions

37.—(1) This Article applies where—

- (a) proposals have been approved (with or without modifications) under Article 36, and
- (b) the administrator proposes to make revisions of those proposals which appear to him substantial.

(2) The administrator shall—

- (a) send to all creditors of the company (so far as he is aware of their addresses) a statement in the prescribed form of his proposed revisions, and
- (b) lay a copy of the statement before a meeting of the company's creditors summoned for the purpose on not less than 14 days' notice;

and he shall not make the proposed revisions unless they are approved by the meeting.

(3) The administrator shall also either—

- (a) send a copy of the statement (so far as he is aware of their addresses) to all members of the company, or
- (b) publish in the prescribed manner a notice stating an address to which members of the company should write for copies of the statement to be sent to them free of charge.

(4) The meeting of creditors may approve the proposed revisions with modifications, but shall not do so unless the administrator consents to each modification.

(5) Subject to paragraphs (2) and (4), the meeting shall be conducted in accordance with the rules.

(6) After the conclusion of the meeting in accordance with the rules, the administrator shall give notice of the result of the meeting to the registrar and to such persons as may be prescribed.

Miscellaneous

Creditors' committee

38.—(1) Where a meeting of creditors summoned under Article 35 has approved the administrator's proposals (with or without modifications), the meeting may, if it thinks fit, establish a committee ("the creditors' committee") to exercise the functions conferred on it by or under this Order.

(2) If such a committee is established, the committee may, on giving not less than 7 days' notice, require the administrator to attend before it at any reasonable time and furnish it with such information relating to the carrying out of his functions as it may reasonably require.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Protection of interests of creditors and members

39.—(1) At any time when an administration order is in force, a creditor or member of the company may apply to the High Court for an order under this Article on the ground—

- (a) that the company's affairs, business and property are being or have been managed by the administrator in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including at least himself), or
- (b) that any actual or proposed act or omission of the administrator is or would be so prejudicial.

(2) On an application for an order under this Article the High Court may, subject to paragraphs (3) and (4), make such order as it thinks fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

(3) An order under this Article shall not prejudice or prevent—

- (a) the implementation of a voluntary arrangement approved under^{F99} Part II], or any compromise or arrangement sanctioned under Article 418 of the Companies Order; or
- (b) where the application for the order was made more than 28 days from the approval of any proposals or revised proposals under Article 36 or 37, the implementation of those proposals or revised proposals.

(4) Subject to paragraph (3), an order under this Article may in particular—

- (a) regulate the future management by the administrator of the company's affairs, business and property;
- (b) require the administrator to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained he has omitted to do;
- (c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the High Court may direct;
- (d) discharge the administration order and make such consequential provision as the Court thinks fit.

(5) Nothing in Article 28 is to be taken as prejudicing applications to the High Court under this Article.

(6) Where the administration order is discharged, the administrator shall, within 14 days from the making of the order effecting the discharge, send an office copy of that order to the registrar; and if without reasonable excuse he contravenes this paragraph, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

F99 2002 NI 6

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

PART IV

RECEIVERSHIP

RECEIVERS AND MANAGERS

Modifications etc. (not altering text)

C25 Pts. II, III and IV applied (with modifications) by 1986 c. 53, **Sch. 15A**, Pt. III (as inserted (1.12.1997) by 1997 c. 32, s. 39(2), **Sch. 6**); S.I. 1997/2668, art. 2, **Sch. Pt. I(i)**

General Provisions

VALID FROM 01/10/2009

[^{F100}Meaning of “company”

39A. In this Part “company” means a company registered under the Companies Act 2006 in Northern Ireland.]

F100 Art. 39A inserted (1.10.2009) by *Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009* (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 110(2)** (with art. 10)

Disqualification of body corporate from acting as receiver

40. A body corporate is not qualified for appointment as receiver of the property of a company, and any body corporate which acts as such a receiver shall be guilty of an offence.

^{F101}Disqualification of undischarged bankrupt

41.—(1) If a person being an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he shall be guilty of an offence.

(2) This Article does not apply to a receiver or a manager acting under an appointment made by the High Court.

F101 prosp. subst. by 2005 NI 10

Power of High Court to appoint official receiver

42. Where application is made to the High Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court, the official receiver may be so appointed.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Receivers and managers appointed out of court

Time from which appointment is effective

43.—(1) The appointment of a person as a receiver or manager of a company's property under powers contained in an instrument—

- (a) is of no effect unless it is accepted by that person before the end of the business day next following that on which the instrument of appointment is received by him or on his behalf, and
- (b) subject to this, is deemed to be made at the time at which the instrument of appointment is so received.

(2) This Article applies to the appointment of 2 or more persons as joint receivers or managers of a company's property under powers contained in an instrument, subject to such modifications as may be prescribed.

Liability for invalid appointment

44. Where the appointment of a person as the receiver or manager of a company's property under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the High Court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

Application to High Court for directions

45.—(1) A receiver or manager of the property of a company appointed under powers contained in an instrument or the persons by whom or on whose behalf a receiver or manager has been so appointed, may apply to the High Court for directions in relation to any particular matter arising in connection with the performance of the functions of the receiver or manager.

(2) On such an application, the High Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, as it thinks just.

Power of High Court to fix remuneration

46.—(1) The High Court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to a person who, under powers contained in an instrument, has been appointed receiver or manager of the company's property.

(2) The High Court's power under paragraph (1), where no previous order has been made with respect thereto under that paragraph—

- (a) extends to fixing the remuneration for any period before the making of the order or the application for it,
- (b) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application, and
- (c) subject to paragraph (3), where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.

(3) The power conferred by sub#paragraph (2)(c) shall not be exercised as respects any period before the making of the application for the order under this Article, unless in the opinion of the High Court there are special circumstances making it proper for the power to be exercised.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(4) The High Court may on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under paragraph (1).

Liability for contracts, etc.

47.—(1) A receiver or manager appointed under powers contained in an instrument (other than an administrative receiver) is, to the same extent as if he had been appointed by order of the High Court—

- (a) personally liable on any contract entered into by him in the performance of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the performance of those functions, and
- (b) entitled in respect of that liability to indemnity out of the assets.

(2) For the purposes of paragraph (1)(a), the receiver or manager is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days from his appointment.

(3) Paragraph (1) does not limit any right to indemnity which the receiver or manager would have apart from it, nor limit his liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.

(4) Where at any time a receiver or manager so appointed vacates office—

- (a) his remuneration and any expenses properly incurred by him, and
- (b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any charge or other security held by the person by or on whose behalf he was appointed.

Receivership accounts to be delivered to registrar

48.—(1) Except in the case of an administrative receiver, every receiver or manager of a company's property who has been appointed under powers contained in an instrument shall deliver to the registrar for registration the requisite accounts of his receipts and payments.

(2) The accounts shall be delivered within one month (or such longer period as the registrar may allow) after the expiration of 12 months from the date of his appointment and of every subsequent period of 6 months, and also within one month after he ceases to act as receiver or manager.

(3) The requisite accounts shall be an abstract in the prescribed form showing—

- (a) receipts and payments during the relevant period of 12 or 6 months, or
- (b) where the receiver or manager ceases to act, receipts and payments during the period from the end of the period of 12 or 6 months to which the last preceding abstract related (or, if no preceding abstract has been delivered under this Article, from the date of his appointment) up to the date of his so ceasing, and the aggregate amount of receipts and payments during all preceding periods since his appointment.

(4) A receiver or manager who contravenes this Article shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Provisions applicable to every receivership

Notification that receiver or manager appointed

49.—(1) When a receiver or manager of the property of a company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the company's name appears, shall contain a statement that a receiver or manager has been appointed.

(2) If this Article is contravened, the company and any of the following persons, who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence.

Payment of debts out of assets subject to floating charge

50 ^{F102}.—(1) This Article applies, in the case of a company, where a receiver is appointed on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge.

(2) If the company is not at the time in course of being wound up, its preferential debts (within the meaning of Article 346) shall be paid out of the assets coming to the hands of the receiver in priority to any claims for principal or interest in respect of the debentures.

(3) Payments made under this Article shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

F102 mod.by 1997 c. 32

Enforcement of duty to make returns

51.—(1) If a receiver or manager of a company's property—

- (a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver or manager is by law required to file, deliver, make or give, fails to make good the default within 14 days from the service on him of a notice requiring him to do so, or
- (b) having been appointed under powers contained in an instrument, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch them and pay over to the liquidator the amount properly payable to him,

the High Court may, on an application made for the purpose, make an order directing the receiver or manager (as the case may be) to make good the default within such time as may be specified in the order.

(2) In the case of the default mentioned in paragraph (1)(a), application to the High Court may be made by any member or creditor of the company or by the registrar; and in the case of the default mentioned in paragraph (1)(b), the application shall be made by the liquidator.

(3) An order of the High Court under paragraph (1), may provide that all costs of and incidental to an application under that paragraph shall be borne by the receiver or manager, as the case may be.

(4) Nothing in this Article prejudices the operation of any statutory provision imposing penalties on receivers in respect of any such default as is mentioned in paragraph (1).

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Administrative receivers: general

General powers

52^{F103}.—(1) The powers conferred on the administrative receiver of a company by the debentures by virtue of which he was appointed are deemed to include (except in so far as they are inconsistent with any of the provisions of those debentures) the powers specified in Schedule 1.

(2) In the application of Schedule 1 to the administrative receiver of a company—

- (a) the words “he” and “him” refer to the administrative receiver, and
- (b) references to the property of the company are to the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

(3) A person dealing with the administrative receiver in good faith and for value is not concerned to inquire whether the receiver is acting within his powers.

F103 mod.by 1997 c. 32

Power to dispose of charged property, etc.

53^{F104}.—(1) Where, on an application by the administrative receiver, the High Court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security would be likely to promote a more advantageous realisation of the company's assets than would otherwise be effected, the Court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.

(2) Paragraph (1) does not apply in the case of any security held by the person by or on whose behalf the administrative receiver was appointed, or of any security to which a security so held has priority.

(3) It shall be a condition of an order under this Article that—

- (a) the net proceeds of the disposal, and
- (b) where those proceeds are less than such amount as may be determined by the High Court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security.

(4) Where a condition imposed in pursuance of paragraph (3) relates to 2 or more securities, that condition shall require the net proceeds of the disposal and, where sub#paragraph (b) of that paragraph applies, the sums mentioned in that sub#paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(5) An office copy of an order under this Article shall, within 14 days of the making of the order, be sent by the administrative receiver to the registrar.

(6) If the administrative receiver without reasonable excuse contravenes paragraph (5), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

(7) In this Article “relevant property”, in relation to the administrative receiver, means the property of which he is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

F104 mod.by 1997 c. 32

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Agency and liability for contracts

54^{F105}.—(1) The administrative receiver of a company—

- (a) is deemed to be the company's agent, unless and until the company goes into liquidation;
- (b) is personally liable on any contract entered into by him in the carrying out of his functions (except in so far as the contract otherwise provides) and^{F106}, to the extent of any qualifying liability,] on any contract of employment adopted by him in the carrying out of those functions; and
- (c) is entitled in respect of that liability to an indemnity out of the assets of the company.

(2) For the purposes of paragraph (1)(b) the administrative receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days from his appointment.

^{F107}(2A) For the purposes of paragraph (1)(b), a liability under a contract of employment is a qualifying liability if—

- (a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme,
- (b) it is incurred while the administrative receiver is in office, and
- (c) it is in respect of services rendered wholly or partly after the adoption of the contract.

(2B) Where a sum payable in respect of a liability which is a qualifying liability for the purposes of paragraph (1)(b) is payable in respect of services rendered partly before and partly after the adoption of the contract, liability under paragraph (1)(b) shall only extend to so much of the sum as is payable in respect of services rendered after the adoption of the contract.

(2C) For the purposes of paragraphs (2A) and (2B)—

- (a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and
- (b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(2D) In paragraph (2C)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the statutory provisions relating to social security as earnings in respect of that period.]

(3) This Article does not limit any right to indemnity which the administrative receiver would have apart from it, nor limit his liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

F105 mod.by 1997 c. 32

F106 1994 c.7

F107 1994 c.7

Vacation of office

55^{F108}.—(1) An administrative receiver of a company may at any time be removed from office by order of the High Court (but not otherwise) and may resign his office by giving notice of his resignation in the prescribed manner to such persons as may be prescribed.

(2) An administrative receiver shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (3) Where at any time an administrative receiver vacates office—
- (a) his remuneration and any expenses properly incurred by him, and
 - (b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.

(4) Where an administrative receiver vacates office otherwise than by death, he shall, within 14 days from his vacation of office, send a notice to that effect to the registrar.

(5) If an administrative receiver without reasonable excuse contravenes paragraph (4), he shall be guilty of an offence^{F109} and, for continued contravention, he shall be guilty of a continuing offence.

F108 mod.by 1997 c. 32

F109 prosp. rep. by 1990 NI 10

Administrative receivers: ascertainment and investigation of company's affairs

Information to be given by administrative receiver

56^{F110}.—(1) Where an administrative receiver is appointed, he shall—

- (a) forthwith send to the company and publish in the prescribed manner a notice of his appointment, and
- (b) within 28 days from his appointment, unless the High Court otherwise directs, send such a notice to all the creditors of the company (so far as he is aware of their addresses).

(2) This Article and Article 57 do not apply in relation to the appointment of an administrative receiver to act—

- (a) with an existing administrative receiver, or
- (b) in place of an administrative receiver dying or ceasing to act,

except that, where they apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in this Article and Article 57 to the administrative receiver include (subject to paragraph (3)) his successor and any continuing administrative receiver.

(3) If the company is being wound up, this Article and Article 57 apply notwithstanding that the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If the administrative receiver without reasonable excuse contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

F110 mod.by 1997 c. 32

Statement of affairs to be submitted

57^{F111}.—(1) Where an administrative receiver is appointed, he shall forthwith require some or all of the persons mentioned in paragraph (3) to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) A statement submitted under this Article shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the company's assets, debts and liabilities;

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (b) the names and addresses of its creditors;
 - (c) the securities held by them respectively;
 - (d) the dates when the securities were respectively given; and
 - (e) such further or other information as may be prescribed.
- (3) The persons referred to in paragraph (1) are—
- (a) those who are or have been officers of the company;
 - (b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver;
 - (c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;
 - (d) those who are or have been within that year officers of or in the employment of a company which is, or within that year was, an officer of the company;

and in this paragraph “employment” includes employment under a contract for services.

(4) Where any persons are required under this Article to submit a statement of affairs to the administrative receiver, they shall do so (subject to paragraph (5)) before the expiration of 21 days from the day on which the prescribed notice of the requirement is given to them by the administrative receiver.

- (5) The administrative receiver, if he thinks fit, may—
- (a) at any time release a person from an obligation imposed on him under paragraph (1) or (2), or
 - (b) either when giving notice under paragraph (4) or subsequently, extend the period so mentioned;

and where the administrative receiver has refused to exercise a power conferred by this paragraph, the High Court, if it thinks fit, may exercise it.

(6) If a person without reasonable excuse contravenes any obligation imposed under this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

F111 mod.by 1997 c. 32

Report by administrative receiver

58^{F112}.—(1) Where an administrative receiver is appointed, he shall, within 3 months (or such longer period as the High Court may allow) from his appointment, send to the registrar, to any trustees for secured creditors of the company and (so far as he is aware of their addresses) to all such creditors a report as to the following matters, namely—

- (a) the events leading up to his appointment, so far as he is aware of them;
- (b) the disposal or proposed disposal by him of any property of the company and the carrying on or proposed carrying on by him of any business of the company;
- (c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors; and
- (d) the amount (if any) likely to be available for the payment of other creditors.

(2) The administrative receiver shall also, within 3 months (or such longer period as the High Court may allow) from his appointment, either—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the company; or
 - (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge,
- and (in either case), unless the Court otherwise directs, lay a copy of the report before a meeting of the company's unsecured creditors summoned for the purpose on not less than 14 days' notice.
- (3) The High Court shall not give a direction under paragraph (2) unless—
 - (a) the report states the intention of the administrative receiver to apply for the direction, and
 - (b) a copy of the report is sent to the persons mentioned in sub#paragraph (a) of that paragraph, or a notice is published as mentioned in sub#paragraph (b) of that paragraph, not less than 14 days before the hearing of the application.
 - (4) Where the company has gone or goes into liquidation, the administrative receiver—
 - (a) shall, within 7 days from his compliance with paragraph (1) or, if later, the nomination or appointment of the liquidator, send a copy of the report to the liquidator, and
 - (b) where he does so within the time limited for compliance with paragraph (2), is not required to comply with that paragraph.
 - (5) A report under this Article shall include a summary of the statement of affairs made out and submitted to the administrative receiver under Article 57 and of his comments (if any) upon it.
 - (6) Nothing in this Article is to be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his functions.
 - (7) Article 56(2) applies for the purposes of this Article also.
 - (8) If the administrative receiver without reasonable excuse contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

F112 mod.by 1997 c. 32

Committee of creditors

59^{F113}.—(1) Where a meeting of creditors is summoned under Article 58, the meeting may, if it thinks fit, establish a committee (“the creditors' committee”) to exercise the functions conferred on it by or under this Order.

(2) If such a committee is established, the committee may, on giving not less than 7 days' notice, require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

F113 mod.by 1997 c. 32

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

VALID FROM 27/03/2006

^{F114}Prohibition of appointment of administrative receiver

F114 Arts. 59A - 59J and preceding cross - heading inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), **5(1)** (with art. 4); [S.R. 2006/21](#), **art. 2** (with [S.R. 2006/22](#), **arts. 2 - 7**)

Floating charge holder not to appoint administrative receiver

59A.—(1) The holder of a qualifying floating charge in respect of a company's property may not appoint an administrative receiver of the company.

(2) In paragraph (1) “holder of a qualifying floating charge in respect of a company's property” has the same meaning as in paragraph 15 of Schedule B1.

(3) This Article applies—

- (a) to a floating charge created on or after a date appointed by the Department by order, and
- (b) in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name).

(4) An order under paragraph (3)(a) may—

- (a) make provision which applies generally or only for a specified purpose;
- (b) make different provision for different purposes;
- (c) make transitional provision.

(5) This Article is subject to the exceptions specified in Articles 59B to 59I.

First exception: capital market

59B.—(1) Article 59A does not prevent the appointment of an administrative receiver in pursuance of an agreement which is or forms part of a capital market arrangement if—

- (a) a party incurs or, when the agreement was entered into was expected to incur, a debt of at least £50 million under the arrangement, and
- (b) the arrangement involves the issue of a capital market investment.

(2) In paragraph (1)—

“capital market arrangement” means an arrangement of a kind described in paragraph 1 of Schedule 1A, and

“capital market investment” means an investment of a kind described in paragraph 2 or 3 of that Schedule.

Second exception: public-private partnership

59C.—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a public-private partnership project, and
- (b) includes step-in rights.

(2) In this Article “public-private partnership project” means a project—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
 - (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.
- (3) In this Article—
- “step-in rights” has the meaning given by paragraph 6 of Schedule 1A, and
 - “project company” has the meaning given by paragraph 7 of that Schedule.

Third exception: utilities

59D.—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a utility project, and
 - (b) includes step-in rights.
- (2) In this Article—
- (a) “utility project” means a project designed wholly or mainly for the purpose of a regulated business,
 - (b) “regulated business” means a business of a kind listed in paragraph 10 of Schedule 1A,
 - (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule, and
 - (d) “project company” has the meaning given by paragraph 7 of that Schedule.

Fourth exception: urban regeneration projects

59E.—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is designed wholly or mainly to develop land which at the commencement of the project is wholly or partly in a designated disadvantaged area in Northern Ireland, and
 - (b) includes step-in rights.
- (2) In paragraph (1) “develop” means to carry out—
- (a) building operations,
 - (b) any operation for the removal of substances or waste from land and the levelling of the surface of the land, or
 - (c) engineering operations in connection with the activities mentioned in sub-paragraph (a) or (b).
- (3) In this Article—
- “building” includes any structure or erection, and any part of a building as so defined, but does not include plant and machinery comprised in a building,
 - “building operations” includes—
- (a) demolition of buildings,
 - (b) filling in of trenches,
 - (c) rebuilding,
 - (d) structural alterations of, or additions to, buildings and
 - (e) other operations normally undertaken by a person carrying on business as a builder,

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

“designated disadvantaged area” means an area designated as a disadvantaged area under section 92 of the Finance Act 2001 (c. 9),

“engineering operations” includes the formation and laying out of means of access to highways,

“project company” has the meaning given by paragraph 7 of Schedule 1A,

“step-in rights” has the meaning given by paragraph 6 of that Schedule,

“substance” means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour, and

“waste” includes any waste materials, spoil, refuse or other matter deposited on land.

Fifth exception: project finance

59F.—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a financed project, and
- (b) includes step-in rights.

(2) In this Article—

- (a) a project is “financed” if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least £50 million for the purposes of carrying out the project,
- (b) “project company” has the meaning given by paragraph 7 of Schedule 1A, and
- (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule.

Sixth exception: financial market

59G. Article 59A does not prevent the appointment of an administrative receiver of a company by virtue of—

- (a) a market charge within the meaning of Article 95 of the Companies (No. 2) (Northern Ireland) Order 1990 (NI 10),
- (b) a system-charge within the meaning of the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (SR 1996 No. 252).

Seventh exception: registered housing association

59H. Article 59A does not prevent the appointment of an administrative receiver of a housing association which is registered as such under Chapter II of Part II of the Housing (Northern Ireland) Order 1992 (NI 15).

Eighth exception: licence companies

59I. Article 59A does not prevent the appointment of an administrative receiver of a licence company within the meaning of section 26 of the Transport Act 2000 (c. 38).

Articles 59A to 59I: supplementary

59J.—(1) Schedule 1A (which supplements Articles 59A to 59I) shall have effect.

(2) The Department may by order—

- (a) insert into this Order provision creating an additional exception to Article 59A(1);

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (b) provide for a provision of this Order which creates an exception to Article 59A(1) to cease to have effect;
 - (c) amend Article 59A in consequence of provision made under sub-paragraph (a) or (b);
 - (d) amend any of Articles 59B to 59I;
 - (e) amend Schedule 1A.
- (3) An order under paragraph (2) may make—
- (a) provision which applies generally or only for a specified purpose;
 - (b) different provision for different purposes;
 - (c) consequential or supplementary provision;
 - (d) transitional provision.
- (4) An order under paragraph (2)—
- (a) in the case of an order under paragraph (2)(e), shall be subject to negative resolution,
 - (b) in the case of an order under paragraph (2)(d) varying the sum specified in Article 59B(1)(a) or 59F(2)(a) (whether or not the order also makes consequential or transitional provision), shall be subject to negative resolution, and
 - (c) in the case of any other order under paragraph (2)(a) to (d), shall be subject to affirmative resolution.]

^{F115}PART V

WINDING UP OF COMPANIES REGISTERED UNDER THE COMPANIES ORDERS

F115 Pts. I-V modified by S.R. 2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/377), reg. 3, Sch. 2)

CHAPTER I

PRELIMINARY

Modes of winding up

Alternative modes of winding up

60.—(1 ^{F116} The winding up of a company, within the meaning given by Article 3 of the Companies Order, may be either voluntary (Chapters II, III, IV and V) or by the High Court (Chapter VI).

(2) This Chapter, and Chapters VII to X, relate to winding up generally, except where otherwise stated.

F116 mod. by SR 2004/307

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Contributories

Liability as contributories of present and past members

61^{F117}.—(1) When a company is wound up, every present and past member is liable to contribute to its assets to any amount sufficient for payment of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

(2) This is subject as follows—

- (a) a past member is not liable to contribute if he has ceased to be a member for one year or more before the commencement of the winding up;
- (b) a past member is not liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c) a past member is not liable to contribute, unless it appears to the High Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of the Companies Order and this Order;
- (d) in the case of a company limited by shares, no contribution is required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member;
- (e) nothing in the Companies Order or this Order invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (f) a sum due to any member of the company (in his character of a member) by way of dividends, profits or otherwise is not deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(3) In the case of a company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be contributed by him to the company's assets in the event of its being wound up; but if it is a company with a share capital, every member of it is liable (in addition to the amount so undertaken to be contributed to the assets), to contribute to the extent of any sums unpaid on shares held by him.

F117 mod. by SR 2004/307

Directors with unlimited liability

62^{F118}.—(1) In the winding up of a limited company, any director (whether past or present) whose liability is under the Companies Order unlimited is liable, in addition to his liability (if any) to contribute as an ordinary member, to make a further contribution as if he were at the commencement of the winding up a member of an unlimited company.

(2) However—

- (a) a past director is not liable to make such further contribution if he has ceased to hold office for a year or more before the commencement of the winding up;
- (b) a past director is not liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (c) subject to the company's articles, a director is not liable to make such further contribution unless the High Court deems it necessary to require that contribution in order to satisfy the company's debts and liabilities, and the expenses of the winding up.

F118 mod. by SR 2004/307

Liability of past directors and shareholders

63^{F119}.—(1) This Article applies where a company is being wound up and—

- (a) it has under Chapter VII of Part VI of the Companies Order (redeemable shares; purchase by a company of its own shares) made a payment out of capital in respect of the redemption or purchase of any of its own shares (the payment being referred to in this Article as “the relevant payment”), and
- (b) the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets (apart from this Article) is not sufficient for payment of its debts and liabilities, and the expenses of the winding up.

(2) If the winding up commenced within one year from the date on which the relevant payment was made, then—

- (a) the person from whom the shares were redeemed or purchased, and
- (b) the directors who signed the statutory declaration made in accordance with Article 183(3) of the Companies Order for the purposes of the redemption or purchase (except a director who shows that he had reasonable grounds for forming the opinion set out in the declaration),

are, so as to enable that insufficiency to be met, liable to contribute to the following extent to the company's assets.

(3) A person from whom any of the shares were redeemed or purchased is liable to contribute an amount not exceeding so much of the relevant payment as was made by the company in respect of his shares; and the directors are jointly and severally liable with that person to contribute that amount.

(4) A person who has contributed any amount to the assets in pursuance of this Article may apply to the High Court for an order directing any other person jointly and severally liable in respect of that amount to pay him such amount as the Court thinks just and equitable.

(5) Articles 61 and 62 do not apply in relation to liability accruing by virtue of this Article.

(6) This Article is deemed included in Chapter VII of Part VI of the Companies Order for the purposes of the Department's power to make regulations under Article 189 of that Order.

F119 mod. by SR 2004/307

Limited company formerly unlimited

64^{F120}.—(1) This Article applies in the case of a company being wound up which was at some former time registered as unlimited but has re#registered—

- (a) as a public company under Article 53 of the Companies Order (or the former corresponding provision, Article 7 of the Companies (Northern Ireland) Order 1981^{F121}), or
- (b) as a limited company under Article 61 of the Companies Order (or the former corresponding provision, Article 119 of the Companies (Northern Ireland) Order 1978^{F122}).

(2) Notwithstanding Article 61(2)(a), a past member of the company who was a member of it at the time of re#registration, if the winding up commences within 3 years from the day on which the

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

company was re#registered, is liable to contribute to the assets of the company in respect of debts and liabilities contracted before that time.

(3) Subject to Article 61(2)(a) and to paragraph (2), but notwithstanding Article 61(2)(c), if no persons who were members of the company at that time are existing members of it, a person who at that time was a present or past member is liable to contribute as mentioned in paragraph (2) notwithstanding that the existing members have satisfied the contributions required to be made by them under the Companies Order and this Order.

(4) Notwithstanding Article 61(2)(d) and (3), there is no limit on the amount which a person who, at that time, was a past or present member of the company is liable to contribute as mentioned in paragraph (2).

F120 mod. by SR 2004/307
F121 1981 NI 19
F122 1978 NI 12

Unlimited company formerly limited

65^{F123}.—(1) This Article applies in the case of a company being wound up which was at some former time registered as limited but has been re#registered as unlimited under Article 59 of the Companies Order (or the former corresponding provision, Article 118 of the Companies (Northern Ireland) Order 1978^{F124}).

(2) A person who, at the time when the application for the company to be re#registered was lodged, was a past member of the company and did not after that again become a member of it is not liable to contribute to the assets of the company more than he would have been liable to contribute had the company not been re#registered.

F123 mod. by SR 2004/307
F124 1978 NI 12

Nature of contributory's liability

66. The liability of a contributory creates a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the liability.

Contributories in case of death of a member

67.—(1) If a contributory dies either before or after he has been placed on the list of contributories, his personal representatives are liable in a due course of administration to contribute to the assets of the company in discharge of his liability and are contributories accordingly.

(2) If the personal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and for compelling payment out of it of the money due.

Effect of contributory's bankruptcy

68.—(1) This Article applies if a contributory becomes bankrupt, either before or after he has been placed on the list of contributories.

(2) His trustee in bankruptcy represents him for all purposes of the winding up, and is a contributory accordingly.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(3) The trustee may be called on to admit to proof against the bankrupt's estate, or otherwise allow to be paid out of the bankrupt's assets in due course of law, any money due from the bankrupt in respect of his liability to contribute to the company's assets.

(4) There may be proved against the bankrupt's estate the estimated value of his liability to future calls as well as calls already made.

Companies registered under Companies Order, Part XXII, Chapter II

69^{F125}.—(1) This Article applies in the event of a company being wound up which has been registered under Article 629 of the Companies Order (or previous corresponding provisions in the Companies Act (Northern Ireland) 1960^{F126} or earlier Acts).

(2) Every person is a contributory, in respect of the company's debts and liabilities contracted before registration, who is liable—

- (a) to pay, or contribute to the payment of, any debt or liability so contracted, or
- (b) to pay, or contribute to the payment of, any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or
- (c) to pay, or contribute to the amount of, the expenses of winding up the company, so far as relates to such debts or liabilities.

(3) Every contributory is liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as is mentioned in paragraph (2).

(4) In the event of the death, bankruptcy or insolvency of any contributory, provisions of this Order, with respect to the personal representatives of deceased contributories and to the trustees of bankrupt or insolvent contributories respectively, apply.

F125 mod. by SR 2004/307

F126 1960 c. 22 (NI)

CHAPTER II

VOLUNTARY WINDING UP (INTRODUCTORY AND GENERAL)

Resolutions for, and commencement of, voluntary winding up

Circumstances in which company may be wound up voluntarily

70.—(1)^{F127} A company may be wound up voluntarily—

- (a) when the period (if any) fixed for the duration of the company by its articles expires, or the event (if any) occurs, on the occurrence of which its articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring it to be wound up voluntarily;
- (b) if the company resolves by special resolution that it be wound up voluntarily;
- (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

^{F128}(2)^{F127} A resolution passed under sub#paragraph (a) of paragraph (1), as well as a special resolution under sub#paragraph (b) and an extraordinary resolution under sub#paragraph (c), is subject to Article 388 of the Companies Order (copy of resolution to be forwarded to registrar within 15 days).^{F127}

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F127 mod. by SR 2004/307

F128 prosp. insertion by 2005 NI 10

Notice of resolution to wind up voluntarily

71.—(1 ^{F129} When a company has passed a resolution for voluntary winding up, it shall, within 14 days from the passing of the resolution, give notice of the resolution by advertisement in the Belfast Gazette.

(2) If default is made in complying with this Article, the company and every officer of it who is in default shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(3) For the purposes of paragraph (2) the liquidator is deemed an officer of the company.

F129 mod. by SR 2004/307

Commencement of voluntary winding up

72 ^{F130}. A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up.

F130 mod. by SR 2004/307

Consequences of resolution to wind up

Effect on business and status of company

73.—(1) In the case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.

(2 ^{F131} However, the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until the company is dissolved.

F131 mod. by SR 2004/307

Avoidance of share transfers, etc., after winding#up resolution

^{F132}74. Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the company's members, made after the commencement of a voluntary winding up is void.

F132 mod. by SR 2004/307

Modifications etc. (not altering text)

C26 Art. 74 excluded by [Financial Markets and Insolvency \(Settlement Finality\) Regulations 1999 \(S.I. 1999/2979\)](#), reg. 16(3) (as amended (1.10.2009) by [Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009 \(S.I. 2009/1972\)](#), reg. 6(b))

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Declaration of solvency

Statutory declaration of solvency

75^{F133}.—(1) Where it is proposed to wind up a company voluntarily, the directors (or, in the case of a company having more than 2 directors, the majority of them) may at a directors' meeting make a statutory declaration to the effect that they have made a full inquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest at the official rate (as defined in Article 5(1)), within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.

(2) Such a declaration by the directors has no effect for the purposes of this Order unless—

- (a)^{F133} it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and
- (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.

(3)^{F133} The declaration shall be delivered to the registrar before the expiration of 15 days from the date on which the resolution for winding up is passed.

(4) A director making a declaration under this Article without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within the period specified shall be guilty of an offence.

(5)^{F133} If the company is wound up in pursuance of a resolution passed within 5 weeks from the making of the declaration, and its debts (together with interest at the official rate) are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.

(6) If a declaration required by paragraph (3) to be delivered to the registrar is not so delivered within the time specified by that paragraph, the company and every officer of it who is in default shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

F133 mod. by SR 2004/307

Distinction between “members’” and “creditors’” voluntary winding up

76^{F134}. A winding up in the case of which a directors' statutory declaration in accordance with Article 75 has been made is a “members' voluntary winding up”; and a winding up in the case of which such a declaration has not been made is a “creditors' voluntary winding up”.

F134 mod. by SR 2004/307

CHAPTER III

MEMBERS' VOLUNTARY WINDING UP

Appointment of liquidator

77.—(1)^{F135} In a members' voluntary winding up, the company in general meeting shall appoint one or more liquidators for the purpose of winding up the company's affairs and distributing its assets.

(2)^{F135} On the appointment of a liquidator all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance.^{F135}

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F135 mod. by SR 2004/307

Power to fill vacancy in office of liquidator

78.—(1 ^{F136} If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2 ^{F136} For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3 ^{F136} The meeting shall be held in the manner provided by this Order or by the company's articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the High Court. ^{F136}

F136 mod. by SR 2004/307

General company meeting at each year's end

79.—(1 ^{F137} Subject to Articles 82 and 88, in the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Department may allow.

(2) The liquidator shall lay before the meeting an account of his acts and dealings, and of the conduct of the winding up, during the preceding year.

(3) If the liquidator contravenes this Article, he shall be guilty of an offence. ^{F137}

F137 mod. by SR 2004/307

Final meeting prior to dissolution

80.—(1 ^{F138} As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving an explanation of it.

(2) The meeting shall be called by advertisement in the Belfast Gazette, specifying its time, place and object and published at least one month before the meeting.

(3) Within one week from the meeting, the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meeting and of its date.

(4) If the copy is not sent or the return is not made in accordance with paragraph (3), the liquidator shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(5) If a quorum is not present at the meeting, the liquidator shall, in lieu of the return mentioned in paragraph (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such a return being made, the provisions of paragraph (3) as to the making of the return are deemed complied with.

^{F138}(6 ^{F138} If the liquidator fails to call a general meeting of the company as required by paragraph (1), he shall be guilty of an offence.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F138 mod. by SR 2004/307

Effect of company's insolvency

81.—(1 ^{F139} This Article applies where the liquidator is of the opinion that the company will be unable to pay its debts in full (together with interest at the official rate) within the period stated in the directors' declaration under Article 75.

(2) The liquidator shall—

- (a) summon a meeting of creditors not later than 28 days from the day on which he formed that opinion;
- (b) not less than 7 days before the day on which the creditors' meeting is to be held—
 - (i) send notices of that meeting to the creditors by post; and
 - (ii) cause notice of that meeting to be advertised once in the Belfast Gazette and once at least in 2 newspapers circulating in each district in which the company's principal place of business in the United Kingdom was situated during the relevant period; and
- (c) during the period before the day on which the creditors' meeting is to be held, furnish creditors free of charge with such information concerning the affairs of the company as they may reasonably require;

and the notice of the creditors' meeting shall state the duty imposed by sub#paragraph (c).

(3) The liquidator shall also—

- (a) make out a statement in the prescribed form as to the affairs of the company;
- (b) lay that statement before the creditors' meeting; and
- (c) attend and preside at that meeting.

(4) The statement as to the affairs of the company shall be verified by affidavit by the liquidator and shall show—

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of the company's creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

(5) Where the company had no place of business in the United Kingdom during the relevant period, the reference in paragraph (2)(b)(ii) to the company's principal place of business in the United Kingdom is replaced by a reference to its registered office.

(6 ^{F139} In this Article “the relevant period” means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

(7) If the liquidator without reasonable excuse contravenes this Article, he shall be guilty of an offence.

F139 mod. by SR 2004/307

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Conversion to creditors' voluntary winding up

82. As from the day on which the creditors' meeting is held under Article 81, this Order has effect as if—

- (a) ^{F140} the directors' declaration under Article 75 had not been made; and
- (b) ^{F140} the creditors' meeting and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in Article 84;

and accordingly the winding up becomes a creditors' voluntary winding up.

F140 mod. by SR 2004/307

CHAPTER IV

CREDITORS' VOLUNTARY WINDING UP

Application of this Chapter

83.—(1) Subject to paragraph (2), this Chapter applies in relation to a creditors' voluntary winding up.

(2) Articles 84 and 85 do not apply where, under Article 82, a members' voluntary winding up has become a creditors' voluntary winding up.

Meeting of creditors

84.—(1) The company shall—

- (a) ^{F141} cause a meeting of its creditors to be summoned not later than 14 days from the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;
- (b) not less than 7 days before the day on which the creditors' meeting is to be held—
 - (i) cause the notices of that meeting to be sent by post; and
 - (ii) cause notice of that meeting to be advertised once in the Belfast Gazette and once at least in 2 newspapers circulating in each district in which the company's principal place of business in the United Kingdom was situated during the relevant period.

(2) The notice of the creditors' meeting shall state either—

- (a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require; or
- (b) a place in each district mentioned in paragraph (1)(b)(ii) where, on the 2 business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge.

(3) Where the company had no place of business in the United Kingdom during the relevant period, the reference in paragraph (1)(b)(ii) to the company's principal place of business in the United Kingdom is replaced by a reference to its registered office.

(4) ^{F141} In this Article “the relevant period” means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

(5) If the company without reasonable excuse contravenes paragraph (1) or (2), it shall be guilty of an offence.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F141 mod. by SR 2004/307

Directors to lay statement of affairs before creditors

85.—(1 ^{F142} The directors of the company shall—

- (a) make out a statement in the prescribed form as to the affairs of the company;
- (b) cause that statement to be laid before the creditors' meeting under Article 84; and
- (c) appoint one of their number to preside at that meeting;

and it is the duty of the director so appointed to attend the meeting and preside over it.

(2 ^{F142} The statement as to the affairs of the company shall be verified by affidavit by some or all of the directors and shall show—

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of the company's creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

(3 ^{F142} If—

- (a) the directors without reasonable excuse contravene paragraph (1) or (2); or
- (b) any director without reasonable excuse contravenes paragraph (1), so far as requiring him to attend and preside at the creditors' meeting,

the directors or (as the case may be) the director shall be guilty of an offence.

F142 mod. by SR 2004/307

Appointment of liquidator

86.—(1 ^{F143} The creditors and the company at their respective meetings mentioned in Article 84 may nominate a person to be liquidator for the purpose of winding up the company's affairs and distributing its assets.

(2) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the company.

(3 ^{F143} In the case of different persons being nominated, any director, member or creditor of the company may, within 7 days from the date on which the nomination was made by the creditors, apply to the High Court for an order either—

- (a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or
- (b) appointing some other person to be liquidator instead of the person nominated by the creditors.^{F144}

F143 mod. by SR 2004/307

F144 prosp. addition by 2005 NI 10

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Appointment of liquidation committee

87.—(1) The creditors at the meeting to be held under Article 84 or at any subsequent meeting may, if they think fit, appoint a committee (“the liquidation committee”) of not more than 5 persons to exercise the functions conferred on it by or under this Order.

(2) ^{F145} If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding 5.

(3) However, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the liquidation committee; and if the creditors so resolve—

- (a) the persons mentioned in the resolution are not then, unless the High Court otherwise directs, qualified to act as members of the committee; and
- (b) on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

F145 mod. by SR 2004/307

Creditors' meeting where winding up converted under Article 82

88. Where, in the case of a winding up which was, under Article 82, converted to a creditors' voluntary winding up, a creditors' meeting is held in accordance with Article 81, any appointment made or committee established by that meeting is deemed to have been made or established by a meeting held in accordance with Article 84.

Cesser of directors' powers

89. On the appointment of a liquidator, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no such committee, the creditors) sanction their continuance.

Vacancy in office of liquidator

90. If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the High Court), the creditors may fill the vacancy.

Meetings of company and creditors at each year's end

91.—(1) ^{F146} If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Department may allow.

(2) The liquidator shall lay before each of the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(3) If the liquidator contravenes this Article, he shall be guilty of an offence.

(4) Where under Article 82 a members' voluntary winding up has become a creditors' voluntary winding up, and the creditors' meeting under Article 81 is held 3 months or less before the end of the first year from the commencement of the winding up, the liquidator is not required by this Article to summon a meeting of creditors at the end of that year. ^{F146}

F146 mod. by SR 2004/307

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Final meeting prior to dissolution

92.—(1) ^{F147} As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.

(2) Each such meeting shall be called by advertisement in the Belfast Gazette specifying the time, place and object of the meeting, and published at least one month before it.

(3) Within one week from the date of the meetings (or, if they are not held on the same date, from the date of the later one) the liquidator shall send to the registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates.

(4) If the copy is not sent or the return is not made in accordance with paragraph (3), the liquidator shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(5) However, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by paragraph (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such return being made the provisions of that paragraph as to the making of the return are, in respect of that meeting, deemed complied with.

^{F147}(6) ^{F147} If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this Article, he shall be guilty of an offence.

F147 mod. by SR 2004/307

CHAPTER V

PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP

Distribution of company's property

93. Subject to the provisions of this Order as to preferential payments, the company's property in a voluntary winding up shall on the winding up be applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the company's articles otherwise provide) be distributed among the members according to their rights and interests in the company.

Appointment or removal of liquidator by the High Court

94.—(1) If from any cause whatever there is no liquidator acting, the High Court may appoint a liquidator.

(2) The High Court may, on cause shown, remove a liquidator and appoint another.

Notice by liquidator of his appointment

95.—(1) The liquidator shall, within 14 days from his appointment, publish in the Belfast Gazette and deliver to the registrar for registration a notice of his appointment in the form prescribed.

(2) If the liquidator contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Acceptance of shares, etc., as consideration for sale of company's property

96 ^{F148}.—(1) This Article applies, in the case of a company proposed to be, or being, wound up voluntarily, where the whole or part of the company's business or property is proposed to be transferred or sold

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

[^{F149}(a)] to another company (“the transferee company”), whether or not the latter is a company within the meaning of the Companies Order[^{F149}, or]

[^{F149}(b) to a limited liability partnership (the transferee limited liability partnership).]

(2) With the requisite sanction, the liquidator of the company being, or proposed to be, wound up (“the transferor company”) may receive, in compensation or part compensation for the transfer or[^{F149} sale—]

[^{F149}(a) in the case of the transferee company, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or

(b) in the case of the transferee limited liability partnership, membership in the transferee limited liability partnership for distribution among the members of the transferor company.]

(3) The sanction requisite under paragraph (2) is—

(a) in the case of a members' voluntary winding up, that of a special resolution of the company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, and

(b) in the case of a creditors' voluntary winding up, that of either the High Court or the liquidation committee.

(4) Alternatively to paragraph (2), the liquidator may (with that sanction) enter into any other arrangement whereby the members of the transferor[^{F149} company may—]

[^{F149}(a) in the case of the transferee company, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto) participate in the profits of, or receive any other benefit from, the transferee company, or

(b) in the case of the transferee limited liability partnership, in lieu of receiving cash or membership (or in addition thereto), participate in some other way in the profits of, or receive any other benefit from, the transferee limited liability partnership.]

(5) A sale or arrangement in pursuance of this Article is binding on members of the transferor company.

(6) A special resolution is not invalid for the purposes of this Article by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but, if an order is made within a year for winding up the company by the High Court, the special resolution is not valid unless sanctioned by the Court.

F148 mod. by SR 2004/307

F149 SR 2004/307

Dissent from arrangement under Article 96

97.—(1 ^{F150} This Article applies in the case of a voluntary winding up where, for the purposes of Article 96(2) or (4), there has been passed a special resolution of the transferor company providing the sanction requisite for the liquidator under that Article.

(2 ^{F150} If a member of the transferor company who did not vote in favour of the special resolution expresses his dissent from it in writing, addressed to the liquidator and left at the company's registered office within 7 days from the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration under this Article.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(3)^{F150} If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(4)^{F150} For the purposes of an arbitration under this Article, the provisions of the Companies Clauses Consolidation Act 1845^{F151} with respect to the settlement of disputes by arbitration are incorporated with this Order, and—

- (a) in the construction of those provisions this Order is deemed the special Act and “the company” means the transferor company, and
- (b) any appointment by the incorporated provisions directed to be made under the hand of the secretary or any 2 of the directors may be made in writing by the liquidator (or, if there is more than one liquidator, then any 2 or more of them).

F150 mod. by SR 2004/307

F151 1845 c. 16

Reference of questions to the High Court

98.—(1) The liquidator or any contributory or creditor may apply to the High Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The High Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(3) An office copy of an order made by virtue of this Article staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

No liquidator appointed or nominated by company

99.—(1) This Article applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the company.

(2) The powers of the directors shall not be exercised, except with the sanction of the High Court or (in the case of a creditors' voluntary winding up) so far as may be necessary to secure compliance with Article 84 (creditors' meeting) and Article 85 (statement of affairs), during the period before the appointment or nomination of a liquidator of the company.

(3) Paragraph (2) does not apply in relation to the powers of the directors—

- (a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of, and
- (b) to do all such other things as may be necessary for the protection of the company's assets.

(4) If the directors of the company without reasonable excuse contravene this Article, they shall be guilty of an offence.

Expenses of voluntary winding up

100. All expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Saving for certain rights

101. The voluntary winding up of a company does not bar the right of any creditor or contributory to have it wound up by the High Court; but in the case of an application by a contributory the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

CHAPTER VI

WINDING UP BY THE HIGH COURT

Grounds and effect of winding up petition

Circumstances in which company may be wound up by the High Court

102 ^{F152}. A company may be wound up by the High Court if—

- (a) the company has by special resolution resolved that the company be wound up by the Court,
- (b) being a public company which was registered as such on its original incorporation, the company has not been issued with a certificate under Article 127 of the Companies Order (public company share capital requirements) and more than a year has expired since it was so registered,
- (c) it is an old public company, within the meaning of Article 3 of the Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986^{F153},
- (d) the company does not commence its business within one year from its incorporation or suspends its business for a year,
- (e) [^{F154}except in the case of a private company limited by shares or by guarantee,] the number of members is reduced below 2,
- (f) the company is unable to pay its debts,
- ^{F155}(fa) at the time at which a moratorium for the company under Article 14A comes to an end, no voluntary arrangement approved under Part II has effect in relation to the company]
- (g) the Court is of the opinion that it is just and equitable that the company should be wound up.

F152 mod. by SR 2004/307

F153 1986 NI 9

F154 SR 1992/405

F155 2002 NI 6

Definition of inability to pay debts; the statutory demand

103.—(1) A company is deemed unable to pay its debts—

- (a) ^{F156} if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding £750 then due has served on the company, by leaving it at the company's registered office, a demand (known as “the statutory demand”) in the prescribed form requiring the company to pay the sum due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or
- (b) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981^{F157}, or

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (c) if, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part, or
- (d) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or
- (e) if it is otherwise proved to the satisfaction of the High Court that the company is unable to pay its debts as they fall due.

(2) A company is also deemed unable to pay its debts if it is proved to the satisfaction of the High Court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(3) The money sum for the time being specified in paragraph (1)(a) is subject to increase or reduction by order under Article 362(1)(a).

F156 mod. by SR 2005/68

F157 1981 NI 6

Modifications etc. (not altering text)

C27 Art. 103 applied (17.2.2009 for certain purposes, otherwise 21.2.2009) by **Banking Act 2009 (c. 1), ss. 166(3), 167, 263(1)** (with s. 247); S.I. 2009/296, **arts. 2, 3, Sch.**

Application for winding up

104.—(1) Subject to the provisions of this Article, an application to the High Court for the winding up of a company shall be by petition presented either by the company, or the directors, or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories^{F158}, or by a liquidator (within the meaning of Article 2(b) of the EC Regulation) appointed in proceedings by virtue of Article 3(1) of the EC Regulation or a temporary administrator (within the meaning of Article 38 of the EC Regulation),^{F159} or by the chief clerk in exercise of the power conferred by section 35(4A) of the Criminal Justice Act (Northern Ireland) 1945 (enforcement of fines imposed on companies) or a clerk of petty sessions in exercise of the power conferred by Article 92A of the Magistrates' Courts (Northern Ireland) Order 1981 (enforcement of fines imposed on companies)] or by all of any of those parties, together or separately.

(2)^{F160} Except as mentioned in paragraph (3), a contributory is not entitled to present a winding up petition unless either—

- (a) the number of members is reduced below 2, or
- (b) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder.

(3)^{F160} A person who is liable under Article 63 to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in Article 102(f) and (g), and paragraph (2) does not then apply; but unless the person is a contributory otherwise than under Article 63, he may not in his character as contributory petition on any other ground.

(4)^{F160} Paragraph (3) is deemed included in Chapter VII of Part VI of the Companies Order (redeemable shares; purchase by a company of its own shares) for the purposes of the Department's power to make regulations under Article 189 of that Order.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

[^{F161}(4A ^{F160} A winding-up petition on the ground set out in Article 102(fa) may only be presented by one or more creditors]

(5) A winding-up petition may be presented by the Department—

(a ^{F160} if the ground of the petition is that in Article 102(b) or (c), or

[^{F162}(b) in a case falling within Article 104A^{F163} or 104B].]

^{F164}(6) Where a company is being wound up voluntarily, a winding-up petition may be presented by the official receiver as well as by any other person authorised in that behalf under the other provisions of this Article; but the High Court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

F158 SR 2002/334

F159 1994 NI 15

F160 mod. by SR 2004/307

F161 2002 NI 6

F162 1990 NI 10

F163 SR 2004/417

F164 prosp. insertion by 2005 NI 17

[^{F165}Petition for winding up on grounds of public interest

104A.—(1) Where it appears to the Department from—

(a) any report made or information obtained under Part XV^{F166} of the Companies Order (company investigations, &c.),

Sub-para.(b) rep. by 1993 c.36

[any report made by inspectors under—

^{F167}(c) (i) section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000, or

^{F168}

(ii) where the company is an open-ended investment company (within the meaning of that Act), regulations made as a result of section 262(2)(k) of that Act;

(cc ^{F168} any information or documents obtained under section 165, 171, 172, 173 or 175 of that Act;]

(d) any information obtained under section 2 of the Criminal Justice Act 1987 or section 52 of the Criminal Justice (Scotland) Act 1987 (fraud investigations), or

(e) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),

that it is expedient in the public interest that a company should be wound up, it may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.

(2) This Article does not apply if the company is already being wound up by the court.]

F165 1990 NI 10

F166 prosp. insertion by 2005 NI 17

F167 SI 2001/3649

F168 mod. by SR 2004/307

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

[^{F169}Petition for winding up of SE

104B.—(1) Where—

- (a) an SE whose registered office is in Northern Ireland is not in compliance with Article 7 of Council Regulation (EC) No 2157/2001 on the Statute for a European Company (the “EC Regulation”) (location of head office and registered office), and
- (b) it appears to the Department that the SE should be wound up,

the Department may present a petition for it to be wound up if the court thinks it is just and equitable for it to be so.

- (2) This Article does not apply if the SE is already being wound up by the court.
- (3) In this Article “SE” has the same meaning as in the EC Regulation.]

F169 SR 2004/417

VALID FROM 18/08/2006

[^{F170}Petition for winding up of SCE

104C.—(1) Where, in the case of an SCE whose registered office is in Northern Ireland—

- (a) there has been such a breach as is mentioned in Article 73(1) of Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative (SCE) (the “European Cooperative Society Regulation”) (winding up by the court or other competent authority), and
- (b) it appears to the Registrar of Credit Unions for Northern Ireland that the SCE should be wound up,

the Registrar may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(2) Where, in the case of an SCE whose registered office is in Northern Ireland—

- (a) the SCE is not in compliance with Article 6 of the European Cooperative Society Regulation (location of head office and registered office), and
- (b) it appears to the Registrar of Credit Unions for Northern Ireland that the SCE should be wound up,

the Registrar may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(3) This Article does not apply if the SCE is already being wound up by the court.

(4) In this Article “SCE” has the same meaning as in the European Cooperative Society Regulation.]

F170 Art. 104C inserted (18.8.2006) by The European Cooperative Society Regulations 2006 (S.I. 2006/2078), reg. 33(3)

Powers of High Court on hearing of petition

105.—(1) On hearing a winding#up petition the High Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit; but the

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Court shall not refuse to make a winding#up order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) If the petition is presented by members of the company as contributories on the ground that it is just and equitable that the company should be wound up, the High Court, if it is of the opinion—

- (a) that the petitioners are entitled to relief either by winding up the company or by some other means, and
- (b) that in the absence of any other remedy it would be just and equitable that the company should be wound up,

shall make a winding#up order; but this does not apply if the Court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

Power to stay or restrain proceedings against company

106.—(1) At any time after the presentation of a winding#up petition, and before a winding#up order has been made, the company, or any creditor or contributory, may—

- (a) where any action or proceeding against the company is pending in the High Court or Court of Appeal, apply to the Court in which the action or proceeding is pending for a stay of proceedings therein, and
- (b) where any other action or proceeding is pending against the company, apply to the High Court to restrain further proceedings in the action or proceeding;

and the Court to which application is so made may (as the case may be) stay or restrain the proceedings accordingly on such terms as it thinks fit.

(2 ^{F171} In the case of a company registered under Article 629 of the Companies Order (pre#1862 companies; companies formed under legislation other than the Companies Acts) or the previous corresponding legislation, where the application to stay or restrain is by a creditor, this Article extends to actions and proceedings against any contributory of the company.

F171 mod. by SR 2004/307

Avoidance of property dispositions, etc.

107 ^{F172}. ^{F173} In a winding up by the High Court, any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the Court otherwise orders, void. ^{F174}

F172 mod. by SR 2004/307

F173 prosp. renumbered by 2005 NI 10

F174 prosp. addition by 2005 NI 10

Avoidance of sequestration or distress

108. Where a company is being wound up by the High Court, any sequestration or distress put in force against the estate or effects of the company after the commencement of the winding up is void.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Commencement of winding up

Commencement of winding up by the High Court

109.—(1) ^{F175} If, before the presentation of a petition for the winding up of a company by the High Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution; and unless the Court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

^{F176}(2) In any other case, the winding up of a company by the High Court is deemed to commence at the time of the presentation of the petition for winding up.

F175 mod. by SR 2004/307

F176 prosp. insertion by 2005 NI 10

Consequences of winding#up order

110.—(1) On the making of a winding#up order, an office copy of the order must forthwith be forwarded by the company (or otherwise as may be prescribed) to the registrar for registration.

(2) When a winding#up order has been made or a provisionalliquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the High Court and subject to such terms as the Court may impose.

(3) ^{F177} When an order has been made for winding up a company registered under Article 629 of the Companies Order, no action or proceeding shall be commenced or proceeded with against the company or its property or any contributory of the company, in respect of any debt of the company, except by leave of the High Court, and subject to such terms as the Court may impose.

(4) An order for winding up a company operates in favour of all the creditors and of all contributories of the company as if made on the joint petition of a creditor and of a contributory.

F177 mod. by SR 2004/307

Investigation procedures

Company's statement of affairs

111.—(1) Where the High Court has made a winding#up order or appointed a provisional liquidator, the official receiver may require some or all of the persons mentioned in paragraph (3) to make out and submit to him a statement in the prescribed form as to the affairs of the company.

(2) The statement shall be verified by affidavit by the persons required to submit it and shall show—

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of the company's creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed or as the official receiver may require.

(3) The persons referred to in paragraph (1) are—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) those who are or have been officers of the company;
- (b) those who have taken part in the formation of the company at any time within one year before the relevant date;
- (c) those who are in the company's employment, or have been in its employment within that year, and are in the official receiver's opinion capable of giving the information required;
- (d) those who are or have been within that year officers of, or in the employment of, a company which is, or within that year was, an officer of the company.

(4) Where any persons are required under this Article to submit a statement of affairs to the official receiver, they shall do so (subject to paragraph (5)) before the expiration of 21 days from the day on which the prescribed notice of the requirement is given to them by the official receiver.

(5) The official receiver, if he thinks fit, may—

- (a) at any time release a person from an obligation imposed on him under paragraph (1) or (2); or
- (b) either when giving the notice mentioned in paragraph (4) or subsequently, extend the period so mentioned;

and where the official receiver has refused to exercise a power conferred by this paragraph, the High Court, if it thinks fit, may exercise it.

(6) In this Article—

“employment” includes employment under a contract for services; and

“the relevant date” means—

- (a) in a case where a provisional liquidator is appointed, the date of his appointment; and
- (b) in a case where no such appointment is made, the date of the winding#up order.

(7) If a person without reasonable excuse contravenes any obligation imposed under this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Investigation by official receiver

112.—(1) Where a winding#up order is made by the High Court, it is the duty of the official receiver to investigate—

- (a) if the company has failed, the causes of the failure; and
- (b) generally, the promotion, formation, business, dealings and affairs of the company,

and to make such report (if any) to the Court as he thinks fit.

(2) The report is, in any proceedings, prima facie evidence of the facts stated in it.

Public examination of officers

113.—(1) Where a company is being wound up by the High Court, the official receiver may at any time before the dissolution of the company apply to the Court for the public examination of any person who—

- (a) is or has been an officer of the company; or
- (b) has acted as liquidator or administrator of the company or as receiver or manager; or
- (c) not being a person falling within sub#paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company.

(2) Unless the High Court otherwise orders, the official receiver shall make an application under paragraph (1) if he is requested in accordance with the rules to do so by—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) one-half, in value, of the company's creditors; or
- (b) three-quarters, in value, of the company's contributories.

(3) On an application under paragraph (1), the High Court shall direct that a public examination of the person to whom the application relates shall be held on a day appointed by the Court; and that person shall attend on that day and be publicly examined as to the promotion, formation or management of the company or as to the conduct of its business and affairs, or his conduct or dealings in relation to the company.

(4) The following may take part in the public examination of a person under this Article and may question that person concerning the matters mentioned in paragraph (3), namely—

- (a) the official receiver;
- (b) the liquidator of the company;
- (c) any person who has been appointed as special manager of the company's property or business;
- (d) any creditor of the company who has tendered a proof;
- (e) any contributory of the company.

Enforcement of Article 113

114.—(1) If a person without reasonable excuse fails at any time to attend his public examination under Article 113, he is guilty of a contempt of court and liable to be punished accordingly.

(2) In a case where a person without reasonable excuse fails at any time to attend his examination under Article 113 or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination under that Article, the High Court may cause a warrant to be issued to a constable—

- (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.

(3) In such a case the High Court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the Court may order.

Appointment of liquidator

Appointment and powers of provisional liquidator

115.—(1) Subject to the provisions of this Article, the High Court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally.

(2) The appointment of a provisional liquidator may be made at any time before the making of a winding-up order; and either the official receiver or any other fit person may be appointed.

(3) The provisional liquidator shall carry out such functions as the High Court may confer on him.

(4) When a liquidator is provisionally appointed by the High Court, his powers may be limited by the order appointing him.

Functions of official receiver in relation to office of liquidator

116.—(1) The following provisions of this Article have effect, subject to Article 119, on a winding-up order being made by the High Court.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(2) The official receiver, by virtue of his office, becomes the liquidator of the company and continues in office until another person becomes liquidator under the provisions of this Part.

(3) The official receiver is, by virtue of his office, the liquidator during any vacancy.

(4) At any time when he is the liquidator of the company, the official receiver may summon separate meetings of the company's creditors and contributories for the purpose of choosing a person to be liquidator of the company in place of the official receiver.

(5) It is the duty of the official receiver—

(a) as soon as practicable within the period of 12 weeks from the day on which the winding up order was made, to decide whether to exercise his power under paragraph (4) to summon meetings, and

(b) if in pursuance of sub#paragraph (a) he decides not to exercise that power, to give notice of his decision, before the end of that period, to the High Court and to the company's creditors and contributories, and

(c) (whether or not he has decided to exercise that power) to exercise his power to summon meetings under paragraph (4) if he is at any time requested, in accordance with the rules, to do so by one#quarter, in value, of the company's creditors;

and accordingly, where the duty imposed by sub#paragraph (c) arises before the official receiver has performed a duty imposed by sub#paragraph (a) or (b), he is not required to perform the latter duty.

(6) A notice given under paragraph (5)(b) to the company's creditors shall contain an explanation of the creditors' power under paragraph (5)(c) to require the official receiver to summon meetings of the company's creditors and contributories.

Appointment by Department

117.—(1) In a winding up by the High Court the official receiver may, at any time when he is liquidator of the company, apply to the Department for the appointment of a person as liquidator in his place.

(2) If meetings are held in pursuance of a decision under Article 116(5)(a), but no person is chosen to be liquidator as a result of those meetings, it is the duty of the official receiver to decide whether to refer the need for an appointment to the Department.

(3) On an application under paragraph (1), or a reference made in pursuance of a decision under paragraph (2), the Department shall either make an appointment or decline to make one.

(4) Where a liquidator has been appointed by the Department under paragraph (3), the liquidator shall give notice of his appointment to the company's creditors or, if the High Court so allows, shall advertise his appointment in accordance with the directions of the Court.

(5) In that notice or advertisement the liquidator shall—

(a) state whether he proposes to summon a general meeting of the company's creditors under Article 120 for the purpose of determining (together with any meeting of contributories) whether a liquidation committee should be established under that Article, and

(b) if he does not propose to summon such a meeting, set out the power of the company's creditors under that Article to require him to summon one.

Choice of liquidator at meetings of creditors and contributories

118.—(1) This Article applies where a company is being wound up by the High Court and separate meetings of the company's creditors and contributories are summoned for the purpose of choosing a person to be liquidator of the company.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(2) The creditors and the contributories at their respective meetings may nominate a person to be liquidator.

(3) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the contributories.

(4) In the case of different persons being nominated, any contributory or creditor may, within 7 days from the date on which the nomination was made by the creditors, apply to the High Court for an order either—

- (a) appointing the person nominated as liquidator by the contributories to be a liquidator instead of, or jointly with, the person nominated by the creditors; or
- (b) appointing some other person to be liquidator instead of the person nominated by the creditors.

Appointment by the High Court following administration or voluntary arrangement

119.—^{F178}(1) Where a winding#up order is made immediately upon the discharge of an administration order, the High Court may appoint as liquidator of the company the person who has ceased on the discharge of the administration order to be the administrator of the company.

(2) Where a winding#up order is made at a time when there is a supervisor of a voluntary arrangement approved in relation to the company under Part II, the High Court may appoint as liquidator of the company the person who is the supervisor at the time when the winding#up order is made.

(3) Where the High Court makes an appointment under this Article, the official receiver does not become the liquidator as otherwise provided by Article 116(2), and he has no duty under Article 116(5)(a) or (b) in respect of the summoning of creditors' or contributories' meetings.

F178 prosp. subst. by [2005 NI 10](#)

Liquidation committees

Liquidation committee

120.—(1) Where a winding#up order has been made and separate meetings of creditors and contributories have been summoned for the purpose of choosing a person to be liquidator, those meetings may establish a committee (“the liquidation committee”) to exercise the functions conferred on it by or under this Order.

(2) The liquidator (not being the official receiver) may at any time, if he thinks fit, summon separate general meetings of the company's creditors and contributories for the purpose of determining whether such a committee should be established and, if it is so determined, of establishing it.

The liquidator (not being the official receiver) shall summon such a meeting if he is requested, in accordance with the rules, to do so by one#tenth, in value, of the company's creditors.

(3) Where meetings are summoned under this Article, or for the purpose of choosing a person to be liquidator, and either the meeting of creditors or the meeting of contributories decides that a liquidation committee should be established, but the other meeting does not so decide or decides that a committee should not be established, the committee shall be established in accordance with the rules, unless the High Court otherwise orders.

(4) The liquidation committee is not to be able or required to carry out its functions at any time when the official receiver is liquidator; but at any such time its functions are vested in the Department except to the extent that the rules otherwise provide.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(5) Where there is for the time being no liquidation committee, and the liquidator is a person other than the official receiver, the functions of such a committee are vested in the Department except to the extent that the rules otherwise provide.

The liquidator's functions

General functions in winding up by the High Court

121.—(1) The functions of the liquidator of a company which is being wound up by the High Court are to secure that the assets of the company are got in, realised and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.

(2) It is the duty of the liquidator of a company which is being wound up by the High Court, if he is not the official receiver—

- (a) to furnish the official receiver with such information,
- (b) to produce to the official receiver, and permit inspection by the official receiver of, such books, papers and other records, and
- (c) to give the official receiver such other assistance,

as the official receiver may reasonably require for the purposes of carrying out his functions in relation to the winding up.

Custody of company's property

122. When a winding-up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator (as the case may be) shall take into his custody or under his control all the property to which the company is or appears to be entitled.

Vesting of company property in liquidator

123.—(1) When a company is being wound up by the High Court, the Court may on the application of the liquidator by order direct that all or any part of the property belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name; and thereupon the property to which the order relates vests accordingly.

(2) The liquidator may, after giving such indemnity (if any) as the High Court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

Duty to summon final meeting

124.—(1) Subject to paragraph (2), if it appears to the liquidator of a company which is being wound up by the High Court that the winding up of the company is for practical purposes complete and the liquidator is not the official receiver, the liquidator shall summon a final general meeting of the company's creditors which—

- (a) shall receive the liquidator's report of the winding up, and
- (b) shall determine whether the liquidator should have his release under Article 148.

(2) The liquidator may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice of any final distribution of the company's property but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the liquidator is able to report to the meeting that the winding up of the company is for practical purposes complete.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(3) In the carrying out of his functions in the winding up it is the duty of the liquidator to retain sufficient sums from the company's property to cover the expenses of summoning and holding the meeting required by this Article.

General powers of High Court

Power to stay winding up

125.—(1) The High Court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) The High Court may, before making an order, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) An office copy of every order made under this Article shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

Settlement of list of contributories and application of assets

126.—(1 ^{F179}) As soon as may be after making a winding#up order, the High Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of the Companies Order or this Order, and shall cause the company's assets to be collected, and applied in discharge of its liabilities.

(2) If it appears to the High Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list, the High Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

F179 mod. by SR 2004/307

Debts due from contributory to company

127.—(1 ^{F180}) The High Court may, at any time after making a winding#up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due from him (or from the estate of the person whom he represents) to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of the Companies Order or this Order.

(2 ^{F180}) The High Court in making such an order may—

- (a) in the case of an unlimited company, allow to the contributory by way of set#off any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit, and
- (b) in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance.

(3 ^{F180}) In the case of any company, whether limited or unlimited, when all the creditors are paid in full (together with interest at the official rate), any money due on any account whatever to a contributory from the company may be allowed to him by way of set#off against any subsequent call.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F180 mod. by SR 2004/307

Power to make calls

128.—(1) The High Court may, at any time after making a winding#up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the company's debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the High Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

Payment into bank of money due to company

129.—(1) The High Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into such bank as the Court may appoint for the purpose to the account of the liquidator instead of to the liquidator, and such an order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All money and securities paid or delivered into any such bank as is mentioned in paragraph (1) in the event of a winding up by the High Court are subject in all respects to the orders of the Court.

Order on contributory to be conclusive evidence

130.—(1) An order made by the High Court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, but subject to any right of appeal.

(2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings.

Power to exclude creditors not proving in time

131. The High Court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

Adjustment of rights of contributories

132. The High Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

Inspection of books by creditors, etc.

133.—(1) The High Court may, at any time after making a winding#up order, make such order for inspection of the company's books and papers by creditors and contributories as the Court thinks just; and any books and papers in the company's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this Article excludes or restricts any statutory rights of—

- (a) a Northern Ireland department; or
- (b) a department of the Government of the United Kingdom; or
- (c) a person acting under the authority of either such department.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Payment of expenses of winding up

134. The High Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the Court thinks just.

Power to arrest absconding contributory

135. The High Court, at any time either before or after making a winding#up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be kept safely until such time as the Court may order.

Powers of High Court to be cumulative

136. Powers conferred by this Order and the Companies Order on the High Court are in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sum.

Delegation of powers to liquidator

137.—(1) Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the High Court by the Companies Order and this Order in respect of the following matters—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories,
- (b) ^{F181} the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,
- (c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator,
- (d) the making of calls,
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court, and subject to the Court's control.

(2) ^{F181} But the liquidator shall not, without the special leave of the High Court, rectify the register of members, and shall not make any call without either that special leave or the sanction of the liquidation committee.

F181 mod. by SR 2004/307

CHAPTER VII LIQUIDATORS

Preliminary

Style and title of liquidators

138. The liquidator of a company shall be described—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) where a person other than the official receiver is liquidator, by the style of “the liquidator” of the particular company, or
- (b) where the official receiver is liquidator, by the style of “the official receiver and liquidator” of the particular company;

and in neither case shall he be described by an individual name.

Corrupt inducement affecting appointment

139. A person who gives, or agrees or offers to give, to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be guilty of an offence.

Liquidator's powers and duties

Voluntary winding up

140.—(1) This Article has effect where a company is being wound up voluntarily, but subject to Article 141 in the case of a creditors' voluntary winding up.

(2) The liquidator may—

- (a) ^{F182} in the case of a members' voluntary winding up, with the sanction of an extraordinary resolution of the company, and
- (b) in the case of a creditor's voluntary winding up, with the sanction of the High Court or the liquidation committee (or, if there is no such committee, a meeting of the company's creditors),

exercise any of the powers specified in Part I of Schedule 2 (payment of debts, compromise of claims, etc.).

(3) The liquidator may, without sanction, exercise either of the powers specified in Part II of Schedule 2 (institution and defence of proceedings; carrying on the business of the company) and any of the general powers specified in Part III of Schedule 2.

(4) The liquidator may—

- (a) exercise the High Court's power of settling a list of contributories (which list is prima facie evidence of the liability of the persons named in it to be contributories),
- (b) exercise the Court's power of making calls,
- (c) ^{F182} summon general meetings of the company for the purpose of obtaining its sanction by special or extraordinary resolution or for any other purpose he may think fit.

^{F182}(5) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.

(6) Where the liquidator in exercise of the powers conferred on him by this Order disposes of any property of the company to a person who is connected with the company (within the meaning given by Article 7), he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

F182 mod. by SR 2004/307

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Creditors' voluntary winding up

141.—(1) This Article applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.

(2) The powers conferred on the liquidator by Article 140 shall not be exercised, except with the sanction of the High Court, during the period before the holding of the creditors' meeting under Article 84.

(3) Paragraph (2) does not apply in relation to the power of the liquidator—

- (a) to take into his custody or under his control all the property to which the company is or appears to be entitled;
- (b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and
- (c) to do all such other things as may be necessary for the protection of the company's assets.

(4) The liquidator shall attend the creditors' meeting held under Article 84 and shall report to the meeting on any exercise by him of his powers (whether or not under this Article or under Article 98 or 140).

(5) If default is made—

- (a) by the company in complying with paragraph (1) or (2) of Article 84, or
- (b) ^{F183} by the directors in complying with paragraph (1) or (2) of Article 85,

the liquidator shall, within 7 days from the relevant day, apply to the High Court for directions as to the manner in which that default is to be remedied.

(6) “The relevant day” means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.

(7) If the liquidator without reasonable excuse contravenes this Article, he shall be guilty of an offence.

F183 mod. by SR 2004/307

Winding up by the High Court

142.—(1) Where a company is being wound up by the High Court, the liquidator may—

- (a) with the sanction of the Court or the liquidation committee, exercise any of the powers specified in Parts I and II of Schedule 2 (payment of debts; compromise of claims, etc.; institution and defence of proceedings; carrying on of the business of the company), and
- (b) with or without that sanction, exercise any of the general powers specified in Part III of Schedule 2.

(2) Where the liquidator (not being the official receiver), in exercise of the powers conferred on him by this Order—

- (a) disposes of any property of the company to a person who is connected with the company (within the meaning given by Article 7), or
- (b) employs a solicitor to assist him in the carrying out of his functions,

he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

(3) The exercise by the liquidator in a winding up by the High Court of the powers conferred by this Article is subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Supplementary powers

143.—(1) This Article applies in the case of a company which is being wound up by the High Court.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by resolution (either at the meeting appointing the liquidator or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories (as the case may be).

(3) The liquidator may apply to the High Court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up.

(4) Subject to the provisions of this Order, the liquidator shall use his own discretion in the management of the assets and their distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the High Court; and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

^{F184}(5A) Where at any time after a winding-up petition has been presented to the High Court against any person (including an insolvent partnership or other body which may be wound up under Part VI of the Order as an unregistered company), whether by virtue of the provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 or not, the attention of the Court is drawn to the fact that the person in question is a member of an insolvent partnership, the Court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(5B) Any order or directions under paragraph (5A) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.

(5C) Where the High Court makes an order^{F185} under section 367(3)(a) of the Financial Services and Markets Act 2000] for the winding up of an insolvent partnership, the Court may make an order as to the future conduct of the winding-up proceedings, and any such order may apply any provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 with any necessary modifications.]

F184 SR 1995/225

F185 SI 2002/1555

Enforcement of liquidator's duty to make returns, etc.

144.—(1) If a liquidator who has made any default—

- (a) in filing, delivering or making any return, account or other document, or
- (b) in giving any notice which he is by law required to file, deliver, make or give,

fails to make good the default within 14 days from the service on him of a notice requiring him to do so, the High Court has the following powers.

(2) On an application made by any creditor or contributory of the company, or by the registrar, the High Court may make an order directing the liquidator to make good the default within such time as may be specified in the order.

(3) The High Court's order may provide that all costs of and incidental to the application shall be borne by the liquidator.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(4) Nothing in this Article prejudices the operation of any statutory provision imposing penalties on a liquidator in respect of any such default as is mentioned in paragraph (1).

Removal: vacation of office

Removal, etc. (voluntary winding up)

145.—(1) This Article applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up voluntarily.

(2) Subject to paragraph (3), the liquidator may be removed from office only by an order of the High Court or—

- (a) ^{F186} in the case of a members' voluntary winding up, by a general meeting of the company summoned specially for that purpose, or
- (b) in the case of a creditors' voluntary winding up, by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules.

(3) Where the liquidator was appointed by the High Court under Article 94, a meeting such as is mentioned in paragraph (2) shall be summoned for the purpose of replacing him only if he thinks fit or the Court so directs or the meeting is requested, in accordance with the rules—

- (a) in the case of a members' voluntary winding up, by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting, or
- (b) in the case of a creditors' voluntary winding up, by not less than one-half, in value, of the company's creditors.

(4) A liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(5) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the registrar.

(6) Where—

- (a) ^{F186} in the case of a members' voluntary winding up, a final meeting of the company has been held under Article 80, or
- (b) ^{F186} in the case of a creditors' voluntary winding up, final meetings of the company and of the creditors have been held under Article 92,

the liquidator whose report was considered at the meeting or meetings shall vacate office as soon as he has complied with paragraph (3) of that Article and has given notice to the registrar that the meeting or meetings have been held and of the decisions (if any) of the meeting or meetings. ^{F186}

F186 mod. by SR 2004/307

Removal, etc. (winding up by the High Court)

146.—(1) This Article applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up by the High Court, or of a provisional liquidator.

(2) Subject to paragraphs (3) and (4), the liquidator may be removed from office only by an order of the High Court or by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules; and a provisional liquidator may be removed from office only by an order of the Court.

(3) Where—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) the official receiver is liquidator otherwise than in succession under Article 116(3) to a person who held office as a result of a nomination by a meeting of the company's creditors or contributories, or
- (b) the liquidator was appointed by the High Court otherwise than under Article 118(4)(a) or 119(1), or was appointed by the Department,

a general meeting of the company's creditors shall be summoned for the purpose of replacing him only if he thinks fit, or the Court so directs, or the meeting is requested, in accordance with the rules, by not less than one-quarter, in value, of the creditors.

(4) If appointed by the Department, the liquidator may be removed from office by a direction of the Department.

(5) A liquidator or provisional liquidator, not being the official receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(6) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the High Court.

(7) Where a final meeting has been held under Article 124 (liquidator's report on completion of winding up), the liquidator whose report was considered at the meeting shall vacate office as soon as he has given notice to the High Court and the registrar that the meeting has been held and of the decisions (if any) of the meeting.

Release of liquidator

Release (voluntary winding up)

147.—(1) This Article applies with respect to the release of the liquidator of a company which is being wound up voluntarily.

(2) A person who has ceased to be a liquidator shall have his release with effect from the following time, that is to say—

- (a) ^{F187} in the case of a person who has been removed from office by a general meeting of the company or by a general meeting of the company's creditors that has not resolved against his release or who has died, the time at which notice is given to the registrar in accordance with the rules that that person has ceased to hold office;
- (b) in the case of a person who has been removed from office by a general meeting of the company's creditors that has resolved against his release, or by the High Court, or who has vacated office under Article 145(4), such time as the Department may, on the application of that person, determine;
- (c) in the case of a person who has resigned, such time as may be prescribed;
- (d) in the case of a person who has vacated office under Article 145(6)(a), the time at which he vacated office;
- (e) in the case of a person who has vacated office under sub-paragraph (b) of Article 145(6)—
 - (i) if the final meeting of the creditors referred to in that sub-paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine, and
 - (ii) if that meeting has not resolved against that person's release, the time at which he vacated office.

(3) Where a liquidator has his release under paragraph (2), he is, with effect from the time specified in that paragraph, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(4) Nothing in this Article prevents the exercise, in relation to a person who has had his release under paragraph (2), of the High Court's powers under Article 176 (summary remedy against delinquent directors, liquidators, etc.).

F187 mod. by SR 2004/307

Release (winding up by the High Court)

148.—(1) This Article applies with respect to the release of the liquidator of a company which is being wound up by the High Court, or of a provisional liquidator.

(2) Where the official receiver has ceased to be liquidator and a person becomes liquidator in his stead, the official receiver has his release with effect from the following time, that is to say—

- (a) in a case where that person was nominated by a general meeting of creditors or contributories, or was appointed by the Department, the time at which the official receiver gives notice to the High Court that he has been replaced;
- (b) in a case where that person is appointed by the Court, such time as the Court may determine.

(3) If the official receiver while he is a liquidator gives notice to the Department that the winding up is for practical purposes complete, he has his release with effect from such time as the Department may determine.

(4) A person other than the official receiver who has ceased to be a liquidator has his release with effect from the following time, that is to say—

- (a) in the case of a person who has been removed from office by a general meeting of creditors that has not resolved against his release or who has died, the time at which notice is given to the High Court in accordance with the rules that that person has ceased to hold office;
- (b) in the case of a person who has been removed from office by a general meeting of creditors that has resolved against his release, or by the High Court or the Department, or who has vacated office under Article 146(5), such time as the Department may, on an application by that person, determine;
- (c) in the case of a person who has resigned, such time as may be prescribed;
- (d) in the case of a person who has vacated office under Article 146(7)—
 - (i) if the final meeting referred to in that paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine, and
 - (ii) if that meeting has not so resolved, the time at which that person vacated office.

(5) A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the High Court may, on an application by him, determine.

(6) Where the official receiver or a liquidator or provisional liquidator has his release under this Article, he is, with effect from the time specified in the preceding provisions of this Article, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator or provisional liquidator.

(7) Nothing in this Article prevents the exercise, in relation to a person who has had his release under this Article, of the High Court's powers under Article 176 (summary remedy against delinquent directors, liquidators, etc.).

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

CHAPTER VIII PROVISIONS OF GENERAL APPLICATION IN WINDING UP

Preferential debts

Preferential debts (general provision)

149.—(1) In a winding up the company's preferential debts (within the meaning of Article 346) shall be paid in priority to all other debts.

(2) Preferential debts—

- (a) rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

Modifications etc. (not altering text)

C28 Art. 149 applied by [Financial Markets and Insolvency \(Settlement Finality\) Regulations 1999 \(S.I. 1999/2979\)](#), reg. 14(5)(a)(i) (as substituted (1.10.2009) by [Financial Markets and Insolvency \(Settlement Finality\) \(Amendment\) Regulations 2009 \(S.I. 2009/1972\)](#), reg. 4(d)(ii))

Preferential charge on goods distrained

150.—(1) This Article applies where a company is being wound up by the High Court, and is without prejudice to Article 108 (avoidance of sequestration or distress).

(2) Where any person has distrained upon the goods or effects of the company within the 3 months immediately preceding the date of the winding up order, those goods or effects, or the proceeds of their sale, shall be charged for the benefit of the company with the preferential debts of the company to the extent that the company's property is for the time being insufficient for meeting them.

(3) Where by virtue of a charge under paragraph (2) any person surrenders any goods or effects to a company or makes a payment to a company, that person ranks, in respect of the amount of the proceeds of sale of those goods or effects by the liquidator or (as the case may be) the amount of the payment, as a preferential creditor of the company, except as against so much of the company's property as is available for the payment of preferential creditors by virtue of the surrender or payment.

F188

F188 prosp. insertion by 2005 NI 10

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

VALID FROM 06/04/2008

[^{F189}Payment of expenses of winding up

150ZA.—(1) The expenses of winding up, so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over any claims to property comprised in or subject to any floating charge created by the company and shall be paid out of any such property accordingly.

(2) In paragraph (1)—

- (a) the reference to assets of the company available for payment of general creditors does not include any amount made available under Article 150A(2)(a);
- (b) the reference to claims to property comprised in or subject to a floating charge is to the claims of—
 - (i) the holders of debentures secured by, or holders of, the floating charge, and
 - (ii) any preferential creditors entitled to be paid out of that property in priority to them.

(3) Provision may be made by rules restricting the application of paragraph (1), in such circumstances as may be prescribed, to expenses authorised or approved—

- (a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them, or
- (b) by the Court.

(4) References in this Article to the expenses of the winding up are to all expenses properly incurred in the winding up, including the remuneration of the liquidator.]

F189 Art. 150ZA inserted (6.4.2008) by Companies Act 2006 (c. 46), ss. 1282(2), 1300(2); S.I. 2007/3495, art. 3(1)(v) (with Sch. 4 para. 43)

Modifications etc. (not altering text)

C29 Art. 150ZA applied by Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), reg. 14(5)(a)(i) (as substituted (1.10.2009) by Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), reg. 4(d)(ii))

F188

Special managers

Power to appoint special manager

151.—(1) Where a company has gone into liquidation or a provisional liquidator has been appointed, the High Court may, on an application under this Article, appoint any person to be the special manager of the business or property of the company.

(2) The application may be made by the liquidator or provisional liquidator in any case where it appears to him that the nature of the business or property of the company, or the interests of the company's creditors or contributories or members generally, require the appointment of another person to manage the company's business or property.

(3) The special manager has such powers as may be entrusted to him by the High Court.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(4) The High Court's power to entrust powers to the special manager includes power to direct that any provision of this Order that has effect in relation to the provisional liquidator or liquidator of a company shall have the like effect in relation to the special manager for the purposes of the carrying out by him of any of the functions of the provisional liquidator or liquidator.

(5) The special manager shall—

- (a) give such security as may be prescribed;
- (b) prepare and keep such accounts as may be prescribed; and
- (c) produce those accounts in accordance with the rules to the Department or to such other persons as may be prescribed.

Disclaimer

Power to disclaim onerous property

152.—(1) Subject to the provisions of this Article and Article 153, where a company is being wound up, the liquidator may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this Article—

- (a) any unprofitable contract, and
- (b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this Article—

- (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but
- (b) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this Article in respect of any property if—

- (a) a person interested in the property has applied in writing to the liquidator or one of this predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not, and
- (b) the period of 28 days from the day on which that application was made, or such longer period as the High Court may allow, has expired without a notice of disclaimer having been given under this Article in respect of that property.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article is deemed a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

Disclaimer of leaseholds

153.—(1) The disclaimer under Article 152 of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the company as underlessee or mortgagee and either—

- (a) no application under Article 155 is made with respect to that property before the expiration of 14 days from the day on which the last notice served under this paragraph was served; or
- (b) where such an application has been made, the High Court directs that the disclaimer shall take effect.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(2) Where the High Court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 155, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

(3) For the purposes of this Article, property held under a fee farm grant creating the relation of landlord and tenant is property of a leasehold nature and a reference to an underlessee includes a person who holds a lease from the fee farm grantee.

Land subject to rentcharge

154.—(1) The following applies where, in consequence of the disclaimer under Article 152 of any land subject to a rentcharge, that land vests by operation of law in the Crown or any other person (referred to in paragraph (2) as “the proprietor”).

(2) The proprietor and the successors in title of the proprietor are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming due after the proprietor, or some person claiming under or through the proprietor, has taken possession or control of the land or has entered into occupation of it.

Powers of High Court (general)

155.—(1) Where the liquidator has disclaimed property under Article 152 an application under this Article may be made to the High Court by—

- (a) any person who claims an interest in the disclaimed property, or
- (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

(2) Subject to paragraph (3) and Article 156, the High Court may on the application make an order, on such terms as it thinks fit, for the vesting of the disclaimed property in, or for its delivery to—

- (a) a person entitled to it or a trustee for such a person, or
- (b) a person subject to such a liability as is mentioned in paragraph (1)(b) or a trustee for such a person.

(3) The High Court shall not make an order under paragraph (2)(b) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this Article shall be taken into account in assessing for the purpose of Article 152(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(5) An order under this Article vesting property in any person need not be completed by conveyance, assignment or transfer.

Powers of High Court (leaseholds)

156.—(1) The High Court shall not make an order under Article 155 vesting property of a leasehold nature in any person claiming under the company as underlessee or mortgagee except on terms making that person—

- (a) subject to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up, or
- (b) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him at the commencement of the winding up.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(2) For the purposes of an order under Article 155 relating to only part of any property comprised in a lease, the requirements of paragraph (1) apply as if the lease comprised only the property to which the order relates.

(3) Where paragraph (1) applies and no person claiming under the company as underlessee or mortgagee is willing to accept an order under Article 155 on the terms required by virtue of that paragraph, the High Court may, by order under that Article, vest the company's estate or interest in the property in any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the company) to perform the lessee's covenants in the lease.

(4) An order of the High Court under paragraph (3) may vest that estate and interest in such a person freed and discharged from all estates, incumbrances and interests created by the company.

(5) Where paragraph (1) applies and a person claiming under the company as underlessee or mortgagee declines to accept an order under Article 155, that person is excluded from all interest in the property.

(6) Paragraph (3) of Article 153 shall apply for the purposes of this Article as it applies for the purposes of that Article.

Miscellaneous matters

Rescission of contracts by the High Court

157.—(1) The High Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just.

(2) Any damages payable under the order to such a person may be proved by him as a debt in the winding up.

Power to make over assets to employees

158^{F190}.—(1) On the winding up of a company (whether by the High Court or voluntarily), the liquidator may, subject to the provisions of this Article, make any payment which the company has, before the commencement of the winding up, decided to make under Article 668 of the Companies Order (power to provide for employees or former employees on cessation or transfer of business).

(2) The power which a company may exercise by virtue only of that Article may be exercised by the liquidator after the winding up has commenced if, after the company's liabilities have been fully satisfied and provision has been made for the expenses of the winding up, the exercise of that power has been sanctioned by such a resolution of the company as would be required of the company itself by paragraph (3) of that Article before that commencement, if sub-paragraph (b) of that paragraph were omitted and any other requirement applicable to its exercise by the company had been met.

(3) Any payment which may be made by a company under this Article (that is, a payment after the commencement of its winding up) may be made out of the company's assets which are available to the members on the winding up.

(4) On a winding up by the High Court, the exercise by the liquidator of his powers under this Article is subject to the Court's control, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of the power.

(5) Paragraphs (1) and (2) have effect notwithstanding anything in any rule of law or in Article 93 of this Order (property of company after satisfaction of liabilities to be distributed among members).

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Notification that company is in liquidation

159.—(1) When a company is being wound up, whether by the High Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company, or a liquidator of the company, or a receiver or manager of the company's property, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this Article, the company and any of the following persons who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be guilty of an offence.

Interest on debts

160.—(1) In a winding up interest is payable in accordance with this Article on any debt proved in the winding up, including so much of any such debt as represents interest on the remainder.

(2) Any surplus remaining after the payment of the debts proved in a winding up shall, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the company went into liquidation.

(3) All interest under this Article ranks equally, whether or not the debts on which it is payable rank equally.

(4) The rate of interest payable under this Article in respect of any debt (“the official rate”) is whichever is the greater of—

- (a) the rate applicable to a money judgment of the High Court on the day on which the company went into liquidation, and
- (b) the rate applicable to that debt apart from the winding up.

Company's books to be evidence

161. Where a company is being wound up, all books and papers of the company and of the liquidators are, as between the contributories of the company, prima facie evidence of the truth of all matters purporting to be recorded in them.

Information as to pending liquidations

162.—(1) If the winding up of a company is not concluded within one year from its commencement, the liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.

(2) If a liquidator contravenes this Article, he shall be guilty of an offence and for continued contravention, he shall be guilty of a continuing offence.

Resolutions passed at adjourned meetings

163 ^{F191}. Where a resolution is passed at an adjourned meeting of a company's creditors or contributories, the resolution is treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

F191 mod. by SR 2004/307

Meeting to ascertain wishes of creditors or contributories

164.—(1) The High Court may—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) as to all matters relating to the winding up of a company, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence), and
 - (b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the Court.
- (2) In the case of creditors, regard shall be had to the value of each creditor's debt.
- (3)^{F192} In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the Companies Order or the company's articles.

F192 mod. by SR 2004/307

Affidavits, etc., in United Kingdom and elsewhere

165.—(1) An affidavit required to be sworn under or for the purposes of this Part may be sworn in Northern Ireland before any court, judge or person lawfully authorised to take and receive affidavits, and shall, if sworn in Great Britain or elsewhere in Her Majesty's dominions before any court, judge or person lawfully authorised to take and receive affidavits, or before any of Her Majesty's consuls or vice#consuls in any place outside Her Majesty's dominions, be treated as an affidavit sworn under or for the purposes of this Part.

(2) All courts, judges,^{F193} lay magistrates], commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul or vice#consul attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

F193 2002 c. 26

CHAPTER IX

DISSOLUTION OF COMPANIES AFTER WINDING UP

Dissolution (voluntary winding up)

166.—(1) This Article applies, in the case of a company wound up voluntarily, where the liquidator has sent to the registrar his final account and return under Article 80 (members' voluntary) or Article 92 (creditors' voluntary).

(2) The registrar on receiving the account and return shall forthwith register them; and on the expiration of 3 months from the registration of the return the company is deemed to be dissolved.

(3) However, the High Court may, on the application of the liquidator or any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(4) The person on whose application an order of the High Court under this Article is made shall within 7 days from the making of the order deliver to the registrar an office copy of the order for registration; and if that person contravenes this paragraph he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Early dissolution

167.—(1) Where an order for the winding up of a company has been made by the High Court, the official receiver, if—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) he is the liquidator of the company, and
 - (b) it appears to him—
 - (i) that the realisable assets of the company are insufficient to cover the expenses of the winding up, and
 - (ii) that the affairs of the company do not require any further investigation,
- may at any time apply to the registrar for the early dissolution of the company.

(2) Before making that application, the official receiver shall give not less than 28 days' notice of his intention to do so to the company's creditors and contributories and, if there is an administrative receiver of the company, to that receiver.

(3) With the giving of that notice the official receiver ceases (subject to any directions under Article 168) to be required to perform any duties imposed on him in relation to the company, its creditors or contributories by virtue of any provision of this Order, apart from a duty to make an application under paragraph (1).

(4) On the receipt of the official receiver's application under paragraph (1) the registrar shall forthwith register it and, subject to paragraph (5), at the expiration of 3 months from the day of the registration of the application, the company shall be dissolved.

(5) The Department may, on the application of the official receiver or any other person who appears to the Department to be interested, give directions under Article 168 at any time before the end of that period.

Consequence of notice under Article 167

168.—(1) Where a notice has been given under Article 167(2), the official receiver or any creditor or contributory of the company, or the administrative receiver of the company (if there is one) may apply to the Department for directions under this Article.

- (2) The grounds on which that application may be made are—
 - (a) that the realisable assets of the company are sufficient to cover the expenses of the winding up;
 - (b) that the affairs of the company do require further investigation; or
 - (c) that for any other reason the early dissolution of the company is inappropriate.
- (3) Directions under this Article—
 - (a) are directions making such provision as the Department thinks fit for enabling the winding up of the company to proceed as if no notice had been given under Article 167(2), and
 - (b) may, in the case of an application under Article 167(4), include a direction deferring the date at which the dissolution of the company is to take effect for such period as the Department thinks fit.

(4) An appeal to the High Court lies from any decision of the Department on an application for directions under this Article.

(5) The person on whose application any directions are given under this Article, or in whose favour an appeal with respect to an application for such directions is determined, shall, within 7 days from the giving of the directions or the determination of the appeal, deliver to the registrar for registration such a copy of the directions or determination as is prescribed.

(6) If a person without reasonable excuse contravenes paragraph (5), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Dissolution otherwise than under Article 167

169.—(1) Where the registrar receives—

- (a) a notice served for the purposes of Article 146(7) (final meeting of creditors and vacation of office by liquidator), or
- (b) a notice from the official receiver that the winding up of a company by the High Court is complete,

the registrar shall, on receipt of the notice, forthwith register it; and, subject to paragraphs (2) to (4), at the expiration of 3 months from the day of the registration of the notice, the company shall be dissolved.

(2) The Department may, on the application of the official receiver or any other person who appears to the Department to be interested, give a direction deferring the date at which the dissolution of the company is to take effect for such period as the Department thinks fit.

(3) An appeal to the High Court lies from any decision of the Department on an application for a direction under paragraph (2).

(4) The person—

- (a) on whose application a direction is given under paragraph (2); or
- (b) in whose favour an appeal with respect to an application for such a direction is determined;

shall, within 7 days from the giving of the direction, the determination of the appeal or the making of the order, deliver to the registrar for registration such a copy of the direction or determination as is prescribed.

(5) If a person without reasonable excuse contravenes paragraph (4), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

CHAPTER X

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

Modifications etc. (not altering text)

C30 mod. by SR 2004/307

Offences of fraud, deception, etc.

Fraud, etc., in anticipation of winding up

170.—(1^{F194}) When a company is ordered to be wound up by the High Court, or passes a resolution for voluntary winding up, any person who, being a past or present officer of the company, has, within the 12 months immediately preceding the commencement of the winding up—

- (a) concealed any part of the company's property to the value of £500 or more, or concealed any debt due to or from the company, or
- (b) fraudulently removed any part of the company's property to the value of £500 or more, or
- (c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the company's property or affairs, or
- (d) made any false entry in any book or paper affecting or relating to the company's property or affairs, or

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the company's property or affairs, or
- (f) pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business),

shall be guilty of an offence.

(2) Such a person as is mentioned in paragraph (1) shall be guilty of an offence if within the period mentioned in that paragraph he has been privy to the doing by others of any of the things mentioned in sub#paragraphs (c), (d) and (e) of that paragraph; and he shall be guilty of an offence if, at any time after the commencement of the winding up, he does any of the things mentioned in sub#paragraphs (a) to (f) of that paragraph, or is privy to the doing by others of any of the things mentioned in sub#paragraphs (c) to (e) of that paragraph.

(3) For the purposes of this Article, "officer" includes a shadow director.

(4) It is a defence—

- (a) for a person charged under sub#paragraph (a) or (f) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub#paragraphs) to prove that he had no intent to defraud, and
- (b) for a person charged under sub#paragraph (c) or (d) of paragraph (1) (or under paragraph (2) in respect of the things mentioned in either of those sub#paragraphs) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

(5) Where a person pawns, pledges or disposes of any property in circumstances which amount to an offence under paragraph (1)(f), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in such circumstances, shall be guilty of an offence and shall, on conviction on indictment, be liable to the same penalty as if he had been convicted of handling stolen goods.

(6) The money sums specified in sub#paragraphs (a) and (b) of paragraph (1) are subject to increase or reduction by order under Article 362(1)(a).

F194 mod. by SR 2004/307

Transactions in fraud of creditors

171.—(1 ^{F195} When a company is ordered to be wound up by the High Court or passes a resolution for voluntary winding up, a person who, being at the time an officer of the company,—

- (a) within the 5 years immediately preceding the commencement of the winding up, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the enforcement of a judgment against, the company's property, or
- (b) has concealed or removed any part of the company's property since, or within the 2 months immediately preceding, the date of any unsatisfied judgment or order for the payment of money obtained against the company,

shall be guilty of an offence.

(2) It is a defence for a person charged under paragraph (1) to prove that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

F195 mod. by SR 2004/307

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Misconduct in course of winding up

172.—(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company,—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the company's property, and how and to whom and for what consideration and when the company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the company's business), or
- (b) does not deliver up to the liquidator (or as he directs) all such part of the company's property as is in his custody or under his control, and which he is required by law to deliver up, or
- (c) does not deliver up to the liquidator (or as he directs) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up, or
- (d) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the liquidator as soon as practicable, or
- (e) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the company's property or affairs,

shall be guilty of an offence.

(2) Any person mentioned in paragraph (1) who, after the commencement of the winding up, attempts to account for any part of the company's property by fictitious losses or expenses shall be guilty of an offence; and if he so attempts at any meeting of the company's creditors within the 12 months immediately preceding the commencement of the winding up he shall be guilty of an offence.

(3) For the purposes of this Article, “officer” includes a shadow director.

(4) It is a defence—

- (a) for a person charged under sub#paragraph (a), (b) or (c) of paragraph (1) to prove that he had no intent to defraud, and
- (b) for a person charged under sub#paragraph (e) of that paragraph to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.

Falsification of company's books

173. When a company is being wound up, an officer or contributory of the company who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, accounting records or document belonging to the company with intent to defraud or deceive any person shall be guilty of an offence.

Material omissions from statement relating to company's affairs

174.—(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company, makes any material omission in any statement relating to the company's affairs shall be guilty of an offence.

(2) ^{F196} When a company has been ordered to be wound up by the High Court, or has passed a resolution for voluntary winding up, any person mentioned in paragraph (1) who, prior to the winding up, has made any material omission in any such statement shall be guilty of an offence.

(3) For the purposes of this Article, “officer” includes a shadow director.

(4) It is a defence for a person charged under this Article to prove that he had no intent to defraud.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F196 mod. by SR 2004/307

False representations to creditors

175.—(1) When a company is being wound up, whether by the High Court or voluntarily, any person who, being a past or present officer of the company,—

- (a) makes any false representation or commits any other fraud for the purpose of obtaining the consent of the company's creditors or any of them to an agreement with reference to the company's affairs or to the winding up; or
- (b) prior to the winding up, has made any false representation, or committed any other fraud, for the purpose mentioned in sub#paragraph (a);

shall be guilty of an offence.

- (2) For the purposes of this Article, “officer” includes a shadow director.

Penalisation of directors and officers

Summary remedy against delinquent directors, liquidators, etc.

176.—(1) This Article applies if in the course of the winding up of a company it appears that a person who—

- (a) is or has been an officer of the company,
- (b) has acted as liquidator^{F197}, administrator or administrative receiver of the company, or
- (c) not being a person falling within sub#paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company,

has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

(2) The reference in paragraph (1) to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as liquidator^{F197} or administrator of the company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator^{F197} or administrator of the company.

(3) The High Court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine into the conduct of the person falling within paragraph (1) and order him—

- (a) to repay, restore or account for the money or property, or any part of it, with interest at such rate as the Court thinks just, or
- (b) to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court thinks just.

(4) The power to make an application under paragraph (3) in relation to a person who has acted as liquidator^{F197} or administrator of the company is not exercisable, except with the leave of the High Court, after^{F198} that person has had his release.

(5) The power of a contributory to make an application under paragraph (3) is not exercisable except with the leave of the High Court, but is exercisable notwithstanding that he will not benefit from any order the Court may make on the application.

(6) In this Article “company” includes a building society within the meaning of the Building Societies Act 1986^{F199} and “officer” includes a director (but not a shadow director) of a building society.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F197 prosp. rep. by [2005 NI 10](#)
F198 prosp. subst. by [2005 NI 10](#)
F199 [1986 c. 53](#)

Fraudulent trading

177. If in the course of the winding up of a company 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 High Court, on the application of the liquidator, may declare that any persons who were knowingly parties to the carrying on of the business in such manner are to be liable to make such contributions (if any) to the company's assets as the Court thinks proper.

Wrongful trading

178.—(1) Without prejudice to Article 177 and subject to paragraph (3), if in the course of the winding up of a company it appears that paragraph (2) applies in relation to a person who is or has been a director of the company, the High Court, on the application of the liquidator, 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) ^{F200} This paragraph applies in relation to a person if—

- (a) the company has gone into insolvent liquidation,
- (b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, and
- (c) that person was a director of the company at that time,

but the High Court shall not make a declaration under this Article in any case where the time mentioned in sub#paragraph (b) was before the coming into operation of this Article.

(3) The High Court shall not make a declaration under this Article with respect to any person if it is satisfied that after the condition specified in paragraph (2)(b) was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the company's creditors as (assuming him to have known that there was no reasonable prospect that the company would avoid going into insolvent liquidation) he ought to have taken.

(4) For the purposes of paragraphs (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he 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.

(5) The reference in paragraph (4) to the functions carried out in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.

(6) For the purposes of this paragraph 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 Article—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

“company” includes a building society within the meaning of the Building Societies Act 1986^{F201};

“director”

- (a) includes a shadow director; and
- (b) includes a director (but not a shadow director) of a building society.

F200 mod. by SR 2004/307
F201 1986 c. 53

.....^{F202}

F202 mod. by SR 2004/307

Proceedings under Articles 177 and 178

179.—(1 ^{F203} On the hearing of an application under Article 177 or 178, the liquidator may himself give evidence or call witnesses.

(2 ^{F203} Where under either Article the High Court makes a declaration, it may give such further directions as it thinks proper for giving effect to the declaration; and in particular, the Court may—

- (a) provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf, and
- (b) make such further order as may be necessary for enforcing any charge imposed under this paragraph.

(3) For the purposes of paragraph (2), “assignee”

- (a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but
- (b) does not include an assignee for valuable consideration (not including consideration by way of marriage^{F204} or the formation of a civil partnership]) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4 ^{F203} Where the High Court makes a declaration under either Article in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5 ^{F203} Articles 177 and 178 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the Article is to be made.

(6) In this Article “company” includes a building society within the meaning of the Building Societies Act 1986^{F205}.

F203 mod. by SR 2004/307
F204 2004 c. 33

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F205 1986 c. 53

Restriction on re#use of company names

180.—(1) This Article applies to a person where a company (“the liquidating company”) has gone into insolvent liquidation on or after the coming into operation of this Article and he was a director or shadow director of the company at any time within the period of 12 months immediately preceding the day before it went into liquidation.

(2) For the purposes of this Article, a name is a prohibited name in relation to such a person if—

- (a) it is a name by which the liquidating company was known at any time in that period, or
- (b) it is a name which is so similar to a name falling within sub#paragraph (a) as to suggest an association with that company.

(3) Except with the leave of the High Court or in such circumstances as may be prescribed, a person to whom this Article applies shall not at any time within 5 years from the day on which the liquidating company went into liquidation—

- (a) be a director of any other company that is known by a prohibited name, or
- (b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of any such company, or
- (c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on (otherwise than by a company) under a prohibited name.

(4) If a person contravenes this Article he shall be guilty of an offence.

(5) On an application for leave under paragraph (3), the Department or the official receiver may appear and call the attention of the High Court to any matters which seem to be relevant.

(6) References in this Article, in relation to any time, to a name by which a company is known are to the name of the company at that time or to any name under which the company carries on business at that time.

(7) For the purposes of this Article 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.

(8) In this Article—

“company” includes a company which may be wound up under Part VI or a building society within the meaning of the Building Societies Act 1986^{F206};

“director” includes a director (but not a shadow director) of a building society.

F206 1986 c. 53

Personal liability for debts, following contravention of Article 180

181.—(1) A person is personally responsible for all the relevant debts of a company if at any time—

- (a) in contravention of Article 180, he is involved in the management of the company, or
- (b) as a person who is involved in the management of the company, he acts or is willing to act on instructions given (without the leave of the High Court) by a person whom he knows at that time to be in contravention in relation to the company of Article 180.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(2) Where a person is personally responsible under this Article for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this Article or otherwise, is so liable.

(3) For the purposes of this Article the relevant debts of a company are—

- (a) in relation to a person who is personally responsible under sub#paragraph(a) of paragraph (1), such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company, and
- (b) in relation to a person who is personally responsible under sub#paragraph (b) of paragraph (1), such debts and other liabilities of the company as are incurred at a time when that person was acting or was willing to act on instructions given as mentioned in that sub#paragraph.

(4) For the purposes of this Article, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this Article a person who, as a person involved in the management of a company, has at any time acted on instructions given (without the leave of the High Court) by a person whom he knew at that time to be in contravention in relation to the company of Article 180 is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

(6) In this Article—

“company” includes a company which may be wound up under Part VI or a building society within the meaning of the Building Societies Act 1986^{F207};

“director” includes a director (but not a shadow director) of a building society.

F207 1986 c. 53

Investigation and prosecution of malpractice

Prosecution of delinquent officers and members of company

182.—(1 ^{F208} If it appears to the High Court in the course of a winding up by the Court that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he is criminally liable, the Court may (either on the application of a person interested in the winding up or of its own motion) direct the liquidator to refer the matter to [^{F209} the Department].

(2 ^{F208} If in the case of a winding up by the High Court it appears to the liquidator, not being the official receiver, that any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, the liquidator shall report the matter to the official receiver.

(3 ^{F208} If it appears to the liquidator in the course of a voluntary winding up that any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, he shall—

- [^{F209}(a) forthwith report the matter to the Department, and
- (b) furnish to the Department such information and give to it such access to and facilities for inspecting and taking copies of documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as the Department requires.]

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

[^{F209}(4) Where a report is made to the Department under paragraph (3), the Department may, for the purpose of investigating the matter reported to it and such other matters relating to the affairs of the company as appear to it to require investigation, exercise any of the powers which are exercisable by inspectors appointed under Article 424 or 425 of the Companies Order to investigate a company's affairs.]

(5 ^{F208} If it appears to the High Court in the course of a voluntary winding up that—

- (a) any past or present officer of the company, or any member of it, has been guilty of any offence in relation to the company for which he is criminally liable, and
- (b) no report with respect to the matter has been made by the liquidator^{F210} . . . under paragraph (3),

the Court may (on the application of any person interested in the winding up or of its own motion) direct the liquidator to make such a report.

(6) On a report being made under paragraph (5), this Article has effect as though the report had been made in pursuance of paragraph (3).

F208 mod. by SR 2004/307

F209 2002 NI 6

F210 2002 NI 6

Obligations arising under Article 182

183.—(1) For the purpose of an investigation by the Department [^{F211} in consequence of a report made to it under Article 182(3)], any obligation imposed on a person by any provision of the Companies Order to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in [^{F211} Article 182(4)] is to be regarded as an obligation similarly to assist the Department in its investigation.

(2) An answer given by a person to a question put to him in exercise of the powers conferred by Article 182(4) may be used in evidence against him.

[^{F212}(2A) However, in criminal proceedings in which that person is charged with an offence to which this paragraph 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) Paragraph (2A) applies to any offence other than an offence under Article 7 or 10 of the Perjury (Northern Ireland) Order 1979 (NI 19) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).]

(3) Where criminal proceedings are instituted by [^{F211} the Director of Public Prosecutions for Northern Ireland] or the Department following any report or reference under Article 182, the liquidator and every officer and agent of the company past and present (other than the defendant) shall give to [^{F211} the Director of Public Prosecutions for Northern Ireland] or the Department (as the case may be) all assistance in connection with the prosecution which he is reasonably able to give.

(4) In paragraph (3), “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.

(5) If a person fails or neglects to give assistance in the manner required by paragraph (3), the High Court may, on the application of the [^{F211} Director of Public Prosecutions for Northern Ireland]

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

or the Department (as the case may be) direct the person to comply with that paragraph; 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.

F211 2002 NI 6

F212 2002 NI 6

PART VI

WINDING UP OF UNREGISTERED COMPANIES

Modifications etc. (not altering text)

C31 Pt. VI (arts. 184-193) applied (with modifications) by [European Economic Interest Grouping Regulations 1989 \(S.I. 1989/638\)](#), reg. 8(1A) (as inserted (1.10.2009) by [European Economic Interest Grouping \(Amendment\) Regulations 2009 \(S.I. 2009/2399\)](#), **reg. 11** (with reg. 2))

Meaning of “unregistered company”

184. For the purposes of this Part, “unregistered company” includes any association and any company, with the following exceptions—

- (a) a railway company incorporated by a statutory provision,
- (b) a company registered in any part of the United Kingdom under the Joint Stock Companies Acts or under the legislation (past or present) relating to companies in Northern Ireland.

Winding up of unregistered companies

185.—(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Order; and all the provisions of this Order and the Companies Order about winding up apply to an unregistered company with the exceptions and additions mentioned in paragraphs (2) to (4).

(2) If an unregistered company has a principal place of business situated in England and Wales or Scotland, it shall not be wound up under this Part unless it has a principal place of business situated in Northern Ireland, and the principal place of business in Northern Ireland is, for all the purposes of the winding up, deemed to be the registered office of the company.

(3) No unregistered company shall be wound up under this Order voluntarily^[F213], except in accordance with the EC Regulation].

(4) The circumstances in which an unregistered company may be wound up are as follows—

- (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
- (b) if the company is unable to pay its debts;
- (c) if the High Court is of opinion that it is just and equitable that the company should be wound up.

F213 SR 2002/334

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Inability to pay debts: unpaid creditor for £750 or more

186.—(1) An unregistered company is deemed (for the purposes of Article 185) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £750 then due and—

- (a) the creditor has served on the company, by leaving at its principal place of business in Northern Ireland, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving in such manner as the High Court may approve or direct, a written demand in the prescribed form requiring the company to pay the sum due, and
- (b) the company has for 3 weeks from the service of the demand neglected to pay the sum or to secure or compound for it to the creditor's satisfaction.

(2) The money sum for the time being specified in paragraph (1) is subject to increase or reduction by order under Article 362(1)(a); but no increase in the sum so specified affects any case in which the winding#up petition was presented before the coming into operation of the increase.

Inability to pay debts: debt remaining unsatisfied after action brought

187. An unregistered company is deemed (for the purposes of Article 185) unable to pay its debts if an action or other proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and—

- (a) notice in writing of the institution of the action or proceeding has been served on the company by leaving it at the company's principal place of business in Northern Ireland (or by delivering it to the secretary, or some director or principal officer of the company, or by otherwise serving it in such manner as the High Court may approve or direct), and
- (b) the company has not within 3 weeks from service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the action or proceeding, and against all costs and damages to be incurred by him because of it.

Inability to pay debts: other cases

188.—(1) An unregistered company is deemed (for the purposes of Article 185) unable to pay its debts—

- (a) if, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981^{F214};
- (b) if, in England and Wales, execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the company, or any member of it as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied;
- (c) if, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made;
- (d) it is otherwise proved to the satisfaction of the High Court that the company is unable to pay its debts as they fall due.

(2) An unregistered company is also deemed unable to pay its debts if it is proved to the satisfaction of the High Court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F214 1981 NI 6

Company incorporated outside Northern Ireland may be wound up though dissolved

189.—^[F215(1)] Where a company incorporated outside Northern Ireland which has been carrying on business in Northern Ireland ceases to carry on business in Northern Ireland, it may be wound up as an unregistered company under this Order, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

^[F215(2)] This Article is subject to the EC Regulation.]

F215 SR 2002/334

Contributories in winding up of unregistered company

190.—(1) In the event of an unregistered company being wound up, every person is deemed a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of members among themselves, or to pay or contribute to the payment of the costs of winding up the company.

(2) Every contributory is liable to contribute to the company's assets all sums due from him in respect of any such liability as is mentioned in paragraph (1).

(3) In the event of the death, bankruptcy or insolvency of any contributory, the provisions of this Order with respect to the personal representatives of deceased contributories, and to the trustees of bankrupt or insolvent contributories, respectively apply.

Power of High Court to stay or restrain proceedings

191. The provisions of this Part with respect to staying or restraining actions and proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order extend, in the case of an unregistered company, where the application to stay or restrain is presented by a creditor, to actions and proceedings against any contributory of the company.

Actions stayed on winding up order

192. Where an order has been made for winding up an unregistered company, no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the High Court, and subject to such terms as the Court may impose.

Provisions of this Part to be cumulative

193.—(1) The provisions of this Part with respect to unregistered companies are in addition to and not in restriction of any provisions in Part V with respect to winding up companies by the High Court; and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under the Companies Order.

(2) However, an unregistered company is not, except in the event of its being wound up, deemed to be a company under the Companies Order, and then only to the extent provided by this Part.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) either alone or jointly with any other person, he obtains credit to the extent of the amount specified by order under Article 362(1)(b) or more without giving the person from whom he obtains it the relevant information about his status; or
 - (b) he engages (whether directly or indirectly) in any business under a name other than that in which he was adjudged bankrupt without disclosing to all persons with whom he enters into any business transaction the name in which he was so adjudged.
- (2) The reference to the bankrupt obtaining credit includes the following cases—
- (a) where goods are bailed to him under a hire#purchase agreement, or agreed to be sold to him under a conditional sale agreement, and
 - (b) where he is paid in advance (whether in money or otherwise) for the supply of goods or services.
- (3) A person whose estate has been sequestrated in Scotland, or who has been adjudged bankrupt in England and Wales, shall be guilty of an offence if, before his discharge, he does anything in Northern Ireland which would be an offence under paragraph (1) if he were an undischarged bankrupt and the sequestration of his estate or the adjudication in England and Wales were an adjudication under this Part.
- (4) For the purposes of paragraph (1)(a), the relevant information about the status of the person in question is the information that he is an undischarged bankrupt or, as the case may be, that his estate has been sequestrated in Scotland and that he has not been discharged.^{F341}

F341 prosp. insertion by 2005 NI 10

^{F342}**Failure to keep proper accounts of business**

- 332.**—(1) Where the bankrupt has been engaged in any business for any of the 2 years immediately preceding petition, he shall be guilty of an offence if he—
- (a) has not kept proper accounting records throughout that period and throughout any part of the initial period in which he was so engaged, or
 - (b) has not preserved all the accounting records which he has kept.
- (2) It shall be a defence for a person charged with an offence under paragraph (1)—
- (a) if his unsecured liabilities at the commencement of the bankruptcy did not exceed the amount specified by order under Article 362(1)(b), or
 - (b) to prove that in the circumstances in which he carried on business the omission was honest and excusable.
- (3) For the purposes of this Article a person is deemed not to have kept proper accounting records if he has not kept such records as are necessary to show or explain his transactions and financial position in his business, including—
- (a) records containing entries from day to day, in sufficient detail, of all cash paid and received,
 - (b) where the business involved dealings in goods, statements of annual stocktakings, and
 - (c) except in the case of goods sold by way of retail trade to the actual customer, records of all goods sold and purchased showing the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.
- (4) In relation to any such records as are mentioned in paragraph (3), paragraphs (2)(d) and (3) (b) of Article 326 apply with the substitution of 2 years for 12 months.

F342 prosp. rep. by 2005 NI 10

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

^{F343} **Gambling**

333.—(1) The bankrupt shall be guilty of an offence if he has—

- (a) in the 2 years immediately preceding petition, materially contributed to, or increased the extent of, his insolvency by gambling or by rash and hazardous speculations, or
- (b) in the initial period, lost any part of his property by gambling or by rash and hazardous speculations.

(2) In determining for the purposes of this Article whether any speculations were rash and hazardous, the financial position of the bankrupt at the time when he entered into them shall be taken into consideration.

F343 prosp. rep. by [2005 NI 10](#)

CHAPTER VII

POWERS OF HIGH COURT IN BANKRUPTCY

General control of High Court

334.—(1) Every bankruptcy is under the general control of the High Court and, subject to the provisions in Parts VIII to X, the Court has full power to decide all questions of priorities and all other questions, whether of law or fact, arising in any bankruptcy.

(2) Without prejudice to any other provision in Parts VIII to X, an undischarged bankrupt or a discharged bankrupt whose estate is still being administered under Chapter IV shall do all such things as he may be directed to do by the High Court for the purposes of his bankruptcy or, as the case may be, the administration of that estate.

(3) The official receiver or the trustee of a bankrupt's estate may at any time apply to the High Court for a direction under paragraph (2).

(4) If any person without reasonable excuse fails to comply with any obligation imposed on him by paragraph (2), he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

Power of arrest

335.—(1) In the cases specified in paragraph (2) the High Court may cause a warrant to be issued to a constable—

- (a) for the arrest of a debtor to whom a bankruptcy petition relates or of an undischarged bankrupt, or of a discharged bankrupt whose estate is still being administered under Chapter IV, and
- (b) for the seizure of any books, papers, records, money or goods in the possession of a person arrested under the warrant,

and 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, until such time as the Court may order.

(2) The powers conferred by paragraph (1) are exercisable in relation to a debtor or undischarged or discharged bankrupt if, at any time after the presentation of the bankruptcy petition relating to him or the making of the bankruptcy order against him, it appears to the High Court—

- (a) that there are reasonable grounds for believing that he has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his debts or his appearance to a bankruptcy petition or to avoiding, delaying or disrupting any proceedings in bankruptcy against him or any examination of his affairs, or

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (b) that he is about to remove his goods with a view to preventing or delaying possession being taken of them by the official receiver or the trustee of his estate, or
- (c) that there are reasonable grounds for believing that he has concealed or destroyed, or is about to conceal or destroy, any of his goods or any books, papers or records which might be of use to his creditors in the course of his bankruptcy or in connection with the administration of his estate, or
- (d) that he has, without the leave of the official receiver or the trustee of his estate, removed any goods in his possession which exceed in value such amount specified in an order under Article 362(1)(b) for the purposes of this sub#paragraph, or
- (e) that he has failed, without reasonable excuse, to attend any examination ordered by the Court.

Seizure of bankrupt's property

336.—(1) At any time after a bankruptcy order has been made, the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, issue a warrant authorising the person to whom it is directed to seize any property comprised in the bankrupt's estate which is, or any books, papers or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of the bankrupt or any other person who is required to deliver the property, books, papers or records to the official receiver or trustee.

(2) Any person executing a warrant under this Article may, for the purpose of seizing any property comprised in the bankrupt's estate or any books, papers or records relating to the bankrupt's estate or affairs, break open any premises where the bankrupt or anything that may be seized under the warrant is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.

(3) If, after a bankruptcy order has been made, the High Court is satisfied that any property comprised in the bankrupt's estate is, or any books, papers or records relating to the bankrupt's estate or affairs are, concealed in any premises not belonging to him, it may issue a warrant authorising any constable to search those premises for the property, books, papers or records.

(4) A warrant under paragraph (3) shall not be executed except in the prescribed manner and in accordance with its terms.

Inquiry into bankrupt's dealings and property

337.—(1) At any time after a bankruptcy order has been made the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, summon to appear before it—

- (a) the bankrupt or the bankrupt's spouse or former spouse^{F344} or civil partner or former civil partner],
- (b) any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt,
- (c) any person appearing to the Court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property.

(2) The High Court may require any person such as is mentioned in paragraph (1)(b) or (c) to submit an affidavit to the Court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property.

(3) Without prejudice to Article 335, paragraphs (4) and (5) apply in a case where—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) a person without reasonable excuse fails to appear before the High Court when he is summoned to do so under this Article, 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 Article.
- (4) The High 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—
- (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.
- (5) The High 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, until that person is brought before the Court under the warrant or until such other time as the Court may order.

F344 2004 c. 33

High Court's enforcement powers under Article 337

338.—(1) If it appears to the High Court, on consideration of any evidence obtained under Article 337 or this Article, that any person has in his possession any property comprised in the bankrupt's estate, the Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to deliver the whole or any part of the property to the official receiver or the trustee at such time, in such manner and on such terms as the Court thinks fit.

(2) If it appears to the High Court, on consideration of any evidence obtained under Article 337 or this Article, that any person is indebted to the bankrupt, the Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order that person to pay to the official receiver or trustee, at such time and in such manner as the Court may direct, the whole or part of the amount due, whether in full discharge of the debt or otherwise as the Court thinks fit.

(3) The High Court may, if it thinks fit, order that any person liable to be summoned to appear before it under Article 337 or this Article shall be examined on oath, either orally or by interrogatories, concerning the bankrupt or the bankrupt's dealings, affairs and property.

Provision corresponding to Article 337, where interim receiver appointed

339. Articles 337 and 338 apply where an interim receiver has been appointed under Article 259 as they apply where a bankruptcy order has been made, as if—

- (a) references to the official receiver or the trustee were to the interim receiver, and
- (b) references to the bankrupt and to his estate were (respectively) to the debtor and his property.

Order for production of documents by Inland Revenue

340.—(1) For the purposes of an examination under Article 263 (public examination of bankrupt) or proceedings under Articles 337 to 339, the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order an inland revenue official to produce to the Court—

- (a) any return, account or accounts submitted (whether before or after the commencement of the bankruptcy) by the bankrupt to any inland revenue official,
- (b) any assessment or determination made (whether before or after the commencement of the bankruptcy) in relation to the bankrupt by any inland revenue official, or

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (c) any correspondence (whether before or after the commencement of the bankruptcy) between the bankrupt and any inland revenue official.
- (2) Where the High Court has made an order under paragraph (1) for the purposes of any examination or proceedings, the Court may, at any time after the document to which the order relates is produced to it, by order authorise the disclosure of the document, or of any part of its contents, to the official receiver, the trustee of the bankrupt's estate or the bankrupt's creditors.
- (3) The High Court shall not address an order under paragraph (1) to an inland revenue official unless it is satisfied that that office is dealing, or has dealt, with the affairs of the bankrupt.
- (4) Where any document to which an order under paragraph (1) relates is not in the possession of the official to whom the order is addressed, it is the duty of that official to take all reasonable steps to secure possession of it and, if he fails to do so, to report the reasons for his failure to the High Court.
- (5) Where any document to which an order under paragraph (1) relates is in the possession of an inland revenue official other than the one to whom the order is addressed, it is the duty of the official in possession of the document, at the request of the official to whom the order is addressed, to deliver it to the official making the request.
- (6) In this Article “inland revenue official” means any inspector or collector of taxes appointed by the Commissioners of Inland Revenue or any person appointed by the Commissioners to serve in any other capacity.
- (7) This Article does not apply for the purposes of an examination under Articles 337 and 338 which takes place by virtue of Article 339 (interim receiver).

Power to appoint special manager

- 341.**—(1) The High Court may, on an application under this Article, appoint any person to be the special manager—
- (a) of a bankrupt's estate, or
 - (b) of the business of an undischarged bankrupt, or
 - (c) of the property or business of a debtor in whose case the official receiver has been appointed interim receiver under Article 259.
- (2) An application under this Article may be made by the official receiver or the trustee of the bankrupt's estate in any case where it appears to the official receiver or trustee that the nature of the estate, property or business, or the interests of the creditors generally, require the appointment of another person to manage the estate, property or business.
- (3) A special manager appointed under this Article has such powers as may be entrusted to him by the High Court.
- (4) The power of the High Court under paragraph (3) to entrust powers to a special manager includes power to direct that any provision in Parts VIII to X that has effect in relation to the official receiver, interim receiver or trustee shall have the like effect in relation to the special manager for the purposes of the carrying out by the special manager of any of the functions of the official receiver, interim receiver or trustee.
- (5) A special manager appointed under this Article shall—
- (a) give such security as may be prescribed,
 - (b) prepare and keep such accounts as may be prescribed, and
 - (c) produce those accounts in accordance with the rules to the Department or to such other persons as may be prescribed.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Re#direction of bankrupt's letters, etc.

342.—(1) Where a bankruptcy order has been made, the High Court may, on the application of the official receiver or the trustee of the bankrupt's estate, order^{F345} a postal operator (within the meaning given by section 125(1) of the Postal Services Act 2000)] to re#direct and send or deliver to the official receiver or trustee or otherwise any postal packet (within the meaning of the^{F345} Postal Services Act 2000]) which would otherwise be sent or delivered by them to the bankrupt at such place or places as may be specified in the order.

(2) An order under this Article has effect for such period, not exceeding 3 months, as may be specified in the order.

F345 SI 2001/1149

PART X

INDIVIDUAL INSOLVENCY: GENERAL PROVISIONS

Modifications etc. (not altering text)

C36 Pts. VIII-X (arts. 209-345) modified by [Foyle Fisheries Act \(Northern Ireland\) 1952 \(c. 5\), s. 52K\(2\)](#) (as inserted (prosp.) by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. 1(3), **3(1)** (with art. 32))

Supplies of water, electricity, etc.

343^{F346}.—(1) This Article applies where on any day (“the relevant day”)—

- (a) a bankruptcy order is made against an individual or an interim receiver of an individual's property is appointed, or
- (b) a voluntary arrangement proposed by an individual is approved under Chapter II of Part VIII, or
- (c) a deed of arrangement is made for the benefit of an individual's creditors;

and “the office#holder” means the official receiver, the trustee in bankruptcy, the interim receiver, the supervisor of the voluntary arrangement or the trustee under the deed of arrangement, as the case may be.

(2) If a request falling within paragraph (3) is made for the giving after the relevant day of any of the supplies mentioned in paragraph (4), 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 individual before the relevant day are paid.

(3) A request falls within this paragraph if it is made—

- (a) by or with the concurrence of the office#holder, and
- (b) for the purposes of any business which is or has been carried on by the individual, by a firm or partnership of which the individual is or was a member, or by an agent or manager for the individual or for such a firm or partnership.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (4) The supplies referred to in paragraph (2) are—
- (a) a supply of electricity by^{F347} a public electricity supplier within the meaning of Part II of the Electricity (Northern Ireland) Order 1992,
 - ^{F348} [a supply of gas by a holder of a licence under Article 8 of the Gas (Northern Ireland) Order 1996;
 - (b) a supply of water by the Department of the Environment,
 - ^{F349} [a supply of communications services by a provider of a^{F350} public electronic communications service,
- and in this paragraph “communications services” do not include electronic communications services to the extent that they are used to broadcast or transmit programme services (within the meaning of the Communications Act 2003).]]]]

F346 mod. by SR 1990/177; SR 1991/411
F347 1992 NI 1
F348 1996 NI 2
F349 2003 c. 21
F350 SI 2004/945

Time#limits

344. Where by any provision in Parts VIII to X (other than Chapter I of Part VIII) or by the rules the time for doing anything is limited, the High Court may extend the time, either before or after it has expired, on such terms, if any, as it thinks fit.

Formal defects

345. The acts of a person as the trustee of a bankrupt's estate or as a special manager, and the acts of the creditors' committee established for any bankruptcy, are valid notwithstanding any defect in the appointment, election or qualifications of the trustee or manager or, as the case may be, of any member of the committee.

PARTS XI TO XIV MISCELLANEOUS MATTERS BEARING ON BOTH COMPANY AND INDIVIDUAL INSOLVENCY

^{F351}PART XI

PREFERENTIAL DEBTS IN COMPANY AND INDIVIDUAL INSOLVENCY

F351 Pts. XI-XIV modified by S.R. 2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/377), reg. 3, Sch. 2)

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Categories of preferential debts

346.—(1) ^{F352} A reference in this Order to the preferential debts of a company or an individual is to the debts listed in Schedule 4 ^{F353} (money owed to the Inland Revenue for income tax deducted at source; VAT, ^{F354} insurance premium tax] ^{F355} landfill tax], ^{F356} climate change levy,] car tax, betting and gaming duties ^{F357}, beer duty] ^{F358}, lottery duty] ^{F359}, air passenger duty]; social security and pension scheme contributions; remuneration, etc., of employees; levies on coal and steel production); and references to preferential creditors are to be read accordingly.

(2) ^{F352} In Schedule 4 “the debtor” means the company or the individual concerned.

(3) Schedule 4 is to be read with Schedule 4 to the Social Security Pensions (Northern Ireland) Order 1975 ^{F360} (occupational pension scheme contributions).

F352 mod. by SR 2004/307

F353 prosp. subst. by 2005 NI 10

F354 1994 c. 9

F355 1996 c. 8

F356 2000 c. 17

F357 1991 c. 31 as inserted by 1992 c. 48

F358 1993 c. 34

F359 1995 c. 4

F360 1975 NI 15

“The relevant date”

347.—(1) This Article explains references in Schedule 4 to the relevant date (being the date which determines the existence and amount of a preferential debt).

(2) For the purposes of Article 17 (meetings to consider company voluntary arrangement), the relevant date in relation to a company which is not being wound up is—

^{F361}(a) where an administration order is in force in relation to the company, the date of the making of that order, and

^{F361}(b) where no such order has been made, the date ^{F362} on which the voluntary arrangement takes effect].

^{F363}(2A) For the purposes of paragraph 41 of Schedule A1 (meetings to consider company voluntary arrangement where a moratorium under Article 14A is in force), the relevant date in relation to a company is the date of filing.]

(3) In relation to a company which is being wound up, the following applies—

(a) if the winding up is by the High Court, and the winding-up order was made immediately upon the discharge of an administration order, the relevant date is ^{F361} the date of the making of the administration order;

^{F364}(aa) if the winding up is by the Court and the winding-up order was made following conversion of administration into winding up by virtue of Article 37 of the EC Regulation, the relevant date is ^{F361} the date of the making of the administration order;

(ab) ^{F365} if the company is deemed to have passed a resolution for voluntary winding up by virtue of an order following conversion of administration into winding up under Article 37 of the EC Regulation, the relevant date is ^{F361} the date of the making of the administration order;]

(b) if the case does not fall within sub#paragraph (a) ^{F364}, (aa) or (ab)] and the company—
(i) is being wound up by the Court, and

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(ii) had not commenced to be wound up voluntarily before the date of the making of the winding#up order,

the relevant date is the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment has been made, the date of the winding#up order;

^{F366}(c) if the case does not fall within^{F364} sub-paragraph (a), (aa), (ab) or (b)], the relevant date^{F365} is the date of the passing of the resolution for the winding up of the company.

^{F366}(4) In relation to a company in receivership (where Article 50 applies), the relevant date is the date of the appointment of the receiver by debenture#holders.

(5 ^{F365} For the purposes of Article 232 (meeting to consider individual voluntary arrangements), the relevant date is, in relation to a debtor who is not an undischarged bankrupt

[^{F362}(a) where an interim order has been made under Article 226 with respect to his proposal, the date of that order, and

(b) in any other case, the date on which the voluntary arrangement takes effect.]

(6 ^{F365} In relation to a bankrupt, the following applies—

(a) where at the time the bankruptcy order was made there was an interim receiver appointed under Article 259, the relevant date is the date on which the interim receiver was first appointed after the presentation of the bankruptcy petition;

(b) otherwise, the relevant date is the date of the making of the bankruptcy order.

F361 prosp. subst. by 2005 NI 10

F362 2002 NI 6

F363 2002 NI 6

F364 SR 2002/334

F365 mod. by SR 2004/307

F366 prosp. insertion by 2005 NI 10

^{F367}PART XII

INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

F367 Pts. XI-XIV modified by S.R. 2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/377), reg. 3, Sch. 2)

Restrictions on unqualified persons acting as liquidator, trustee in bankruptcy, etc.

Acting as insolvency practitioner without qualification

348.—(1 ^{F368} A person who acts as an insolvency practitioner in relation to a company or an individual at a time when he is not qualified to do so shall be guilty of an offence.

[^{F369}(1A) This Article is subject to Article 348A.]

(2) This Article does not apply to the official receiver.

F368 mod. by SR 2004/307

F369 2002 NI 6

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

[^{F370} Authorisation of nominees and supervisors

348A.—(1 ^{F371} Article 348 does not apply to a person acting, in relation to a voluntary arrangement proposed or approved under Part II or Part VIII, as nominee or supervisor if he is authorised so to act.

(2) For the purposes of paragraph (1) and those Parts, an individual to whom paragraph (3) does not apply is authorised to act as nominee or supervisor in relation to such an arrangement if—

- (a) he is a member of a body recognised for the purpose by the Department, and
- (b) there is in force security for the proper performance of his functions and that security meets the prescribed requirements with respect to his so acting in relation to the arrangement.

(3) This paragraph applies to a person if—

- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
- (b) he is subject to—
 - (i) a disqualification order made under Part II of the Companies (Northern Ireland) Order 1989 (NI 18), or
 - (ii) a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002 or the Company Directors Disqualification Act 1986 (c. 46), or
- (c) he is a patient within the meaning of Part VIII of the Mental Health (Northern Ireland) Order 1986 (NI 4), Part VII of the Mental Health Act 1983 (c. 20) or [^{F372}section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003] .

(4) The Department may by order declare a body which appears to it to fall within paragraph (5) to be a recognised body for the purposes of paragraph (2)(a).

(5) A body may be recognised if it maintains and enforces rules for securing that its members—

- (a) are fit and proper persons to act as nominees or supervisors, and
- (b) meet acceptable requirements as to education and practical training and experience.

(6) For the purposes of this Article, a person is a member of a body only if he is subject to its rules when acting as nominee or supervisor (whether or not he is in fact a member of the body).

(7) An order made under paragraph (4) in relation to a body may be revoked by a further order if it appears to the Department that the body no longer falls within paragraph (5).

(8) An order of the Department under this Article has effect from such date as is specified in the order; and any such order revoking a previous order may make provision for members of the body in question to continue to be treated as members of a recognised body for a specified period after the revocation takes effect.]

F370 2002 NI 6

F371 mod. by SR 2004/307

F372 S.I. 2005/2078

F373

F373 prosp. insertion by 2005 NI 10

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

The requisite qualification, and the means of obtaining it

Persons not qualified to act as insolvency practitioners

- 349.**—(1) A person who is not an individual is not qualified to act as an insolvency practitioner.
- (2) A person is not qualified to act as an insolvency practitioner at any time unless at that time—
- (a) he is authorised so to act by virtue of membership of a professional body recognised under Article 350, being permitted so to act by or under the rules of that body, or
 - (b) he holds an authorisation granted by a competent authority under Article 352.
- (3) A person is not qualified to act as an insolvency practitioner in relation to another person at any time unless—
- (a) there is in force at that time security, and
 - (b) that security meets the prescribed requirements with respect to his so acting in relation to that other person.
- (4) A person is not qualified to act as an insolvency practitioner at any time if at that time—
- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
 - ^[F374](b) he is subject to a disqualification order made or a disqualification undertaking accepted under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002, or]
 - (c) he is a patient within the meaning of Part VII of the Mental Health Act 1983^{F375}, section 125(1) of the Mental Health (Scotland) Act 1984^{F376} or Part VIII of the Mental Health (Northern Ireland) Order 1986^{F377 F378}.

F374 2002 NI 4

F375 1983 c. 20

F376 1984 c. 36

F377 1986 NI 4

F378 prosp. insertion by 2005 NI 10

Recognised professional bodies

350.—(1) The Department may by order subject to negative resolution declare a body which appears to it to fall within paragraph (2) to be a recognised professional body for the purposes of this Article.

- (2) A body which—
- (a) has an established place of business in the United Kingdom; and
 - (b) is—
 - (i) by an order under section 391(1) of the Insolvency Act 1986^{F379}, declared to be a recognised professional body for the purposes of that section; or
 - (ii) a Northern Ireland professional body with members which are from Northern Ireland, being a body corresponding to a body such as is mentioned in head (i);

may be recognised if it regulates the practice of a profession and maintains and enforces rules for securing that such of its members as are permitted by or under the rules to act as insolvency practitioners—

- (aa) are fit and proper persons so to act, and

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(ab) meet acceptable requirements as to education and practical training and experience.

(3) References to members of a recognised professional body are to persons who, whether members of that body or not, are subject to its rules in the practice of the profession in question; and the reference in Article 349(2) to membership of a professional body recognised under this Article is to be read accordingly.

(4) An order of the Department under this Article has effect from such date as is specified in the order; and any such order revoking a previous order may make provision whereby members of the body in question continue to be treated as authorised to act as insolvency practitioners for a specified period after the revocation takes effect.

F379 1986 c. 45

Authorisation by competent authority

351.—(1) Application may be made to a competent authority for authorisation to act as an insolvency practitioner.

(2) The competent authorities for this purpose are—

- (a) in relation to a case of any description specified in directions given by the Department, the body or person so specified in relation to cases of that description, and
- (b) in relation to a case not falling within sub#paragraph (a), the Department.

(3) The application—

- (a) shall be made in such manner as the competent authority may direct,
- (b) shall contain or be accompanied by such information as that authority may reasonably require for the purpose of determining the application, and
- (c) shall be accompanied by the prescribed fee;

and the authority may direct that notice of the making of the application shall be published in such manner as may be specified in the direction.

(4) At any time after receiving the application and before determining it the authority may require the applicant to furnish additional information.

(5) Directions and requirements given or imposed under paragraph (3) or (4) may differ as between different applications.

(6) Any information to be furnished to the competent authority under this Article shall, if it so requires, be in such form or verified in such manner as it may specify.

(7) An application may be withdrawn before it is granted or refused.

(8) Any sums received under this Article by a competent authority other than the Department may be retained by the authority; and any sums so received by the Department shall be applied in such manner as the Department of Finance and Personnel may direct.^{F380}

F380 prosp. addition by 2005 NI 10

Grant, refusal and withdrawal of authorisation

352.—(1) The competent authority may, on an application duly made in accordance with Article 351 and after being furnished with all such information as it may require under that Article, grant or refuse the application.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (2) The authority shall grant the application if it appears to it from the information furnished by the applicant and having regard to such other information, if any, as it may have—
- (a) that the applicant is a fit and proper person to act as an insolvency practitioner, and
 - (b) that the applicant meets the prescribed requirements with respect to education and practical training and experience.
- (3) An authorisation granted under this Article, if not previously withdrawn, continues in force for such period not exceeding the prescribed maximum as may be specified in the authorisation.
- (4) An authorisation so granted may be withdrawn by the competent authority if it appears to it—
- (a) that the holder of the authorisation is no longer a fit and proper person to act as an insolvency practitioner, or
 - (b) without prejudice to sub#paragraph (a), that the holder—
 - (i) has failed to comply with any provision of this Part or of any regulations made under this Part or Part XIII, or
 - (ii) in purported compliance with any such provision, has furnished the competent authority with false, inaccurate or misleading information.
- (5) An authorisation granted under this Article may be withdrawn by the competent authority at the request or with the consent of the holder of the authorisation.

Notices

- 353.**—(1) Where a competent authority grants an authorisation under Article 352, it shall give written notice of that fact to the applicant, specifying the date on which the authorisation takes effect.
- (2) Where the authority proposes to refuse an application, or to withdraw an authorisation under Article 352(4), it shall give the applicant or holder of the authorisation written notice of its intention to do so, setting out particulars of the grounds on which it proposes to act.
- (3) In the case of a proposed withdrawal the notice shall state the date on which it is proposed that the withdrawal should take effect.
- (4) A notice under paragraph (2) shall give particulars of the rights exercisable under Article 354 by a person on whom the notice is served.

Right to make representations

- 354.**—(1) A person on whom a notice is served under Article 353(2) may within 14 days from the date of service make written representations to the competent authority.
- (2) The competent authority shall have regard to any representations so made in determining whether to refuse the application or withdraw the authorisation, as the case may be.

^{F381}PART XIII

PUBLIC ADMINISTRATION

F381 Pts. XI-XIV modified by S.R. 2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/377), reg. 3, Sch. 2)

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Official receivers

Appointment, etc., of official receivers

355.—(1) The Department may appoint one or more than one officer of the Department as official receiver for Northern Ireland.

(2) The Department may give directions with respect to the disposal of the business of official receivers.

Functions and status of official receivers

356.—(1) In addition to any functions conferred on him by this Order, an official receiver shall carry out such other functions as may be conferred on him by the Department.

(2) In the exercise of the functions of his office an official receiver shall act under the general authority and direction of the Department, but shall also be an officer of the High Court.

(3) Any property vested in an officer of the Department in his official capacity as official receiver shall, on his dying, ceasing to hold office or being otherwise succeeded in relation to the bankruptcy or winding up in question by another official receiver, vest in his successor without any conveyance, assignment or transfer.

Deputy official receivers

357.—(1) The Department may, if it thinks it expedient to do so in order to facilitate the disposal of the business of official receiver, appoint one or more than one officer of the Department as deputy official receiver.

(2) Subject to any directions given by the Department under Article 355 or 356, a deputy official receiver has, on such conditions and for such period as may be specified in the terms of his appointment, the same status and functions as an official receiver.

Insolvency Account

Insolvency Account

358.—(1) An account, to be called the Insolvency Account, shall continue to be kept by the Department with such bank as may be agreed with the Department of Finance and Personnel.

(2) The Department may, with the agreement of the Department of Finance and Personnel, invest any money from time to time standing to the credit of the Insolvency Account.

(3) The Department shall in respect of each year ending on 31st March prepare an account, in such form and manner as the Department of Finance and Personnel may direct, of sums credited and debited to the Insolvency Account during that year.

(4) On or before 31st August in each year the Department shall transmit to the Comptroller and Auditor General for Northern Ireland the account prepared under paragraph (3) in respect of the year ending on the preceding 31st March and the Comptroller and Auditor General shall examine and certify such account and the Department shall lay copies thereof, together with the report of the Comptroller and Auditor General thereon, before the Assembly.

(5) On or before 31st March in each year the Department shall pay into the Consolidated Fund the amount of any lodgment made into the Insolvency Account of unclaimed dividends and unapplied or undistributed balances, which has remained unclaimed for a period of at least 2 years from the date of lodgment.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F382 prosp. insertion by 2005 NI 10

Insolvency rules

Insolvency rules

359.—(1) The Lord Chancellor may, with the concurrence of the Department and after consultation with the committee appointed under Article 360, make rules for the purpose of giving effect to this Order^{F383} or the EC Regulation].

^{F384}(2) Without prejudice to the generality of paragraph (1), or to any provision of this Order by virtue of which rules under this Article may be made with respect to any matter, rules under this Article may contain—

- (a) any such provision as is specified in Schedule 5 or corresponds to provision contained immediately before the coming into operation of this Order in rules made, or having effect as if made under Article 613(1) and (2) of the Companies Order (old winding#up rules), and
- (b) ^{F385} any such provision as is specified in Schedule 6 or corresponds to provision contained immediately before the coming into operation of this Order in rules made under Article 33(1) and (2) of the Bankruptcy Amendment (Northern Ireland) Order 1980^{F386} (old bankruptcy rules), and
- (c) provision for enabling the Master (Bankruptcy) to exercise such of the jurisdiction conferred for the purposes of this Order on the High Court as may be prescribed and for enabling the review of any such jurisdiction, and
- (d) such incidental, supplemental and transitional provision as may appear to the Lord Chancellor or, as the case may be, the Department necessary or expedient.

[^{F383}2A ^{F385} For the purposes of paragraph (2), a reference in Schedule 5 or Schedule 6 to doing anything under or for the purposes of a provision of this Order includes a reference to doing anything under or for the purposes of the EC Regulation (in so far as the provision of this Order relates to a matter to which the EC Regulation applies).

(2B) Rules under this Article for the purpose of giving effect to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.]

(3) In Schedule 5 “liquidator” includes a provisional liquidator; and references in this Article to this Order are to be read as including the Companies Order so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

(4) Rules under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946^{F387} shall apply accordingly.

(5) Regulations made by the Department under a power conferred by rules under this Article shall be subject to affirmative resolution.

(6) Nothing in this Article prejudices any power to make rules of court.

F383 SR 2002/223

F384 prosp. insertion by 2005 c. 4

F385 mod. by SR 2004/307

F386 1980 NI 4

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F387 1946 c. 36

Committee to review rules under Article 359

360.—(1) There shall^{F388F389} continue to be a committee appointed by the Lord Chancellor to keep under review rules for the time being in force under Article 359 and to make recommendations to the Lord Chancellor as to any changes in the rules that may appear to the committee to be desirable.

(2) The committee shall consist of—

- (a) the Chancery Judge;
- (b) the Master (Bankruptcy);
- (c) a practising barrister^{#at#}law;
- (d) a practising solicitor of the Supreme Court;
- (e) a practising accountant; and
- (f) such additional persons, if any, as appear to the^{F388F389} Lord Chancellor to have qualifications or experience that would be of value to the committee in considering any matter with which it is concerned.^{F390}

F388 prosp. subst. by 2002 c. 26

F389 prosp. subst. by 2005 c. 4

F390 prosp. insertion by 2005 c. 4

Fees

Fees orders

361.—(1) The Department may, with the concurrence of the Department of Finance and Personnel, by order subject to affirmative resolution specify the fees which shall be paid in respect of—

- (a) proceedings under this Order other than fees to which section 116 of the Judicature (Northern Ireland) Act 1978^{F391} (court fees, etc.) applies; and
- (b) the performance by the official receiver or the Department of functions under this Order; and the Department of Finance and Personnel may direct by whom and in what manner the fees are to be collected and accounted for.

(2) The Department may, with the concurrence of the Department of Finance and Personnel, by order subject to negative resolution provide for sums to be deposited, by such persons, in such manner and in such circumstances as may be specified in the order, by way of security for—

- (a) fees payable by virtue of this Article, and
- (b)^{F392} fees payable to any person who has prepared an insolvency practitioner's report under Article 248.

(3) An order under this Article may contain such incidental, supplemental, and transitional provisions as may appear to the Department or (as the case may be) the Department of Finance and Personnel necessary or expedient.

(4) References in paragraph (1) to this Order are to be read as including the Companies Order so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(5) Nothing in this Article prejudices any power to make rules of court.

F391 1978 c. 23

F392 mod. by SR 2004/307

F393

F393 prosp. insertion by 2005 NI 10

Specification, increase and reduction of money sums relevant in the operation of this Order

Monetary limits

362.—(1) The Department may by order—

(a) ^{F394} increase or reduce any of the money sums for the time being specified in—

Article 103(1)(a) (minimum debt for service of demand on company by unpaid creditor);

Article 170(1)(a) and (b) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer);

Article 186(1) (minimum debt for service of demand on unregistered company by unpaid creditor);

Article 215(5) (maximum debt for calculating majority of creditors for assent to deed of arrangement);

Article 221(4) (maximum debt for calculating majority of creditors for assent to dispense with security by trustee under deed of arrangement); or

(b) ^{F394} specify amounts for the purposes of the following provisions—

Article 247 (minimum value of debtor's estate determining whether immediate bankruptcy order should be made; small bankruptcies level);

^{F395}Article 325(1)(b) and (3) (minimum amount of concealed debt, or value of property concealed or removed, determining criminal liability under the Article);

Article 329(1)(a) (minimum value of property taken by a bankrupt out of Northern Ireland, determining his criminal liability);

Article 331(1)(a) (maximum amount of credit which bankrupt may obtain without disclosure of his status);

Article 332(2)(a) (exemption of bankrupt from criminal liability for failure to keep proper accounts, if unsecured debts not more than the prescribed minimum);

Article 335(2)(d) (minimum value of goods removed by the bankrupt, determining his liability to arrest)^{F396} or]

^{F396}(c) increase or reduce any of the money sums for the time being specified in the following provisions of Schedule A1—

paragraph 28(1) (maximum amount of credit which company may obtain without disclosure of moratorium);

paragraph 51(4) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer).]

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(2) An order under this Article may contain such transitional provisions as may appear to the Department necessary or expedient.

(3) No order shall be made under this Article unless a draft of it has been laid before, and approved by a resolution of the Assembly.

F394 mod. by SR 2004/307

F395 prosp. insertion by 2005 NI 10

F396 2002 NI 6

Insolvency practice

Regulations for purposes of Part XII

363. Without prejudice to the generality of any provision of Part XII by virtue of which regulations may be made with respect to any matter, regulations may contain—

- (a) provision as to the matters to be taken into account in determining whether a person is a fit and proper person to act as an insolvency practitioner;
- (b) provision prohibiting a person from so acting in prescribed cases, being cases in which a conflict of interest will or may arise;
- (c) provision imposing requirements with respect to—
 - (i) the preparation and keeping by a person who acts as an insolvency practitioner of prescribed books, accounts and other records, and
 - (ii) the production of those books, accounts and records to prescribed persons;
- (d) provision conferring power on prescribed persons—
 - (i) to require any person who acts or has acted as an insolvency practitioner to answer any inquiry in relation to a case in which he is so acting or has so acted, and
 - (ii) to apply to a court to examine such a person or any other person on oath concerning such a case;
- (e) provision making non-compliance with any of the regulations a criminal offence; and
- (f) such incidental, supplemental and transitional provisions as may appear to the Department necessary or expedient.

Other order-making powers

Insolvent partnerships

364 ^{F397}.—(1) The Lord Chancellor may, by order made with the concurrence of ^{F398} the Department, provide that such provisions of this Order, Part VI of the Judgments Enforcement (Northern Ireland) Order 1981^{F399}, the Land Registration Act (Northern Ireland) 1970^{F400} or the Registration of Deeds Acts as may be specified in the order shall apply in relation to insolvent partnerships with such modifications as may be so specified.

[^{F401F398}(1A) An order under this Article may make provision in relation to the EC Regulation.

(1B) Provision made by virtue of this Article in relation to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.]

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(2) An order under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946^{F402} shall apply accordingly.

F397 mod. by SR 2004/307
F398 prosp. insertion by 2005 c. 4
F399 1981 NI 6
F400 1970 c. 18 (NI)
F401 SR 2002/223
F402 1946 c. 36

Insolvent estates of deceased persons

365^{F403}.—(1) The Lord Chancellor may, by order made with the concurrence of^{F404} the Department, provide that such provisions of this Order, Part VI of the Judgments Enforcement (Northern Ireland) Order 1981, the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts as may be specified in the order shall apply^{F405} in relation] to the administration of the insolvent estates of deceased persons with such modifications as may be so specified.

[^{F406F404}(1A) An order under this Article may make provision in relation to the EC Regulation.

(1B) Provision made by virtue of this Article in relation to the EC Regulation may not create an offence of a kind referred to in paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972.]

(2) An order under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act shall apply accordingly.

(3) For the purposes of this Article the estate of a deceased person is insolvent if, when realised, it will be insufficient to meet in full all the debts and other liabilities to which it is subject.

F403 mod. by SR 2004/307
F404 prosp. insertion by 2005 c. 4
F405 2002 NI 6
F406 SR 2002/223

[^{F407} Insolvent estates: joint tenancies

365A.—(1) This Article applies where—

- (a) an insolvency administration order has been made in respect of the insolvent estate of a deceased person,
- (b) the petition for the order was presented after the commencement of this Article and within the period of 5 years beginning with the day on which he died, and
- (c) immediately before his death he was beneficially entitled to an interest in any property as joint tenant.

(2) For the purpose of securing that debts and other liabilities to which the estate is subject are met, the High Court may, on an application by the trustee appointed pursuant to the insolvency administration order, make an order under this Article requiring the survivor to pay to the trustee an amount not exceeding the value lost to the estate.

(3) In determining whether to make an order under this Article, and the terms of such an order, the High Court must have regard to all the circumstances of the case, including the interests of the

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

deceased's creditors and of the survivor; but, unless the circumstances are exceptional, the Court must assume that the interests of the deceased's creditors outweigh all other considerations.

(4) The order may be made on such terms and conditions as the High Court thinks fit.

(5) Any sums required to be paid to the trustee in accordance with an order under this Article shall be comprised in the estate.

(6) The modifications of this Order which may be made by an order under Article 365 include any modifications which are necessary or expedient in consequence of this Article.

(7) In this Article “survivor” means the person who, immediately before the death, was beneficially entitled as joint tenant with the deceased or, if the person who was so entitled dies after the making of the insolvency administration order, his personal representatives.

(8) If there is more than one survivor—

(a) an order under this Article may be made against all or any of them, but

(b) no survivor shall be required to pay more than so much of the value lost to the estate as is properly attributable to him.

(9) In this Article—

“insolvency administration order” has the same meaning as in any order under Article 365 having effect for the time being,

“value lost to the estate” means the amount which, if paid to the trustee, would in the High Court's opinion restore the position to what it would have been if the deceased had been adjudged bankrupt immediately before his death.]

F407 2002 NI 6

[^{F408}Formerly authorised banks]

366 ^{F409}.—[^{F410}(1)] The Department may, by order subject to negative resolution, made after consultation with the [^{F411} Financial Services Authority], provide that such provisions in Parts II to VII as may be specified in the order shall apply in relation to [^{F412}^{F408} any person] which continues to have a liability in respect of a deposit which was held by it in accordance with the Banking Act 1979 or the Banking Act 1987.]^{F413} with such modifications as may be so specified.

[^{F410}^{F414}(2) For the purposes of paragraph (1), “authorised deposit taker” has the meaning given in Article 21(1B).]

F408 SI 2004/355

F409 mod. by SR 2004/307

F410 SI 2002/1555

F411 1998 c. 11

F412 SI 2001/3649

F413 1987 c. 22

F414 prosp. rep. by 2005 NI 10

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F415 PART XIV MISCELLANEOUS

F415 Pts. XI-XIV modified by S.R. 2004/307 (as amended (1.10.2006) by Limited Liability Partnerships (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/377), reg. 3, Sch. 2)

Provisions against debt avoidance

Transactions defrauding creditors

367.—(1) This Article relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—

- (a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;
- (b) he enters into a transaction with the other in consideration of marriage^{F416} or the formation of a civil partnership]; or
- (c) he enters into a transaction with the other 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 himself.

(2) Where a person has entered into such a transaction, the High Court may, if satisfied as mentioned in paragraph (3), make such order as it thinks fit for—

- (a) restoring the position to what it would have been if the transaction had not been entered into, and
- (b) protecting the interests of persons who are victims of the transaction.

(3) In the case of a person entering into such a transaction, an order shall only be made if the High Court is satisfied that it was entered into by him for the purpose—

- (a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or
- (b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

(4) In relation to a transaction at an undervalue, references in this Article and Article 368 to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in Articles 368 and 369 the person entering into the transaction is referred to as “the debtor”.

F416 2004 c. 33

Those who may apply for an order under Article 367

368.—(1) An application for an order under Article 367 shall not be made in relation to a transaction except—

- (a) in a case where the debtor has been adjudged bankrupt or is a body corporate which is being wound up or^{F417} in relation to which an administration order is in force, by the official receiver, by the trustee of the bankrupt's estate or the liquidator or administrator of the body corporate or (with the leave of the High Court) by a victim of the transaction;

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (b) in a case where a victim of the transaction is bound by a voluntary arrangement approved under Part II or Part VIII, by the supervisor of the voluntary arrangement or by any person who (whether or not so bound) is such a victim; or
 - (c) in any other case, by a victim of the transaction.
- (2) An application made under any of the subparagraphs of paragraph (1) is to be treated as made on behalf of every victim of the transaction.

F417 prosp. subst. by 2005 NI 10

Provision which may be made by order under Article 367

369.—(1) Without prejudice to the generality of Article 367, an order made under that Article with respect to a transaction may (subject as follows)—

- (a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;
- (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 debtor;
- (d) require any person to pay to any other person in respect of benefits received from the debtor such sums as the High 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 to be under such new or revived obligations as the High 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 such security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction.

(2) An order under Article 367 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the debtor entered into the transaction; but such an order—

- (a) shall not prejudice any interest in property which was acquired from a person other than the debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest, and
- (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

(3) For the purposes of this Article the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under Article 367 may be made in respect of the transaction.

- (4) In this Article “security” means any mortgage, charge, lien or other security.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Disqualifications, reviews and reports

F418 Northern Ireland Assembly disqualification

370 ^{F419}.—(1) Where the High Court adjudges an individual bankrupt, the individual is disqualified—

- (a) for being elected to, or sitting or voting in, the Northern Ireland Assembly, and
- (b) for sitting or voting in a committee of the Northern Ireland Assembly.

(2) Where an individual is disqualified under this Article, the disqualification ceases—

- (a) except where the adjudication is annulled, on the discharge of the individual, and
- (b) in the excepted case, on the annulment.

(3) Where a member of the Northern Ireland Assembly who is disqualified under this Article continues to be so disqualified until the expiration of 6 months from the day of the adjudication, his seat shall be vacated at the end of that period.

(4) Where the High Court makes an adjudication such as is mentioned in paragraph (1) in relation to any member of the Northern Ireland Assembly, the Court shall forthwith certify the adjudication or award to the presiding officer of the Assembly.

(5) Where the High Court has certified an adjudication to the presiding officer of the Northern Ireland Assembly under paragraph (4), then immediately after it becomes apparent which of the following certificates is applicable, the Court shall certify to the presiding officer of the Assembly—

- (a) that the 6 months from the day of the adjudication has expired without the adjudication having been annulled, or
- (b) that the adjudication has been annulled before the end of that period.

(6) Subject to the preceding provisions of this Article, so much of this Order and any other statutory provision (whenever passed) and of any subordinate legislation (whenever made) as—

- (a) makes provision for or in connection with bankruptcy in Northern Ireland, or
- (b) makes provision conferring a power of arrest in connection with the winding up or insolvency of companies in Northern Ireland,

applies in relation to persons having privilege of the Northern Ireland Assembly as it applies in relation to persons not having such privilege.

F418 prosp. subst. by [2005 NI 10](#)

F419 mod. by SR 2004/307

VALID FROM 27/03/2006

[^{F420}Irrelevance of privilege

370A. A statutory provision about insolvency applies in relation to a member of the Assembly irrespective of any privilege of the Assembly.]

F420 Arts. 370 - 370A substituted (27.3.2006) for art. 370 by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 22 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Review, etc., by High Court of its orders

371. The High Court may review, rescind or vary any order made by it in the exercise of the jurisdiction under this Order.

Annual report

372. The Department shall cause an annual general report of matters for which it and its officers, including the official receiver, are responsible under this Order to be prepared and laid before the Assembly.

Legal proceedings

Prosecution and punishment of offences

373.—(1) Schedule 7 sets out in tabular form the manner in which offences under this Order are punishable on conviction.

(2) In relation to an offence under a provision of this Order specified in column 1 of Schedule 7 (the general nature of the offence being described in column 2)—

- (a) column 3 shows whether the offence is punishable on conviction on indictment, or on summary conviction, or either in one way or the other;
- (b) column 4 shows the maximum punishment by way of fine or imprisonment which may be imposed on a person convicted of the offence in the way specified in relation to it in column 3 (that is to say, on indictment or summarily) any reference to a period of years or months being to a term of imprisonment of that duration;
- (c) column 5 shows (in relation to an offence for which there is an entry in that column) that a person convicted of the offence after continued contravention is liable to a daily default fine; that is to say he is liable on a second or subsequent conviction of the offence to the fine specified in that column for each day on which the contravention is continued (instead of the penalty specified for the offence in column 4).

(3) This Article and Schedule 7 shall be subject to any provision of this Order with respect to the prosecution and punishment of any offence specified in that Schedule.

(4) The power to charge a person by virtue of section 20(2) of the Interpretation Act (Northern Ireland) 1954^{F421} of any offence committed by a body corporate under this Order does not extend to an offence committed under Articles 40, 49(2), 71(2), 75(4) and (6), 139, 159(2), 166(4), 170(1), (2) and (5), 171(1), 172(1), 173, 174(1) and 175(1).

(5) In Schedule 7 a reference to a fine without a qualifying reference shall be construed as a reference to an unlimited fine.

F421 1954 c. 33 (NI)

Summary proceedings

374.—(1) Summary proceedings for any offence under any of Parts II to VII may (without prejudice to any jurisdiction exercisable apart from this paragraph) be taken against a body corporate at any place at which the body has a place of business, and against any other person at any place at which he is for the time being.

(2) Notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981^{F422} (limitation of time for taking proceedings) summary proceedings for an offence under this Order, other than under Articles 34(6), 40, 41(1), 57(6), 75(4), 84(4), 85(3), 111(7), 139, 170(1)

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

and (2), 171(1), 172(1), 173, 174(1), 175(1), 180(4), 199(5), 223, 324(1), 325(1), (3) and (5), 326(1), (2) and (3), 327(1) and (3), 328(1) and (3), 329(1), 330(1) and (3), 331(1) and (3), 332, 333(1) and 348(1) may be instituted at any time within 3 years from the commission of the offence and within 12 months from the date on which evidence sufficient in the opinion of the Director of Public Prosecutions for Northern Ireland or, as the case may be, the Department to justify the proceedings comes to his or the Department's knowledge.

(3) For the purposes of this Article, a certificate of the Director of Public Prosecutions for Northern Ireland or, as the case may be, the Department as to the date on which such evidence as is referred to in paragraph (2) came to his or the Department's knowledge is conclusive evidence.

F422 1981 NI 26

Admissibility in evidence of statements of affairs, etc.

375.—^[F423(1)] In any proceedings (whether or not under this Order)—

- (a) a statement of affairs prepared for the purposes of any provision of this Order, and
- (b) any other statement made in pursuance of a requirement imposed by or under any such provision or by or under rules made under this Order,

may be used in evidence against any person making or concurring in making the statement.

^[F424(2)] However, in criminal proceedings in which any such person is charged with an offence to which this paragraph applies—

- (a) no evidence relating to the statement 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.

(3) Paragraph (2) applies to any offence other than—

- (a) an offence under Article 34(6), 57(6), 58(8), 81(7), 84(5), 85(3)(a), 111(7), 162(2), 172(1) (a) or (d) or (2), 174, 199(5), 324(1), 325(1)(b) or (5) or 327(1) or (3)(a) or (b);
- (b) an offence which is—
 - (i) created by rules made under this Order, and
 - (ii) designated for the purposes of this paragraph by such rules or by regulations;
- (c) an offence which is—
 - (i) created by regulations made under any such rules, and
 - (ii) designated for the purposes of this paragraph by such regulations; or
- (d) an offence under Article 3, 7 or 10 of the Perjury (Northern Ireland) Order 1979 (false statements made on oath or made otherwise than on oath).

(4) Regulations under paragraph (3)(b)(ii) shall after being made be laid before the Assembly.]

F423 1999 c. 23

F424 1999 c. 23

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Supplemental

Judicial notice of court documents

376. In all proceedings under this Order, all courts, judges and persons judicially acting, and all officers, judicial or ministerial, of any court, or employed in enforcing the process of any court shall take judicial notice—

- (a) of the signature of any officer of the High Court in Northern Ireland or of the High Court or a county court in England and Wales, or of the Court of Session or a sheriff court in Scotland, and also
- (b) of the official seal or stamp of the several offices of the High Court in Northern Ireland or England and Wales or of the Court of Session, appended to or impressed on any document made, issued or signed under the provisions of this Order or the Companies Order, or any official copy of such a document.

Exemption from stamp duty

377. Stamp duty shall not be charged on—

- (a) any document, being a deed, conveyance, assignment, surrender, admission or other assurance relating solely to property which—
 - (i) in the case of a winding up by the High Court or of a creditors' voluntary winding up, forms part of the company's assets; or
 - (ii) is comprised in a bankrupt's estate;
 and which, after the execution of that document, is or remains at law or in equity part of that company's assets or the property of the bankrupt or of the trustee in bankruptcy, as the case may require,
- (b) any order, certificate or other instrument relating solely to—
 - (i) the assets of any company which is being wound up as mentioned in head (a)(i) or any proceedings under such a winding up, or
 - (ii) the property of a bankrupt or any bankruptcy proceedings.

Crown application

378. For the avoidance of doubt it is hereby declared that provisions of this Order bind the Crown, including the Crown in right of Her Majesty's government in the United Kingdom, so far as affecting or relating to the following matters, namely—

- (a) remedies against, or against the property of, companies or individuals;
- (b) priorities of debts;
- (c) transactions at an undervalue or preferences;
- (d) voluntary arrangements approved under Part II or Part VIII, and
- (e) discharge from bankruptcy.

Transitional provisions and savings

379 ^{F425}. The transitional provisions and savings set out in Schedule 8 shall have effect, the Schedule comprising the following Parts—

Part I: company insolvency and winding up (matters arising before the date of the coming into operation of this Order, and continuance of proceedings in certain cases as before that date);

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Part II: individual insolvency (matters so arising, and continuance of bankruptcy proceedings in certain cases as before that date); and

Part III: other general transitional provisions and savings.

F425 mod. by SR 2004/307

Art.380 rep. by 1996 NI 16

Art.381—Amendments

Art.382—Repeals

PART 15

SUPPLEMENTARY PROVISIONS

VALID FROM 06/04/2008

[^{F426}Introductory

383. The provisions of this Part have effect for the purposes of—

- (a) Parts 2 to 7 (company insolvency; companies winding-up),
- (b) Articles 2 and 5 to 8 (interpretation), and
- (c) Articles 359, 360, 361 and 362 in Part 13.

F426 Pt. 15 (arts. 383-385) inserted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), **Sch. 1 para. 171** (with arts. 6, 11, 12)

Representation of corporations at meetings

384.—(1) If a corporation is a creditor or debenture-holder, it may by resolution of its directors or other governing body authorise a person or persons to act as its representative or representatives—

- (a) at any meeting of the creditors of a company held in pursuance of this Order or of rules made under it, or
- (b) at any meeting of a company held in pursuance of the provisions contained in a debenture or trust deed.

(2) Where the corporation authorises only one person, that person is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor or debenture-holder.

(3) Where the corporation authorises more than one person, any one of them is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor or debenture-holder.

(4) Where the corporation authorises more than one person and more than one of them purport to exercise a power under paragraph (3)—

- (a) if they purport to exercise the power in the same way, the power is treated as exercised in that way;

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (b) if they do not purport to exercise the power in the same way, the power is treated as not exercised.

Legal professional privilege

385. In proceedings against a person for an offence under this Order nothing in this Order is to be taken to require any person to disclose any information that he is entitled to refuse to disclose on grounds of legal professional privilege.

Enforcement of company's filing obligations

386.—(1) This Article applies where a company has made default in complying with any obligation under this Order—

- (a) to deliver a document to the registrar, or
- (b) to give notice to the registrar of any matter.

(2) The registrar, or any member or creditor of the company, may give notice to the company requiring it to comply with the obligation.

(3) If the company fails to make good the default within 14 days after service of the notice, the registrar, or any member or creditor of the company, may apply to the High Court for an order directing the company, and any specified officer of it, to make good the default within a specified time.

(4) The High Court's order may provide that all costs of or incidental to the application are to be borne by the company or by any officers of it responsible for the default.

(5) This Article does not affect the operation of any enactment imposing penalties on a company or its officers in respect of any such default.

VALID FROM 01/10/2009

Application of filing obligations to overseas companies

387. The provisions of this Order requiring documents to be forwarded or delivered to, or filed with, the registrar apply in relation to an overseas company that is required to register particulars under section 1046 of the Companies Act 2006 as they apply in relation to a company registered under that Act in Northern Ireland.]]

F426 Pt. 15 (arts. 383-385) inserted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 171** (with arts. 6, 11, 12)

F427 Arts. 386, 387 inserted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 115** (with art. 10)

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

SCHEDULES

[^{F428}SCHEDULE A1

MORATORIUM WHERE DIRECTORS PROPOSE VOLUNTARY ARRANGEMENT^{F429}

F428 2002 NI 6

F429 mod. by SR 2004/307

PART I

INTRODUCTORY

Interpretation

1. In this Schedule—

the beginning of the moratorium has the meaning given by paragraph 19(1),

the date of filing means the date on which the documents for the time being referred to in paragraph 18(1) are filed or lodged with the High Court,

hire-purchase agreement includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

market contract and market charge have the meanings given by Part V of the Companies (No. 2) (Northern Ireland) Order 1990,

moratorium means a moratorium under Article 14A,

the nominee includes any person for the time being carrying out the functions of a nominee under this Schedule,

the settlement finality regulations means the Financial Markets and Insolvency (Settlement Finality) Regulations 1999,

system-charge has the meaning given by the Financial Markets and Insolvency Regulations (Northern Ireland) 1996.

Eligible companies

2.—(1) A company is eligible for a moratorium if it meets the requirements of paragraph 3, unless—

- (a) it is excluded from being eligible by virtue of^{F430} paragraph 4, or
- (b) it falls within sub-paragraph (2).

(2) A company falls within this sub-paragraph if—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) it effects or carries out contracts of insurance, but is not exempt from the general prohibition, within the meaning of section 19 of the Financial Services and Markets Act 2000, in relation to that activity,
 - (b) it has permission under Part IV of that Act to accept deposits,
 - (c) it has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 or the Banking Act 1987,
 - (d) it is a party to a market contract or any of its property is subject to a market charge or a system-charge,
 - (e) it is a participant (within the meaning of the settlement finality regulations) or any of its property is subject to a collateral security charge (within the meaning of those regulations).
- (3) Paragraphs (a), (b) and (c) of sub-paragraph (2) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.

F430 prosp. subst. by [2005 NI 10](#)

3.—(1) A company meets the requirements of this paragraph if the qualifying conditions are met—

- (a) in the year ending with the date of filing, or
 - (b) in the financial year of the company which ended last before that date.
- (2) For the purposes of sub-paragraph (1)—
- (a) the qualifying conditions are met by a company in a period if, in that period, it satisfies 2 or more of the requirements for being a small company specified for the time being in Article 255(3) of the Companies (Northern Ireland) Order 1986, and
 - (b) a company's financial year is to be determined in accordance with that Order.

(3) Paragraphs (4), (5) and (6) of Article 255 of that Order apply for the purposes of this paragraph as they apply for the purposes of that Article.

(4) A company does not meet the requirements of this paragraph if it is a holding company of a group of companies which does not qualify as a small group or a medium-sized group in respect of the financial year of the company which ended last before the date of filing.

(5) For the purposes of sub-paragraph (4) group has the meaning given by Article 270 of the Companies (Northern Ireland) Order 1986 (definitions for Part VIII) and a group qualifies as small or medium-sized if it qualifies as such under Article 257 of the Companies (Northern Ireland) Order 1986 (qualification of group as small or medium-sized).

4.—(1) A company is excluded from being eligible for a moratorium if, on the date of filing—

- ^{F431}(a) an administration order is in force in relation to the company,
- (b) the company is being wound up,
- (c) there is an administrative receiver of the company,
- (d) a voluntary arrangement has effect in relation to the company,
- (e) there is a provisional liquidator of the company,

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (f) a moratorium has been in force for the company at any time during the period of 12 months ending with the date of filing and—
 - (i) no voluntary arrangement had effect at the time at which the moratorium came to an end, or
 - (ii) a voluntary arrangement which had effect at any time in that period has come to an end prematurely,^{F432} or
 - (g) a voluntary arrangement in relation to the company which had effect in pursuance of a proposal under Article 14(3) has come to an end prematurely and, during the period of 12 months ending with the date of filing, an order under Article 18(3)(a) has been made.
- (2) Sub-paragraph (1)(b) does not apply to a company which, by reason of a winding-up order made after the date of filing, is treated as being wound up on that date.

F431 prosp. subst. by 2005 NI 10

F432 prosp. insertion by 2005 NI 10

Capital market arrangement

5. A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a party to an agreement which is or forms part of a capital market arrangement under which—
- (a) a party has incurred, or when the agreement was entered into was expected to incur, a debt of at least £10 million under the arrangement, and
 - (b) the arrangement involves the issue of a capital market investment.

Public private partnership

6. A company is also excluded from being eligible for a moratorium if, on the date of filing, it is a project company of a project which—
- (a) is a public-private partnership project, and
 - (b) includes step-in rights.

Liability under an arrangement

7.—(1) A company is also excluded from being eligible for a moratorium if, on the date of filing, it has incurred a liability under an agreement of £10 million or more.

(2) Where the liability in sub-paragraph (1) is a contingent liability under or by virtue of a guarantee or an indemnity or security provided on behalf of another person, the amount of that liability is the full amount of the liability in relation to which the guarantee, indemnity or security is provided.

- (3) In this paragraph—
- (a) the reference to liability includes a present or future liability whether, in either case, it is certain or contingent,
 - (b) the reference to liability includes a reference to a liability to be paid wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the liability is incurred).

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Interpretation of capital market arrangement

- 8.—(1) For the purposes of paragraph 5 an arrangement is a capital market arrangement if—
- (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or
 - (b) at least one party guarantees the performance of obligations of another party, or
 - (c) at least one party provides security in respect of the performance of obligations of another party, or
 - (d) the arrangement involves an investment of a kind described in Articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (options, futures and contracts for differences).
- (2) For the purposes of sub-paragraph (1)—
- (a) a reference to a holding as trustee includes a reference to holding as nominee or agent,
 - (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
 - (c) a person holds a capital market investment if he has a legal or beneficial interest in it.
- (3) In paragraph 5, 7, 14 and this paragraph—
- agreement includes an agreement or undertaking effected by—
- (a) contract,
 - (b) deed, or
 - (c) any other instrument intended to have effect in accordance with the law of Northern Ireland or another jurisdiction, and
- party to an arrangement includes a party to an agreement which—
- (a) forms part of the arrangement,
 - (b) provides for the raising of finance as part of the arrangement, or
 - (c) is necessary for the purposes of implementing the arrangement.

Capital market investment

- 9.—(1) For the purposes of paragraphs 5 and 8, an investment is a capital market investment if—
- (a) it is within Article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (debt instruments), and
 - (b) it is rated, listed or traded or designed to be rated, listed or traded.
- (2) In sub-paragraph (1)—
- listed means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (interpretation),
- rated means rated for the purposes of investment by an internationally recognised rating agency,
- traded means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.
- (3) In sub-paragraph (2)—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

foreign market has the same meaning as relevant market in Article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (foreign markets),
recognised investment exchange has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange).

10.—(1) For the purposes of paragraphs 5 and 8 an investment is also a capital market investment if it consists of a bond or commercial paper issued to one or more of the following—

- (a) an investment professional within the meaning of Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,
- (b) a person who is, when the agreement mentioned in paragraph 5 is entered into, a certified high net worth individual in relation to a communication within the meaning of Article 48(2) of that Order,
- (c) a person to whom Article 49(2) of that Order applies (high net worth company, &c.),
- (d) a person who is, when the agreement mentioned in paragraph 5 is entered into, a certified sophisticated investor in relation to a communication within the meaning of Article 50(1) of that Order, and
- (e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.

(2) For the purposes of sub-paragraph (1)—

- (a) in applying Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 for the purposes of sub-paragraph (1)(a)—
 - (i) in Article 19(5)(b), ignore the words after exempt person,
 - (ii) in Article 19(5)(c)(i), for the words from the controlled activity to the end substitute a controlled activity, and
 - (iii) in Article 19(5)(e) ignore the words from where the communication to the end, and
- (b) in applying Article 49(2) of that Order for the purposes of sub-paragraph (1)(c), ignore Article 49(2)(e).

(3) In sub-paragraph (1)—

bond shall be construed in accordance with Article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and
commercial paper has the meaning given by Article 9(3) of that Order.

Debt

11. The debt of at least £10 million referred to in paragraph 5—

- (a) may be incurred at any time during the life of the capital market arrangement, and
- (b) may be expressed wholly or partly in a foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into).

Interpretation of project company

12.—(1) For the purposes of paragraph 6 a company is a project company of a project if—

- (a) it holds property for the purpose of the project,
- (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (c) it is one of a number of companies which together carry out the project,
 - (d) it has the purpose of supplying finance to enable the project to be carried out, or
 - (e) it is the holding company of a company within any of paragraphs (a) to (d).
- (2) But a company is not a project company of a project if—
- (a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1) (e), but
 - (b) it also performs a function which is not—
 - (i) within sub-paragraph (1)(a) to (d),
 - (ii) related to a function within sub-paragraph (1)(a) to (d), or
 - (iii) related to the project.
- (3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

Public-private partnership project

- 13.**—(1) In paragraph 6 public-private partnership project means a project—
- (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
 - (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.
- (2) In sub-paragraph (1) resources includes—
- (a) funds (including payment for the provision of services or facilities),
 - (b) assets,
 - (c) professional skill,
 - (d) the grant of a concession or franchise, and
 - (e) any other commercial resource.
- (3) In sub-paragraph (1) public body means—
- (a) a body which exercises public functions,
 - (b) a body specified for the purposes of this paragraph by the Department, and
 - (c) a body within a class specified for the purposes of this paragraph by the Department.
- (4) A specification under sub-paragraph (3) may be—
- (a) general, or
 - (b) for the purpose of the application of paragraph 6 to a specified case.

Step-in rights

- 14.**—(1) For the purposes of paragraph 6 a project has step-in rights if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—
- (a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or
 - (b) make arrangements for carrying out all or part of the project.
- (2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

“Person”

15. For the purposes of paragraphs 5 to 14, a reference to a person includes a reference to a partnership or another unincorporated group of persons.

16.—(1) The Department may by regulations modify the qualifications for eligibility of a company for a moratorium.

(2) Regulations under this paragraph shall only be made if a draft containing the regulations has been laid before, and approved by a resolution of, the Assembly.

PART II

OBTAINING A MORATORIUM

Nominee's statement

17.—(1) ^{F433} Where the directors of a company wish to obtain a moratorium, they shall submit to the nominee—

- (a) a document setting out the terms of the proposed voluntary arrangement,
- (b) a statement of the company's affairs containing—
 - (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and
 - (ii) such other information as may be prescribed, and
- (c) any other information necessary to enable the nominee to comply with sub-paragraph (2) which he requests from them.

(2) The nominee shall submit to the directors a statement in the prescribed form indicating whether or not, in his opinion—

- (a) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
- (b) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and
- (c) ^{F433} meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(3) In forming his opinion on the matters mentioned in sub-paragraph (2), the nominee is entitled to rely on the information submitted to him under sub-paragraph (1) unless he has reason to doubt its accuracy.

(4) The reference in sub-paragraph (2)(b) to the company's business is to that business as the company proposes to carry it on during the moratorium.

F433 mod. by SR 2004/307

Documents to be submitted to High Court

18.—(1) ^{F434} To obtain a moratorium the directors of a company must file with the High Court—

- (a) a document setting out the terms of the proposed voluntary arrangement,

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (b) a statement of the company's affairs containing—
 - (i) such particulars of its creditors and of its debts and other liabilities and of its assets as may be prescribed, and
 - (ii) such other information as may be prescribed,
- (c) a statement that the company is eligible for a moratorium,
- (d) a statement from the nominee that he has given his consent to act, and
- (e) a statement from the nominee that, in his opinion—
 - (i) the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,
 - (ii) the company is likely to have sufficient funds available to it during the proposed moratorium to enable it to carry on its business, and
 - (iii) ^{F434} meetings of the company and its creditors should be summoned to consider the proposed voluntary arrangement.

(2) Each of the statements mentioned in sub-paragraph (1)(b) to (e), except so far as it contains the particulars referred to in paragraph (b)(i), must be in the prescribed form.

(3) The reference in sub-paragraph (1)(e)(ii) to the company's business is to that business as the company proposes to carry it on during the moratorium.

(4) The Department may by regulations modify the requirements of this paragraph as to the documents required to be filed with the High Court in order to obtain a moratorium.

F434 mod. by SR 2004/307

Duration of moratorium

19.—(1) A moratorium comes into force when the documents for the time being referred to in paragraph 18(1) are filed or lodged with the High Court and references in this Schedule to the beginning of the moratorium shall be construed accordingly.

(2) ^{F435} A moratorium ends at the end of the day on which the meetings summoned under paragraph 39(1) are first held (or, if the meetings are held on different days, the later of those days), unless it is extended under paragraph 42.

(3) ^{F435} If either of those meetings has not first met before the end of the period of 28 days beginning with the day on which the moratorium comes into force, the moratorium ends at the end of the day on which those meetings were to be held (or, if those meetings were summoned to be held on different days, the later of those days), unless it is extended under paragraph 42.

(4) ^{F435} If the nominee fails to summon either meeting within the period required by paragraph 39(1), the moratorium ends at the end of the last day of that period.

(5) If the moratorium is extended (or further extended) under paragraph 42, it ends at the end of the day to which it is extended (or further extended).

(6) Sub-paragraphs (2) to (5) do not apply if the moratorium comes to an end before the time concerned by virtue of—

- (a) paragraph 35(4) (effect of withdrawal by nominee of consent to act),
- (b) an order under paragraph 36(3), 37(3) or 50 (challenge of actions of nominee or directors), or
- (c) ^{F435} a decision of one or both of the meetings summoned under paragraph 39.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(7) If the moratorium has not previously come to an end in accordance with sub-paragraphs (2) to (6), it ends at the end of the day on which a decision under paragraph 41 to approve a voluntary arrangement takes effect under paragraph 46.

(8) The Department may by order increase or reduce the period for the time being specified in sub-paragraph (3).

F435 mod. by SR 2004/307

Notification of beginning of moratorium

20.—(1) ^{F436} When a moratorium comes into force, the directors shall notify the nominee of that fact forthwith.

(2) ^{F436} If the directors without reasonable excuse fail to comply with sub-paragraph (1), each of them shall be guilty of an offence.

F436 mod. by SR 2004/307

21.—(1) When a moratorium comes into force, the nominee shall, in accordance with the rules—

- (a) advertise that fact forthwith, and
- (b) notify the registrar, the company and any petitioning creditor of the company of whose claim he is aware of that fact.

(2) In sub-paragraph (1)(b), petitioning creditor means a creditor by whom a winding-up petition has been presented before the beginning of the moratorium, as long as the petition has not been dismissed or withdrawn.

(3) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he shall be guilty of an offence.

Notification of end of moratorium

22.—(1) When a moratorium comes to an end, the nominee shall, in accordance with the rules—

- (a) advertise that fact forthwith, and
- (b) notify the High Court, the registrar, the company and any creditor of the company of whose claim he is aware of that fact.

(2) If the nominee without reasonable excuse fails to comply with sub-paragraph (1)(a) or (b), he shall be guilty of an offence.

PART III

EFFECTS OF MORATORIUM

Effect on creditors, etc.

23.—(1) During the period for which a moratorium is in force for a company—

- (a) no petition may be presented for the winding up of the company,

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (b) ^{F437} no meeting of the company may be called or requisitioned except with the consent of the nominee or the leave of the High Court and subject (where the Court gives leave) to such terms as the Court may impose,
- (c) ^{F437} no resolution may be passed or order made for the winding up of the company,
- ^{F438}(d) no petition for an administration order in relation to the company may be presented,
- (e) no administrative receiver of the company may be appointed,
- (f) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the High Court and subject to such terms as the Court may impose,
- (g) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the High Court and subject to such terms as the Court may impose, and
- (h) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the High Court and subject to such terms as the Court may impose.

(2) ^{F437} Where a petition, other than an excepted petition, for the winding up of the company has been presented before the beginning of the moratorium, Article 107 shall not apply in relation to any disposition of property, transfer of shares or alteration in status made during the moratorium or at a time mentioned in paragraph 47(5)(a).

(3) Paragraph (a) of sub-paragraph (1) does not apply to an excepted petition and, where such a petition has been presented before the beginning of the moratorium or is presented during the moratorium, paragraphs (b) and (c) of that sub-paragraph do not apply in relation to proceedings on the petition.

(4) For the purposes of this paragraph, excepted petition means a petition under—

- (a) Article 104A^{F439} or 104B],
- ^{F440}(b) section 72 of the Financial Services Act 1986 on the ground mentioned in subsection (1) (b) of that section,
- ^{F440}(c) section 92 of the Banking Act 1987 on the ground mentioned in subsection (1)(b) of that section, or
- (d) section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in subsection (3)(b) of that section.

F437 mod. by SR 2004/307

F438 prosp. subst. by 2005 NI 10

F439 SR 2004/417

F440 prosp. rep. by 2005 NI 10

24.—(1) This paragraph applies where there is an uncrystallised floating charge on the property of a company for which a moratorium is in force.

(2) If the conditions for the holder of the charge to give a notice having the effect mentioned in sub-paragraph (4) are met at any time, the notice may not be given at that time but may instead be given as soon as practicable after the moratorium has come to an end.

(3) If any other event occurs at any time which (apart from this sub-paragraph) would have the effect mentioned in sub-paragraph (4), then—

- (a) the event shall not have the effect in question at that time, but

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (b) if notice of the event is given to the company by the holder of the charge as soon as is practicable after the moratorium has come to an end, the event is to be treated as if it had occurred when the notice was given.
 - (4) The effect referred to in sub-paragraphs (2) and (3) is—
 - (a) causing the crystallisation of the floating charge, or
 - (b) causing the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.
 - (5) Application may not be made for leave under paragraph 23(1)(g) or (h) with a view to obtaining—
 - (a) the crystallisation of the floating charge, or
 - (b) the imposition, by virtue of provision in the instrument creating the charge, of any restriction on the disposal of any property of the company.
- 25.** Security granted by a company at a time when a moratorium is in force in relation to the company may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the company.

Effect on company

- 26.—**(1) Paragraphs 27 to 33 apply in relation to a company for which a moratorium is in force.
- (2) The fact that a company enters into a transaction in contravention of any of paragraphs 27 to 32 does not—
 - (a) make the transaction void, or
 - (b) make it to any extent unenforceable against the company.

Company invoices, etc.

- 27.—**(1) Every invoice, order for goods or business letter which—
 - (a) is issued by or on behalf of the company, and
 - (b) on or in which the company's name appears,shall also contain the nominee's name and a statement that the moratorium is in force for the company.
- (2) If default is made in complying with sub-paragraph (1), the company and (subject to sub-paragraph (3)) any officer of the company shall be guilty of an offence.
- (3) An officer of the company is only liable under sub-paragraph (2) if, without reasonable excuse, he authorises or permits the default.

Obtaining credit during moratorium

- 28.—**(1) The company may not obtain credit to the extent of £250 or more from a person who has not been informed that a moratorium is in force in relation to the company.
- (2) The reference to the company obtaining credit includes the following cases—
 - (a) where goods are bailed to the company under a hire-purchase agreement, or agreed to be sold to the company under a conditional sale agreement, and
 - (b) where the company is paid in advance (whether in money or otherwise) for the supply of goods or services.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (3) Where the company obtains credit in contravention of sub-paragraph (1)—
 - (a) the company shall be guilty of an offence, and
 - (b) if any officer of the company knowingly and wilfully authorised or permitted the contravention, he shall be guilty of an offence.
- (4) The money sum specified in sub-paragraph (1) is subject to increase or reduction by order under Article 362.

Disposals and payments

- 29.**—(1) Subject to sub-paragraph (2), the company may only dispose of any of its property if—
 - (a) there are reasonable grounds for believing that the disposal will benefit the company, and
 - (b) the disposal is approved by the committee established under paragraph 45(1) or, where there is no such committee, by the nominee.
- (2) Sub-paragraph (1) does not apply to a disposal made in the ordinary way of the company's business.
- (3) If the company makes a disposal in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the High Court—
 - (a) the company shall be guilty of an offence, and
 - (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he shall be guilty of an offence.
- 30.**—(1) Subject to sub-paragraph (2), the company may only make any payment in respect of any debt or other liability of the company in existence before the beginning of the moratorium if—
 - (a) there are reasonable grounds for believing that the payment will benefit the company, and
 - (b) the payment is approved by the committee established under paragraph 45(1) or, where there is no such committee, by the nominee.
- (2) Sub-paragraph (1) does not apply to a payment required by paragraph 31(6).
- (3) If the company makes a payment in contravention of sub-paragraph (1) otherwise than in pursuance of an order of the High Court—
 - (a) the company shall be guilty of an offence, and
 - (b) if any officer of the company authorised or permitted the contravention, without reasonable excuse, he shall be guilty of an offence.

Disposal of charged property, etc.

- 31.**—(1) This paragraph applies where—
 - (a) any property of the company is subject to a security, or
 - (b) any goods are in the possession of the company under a hire-purchase agreement.
- (2) If the holder of the security consents, or the High Court gives leave, the company may dispose of the property as if it were not subject to the security.
- (3) If the owner of the goods consents, or the High Court gives leave, the company may dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.
- (4) Where property subject to a security which, as created, was a floating charge is disposed of under sub-paragraph (2), the holder of the security has the same priority in respect of any property

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) Sub-paragraph (6) applies to the disposal under sub-paragraph (2) or (as the case may be) sub-paragraph (3) of—

- (a) any property subject to a security other than a security which, as created, was a floating charge, or
- (b) any goods in the possession of the company under a hire-purchase agreement.

(6) It shall be a condition of any consent or leave under sub-paragraph (2) or (as the case may be) sub-paragraph (3) that—

- (a) the net proceeds of the disposal, and
- (b) where those proceeds are less than such amount as may be agreed, or determined by the High Court, to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(7) Where a condition imposed in pursuance of sub-paragraph (6) relates to 2 or more securities, that condition requires—

- (a) the net proceeds of the disposal, and
- (b) where paragraph (b) of sub-paragraph (6) applies, the sums mentioned in that paragraph, to be applied towards discharging the sums secured by those securities in the order of their priorities.

(8) ^{F441} Where the High Court gives leave for a disposal under sub-paragraph (2) or (3), the directors shall, within 14 days after leave is given, send an office copy of the order giving leave to the registrar.

(9) ^{F441} If the directors without reasonable excuse fail to comply with sub-paragraph (8), they shall be guilty of an offence.

F441 mod. by SR 2004/307

32.—(1) If the company—

- (a) without any consent or leave under paragraph 31, disposes of any of its property which is subject to a security otherwise than in accordance with the terms of the security,
- (b) without any consent or leave under paragraph 31, disposes of any goods in the possession of the company under a hire-purchase agreement otherwise than in accordance with the terms of the agreement, or
- (c) fails to comply with any requirement imposed by paragraph 31,

it shall be guilty of an offence.

(2) If any officer of the company, without reasonable excuse, authorises or permits any such disposal or failure to comply, he shall be guilty of an offence.

Market contracts, etc.

33.—(1) If the company enters into any transaction to which this paragraph applies—

- (a) the company shall be guilty of an offence, and

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (b) if any officer of the company, without reasonable excuse, authorised or permitted the company to enter into the transaction, he shall be guilty of an offence.
- (2) A company enters into a transaction to which this paragraph applies if it—
 - (a) enters into a market contract,
 - (b) gives a transfer order,
 - (c) grants a market charge or a system-charge, or
 - (d) provides any collateral security.
- (3) The fact that a company enters into a transaction in contravention of this paragraph does not—
 - (a) make the transaction void, or
 - (b) make it to any extent unenforceable by or against the company.
- (4) Where during the moratorium a company enters into a transaction to which this paragraph applies, nothing done by or in pursuance of the transaction is to be treated as done in contravention of paragraphs 23(1)(g), 25 or 27 to 32.
- (5) Paragraph 31 does not apply in relation to any property which is subject to a market charge, a system-charge or a collateral security charge.
- (6) In this paragraph, transfer order, collateral security and collateral security charge have the same meanings as in the settlement finality regulations.

PART IV NOMINEES

Monitoring of company's activities

- 34.**—(1) During a moratorium, the nominee shall monitor the company's affairs for the purpose of forming an opinion as to whether—
- (a) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 41(7), the proposed arrangement with those modifications has a reasonable prospect of being approved and implemented, and
 - (b) the company is likely to have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business.
- (2) ^{F442} The directors shall submit to the nominee any information necessary to enable him to comply with sub-paragraph (1) which he requests from them.
- (3) In forming his opinion on the matters mentioned in sub-paragraph (1), the nominee is entitled to rely on the information submitted to him under sub-paragraph (2) unless he has reason to doubt its accuracy.
- (4) The reference in sub-paragraph (1)(b) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

F442 mod. by SR 2004/307

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Withdrawal of consent to act

35.—(1) The nominee may only withdraw his consent to act in the circumstances mentioned in this paragraph.

(2) The nominee must withdraw his consent to act if, at any time during a moratorium—

(a) he forms the opinion that—

(i) the proposed voluntary arrangement or, if he has received notice of proposed modifications under paragraph 41(7), the proposed arrangement with those modifications no longer has a reasonable prospect of being approved or implemented, or

(ii) the company will not have sufficient funds available to it during the remainder of the moratorium to enable it to continue to carry on its business,

(b) he becomes aware that, on the date of filing, the company was not eligible for a moratorium, or

(c) ^{F443} the directors fail to comply with their duty under paragraph 34(2).

(3) The reference in sub-paragraph (2)(a)(ii) to the company's business is to that business as the company proposes to carry it on during the remainder of the moratorium.

(4) If the nominee withdraws his consent to act, the moratorium comes to an end.

(5) If the nominee withdraws his consent to act he must, in accordance with the rules, notify the High Court, the registrar, the company and any creditor of the company of whose claim he is aware of his withdrawal and the reason for it.

(6) If the nominee without reasonable excuse fails to comply with sub-paragraph (5), he shall be guilty of an offence.

F443 mod. by SR 2004/307

Challenge of nominee's actions, etc.

36.—(1) ^{F444} If any creditor, director or member of the company, or any other person affected by a moratorium, is dissatisfied by any act, omission or decision of the nominee during the moratorium, he may apply to the High Court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1) the High Court may—

(a) confirm, reverse or modify any act or decision of the nominee,

(b) give him directions, or

(c) make such other order as it thinks fit.

(4) An order under sub-paragraph (3) may (among other things) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.

F444 mod. by SR 2004/307

37.—(1) Where there are reasonable grounds for believing that—

(a) as a result of any act, omission or decision of the nominee during the moratorium, the company has suffered loss, but

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(b) the company does not intend to pursue any claim it may have against the nominee, any creditor of the company may apply to the High Court.

(2) An application under sub-paragraph (1) may be made during the moratorium or after it has ended.

(3) On an application under sub-paragraph (1) the High Court may—

- (a) order the company to pursue any claim against the nominee,
- (b) (authorise any creditor to pursue such a claim in the name of the company, or
- (c) make such other order with respect to such a claim as it thinks fit,

unless the Court is satisfied that the act, omission or decision of the nominee was in all the circumstances reasonable.

(4) An order under sub-paragraph (3) may (among other things)—

- (a) impose conditions on any authority given to pursue a claim,
- (b) direct the company to assist in the pursuit of a claim,
- (c) make directions with respect to the distribution of anything received as a result of the pursuit of a claim,
- (d) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.

(5) On an application under sub-paragraph (1) the High Court shall have regard to the interests of the members and creditors of the company generally.

Replacement of nominee by High Court

38.—(1) The High Court may—

- (a) on an application made by the directors in a case where the nominee has failed to comply with any duty imposed on him under this Schedule or has died, or
- (b) on an application made by the directors or the nominee in a case where it is impracticable or inappropriate for the nominee to continue to act as such,

direct that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(2) A person may only be appointed as a replacement nominee under this paragraph if he submits to the High Court a statement indicating his consent to act.

PART V

CONSIDERATION AND IMPLEMENTATION OF VOLUNTARY ARRANGEMENT

Summoning of meetings

39.—(1 ^{F445} Where a moratorium is in force, the nominee shall summon meetings of the company and its creditors for such a time, date (within the period for the time being specified in paragraph 19(3)) and place as he thinks fit.

(2) The persons to be summoned to a creditors' meeting under this paragraph are every creditor of the company of whose claim the nominee is aware.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F445 mod. by SR 2004/307

Conduct of meetings

40.—(1 ^{F446} Subject to the provisions of paragraphs 41 to 45, the meetings summoned under paragraph 39 shall be conducted in accordance with the rules.

(2) A meeting so summoned may resolve that it be adjourned (or further adjourned).

^{F446}(3 ^{F446} After the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the High Court, and, immediately after reporting to the Court, shall give notice of the result of the meeting to such persons as may be prescribed.

F446 mod. by SR 2004/307

Approval of voluntary arrangement

41.—(1 ^{F447} The meetings summoned under paragraph 39 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

(2) The modifications may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(3) The modifications shall not include one by virtue of which the proposal ceases to be a proposal such as is mentioned in Article 14.

(4) A meeting summoned under paragraph 39 shall not approve any proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the concurrence of the creditor concerned.

(5) Subject to sub-paragraph (6), a meeting so summoned shall not approve any proposal or modification under which—

- (a) any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts, or
- (b) a preferential creditor of the company is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(6) The meeting may approve such a proposal or modification with the concurrence of the preferential creditor concerned.

(7 ^{F447} The directors of the company may, before the beginning of the period of 7 days which ends with the meetings (or either of them) summoned under paragraph 39 being held, give notice to the nominee of any modifications of the proposal for which the directors intend to seek the approval of those meetings.

(8) References in this paragraph to preferential debts and preferential creditors are to be read in accordance with Article 346.

F447 mod. by SR 2004/307

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Extension of moratorium

42.—(1) Subject to sub-paragraph (2), a meeting summoned under paragraph 39 which resolves that it be adjourned (or further adjourned) may resolve that the moratorium be extended (or further extended), with or without conditions.

(2) The moratorium may not be extended (or further extended) to a day later than the end of the period of 2 months which begins—

- (a) ^{F448} where both meetings summoned under paragraph 39 are first held on the same day, with that day,
- (b) ^{F448} in any other case, with the day on which the later of those meetings is first held.

(3) At any meeting where it is proposed to extend (or further extend) the moratorium, before a decision is taken with respect to that proposal, the nominee shall inform the meeting—

- (a) of what he has done in order to comply with his duty under paragraph 34 and the cost of his actions for the company, and
- (b) of what he intends to do to continue to comply with that duty if the moratorium is extended (or further extended) and the expected cost of his actions for the company.

(4) Where, in accordance with sub-paragraph (3)(b), the nominee informs a meeting of the expected cost of his intended actions, the meeting shall resolve whether or not to approve that expected cost.

(5) If a decision not to approve the expected cost of the nominee's intended actions has effect under paragraph 46, the moratorium comes to an end.

(6) A meeting may resolve that a moratorium which has been extended (or further extended) be brought to an end before the end of the period of the extension (or further extension).

(7) The Department may by order increase or reduce the period for the time being specified in sub-paragraph (2).

F448 mod. by SR 2004/307

43.—(1) The conditions which may be imposed when a moratorium is extended (or further extended) include a requirement that the nominee be replaced as such by another person qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement.

(2) A person may only be appointed as a replacement nominee by virtue of sub-paragraph (1) if he submits to the High Court a statement indicating his consent to act.

(3) At any meeting where it is proposed to appoint a replacement nominee as a condition of extending (or further extending) the moratorium—

- (a) the duty imposed by paragraph 42(3)(b) on the nominee shall instead be imposed on the person proposed as the replacement nominee, and
- (b) paragraphs 42(4) and (5) and 46(1)(e) apply as if the references to the nominee were to that person.

44.—(1) If a decision to extend, or further extend, the moratorium takes effect under paragraph 46, the nominee shall, in accordance with the rules, notify the registrar and the High Court.

(2) If the moratorium is extended, or further extended, by virtue of an order under paragraph 46(5), the nominee shall, in accordance with the rules, send an office copy of the order to the registrar.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(3) If the nominee without reasonable excuse fails to comply with this paragraph, he shall be guilty of an offence.

Moratorium committee

45.—(1) A meeting summoned under paragraph 39 which resolves that the moratorium be extended (or further extended) may, with the consent of the nominee, resolve that a committee be established to exercise the functions conferred on it by the meeting.

(2) The meeting may not so resolve unless it has approved an estimate of the expenses to be incurred by the committee in the exercise of the proposed functions.

(3) Any expenses, not exceeding the amount of the estimate, incurred by the committee in the exercise of its functions shall be reimbursed by the nominee.

(4) The committee shall cease to exist when the moratorium comes to an end.

Effectiveness of decisions

46.—(1) Sub-paragraph (2) applies to references to one of the following decisions having effect, that is, a decision, under paragraph 41, 42 or 45, with respect to—

- (a) the approval of a proposed voluntary arrangement,
- (b) the extension (or further extension) of a moratorium,
- (c) the bringing of a moratorium to an end,
- (d) the establishment of a committee, or
- (e) the approval of the expected cost of a nominee's intended actions.

(2) ^{F449} The decision has effect if, in accordance with the rules—

- (a) it has been taken by both meetings summoned under paragraph 39, or
- (b) subject to any order made under sub-paragraph (5)) it has been taken by the creditors' meeting summoned under that paragraph.

(3) ^{F449} If a decision taken by the creditors' meeting under any of paragraphs 41, 42 or 45 with respect to any of the matters mentioned in sub-paragraph (1) differs from one so taken by the company meeting with respect to that matter, a member of the company may apply to the High Court.

(4) ^{F449} An application under sub-paragraph (3) shall not be made after the end of the period of 28 days beginning with—

- (a) the day on which the decision was taken by the creditors' meeting, or
- (b) where the decision of the company meeting was taken on a later day, that day.

(5) ^{F449} On an application under sub-paragraph (3), the High Court may—

- (a) order the decision of the company meeting to have effect instead of the decision of the creditors' meeting, or
- (b) make such other order as it thinks fit.

F449 mod. by SR 2004/307

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Effect of approval of voluntary arrangement

47.—(1) This paragraph applies where a decision approving a voluntary arrangement has effect under paragraph 46.

(2) The approved voluntary arrangement—

- (a) takes effect as if made by the company at the creditors' meeting, and
- (b) binds every person who in accordance with the rules—
 - (i) was entitled to vote at that meeting (whether or not he was present or represented at it), or
 - (ii) would have been so entitled if he had had notice of it,

as if he were a party to the voluntary arrangement.

(3) If—

- (a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of sub-paragraph (2)(b)(ii) has not been paid, and
- (b) the arrangement did not come to an end prematurely,

the company shall at that time become liable to pay to that person the amount payable under the arrangement.

(4) Where a petition for the winding up of the company, other than an excepted petition within the meaning of paragraph 23, was presented before the beginning of the moratorium, the High Court shall dismiss the petition.

(5) The High Court shall not dismiss a petition under sub-paragraph (4)—

- (a) ^{F450} at any time before the end of the period of 28 days beginning with the first day on which each of the reports of the meetings required by paragraph 40(3) has been made to the High Court, or
- (b) at any time when an application under paragraph 48 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.

F450 mod. by SR 2004/307

Challenge of decisions

48.—(1) Subject to the following provisions of this paragraph, any of the persons mentioned in sub-paragraph (2) may apply to the High Court on one or both of the following grounds—

- (a) ^{F451} that a voluntary arrangement approved at one or both of the meetings summoned under paragraph 39 and which has taken effect unfairly prejudices the interests of a creditor, member or contributory of the company,
- (b) ^{F451} that there has been some material irregularity at or in relation to either of those meetings.

(2) The persons who may apply under this paragraph are—

- (a) ^{F451} a person entitled, in accordance with the rules, to vote at either of the meetings,
- ^{F451}(b) a person who would have been entitled, in accordance with the rules, to vote at the ^{F451}creditors' meeting if he had had notice of it, and
- (c) the nominee.

(3) An application under this paragraph shall not be made—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a)^{F451} after the end of the period of 28 days beginning with the first day on which each of the reports required by paragraph 40(3) has been made to the High Court, or
- (b)^{F451} in the case of a person who was not given notice of the creditors' meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,

but (subject to that) an application made by a person within sub-paragraph (2)(b) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.

(4) Where on an application under this paragraph the High Court is satisfied as to either of the grounds mentioned in sub-paragraph (1), it may do any of the following—

- (a) revoke or suspend—
 - (i) any decision approving the voluntary arrangement which has effect under paragraph 46, or
 - (ii)^{F451} in a case falling within sub-paragraph (1)(b), any decision taken by the meeting in question which has effect under that paragraph,
- (b) give a direction to any person—
 - (i)^{F451} for the summoning of further meetings to consider any revised proposal for a voluntary arrangement which the directors may make, or
 - (ii)^{F451} in a case falling within sub-paragraph (1)(b), for the summoning of a further company or (as the case may be) creditors' meeting to reconsider the original proposal.

(5) Where at any time after giving a direction under sub-paragraph (4)(b)(i) the High Court is satisfied that the directors do not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement which has effect under paragraph 46.

(6) Where the High Court gives a direction under sub-paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect of the moratorium.

(7) Sub-paragraph (8) applies in a case where the High Court, on an application under this paragraph—

- (a) gives a direction under sub-paragraph (4)(b), or
- (b) revokes or suspends a decision under sub-paragraph (4)(a) or (5).

(8) In such a case, the High Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

- (a) things done under the voluntary arrangement since it took effect, and
- (b) such things done since that time as could not have been done if a moratorium had been in force in relation to the company when they were done.

(9) Except in pursuance of the preceding provisions of this paragraph, a decision taken at a meeting summoned under paragraph 39 is not invalidated by any irregularity at or in relation to the meeting.

F451 mod. by SR 2004/307

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Implementation of voluntary arrangement

49.—(1 ^{F452} This paragraph applies where a voluntary arrangement approved by one or both of the meetings summoned under paragraph 39 has taken effect.

(2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions conferred—

- (a) by virtue of the approval of the arrangement, on the nominee, or
- (b) by virtue of paragraph 41(2), on a person other than the nominee,

shall be known as the supervisor of the voluntary arrangement.

(3) If any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the High Court.

(4) On an application under sub-paragraph (3) the High Court may—

- (a) confirm, reverse or modify any act or decision of the supervisor,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(5) The supervisor—

- (a) may apply to the High Court for directions in relation to any particular matter arising under the voluntary arrangement, and
- (b) is included among the persons who may apply to the Court for the winding up of the company or for an administration order to be made in relation to it.

(6) The High Court may, whenever—

- (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
- (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner, or authorised to act as supervisor, in relation to the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

(7) The power conferred by sub-paragraph (6) is exercisable so as to increase the number of persons exercising the functions of supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

F452 mod. by SR 2004/307

PART VI

MISCELLANEOUS

Challenge of directors' actions

50.—(1) This paragraph applies in relation to acts or omissions of the directors of a company during a moratorium.

(2) A creditor or member of the company may apply to the High Court for an order under this paragraph on the ground—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) that the company's affairs, business and property are being or have been managed by the directors in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including at least the petitioner), or
 - (b) that any actual or proposed act or omission of the directors is or would be so prejudicial.
- (3) An application for an order under this paragraph may be made during or after the moratorium.
- (4) On an application for an order under this paragraph the High Court may—
- (a) make such order as it thinks fit for giving relief in respect of the matters complained of,
 - (b) adjourn the hearing conditionally or unconditionally, or
 - (c) make an interim order or any other order that it thinks fit.
- (5) An order under this paragraph may in particular—
- (a) regulate the management by the directors of the company's affairs, business and property during the remainder of the moratorium,
 - (b) require the directors to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained they have omitted to do,
 - (c) require the summoning of a meeting of creditors or members for the purpose of considering such matters as the High Court may direct,
 - (d) bring the moratorium to an end and make such consequential provision as the High Court thinks fit.
- (6) In making an order under this paragraph the High Court shall have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.
- ^{F453}(7) In relation to any time when an administration order is in force in relation to the company, or the company is being wound up, in pursuance of a petition presented before the moratorium came into force, no application for an order under this paragraph may be made by a creditor or member of the company; but such an application may be made instead by the administrator or (as the case may be) liquidator.

F453 prosp. subst. by 2005 NI 10

Offences

- 51.**—(1) This paragraph applies where a moratorium has been obtained for a company.
- (2) If, within the period of 12 months ending with the day on which the moratorium came into force, a person who was at the time an officer of the company—
- (a) did any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
 - (b) was privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,
- he is to be treated as having committed an offence at that time.
- (3) If, at any time during the moratorium, a person who is an officer of the company—
- (a) does any of the things mentioned in paragraphs (a) to (f) of sub-paragraph (4), or
 - (b) is privy to the doing by others of any of the things mentioned in paragraphs (c), (d) and (e) of that sub-paragraph,
- he shall be guilty of an offence.
- (4) Those things are—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) concealing any part of the company's property to the value of £500 or more, or concealing any debt due to or from the company, or
 - (b) fraudulently removing any part of the company's property to the value of £500 or more, or
 - (c) concealing, destroying, mutilating or falsifying any book or paper affecting or relating to the company's property or affairs, or
 - (d) making any false entry in any book or paper affecting or relating to the company's property or affairs, or
 - (e) fraudulently parting with, altering or making any omission in any document affecting or relating to the company's property or affairs, or
 - (f) pawning, pledging or disposing of any property of the company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the company's business).
- (5) For the purposes of this paragraph, officer includes a shadow director.
- (6) It is a defence—
- (a) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (a) or (f) of sub-paragraph (4) to prove that he had no intent to defraud, and
 - (b) for a person charged under sub-paragraph (2) or (3) in respect of the things mentioned in paragraph (c) or (d) of sub-paragraph (4) to prove that he had no intent to conceal the state of affairs of the company or to defeat the law.
- (7) Where a person pawns, pledges or disposes of any property of a company in circumstances which amount to an offence under sub-paragraph (2) or (3), every person who takes in pawn or pledge, or otherwise receives, the property knowing it to be pawned, pledged or disposed of in circumstances which—
- (a) would, if a moratorium were obtained for the company within the period of 12 months beginning with the day on which the pawning, pledging or disposal took place, amount to an offence under sub-paragraph (2), or
 - (b) amount to an offence under sub-paragraph (3),
- shall be guilty of an offence.
- (8) The money sums specified in paragraphs (a) and (b) of sub-paragraph (4) are subject to increase or reduction by order under Article 362.

52.—(1) If, for the purpose of obtaining a moratorium, or an extension of a moratorium, for a company, a person who is an officer of the company—

- (a) makes any false representation, or
- (b) fraudulently does, or omits to do, anything,

he shall be guilty of an offence.

(2) Sub-paragraph (1) applies even if no moratorium or extension is obtained.

(3) For the purposes of this paragraph, officer includes a shadow director.

Void provisions in floating charge documents

53.—(1) A provision in an instrument creating a floating charge is void if it provides for—

- (a) obtaining a moratorium, or
- (b) anything done with a view to obtaining a moratorium (including any preliminary decision or investigation),

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

to be an event causing the floating charge to crystallise or causing restrictions which would not otherwise apply to be imposed on the disposal of property by the company or a ground for the appointment of a receiver.

(2) In sub-paragraph (1), receiver includes a manager and a person who is appointed both receiver and manager.

Functions of the Financial Services Authority

54.—(1) This Schedule has effect in relation to a moratorium for a regulated company with the modifications in sub-paragraphs (2) to (16).

(2) Any notice or other document required by virtue of this Schedule to be sent to a creditor of a regulated company must also be sent to the Authority.

(3) The Authority is entitled to be heard on any application to the High Court for leave under paragraph 31(2) or 31(3) (disposal of charged property, etc.).

(4) Where paragraph 36(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the High Court include the Authority.

(5) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(6) Where paragraph 37(1) (challenge of nominee's actions, etc.) applies, the persons who may apply to the High Court include the Authority.

(7) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(8) The persons to be summoned to a creditors' meeting under paragraph 39 include the Authority.

(9) A person appointed for the purpose by the Authority is entitled to attend and participate in (but not to vote at)—

(a) any creditors' meeting summoned under that paragraph,

(b) any meeting of a committee established under paragraph 45 (moratorium committee).

(10) The Authority is entitled to be heard on any application under paragraph 46(3) (effectiveness of decisions).

(11) Where paragraph 48(1) (challenge of decisions) applies, the persons who may apply to the High Court include the Authority.

(12) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(13) Where paragraph 49(3) (implementation of voluntary arrangement) applies, the persons who may apply to the High Court include the Authority.

(14) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(15) Where paragraph 50(2) (challenge of directors' actions) applies, the persons who may apply to the High Court include the Authority.

(16) If a person other than the Authority applies to the High Court under that paragraph, the Authority is entitled to be heard on the application.

(17) This paragraph does not prejudice any right the Authority has (apart from this paragraph) as a creditor of a regulated company.

(18) In this paragraph—

the Authority means the Financial Services Authority, and

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

regulated company means a company which—

- (a) is, or has been, an authorised person within the meaning given by section 31 of the Financial Services and Markets Act 2000,
- (b) is, or has been, an appointed representative within the meaning given by section 39 of that Act, or
- (c) is carrying on, or has carried on, a regulated activity, within the meaning given by section 22 of that Act, in contravention of the general prohibition within the meaning given by section 19 of that Act.

Subordinate legislation

55.—(1) Regulations made by the Department under this Schedule may make such consequential, incidental, supplemental and transitional provision as appears to the Department necessary or expedient.

(2) Any power of the Department to make regulations under this Schedule may be exercised by amending or repealing any provision contained in this Order (including one contained in this Schedule) or contained in the Company Directors Disqualification (Northern Ireland) Order 2002.

(3) An order made by the Department under this Schedule shall be subject to negative resolution.]

VALID FROM 27/03/2006

[^{F454}SCHEDULE B1

ADMINISTRATION

F454 Sch. B1 inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(2), Sch. 1 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)

Modifications etc. (not altering text)

C37 Sch. B1 applied (with modifications) (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), ss. 73, 87(1)(2), 93(3), **Sch. 10 Pt. 1, Sch. 10 Pt. 2**

SCHEDULE 1

Articles 27, 52.

POWERS OF ADMINISTRATOR OR ADMINISTRATIVE RECEIVER

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.
2. Power to sell or otherwise dispose of the company's property, including the goodwill and book debts of any business.
3. Power to make, on such terms and conditions as he may think proper, a sub#fee farm grant of land or any part thereof, or a sub#lease of land or any part thereof with a nominal reversion (and

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

to sell the rent or reversion), where such sub#fee farm grant or sub#lease amounts in substance to a sale and he has satisfied himself that it is the most appropriate method of disposing of the land.

4. Power to raise or borrow money and grant security therefor over the property of the company.
5. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.
6. Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.
7. Power to refer to arbitration any question affecting the company.
8. Power to effect and maintain insurances in respect of the business and property of the company.
9. Power to use the company's seal.
10. Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.
11. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.
12. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
13. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.
14. Power to make any payment which is necessary or incidental to the performance of his functions.
15. Power to carry on the business of the company.
16. Power to establish subsidiaries of the company.
17. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.
18. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.
19. Power to make any arrangement or compromise on behalf of the company.
- 20 ^{F456}. Power to call up any uncalled capital of the company.

F456 mod. by SR 2004/307

21. Power to rank and claim in the bankruptcy, insolvency or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.
22. Power to present or defend a petition for the winding up of the company.
23. Power to change the situation of the company's registered office.
24. Power to do all other things incidental to the exercise of the foregoing powers.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

VALID FROM 27/03/2006

^{F457}SCHEDULE 1A

EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER: SUPPLEMENTARY PROVISIONS

F457 Sch. 1A inserted (27.3.2006) by *Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10))*, arts. 1(3), 5(2), Sch. 3 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

SCHEDULE 2

Articles 140, 142.

POWERS OF LIQUIDATOR IN A WINDING UP

PART I

POWERS EXERCISABLE WITH SANCTION

1. Power to pay any class of creditors in full.
2. Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.
3. Power to compromise, on such terms as may be agreed—
 - (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and
 - (b) all questions in any way relating to or affecting the assets or the winding up of the company,
 and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

F461

F461 prosp. insertion by *2005 NI 10*

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

PART II

POWERS EXERCISABLE WITHOUT SANCTION IN VOLUNTARY WINDING UP, WITH SANCTION IN WINDING UP BY THE HIGH COURT

4. Power to bring or defend any action or other legal proceeding in the name and on behalf of the company.
5. Power to carry on the business of the company so far as may be necessary for its beneficial winding up.

PART III

POWERS EXERCISABLE WITHOUT SANCTION IN ANY WINDING UP

6. Power to sell any part of the company's property, including the goodwill and book debts of any business.
7. [^{F462}Without prejudice to Article 28 or 30 of the Property (Northern Ireland) Order 1997,] power to make, on such terms and conditions as the liquidator may think proper, a sub#fee farm grant of land or any part thereof, or a sub#lease of land or any part thereof with a nominal reversion (and to sell the rent or reversion), where such sub#fee farm grant or sub#lease amounts in substance to a sale and the liquidator has satisfied himself that it is the most appropriate method of disposing of the land.

F462 1997 NI 8

8. Power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents^{F463}

F463 2005 NI 7

[^{F464}8A. Power to use the company's seal.]

F464 2005 NI 7

9. Power to prove, rank and claim in the bankruptcy or insolvency of any contributory for any balance against his estate, and to receive dividends in the bankruptcy or insolvency in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business.
11. Power to raise on the security of the assets of the company any money requisite.
- 12.—(1) Power to take out in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot conveniently be done in the name of the company.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(2) For the purposes of sub#paragraph (1) the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.

13. Power to appoint an agent to do any business which the liquidator is unable to do himself.

14. Power to do all such other things as may be necessary for winding up the company's affairs and distributing its assets.

VALID FROM 30/06/2011

[^{F465}SCHEDULE 2ZA

CONDITIONS FOR MAKING A DEBT RELIEF ORDER

F465 Sch. 2ZA inserted (30.6.2011) by Debt Relief Act (Northern Ireland) 2010 (c. 16), ss. 2, 7(1); S.R. 2011/13, art. 2

PART 1

CONDITIONS WHICH MUST BE MET

Connection with Northern Ireland

- 1.**—(1) The debtor—
- (a) is domiciled in Northern Ireland on the application date; or
 - (b) at any time in the 3 years immediately preceding that date—
 - (i) was ordinarily resident, or had a place of residence, in Northern Ireland; or
 - (ii) carried on business in Northern Ireland.
- (2) The reference in sub-paragraph (1)(b)(ii) to the debtor carrying on business includes—
- (a) the carrying on of business by a firm or partnership of which he is a member;
 - (b) the carrying on of business by an agent or manager for him or for such a firm or partnership.

Debtor's previous insolvency history

- 2** The debtor is not, on the determination date—
- (a) an undischarged bankrupt;
 - (b) subject to an interim order or voluntary arrangement under Chapter 2 of Part 8; or
 - (c) subject to a bankruptcy restrictions order or a debt relief restrictions order.
- 3** A debtor's petition for the debtor's bankruptcy under Part 9—
- (a) has not been presented by the debtor before the determination date;
 - (b) has been so presented, but proceedings on the petition have been finally disposed of before that date; or

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(c) has been so presented and proceedings in relation to the petition remain before the High Court at that date, but the Court has referred the debtor under Article 248A(2) for the purposes of making an application for a debt relief order.

4 A creditor's petition for the debtor's bankruptcy under Part 9—

- (a) has not been presented against the debtor at any time before the determination date;
- (b) has been so presented, but proceedings on the petition have been finally disposed of before that date; or
- (c) has been so presented and proceedings in relation to the petition remain before the Court at that date, but the person who presented the petition has consented to the making of an application for a debt relief order.

5 A debt relief order has not been made in relation to the debtor in the period of 6 years ending with the determination date.

Limit on debtor's overall indebtedness

6.—(1) The total amount of the debtor's debts on the determination date, other than unliquidated debts and excluded debts, does not exceed the amount specified by order under Article 362(1)(b).

(2) For this purpose an unliquidated debt is a debt that is not for a liquidated sum payable to a creditor either immediately or at some future certain time.

Limit on debtor's monthly surplus income

7.—(1) The debtor's monthly surplus income (if any) on the determination date does not exceed the amount specified by order under Article 362(1)(b).

(2) For this purpose “monthly surplus income” is the amount by which a person's monthly income exceeds the amount necessary for the reasonable domestic needs of himself and his family.

(3) The rules may—

- (a) make provision as to how the debtor's monthly surplus income is to be determined;
- (b) provide that particular descriptions of income are to be excluded for the purposes of this paragraph.

Modifications etc. (not altering text)

C53 Sch. 2ZA para. 7 modified by S.R. 1991/364, Rule 5A.18 (as inserted (30.6.2011) by Insolvency (Amendment) Rules (Northern Ireland) 2011 (S.R. 2011/151), Rule 8, Sch. 1)

Limit on value of debtor's property

8.—(1) The total value of the debtor's property on the determination date does not exceed the amount specified by order under Article 362(1)(b).

(2) The rules may—

- (a) make provision as to how the value of a person's property is to be determined;
- (b) provide that particular descriptions of property are to be excluded for the purposes of this paragraph.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Modifications etc. (not altering text)

C54 Sch. 2ZA para. 8 modified by S.R. 1991/364, Rule 5A.18 (as inserted (30.6.2011) by Insolvency (Amendment) Rules (Northern Ireland) 2011 (S.R. 2011/151), Rule 8, Sch. 1)

PART 2

OTHER CONDITIONS

9.—(1) The debtor has not entered into a transaction with any person at an undervalue during the period between—

- (a) the start of the period of 2 years ending with the application date; and
 - (b) the determination date.
- (2) For this purpose a debtor enters into a transaction with a person at an undervalue if—
- (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration;
 - (b) he enters into a transaction with that person in consideration of marriage or the formation of a civil partnership; or
 - (c) he 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 individual.

10.—(1) The debtor has not given a preference to any person during the period between—

- (a) the start of the period of 2 years ending with the application date; and
 - (b) the determination date.
- (2) For this purpose a debtor gives a preference to a person if—
- (a) that person is one of the debtor's creditors to whom a qualifying debt is owed or is a surety or guarantor for any such debt, and
 - (b) the debtor 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 that a debt relief order is made in relation to the debtor, will be better than the position he would have been in if that thing had not been done.]

VALID FROM 30/06/2011

[^{F466}SCHEDULE 2ZB

DEBT RELIEF RESTRICTIONS ORDERS AND UNDERTAKINGS

F466 Sch. 2ZB inserted (30.6.2011) by Debt Relief Act (Northern Ireland) 2010 (c. 16), ss. 3, 7(1); S.R. 2011/13, art. 2

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Debt relief restrictions order

1.—(1) A debt relief restrictions order may be made by the High Court in relation to a person in respect of whom a debt relief order has been made.

(2) An order may be made only on the application of—

- (a) the Department, or
- (b) the official receiver acting on a direction of the Department.

Grounds for making order

2.—(1) The High Court shall grant an application for a debt relief restrictions order if it thinks it appropriate to do so having regard to the conduct of the debtor (whether before or after the making of the debt relief order).

(2) The Court shall, in particular, take into account any of the following kinds of behaviour on the part of the debtor—

- (a) failing to keep records which account for a loss of property by the debtor, or by a business carried on by him, where the loss occurred in the period beginning 2 years immediately preceding the application date for the debt relief order and ending with the date of the application for the debt relief restrictions order;
- (b) failing to produce records of that kind on demand by the official receiver;
- (c) entering into a transaction at an undervalue in the period beginning 2 years before the application date for the debt relief order and ending with the date of the determination of that application;
- (d) giving a preference in the period beginning 2 years before the application date for the debt relief order and ending with the date of the determination of that application;
- (e) making an excessive pension contribution;
- (f) a failure to supply goods or services that were wholly or partly paid for;
- (g) trading at a time, before the date of the determination of the application for the debt relief order, when the debtor knew or ought to have known that he was unable to pay his debts;
- (h) incurring, before the date of the determination of the application for the debt relief order, a debt which the debtor had no reasonable expectation of being able to pay;
- (i) failing to account satisfactorily to the Court or the official receiver for a loss of property or for an insufficiency of property to meet his debts;
- (j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of his inability to pay his debts before the application date for the debt relief order or which took place between that date and the date of the determination of the application for the debt relief order;
- (k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of his inability to pay his debts;
- (l) fraud or fraudulent breach of trust;
- (m) failing to co-operate with the official receiver.

(3) The High Court shall also, in particular, consider whether the debtor was an undischarged bankrupt at some time during the period of 6 years ending with the date of the application for the debt relief order.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (4) For the purposes of sub-paragraph (2)—
- “excessive pension contribution” shall be construed in accordance with Article 315A;
 - “preference” shall be construed in accordance with paragraph 10(2) of Schedule 2ZA;
 - “undervalue” shall be construed in accordance with paragraph 9(2) of that Schedule.

Timing of application for order

- 3 An application for a debt relief restrictions order in respect of a debtor may be made—
- (a) at any time during the moratorium period relating to the debt relief order in question, or
 - (b) after the end of that period, but only with the permission of the Court.

Duration of order

- 4.—(1) A debt relief restrictions order—
- (a) comes into force when it is made, and
 - (b) ceases to have effect at the end of a date specified in the order.
- (2) The date specified in a debt relief restrictions order under sub-paragraph (1)(b) must not be—
- (a) before the end of the period of 2 years beginning with the date on which the order is made, or
 - (b) after the end of the period of 15 years beginning with that date.

Interim debt relief restrictions order

- 5.—(1) This paragraph applies at any time between—
- (a) the institution of an application for a debt relief restrictions order, and
 - (b) the determination of the application.
- (2) The High Court may make an interim debt relief restrictions order if the Court thinks that—
- (a) there are prima facie grounds to suggest that the application for the debt relief restrictions order will be successful, and
 - (b) it is in the public interest to make an interim debt relief restrictions order.
- (3) An interim debt relief restrictions order may only be made on the application of—
- (a) the Department, or
 - (b) the official receiver acting on a direction of the Department.
- (4) An interim debt relief restrictions order—
- (a) has the same effect as a debt relief restrictions order, and
 - (b) comes into force when it is made.
- (5) An interim debt relief restrictions order ceases to have effect—
- (a) on the determination of the application for the debt relief restrictions order,
 - (b) on the acceptance of a debt relief restrictions undertaking made by the debtor, or
 - (c) if the Court discharges the interim debt relief restrictions order on the application of the person who applied for it or of the debtor.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

6.—(1) This paragraph applies to a case in which both an interim debt relief restrictions order and a debt relief restrictions order are made.

(2) Paragraph 4(2) has effect in relation to the debt relief restrictions order as if a reference to the date of that order were a reference to the date of the interim debt relief restrictions order.

Debt relief restrictions undertaking

7.—(1) A debtor may offer a debt relief restrictions undertaking to the Department.

(2) In determining whether to accept a debt relief restrictions undertaking the Department shall have regard to the matters specified in paragraph 2(2) and (3).

8 A reference in a statutory provision to a person in respect of whom a debt relief restrictions order has effect (or who is “the subject of” a debt relief restrictions order) includes a reference to a person in respect of whom—

- (a) an interim debt relief restrictions order; or
- (b) a debt relief restrictions undertaking,

has effect.

9.—(1) A debt relief restrictions undertaking—

- (a) comes into force on being accepted by the Department, and
- (b) ceases to have effect at the end of a date specified in the undertaking.

(2) The date specified under sub-paragraph (1)(b) must not be—

- (a) before the end of the period of 2 years beginning with the date on which the undertaking is accepted, or
- (b) after the end of the period of 15 years beginning with that date.

(3) On an application by the debtor the High Court may—

- (a) annul a debt relief restrictions undertaking;
- (b) provide for a debt relief restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

Effect of revocation of debt relief order

10 Unless the High Court directs otherwise, the revocation at any time of a debt relief order does not—

- (a) affect the validity of any debt relief restrictions order, interim debt relief restrictions order or debt relief restrictions undertaking which is in force in respect of the debtor;
- (b) prevent the determination of any application for a debt relief restrictions order, or an interim debt relief restrictions order, in relation to the debtor that was instituted before that time;
- (c) prevent the acceptance of a debt relief restrictions undertaking that was offered before that time; or
- (d) prevent the institution of an application for a debt relief restrictions order or interim debt relief restrictions order in respect of the debtor, or the offer or acceptance of a debt relief restrictions undertaking by the debtor, after that time.]

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

VALID FROM 27/03/2006

^{F467}SCHEDULE 2A

BANKRUPTCY RESTRICTIONS ORDER AND UNDERTAKING

F467 Sch. 2A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 13(2), Sch. 5 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

Bankruptcy restrictions order

- 1.—(1) A bankruptcy restrictions order may be made by the High Court.
- (2) An order may be made only on the application of—
- (a) the Department, or
 - (b) the official receiver acting on a direction of the Department.

Grounds for making order

2.—(1) The High Court shall grant an application for a bankruptcy restrictions order if it thinks it appropriate having regard to the conduct of the bankrupt (whether before or after the making of the bankruptcy order).

(2) The Court shall, in particular, take into account any of the following kinds of behaviour on the part of the bankrupt—

- (a) failing to keep records which account for a loss of property by the bankrupt, or by a business carried on by him, where the loss occurred in the period beginning 2 years immediately preceding petition and ending with the date of the application;
- (b) failing to produce records of that kind on demand by the official receiver or the trustee;
- (c) entering into a transaction at an undervalue;
- (d) giving a preference;
- (e) making an excessive pension contribution;
- (f) a failure to supply goods or services which were wholly or partly paid for which gave rise to a claim provable in the bankruptcy;
- (g) trading at a time before commencement of the bankruptcy when the bankrupt knew or ought to have known that he was unable to pay his debts;
- (h) incurring, before commencement of the bankruptcy, a debt which the bankrupt had no reasonable expectation of being able to pay;
- (i) failing to account satisfactorily to the Court, the official receiver or the trustee for a loss of property or for an insufficiency of property to meet bankruptcy debts;
- (j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of the bankruptcy or which took place between presentation of the petition and commencement of the bankruptcy;
- (k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of the bankruptcy;

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (l) fraud or fraudulent breach of trust;
- (m) failing to cooperate with the official receiver or the trustee.

(3) The Court shall also, in particular, consider whether the bankrupt was an undischarged bankrupt at some time during the period of 6 years ending with the date of the bankruptcy to which the application relates.

- (4) For the purpose of sub-paragraph (2)—
- “immediately preceding petition” shall be construed in accordance with Article 322(c),
 - “excessive pension contribution” shall be construed in accordance with Article 315A,
 - “preference” shall be construed in accordance with Article 313, and
 - “undervalue” shall be construed in accordance with Article 312.

Timing of application for order

3.—(1) An application for a bankruptcy restrictions order in respect of a bankrupt must be made—

- (a) before the end of the period of one year beginning with the date on which the bankruptcy commences, or
- (b) with the permission of the High Court.¹

(2) The period specified in sub-paragraph (1)(a) shall cease to run in respect of a bankrupt while the period set for his discharge is suspended under Article 253(3).

Duration of order

4.—(1) A bankruptcy restrictions order—

- (a) shall come into force when it is made, and
- (b) shall cease to have effect at the end of a date specified in the order.

(2) The date specified in a bankruptcy restrictions order under sub-paragraph (1)(b) must not be—

- (a) before the end of the period of 2 years beginning with the date on which the order is made, or
- (b) after the end of the period of 15 years beginning with that date.

Interim bankruptcy restrictions order

5.—(1) This paragraph applies at any time between—

- (a) the institution of an application for a bankruptcy restrictions order, and
- (b) the determination of the application.

(2) The High Court may make an interim bankruptcy restrictions order if the Court thinks that—

- (a) there are prima facie grounds to suggest that the application for the bankruptcy restrictions order will be successful, and
- (b) it is in the public interest to make an interim order.

(3) An interim order may be made only on the application of—

- (a) the Department, or
- (b) the official receiver acting on a direction of the Department.

(4) An interim order—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) shall have the same effect as a bankruptcy restrictions order, and
 - (b) shall come into force when it is made.
- (5) An interim order shall cease to have effect—
- (a) on the determination of the application for the bankruptcy restrictions order,
 - (b) on the acceptance of a bankruptcy restrictions undertaking made by the bankrupt, or
 - (c) if the Court discharges the interim order on the application of the person who applied for it or of the bankrupt.

6.—(1) This paragraph applies to a case in which both an interim bankruptcy restrictions order and a bankruptcy restrictions order are made.

(2) Paragraph 4(2) shall have effect in relation to the bankruptcy restrictions order as if a reference to the date of that order were a reference to the date of the interim order.

Bankruptcy restrictions undertaking

7.—(1) A bankrupt may offer a bankruptcy restrictions undertaking to the Department.

(2) In determining whether to accept a bankruptcy restrictions undertaking the Department shall have regard to the matters specified in paragraph 2(2) and (3).

8. A reference in a statutory provision to a person in respect of whom a bankruptcy restrictions order has effect (or who is “the subject of” a bankruptcy restrictions order) includes a reference to a person in respect of whom—

- (a) an interim bankruptcy restrictions order, or
- (b) a bankruptcy restrictions undertaking,

has effect.

9.—(1) A bankruptcy restrictions undertaking—

- (a) shall come into force on being accepted by the Department, and
- (b) shall cease to have effect at the end of a date specified in the undertaking.

(2) The date specified under sub-paragraph (1)(b) must not be—

- (a) before the end of the period of 2 years beginning with the date on which the undertaking is accepted, or
- (b) after the end of the period of 15 years beginning with that date.

(3) On an application by the bankrupt the High Court may—

- (a) annul a bankruptcy restrictions undertaking;
- (b) provide for a bankruptcy restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

Modifications etc. (not altering text)

C55 Sch. 2A para. 9 modified by S.R. 1991/364, rule 6.242 (as inserted (27.3.2006) by Insolvency (Amendment) Rules (Northern Ireland) 2006 (S.R. 2006/47), Sch. 1 para. 92)

Effect of annulment of bankruptcy order

10. Where a bankruptcy order is annulled under Article 256(1)(a)—

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (a) any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt shall be annulled,
- (b) no new bankruptcy restrictions order or interim order may be made in respect of the bankrupt, and
- (c) no new bankruptcy restrictions undertaking by the bankrupt may be accepted.

11. Where a bankruptcy order is annulled under Article 235, 237D or 256(1)(b)—

- (a) the annulment shall not affect any bankruptcy restrictions order, interim order or undertaking in respect of the bankrupt,
- (b) the High Court may make a bankruptcy restrictions order in relation to the bankrupt on an application instituted before the annulment,
- (c) the Department may accept a bankruptcy restrictions undertaking offered before the annulment, and
- (d) an application for a bankruptcy restrictions order or interim order in respect of the bankrupt may not be instituted after the annulment.

Registration

12. The Department shall maintain a register of—

- (a) bankruptcy restrictions orders,
- (b) interim bankruptcy restrictions orders, and
- (c) bankruptcy restrictions undertakings.]

SCHEDULE 3

Article 287.

POWERS OF TRUSTEE IN BANKRUPTCY

PART I

POWERS EXERCISABLE WITH SANCTION

1. Power to carry on any business of the bankrupt so far as may be necessary for winding it up beneficially and so far as the trustee is able to do so without contravening any requirement imposed by or under any statutory provision.

2. Power to bring, institute or defend any action or legal proceedings relating to the property comprised in the bankrupt's estate.

F468

F468 prosp. insertion by 2005 NI 10

3. Power to accept as the consideration for the sale of any property comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditors' committee or the High Court thinks fit.

4. Power to mortgage or pledge any part of the property comprised in the bankrupt's estate for the purpose of raising money for the payment of his debts.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

5. Power, where any right, option or other power forms part of the bankrupt's estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power.

6. Power to refer to arbitration, or compromise on such terms as may be agreed on, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

7. Power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of bankruptcy debts.

8. Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the trustee by any person or by the trustee on any person.

PART II

POWERS EXERCISABLE WITHOUT SANCTION

9. Power to sell any part of the property for the time being comprised in the bankrupt's estate, including the goodwill and book debts of any business.

10. [^{F469}Without prejudice to Article 28 or 30 of the Property (Northern Ireland) Order 1997,] power to make, on such terms and conditions as the trustee may think proper, a sub#fee farm grant of land or any part thereof, or a sub#lease of land or any part thereof with a nominal reversion (and to sell the rent or reversion), where such sub#fee farm grant or sub#lease amounts in substance to a sale and the trustee has satisfied himself that it is the most appropriate method of disposing of the land.

F469 1997 NI 8

11. Power to give receipts for any money received by him, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application.

12. Power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate.

13. Power to exercise in relation to any property comprised in the bankrupt's estate any powers the capacity to exercise which is vested in him under Parts VIII to X.

14. Power to deal with any property comprised in the estate to which the bankrupt is beneficially entitled as tenant in tail to the same extent as a commissioner under sections 49 to 61 of the Fines and Recoveries (Ireland) Act 1834^{F470}.

F470 1834 c. 92

PART III

ANCILLARY POWERS

15. For the purposes of, or in connection with, the exercise of any of his powers under Parts VIII to X, the trustee may, by his official name—

- (a) hold property of every description,
- (b) make contracts,

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (c) sue and be sued,
- (d) enter into engagements binding on himself and, in respect of the bankrupt's estate, on his successors in office,
- (e) employ an agent,
- (f) execute any power of attorney, deed or other instrument;

and he may do any other act which is necessary or expedient for the purposes of or in connection with the exercise of those powers.

SCHEDULE 4

Article 346.

THE CATEGORIES OF PREFERENTIAL DEBTS

Category 1: Debts due to Inland Revenue

^{F471}**1.**—(1) Sums due at the relevant date from the debtor on account of deductions of income tax from^{F472} taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003)] paid during the period of 12 months next before that date.

(2) The deductions referred to in sub#paragraph (1) are those which the debtor was liable to make under^{F472} regulations made under section 684 of that Act (PAYE regulations)], less the amount of the repayments of income tax which the debtor was liable to make during that period.

F471 prosp. rep. by [2005 NI 10](#)

F472 [2003 c. 1](#)

^{F473}**2.** Sums due at the relevant date from the debtor in respect of such deductions as are required to be made by the debtor for that period under section 559 of that Act of 1988 (sub#contractors in the construction industry).

F473 prosp. rep. by [2005 NI 10](#)

Category 2: Debts due to Customs and Excise

^{F474}**3.**—(1) Any value added tax which is referable to the period of 6 months next before the relevant date (which period is referred to as “the 6#month period”).

(2) For the purposes of sub#paragraph (1)—

- (a) where the whole of the prescribed accounting period to which any value added tax is attributable falls within the 6#month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any value added tax which is referable to the 6#month period is the proportion of the tax which is equal to such proportion (if any) of the accounting reference period in question as falls within the 6#month period.

(3) In sub#paragraph (2)(a) “prescribed” means prescribed by regulations under the Value Added Tax Act 1983^{F475}.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F474 prosp. rep. by [2005 NI 10](#)

F475 [1983 c. 55](#)

^[F476F477]**3A.** Any insurance premium tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6#month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any insurance premium tax is attributable falls within the 6#month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any insurance premium tax which is referable to the 6# month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6#month period;

and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1994.]

F476 [1994 c. 9](#)

F477 prosp. rep. by [2005 NI 10](#)

^[F478F479]**3B.** Any landfill tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6#month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any landfill tax is attributable falls within the 6#month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any landfill tax which is referable to the 6#month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6#month period;

and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1996.]

F478 [1996 c. 8](#)

F479 prosp. rep. by [2005 NI 10](#)

^[F480F481]**3C.** Any climate change levy which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6#month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any climate change levy is attributable falls within the 6#month period, the whole amount of that levy is referable to that period; and
- (b) in any other case the amount of any climate change levy which is referable to the 6# month period is the proportion of the levy which is equal to such proportion (if any) of the accounting period in question as falls within the 6#month period;

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

and references here to accounting periods shall be construed in accordance with Schedule 6 to the Finance Act 2000.]

F480 2000 c. 17
F481 prosp. rep. by 2005 NI 10

^{F482F483}**4.** The amount of any car tax which is due at the relevant date from the debtor and which became due within a period of 12 months next before that date.

F482 prosp. inserted by 2001 c. 9
F483 prosp. rep. by 2005 NI 10

^{F484}**5.** Any amount which is due—

- (a) by way of general betting duty^{F485}, bingo duty or gaming duty], or
- (b) under section 16 of the Miscellaneous Transferred Excise Duties Act (Northern Ireland) 1972^{F486} (general betting duty and pool betting duty recoverable from agent collecting stakes),^{F487} . . .

Sub-para.(c) rep. by 1997 c.16

from the debtor at the relevant date and which became due within the period of 12 months next before that date.

F484 prosp. rep. by 2005 NI 10
F485 1997 c. 16
F486 1972 c. 11 (NI)
F487 1997 c. 16

[^{F488F489}**5A.** The amount of any excise duty on beer which is due at the relevant date from the debtor and which became due within a period of 6 months next before that date.]

F488 1991 c. 31
F489 prosp. rep. by 2005 NI 10

[^{F490F491}**5B.** Any amount which is due by way of lottery duty from the debtor at the relevant date and which became due within the period of 12 months next before that date.]

F490 1993 c. 34
F491 prosp. rep. by 2005 NI 10

[^{F492F493}**5C.** Any amount which is due by way of air passenger duty from the debtor at the relevant date and which became due within the period of six months next before that date.]

F492 1994 c. 9

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F493 prosp. rep. by [2005 NI 10](#)

Category 3: Social security contributions

^{F494}6. All sums which on the relevant date are due from the debtor on account of Class 1 or Class 2 contributions under^{F495} the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992] and which became due from the debtor in the 12 months next before the relevant date.

F494 prosp. rep. by [2005 NI 10](#)

F495 [1992 c. 9](#)

^{F496}7. All sums which on the relevant date have been assessed on and are due from the debtor on account of Class 4 contributions under either of those Acts of 1975, being sums which—

- (a) are due to the Commissioners of Inland Revenue (rather than to the Secretary of State or the Department of Health and Social Services), and
- (b) are assessed on the debtor up to 5th April next before the relevant date,

but not exceeding, in the whole, any one year's assessment.

F496 prosp. rep. by [2005 NI 10](#)

Category 4: Contributions to occupational pension schemes, etc.

8. Any sum which is owed by the debtor and is a sum to which^{F497} Schedule 3 to the Pension Schemes (Northern Ireland) Act 1993] applies (contributions to occupational pension schemes and state scheme premiums).

F497 [1993 c. 49](#)

Category 5: Remuneration, etc., of employees

9. So much of any amount which—

- (a) is owed by the debtor to a person who is or has been an employee of the debtor, and
- (b) is payable by way of remuneration in respect of the whole or any part of the period of 4 months next before the relevant date,

as does not exceed so much as may be specified in an order made by the Department.

10. An amount owed by way of accrued holiday remuneration, in respect of any period of employment before the relevant date, to a person whose employment by the debtor has been terminated, whether before, on or after that date.

11. So much of any sum owed in respect of money advanced for the purpose as has been applied for the payment of a debt which, if it had not been paid, would have been a debt falling within paragraph 9 or 10.

12. So much of any amount which—

- (a) is ordered (whether before or after the relevant date) to be paid by the debtor under the Reserve Forces (Safeguard of Employment) Act 1985^{F498}, and

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(b) is so ordered in respect of a default made by the debtor before that date in the discharge of his obligations under that Act,
as does not exceed such amount as may be specified in an order made by the Department.

F498 1985 c. 17

Interpretation for Category 5

13.—(1) For the purposes of paragraphs 9 to 12, a sum is payable by the debtor to a person by way of remuneration in respect of any period if—

- (a) it is paid as wages or salary (whether payable for time or for piece work or earned wholly or partly by way of commission) in respect of services rendered to the debtor in that period, or
- (b) it is an amount falling within sub#paragraph (2) and is payable by the debtor in respect of that period.

[^{F499}(2) An amount falls within this sub#paragraph if it is—

- (a) a guarantee payment under Part V of the Employment Rights (Northern Ireland) Order 1996 (employee without work to do);
- (b) any payment for time off under Article 81 (time off to look for work or arrange training), Article 84 (time off for ante#natal care) or Article 93 (time off for carrying out trade union duties etc.) of that Order;
- (c) remuneration on suspension on medical grounds, or on maternity grounds, under Part VIII of that Order; or
- (d) remuneration under a protective award made under Article 217 of that Order (redundancy dismissal with compensation).]

F499 1996 NI 16

14.—(1) This paragraph relates to a case in which a person's employment has been terminated by or in consequence of his employer going into liquidation or being adjudged bankrupt (his employer being a company not in liquidation) by or in consequence of—

- (a) a receiver being appointed as mentioned in Article 50 (debenture#holders secured by floating charge), or
- (b) the taking of possession by debenture#holder (so secured), as mentioned in Article 205 of the Companies Order.

(2) For the purposes of paragraphs 9 to 12, holiday remuneration is deemed to have accrued to that person in respect of any period of employment if, by virtue of his contract of employment or of any statutory provision, that remuneration would have accrued in respect of that period if his employment had continued until he became entitled to be allowed the holiday.

(3) The reference in sub#paragraph (2) to any statutory provision includes an order or direction made under a statutory provision.

15. Without prejudice to paragraphs 13 and 14—

- (a) any remuneration payable by the debtor to a person in respect of a period of holiday or of absence from work through sickness or other good cause is deemed to be wages or (as the case may be) salary in respect of services rendered to the debtor in that period, and

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (b) references here and in those paragraphs to remuneration in respect of a period of holiday include any sums which, if they had been paid, would have been treated for the purposes of the statutory provisions relating to social security as earnings in respect of that period.

Orders under Category 5

16. An order under paragraph 9 or 12—
- (a) may contain such transitional provisions as may appear to the Department necessary or expedient;
- (b) shall be subject to negative resolution.

Category 6: Levies on coal and steel production

17. Any sums due at the relevant date from the debtor in respect of—
- (a) the levies on the production of coal and steel referred to in Articles 49 and 50 of the E.C.S.C. Treaty, or
- (b) any surcharge for delay provided for in Article 50(3) of that Treaty and Article 6 of Decision 3/52 of the High Authority of the Coal and Steel Community.

SCHEDULE 5

Article 359.

PROVISIONS CAPABLE OF INCLUSION IN COMPANY INSOLVENCY RULES

High Court

1. ^{F500}Provision for regulating the practice and procedure of the High Court so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies, being any provision that could be made by rules of court. ^{F501}

F500 prosp. renumbered by 2005 NI 10

F501 prosp. addition by 2005 NI 10

2. Provision conferring rights of audience, in the High Court so far as relating to, and to matters connected with or arising out of, the insolvency or winding up of companies, on the official receiver.

Notices, etc.

3. Provision requiring notice of any proceedings in connection with or arising out of the insolvency or winding up of a company to be given or published in the prescribed manner.

4. Provision with respect to the form, manner of serving, contents and proof of any petition, application, order, notice, statement or other document required to be presented, made, given, published or prepared under any statutory provision relating to, or to matters connected with or arising out of, the insolvency or winding up of companies.

5. Provision specifying the persons to whom any notice is to be given.

Registration of voluntary arrangements

6. Provision for the registration of voluntary arrangements approved under Part II, including provision for the keeping and inspection of a register.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Provisional liquidator

7. Provision as to the manner in which a provisional liquidator appointed under Article 115 is to carry out his functions.

Conduct of insolvency

8. Provision with respect to the certification of any person as, and as to the proof that a person is, the liquidator, administrator or administrative receiver of a company.

9. The following provision with respect to meetings of a company's creditors, contributories or members—

- (a) provision as to the manner of summoning a meeting (including provision as to how any power to require a meeting is to be exercised, provision as to the manner of determining the value of any debt or contribution for the purposes of any such power and provision making the exercise of any such power subject to the deposit of a sum sufficient to cover the expenses likely to be incurred in summoning and holding a meeting);
- (b) provision specifying the time and place at which a meeting may be held and the period of notice required for a meeting;
- (c) provision as to the procedure to be followed at a meeting (including the manner in which decisions may be reached by a meeting and the manner in which the value of any vote at a meeting is to be determined);
- (d) provision for requiring a person who is or has been an officer of the company to attend a meeting;
- (e) provision creating, in the prescribed circumstances, a presumption that a meeting has been duly summoned and held;
- (f) provision as to the manner of proving the decisions of a meeting.

10.—(1) Provision as to the functions, membership and proceedings of a committee established under^{F502} Article 38, 59, 87 or 120.

(2) The following provision with respect to the establishment of a committee under Article 87 or 120, that is to say—

- (a) provision for resolving differences between a meeting of the company's creditors and a meeting of its contributories or members;
- (b) provision authorising the establishment of the committee without a meeting of contributories in a case where a company is being wound up on grounds including its inability to pay its debts; and
- (c) provision modifying the requirements of this Order with respect to the establishment of the committee in a case where a winding#up order has been made immediately upon the discharge of an administration order.

F502 prosp. subst. by [2005 NI 10](#)

11. Provision as to the manner in which any requirement that may be imposed on a person under any of Parts II to VII by the official receiver, the liquidator, administrator or administrative receiver of a company or a special manager appointed under Article 151 is to be so imposed.

12. Provision as to the debts that may be proved in a winding up, as to the manner and conditions of proving a debt and as to the manner and expenses of establishing the value of any debt or security.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

13. Provision with respect to the manner of the distribution of the property of a company that is being wound up, including provision with respect to unclaimed funds and dividends.

14. Provision which, with or without modifications, applies in relation to the winding up of companies any provision contained in Parts VIII to X.

F503

F503 prosp. insertion by [2005 NI 10](#)

F504

F504 prosp. insertion by [2005 NI 10](#)

Financial provisions

15. Provision as to the amount, or manner of determining the amount, payable to the liquidator, administrator or administrative receiver of a company or a special manager appointed under Article 151, by way of remuneration for the carrying out of functions in connection with or arising out of the insolvency or winding up of a company.

16. Provision with respect to the manner in which money received by the liquidator of a company in the course of carrying out his functions as such is to be paid into and out of the Insolvency Account, invested or otherwise handled and with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Account.

F505

F505 prosp. insertion by [2005 NI 10](#)

17. Provision as to the costs that may be treated as the expenses of a winding up.

18. Provision as to the costs that may be treated as properly incurred by the administrator or administrative receiver of a company.

19. Provision as to the costs that may be incurred for any of the purposes of Part II or in the administration of any voluntary arrangement approved under that Part.

Information and records

20. Provision requiring officers of the High Court—

- (a) to keep books and other records with respect to the exercise of the jurisdiction of the Court in relation to, or to matters connected with or arising out of, the insolvency or winding up of companies, and
- (b) to make returns to the Department of the business of the Court.

21. Provision requiring a creditor, member or contributory, or such a committee as is mentioned in paragraph 10, to be supplied (on payment in prescribed cases of the prescribed fee) with such information and with copies of such documents as may be prescribed.

22. Provision as to the manner in which public examinations under Articles 113 and 114 and proceedings under Articles 200 and 201 are to be conducted, as to the circumstances in which records of such examinations or proceedings are to be made available to prescribed persons and as to the costs of such examinations and proceedings.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

23. Provision imposing requirements with respect to—

- (a) the preparation and keeping by the liquidator, administrator or administrative receiver of a company, or by the supervisor of a voluntary arrangement approved under Part II, of prescribed books, accounts and other records;
- (b) the production in the manner and at the location prescribed of those books, accounts and records for inspection by prescribed persons;
- (c) the auditing of accounts kept by the liquidator, administrator or administrative receiver of a company, or the supervisor of such a voluntary arrangement; and
- (d) the issue by the administrator or administrative receiver of a company of such a certificate as is mentioned in section 22(3)(b) of the Value Added Tax Act 1983^{F506} (refund of tax in cases of bad debts) and the supply of copies of the certificate to creditors of the company.

F506 1983 c. 55

24. Provision requiring the person who is the supervisor of a voluntary arrangement approved under Part II, when it appears to him that the voluntary arrangement has been fully implemented and that nothing remains to be done by him under the arrangement—

- (a) to give notice of that fact to persons bound by the voluntary arrangement, and
- (b) to report to those persons on the carrying out of the functions conferred on the supervisor of the arrangement.

25. Provision as to the manner in which the liquidator of a company is to act in relation to the books, papers and other records of the company, including provision authorising their disposal.

26. Provision imposing requirements in connection with the carrying out of functions under^{F507} Article 10(4) of the Company Directors Disqualification (Northern Ireland) Order 2002] (including, in particular, requirements with respect to the making of periodic returns).

F507 2002 NI 4

General

27. Provision conferring power on the Department to make regulations with respect to so much of any matter that may be provided for in the rules as relates to the Insolvency Account or to the carrying out of the functions of the liquidator, administrator or administrative receiver of a company.

28. Provision conferring a discretion on the High Court.

29. Provision conferring power on the High Court to make orders for the purpose of securing compliance with obligations imposed by or under^{F508} Article 34, 57, 111, 121(2) or 199 of this Order or^{F509} Article 10(5) of the Company Directors Disqualification (Northern Ireland) Order 2002].

F508 prosp. subst. by 2005 NI 10

F509 2002 NI 4

30. Provision making non-compliance with any of the rules a criminal offence.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

SCHEDULE 6^{F510}

Article 359.

PROVISIONS CAPABLE OF INCLUSION IN INDIVIDUAL INSOLVENCY RULES

F510 mod. by SR 2004/307

High Court

1. Provision for regulating the practice and procedure of the High Court for the purposes of Parts VIII to X, being any provision that could be made by rules of court.

2. Provision conferring rights of audience, in the High Court for the purposes of Parts VIII to X, on the official receiver.

Notices, etc.

3. Provision requiring notice of any proceedings under Parts VIII to X or of any matter relating to or arising out of a proposal under Part VIII or a bankruptcy to be given or published in the prescribed manner.

4. Provision with respect to the form, manner of serving, contents and proof of any petition, application, order, notice, statement or other document required to be presented, made, given, published or prepared under any provision contained in Parts VIII to X, or Articles 359 to 366 (including provision requiring prescribed matters to be verified by affidavit).

5. Provision specifying the persons to whom any notice under Parts VIII to X is to be given.

VALID FROM 30/06/2011

[^{F511}Debt relief orders

F511 Sch. 6 paras. 5A-5E and cross-headings inserted (30.6.2011) by [Debt Relief Act \(Northern Ireland\) 2010](#) (c. 16), ss. 6, 7(1), [Sch. para. 4\(14\)\(f\)](#); S.R. 2011/13, [art. 2](#)

5A Provision as to the manner in which the official receiver is to carry out his functions under Part 7A.

5B Provision as to the manner in which any requirement that may be imposed by the official receiver on a person under Part 7A is to take effect.

5C Provision modifying the application of Part 7A in relation to an individual who has died at a time when a moratorium period under a debt relief order applies in relation to him.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

VALID FROM 30/06/2011

Debt relief restrictions orders and undertakings

5D Provision about debt relief restrictions orders, interim orders and undertakings, including provision about evidence.

VALID FROM 30/06/2011

Register of debt relief orders and debt relief restrictions orders, etc.

5E Provision about the register required to be maintained by Article 208W and the information to be contained in it, including provision—

- (a) enabling the amalgamation of the register with another register;
- (b) enabling inspection of the register by the public.]

Deeds of arrangement and voluntary arrangements

6. Provision for endorsement, execution and certification of deeds of arrangement registered under Article 211 and for the registration of other voluntary arrangements approved under Part VIII, including provision for the keeping and inspection of a register.

F512

F512 prosp. insertion by [2005 NI 10](#)

Interim receiver

7. Provision as to the manner in which an interim receiver appointed under Article 259 is to carry out his functions, including any such provision as is specified in relation to the trustee of a bankrupt's estate in paragraph 19 or 25.

Receiver or manager

8. Provision as to the manner in which the official receiver is to carry out his functions as receiver or manager of a bankrupt's estate under Article 260, including any such provision as is specified in relation to the trustee of a bankrupt's estate in paragraph 19 or 25.

Administration of individual insolvency

9. Provision with respect to the certification of the appointment of any person as trustee of a bankrupt's estate and as to the proof of that appointment.

10. The following provision with respect to meetings of creditors—

- (a) provision as to the manner of summoning a meeting (including provision as to how any power to require a meeting is to be exercised, provision as to the manner of determining the value of any debt for the purposes of any such power and provision making the exercise of any such power subject to the deposit of a sum sufficient to cover the expenses likely to be incurred in summoning and holding a meeting);

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

- (b) provision specifying the time and place at which a meeting may be held and the period of notice required for a meeting;
 - (c) provision as to the procedure to be followed at such a meeting (including the manner in which decisions may be reached by a meeting and the manner in which the value of any vote at a meeting is to be determined);
 - (d) provision for requiring a bankrupt or debtor to attend a meeting;
 - (e) provision creating, in the prescribed circumstances, a presumption that a meeting has been duly summoned and held; and
 - (f) provision as to the manner of proving the decisions of a meeting.
- 11.** Provision as to the functions, membership and proceedings of a creditors' committee established under Article 274.
- 12.** Provision as to the manner in which any requirement that may be imposed on a person under Parts VIII to X by the official receiver, the trustee of a bankrupt's estate or a special manager appointed under Article 341 is to be so imposed and, in the case of any requirement imposed under Article 278(3) (information, etc., to be given by the trustee to the official receiver), provision conferring power on the High Court to make orders for the purpose of securing compliance with that requirement.
- 13.** Provision as to the manner in which any requirement imposed by virtue of Article 283(3) (compliance with income payments order) is to take effect.
- 14.** Provision as to the terms and conditions that may be included in a charge under Article 286 (dwelling house forming part of bankrupt's estate).
- 15.** Provision as to the debts that may be proved in any bankruptcy, as to the manner and conditions of proving a debt and as to the manner and expenses of establishing the value of any debt or security.
- 16.** Provision with respect to the manner of the distribution of a bankrupt's estate, including provision with respect to unclaimed funds and dividends.
- 17.** Provision modifying the application of Parts VIII to X in relation to a debtor or bankrupt who has died.

Financial provisions

- 18.** Provision as to the amount, or manner of determining the amount, payable to an interim receiver, the trustee of a bankrupt's estate or a special manager appointed under Article 341 by way of remuneration for the performance of functions in connection with or arising out of the bankruptcy of any person.
- 19.** Provision with respect to the manner in which money received by the trustee of a bankrupt's estate in the course of carrying out his functions as such is to be paid into and out of the Insolvency Account, invested or otherwise handled and with respect to the payment of interest on sums which, in pursuance of rules made by virtue of this paragraph, have been paid into the Insolvency Account.

F513

F513 prosp. insertion by [2005 NI 10](#)

- 20.** Provision as to the costs that may be treated as the expenses of a bankruptcy.
- 21.** Provision as to the costs that may be incurred for any of the purposes of Part VIII or in the administration of any voluntary arrangement approved under that Part.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Information and records

22. Provision requiring officers of the High Court—

- (a) to keep books and other records with respect to the exercise of the jurisdiction of the Court under Parts VIII to X, and
- (b) to make returns to the Department of the business of the Court.

23. Provision requiring a creditor or a committee established under Article 274 to be supplied (on payment in prescribed cases of the prescribed fee) with such information and with copies of such documents as may be prescribed.

24. Provision as to the manner in which public examinations under Article 263 and proceedings under Articles 337 to 339 are to be conducted, as to the circumstances in which records of such examinations and proceedings are to be made available to prescribed persons and as to the costs of such examinations and proceedings.

25. Provision imposing requirements with respect to—

- (a) the preparation and keeping by the trustee of a bankrupt's estate, the trustee of a deed of arrangement or the supervisor of a voluntary arrangement approved under Part VIII, of prescribed books, accounts and other records;
- (b) the production in the manner and at the location prescribed of those books, accounts and records for inspection by prescribed persons; and
- (c) the auditing of accounts kept by the trustee of a bankrupt's estate, the trustee of a deed of arrangement or the supervisor of such a voluntary arrangement.

26. Provision requiring the person who is the supervisor of a voluntary arrangement approved under Part VIII, when it appears to him that the voluntary arrangement has been fully implemented and that nothing remains to be done by him under it—

- (a) to give notice of that fact to persons bound by the voluntary arrangement, and
- (b) to report to those persons on the carrying out of the functions conferred on the supervisor of it.

27. Provision as to the manner in which the trustee of a bankrupt's estate is to act in relation to the books, papers and other records of the bankrupt, including provision authorising their disposal.

F514

F514 prosp. insertion by [2005 NI 10](#)

General

28. Provision conferring power on the Department to make regulations with respect to so much of any matter that may be provided for in the rules as relates to deeds of arrangement, the Insolvency Account or to the carrying out of the functions of an interim receiver appointed under Article 259, of the official receiver while acting as a receiver or manager under Article 260 or of a trustee of a bankrupt's estate.

29. Provision conferring a discretion on the High Court.

30. Provision making non-compliance with any of the rules a criminal offence.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

SCHEDULE 7

Article 373.

PUNISHMENT OF OFFENCES UNDER THIS ORDER

Article of Order creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
[^{F515} 19A(1).]	[^{F515} False representation or fraud for purpose of obtaining members' or creditor's approval of proposed voluntary arrangement.]	[^{F515} 1. On indictment.] [^{F515} 2. Summary.]	[^{F515} 7 years or a fine, or both.] [^{F515} 6 months or the statutory maximum, or both.]	
^{F516} 25(2)	^{F516} Company and others failing to state in correspondence, etc., that administrator appointed.	^{F516} Summary.	^{F516} One#fifth of the statutory maximum.	
^{F516} 28(8)	^{F516} Failure of administrator to register office copy of High Court order permitting disposal of charged property.	^{F516} Summary.	^{F516} One#fifth of the statutory maximum.	^{F516} One#fiftieth of the statutory maximum.
^{F516} 30(5)	^{F516} Failure of administrator to register office copy of High Court order varying or discharging administration order.	^{F516} Summary.	^{F516} One#fifth of the statutory maximum.	^{F516} One#fiftieth of the statutory maximum.
^{F516} 33(3)	^{F516} Administrator failing to register administration order and	^{F516} Summary.	^{F516} One#fifth of the statutory maximum.	^{F516} One#fiftieth of the statutory maximum.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

	give notice of appointment.				
F516 34(6)	F516 Failure to comply with provisions relating to statement of affairs, where administrator appointed.	F516 1. On indictment. F516 2. Summary.	F516 A fine. F516 The statutory maximum.	F516 One#tenth of the statutory maximum.	
F516 35(3)	F516 Administrator failing to send out, register and lay before creditors statement of his proposals.	F516 Summary.	F516 One#fifth of the statutory maximum.	F516 One#fiftieth of the statutory maximum.	
F516 36(7)	F516 Administrator failing to file High Court order discharging administration order under Article 36.	F516 Summary.	F516 One#fifth of the statutory maximum.	F516 One#fiftieth of the statutory maximum.	
F516 39(6)	F516 Administrator failing to file High Court order discharging administration order under Article 39.	F516 Summary.	F516 One#fifth of the statutory maximum.	F516 One#fiftieth of the statutory maximum.	
40	Body corporate acting as receiver.	1. On indictment. 2. Summary.	A fine. The statutory maximum.		
41(1)	F516 Undischarged bankrupt acting as receiver or manager.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.		
48(4)	Receiver failing to deliver accounts to registrar.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.	

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

49(2)	Company and others failing to state in correspondence that receiver appointed.	Summary.	One#fifth of the statutory maximum.	
53(6)	Administrative receiver failing to file office copy of order permitting disposal or charged property.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
55(5)	Administrative receiver failing to file notice of vacation of office.	Summary.	One#fifth of the statutory maximum.	F517 One#fiftieth of the statutory maximum.
56(4)	Administrative receiver failing to give notice of his appointment.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
57(6)	Failure to comply with provisions relating to statement of affairs, where administrative receiver appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One#tenth of the statutory maximum.
58(8)	Administrative receiver failing to comply with requirements as to his report.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
71(2) F518	Company failing to give notice in Belfast Gazette of resolution for voluntary winding up.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
75(4) F518	Director making statutory declaration of company's solvency without reasonable grounds for his opinion.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

75(6)	Declaration under Article 75 not delivered to registrar within prescribed time.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
79(3) F518	Liquidator failing to summon general meeting of company at each year's end.	Summary.	One#fifth of the statutory maximum.	
80(4)	Liquidator failing to send to registrar a copy of account of winding up and return of final meeting.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
80(6)	Liquidator failing to call final meeting.	Summary.	One#fifth of the statutory maximum.	
81(6)	Liquidator failing to comply with Article 81 where company insolvent.	Summary.	The statutory maximum.	
84(4)	Company failing to comply with Article 84 in respect of summoning and giving notice of creditors' meeting.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
85(3) F518	Directors failing to attend and lay statement in prescribed form before creditors' meeting.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
91(3) F518	Liquidator failing to summon company general meeting and creditors' meeting at each year's end.	Summary.	One#fifth of the statutory maximum.	
92(4)	Liquidator failing to send to registrar account of winding up	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

	and return of final meetings.			
92(6) F518	Liquidator failing to call final meeting of company or creditors.	Summary.	One#fifth of the statutory maximum.	
95(2)	Liquidator failing to publish, or deliver to the registrar, notice of his appointment.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
99(4)	Directors exercising powers in breach of Article 99, where no liquidator.	Summary.	The statutory maximum.	
111(7)	Failing to comply with requirements as to statement of affairs, where liquidator appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One#tenth of the statutory maximum.
139	Giving, offering, etc., corrupt inducement affecting appointment of liquidator.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
141(7)	Liquidator failing to comply with requirements of Article 141 in creditors' voluntary winding up.	Summary.	The statutory maximum.	
159(2)	Default in compliance with Article 159 as to notification that company being wound up.	Summary.	One#fifth of the statutory maximum.	
162(2)	Liquidator failing to notify registrar as to progress of winding up.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

166(4)	Failing to deliver to registrar office copy of High Court order deferring dissolution.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
168(6)	Failing to deliver to registrar copy of directions or result of appeal under Article 168.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
169(5)	Failing to deliver to registrar copy of Department's directions or High Court order deferring dissolution.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
170(1)	Fraud, etc., in anticipation of winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
170(2)	Privity to fraud in anticipation of winding up; fraud, or privity to fraud, after commencement of winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
171(1)	Officer of company entering into transaction in fraud of company's creditors.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
172(1)	Officer of company misconducting himself in course of winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
173	Officer or contributory destroying, falsifying, etc., company's books.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

174(1)	Officer of company making material omission from statement relating to company's affairs.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
175(1)	False representation or fraud for purpose of obtaining creditors' consent to an agreement in connection with winding up.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.	
180(4)	Contravening restrictions on re#use of name of company in insolvent liquidation.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.	
199(5)	Failing to co#operate with office#holder.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One#tenth of the statutory maximum.
217(2)	Default in compliance with Article 374 as to notification that deed is void.	Summary.	One#fifth of the statutory maximum.	
218(1)	Trustee acting when deed of arrangement void.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
222(3)	Failing to transmit accounts.	Summary.	One#fifth of the statutory maximum.	One#fiftieth of the statutory maximum.
223	Preferential payment to creditor.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	
[^{F515} 236A(1).]	[^{F515} False representation or fraud for purpose of obtaining creditor's approval of proposed voluntary arrangement.]	[^{F515} 1. On indictment.] [^{F515} 2. Summary.]	[^{F515} 7 years or a fine, or both.] [^{F515} 6 months or the statutory maximum, or both.]	

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

324(1) F518	Bankrupt failing to disclose property or disposals to official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
325(1) F518	Bankrupt failing to deliver property to, or concealing property from, official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
325(3) F518	Bankrupt removing property which he is required to deliver to official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
325(5) F518	Bankrupt failing to account for loss of substantial part of property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
326(1) F518	Bankrupt failing to deliver books, papers and records to official receiver or trustee.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
326(2) F518	Bankrupt concealing, destroying etc., books, papers or records, or making false entries in them.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
326(3) F518	Bankrupt disposing of, or altering, books, papers or records relating to his estate or affairs.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
327(1) F518	Bankrupt making material omission in statement	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

	relating to his affairs.		maximum, or both.
327(3) F518	Bankrupt making false statement, or failing to inform trustee, where false debt proved.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
328(1) F518	Bankrupt fraudulently disposing of property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
328(3) F518	Bankrupt conceals or removes property.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
329(1) F518	Bankrupt absconding with property he is required to deliver to official receiver or trustee.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
330(1) F518	Bankrupt disposing of property obtained on credit and not paid for.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
330(3) F518	Obtaining property in respect of which money is owed by a bankrupt.	1. On indictment. 2. Summary.	7 years or a fine, or both. 6 months or the statutory maximum, or both.
331(1) F518	Bankrupt obtaining credit or engaging in business without disclosing his status or name in which he was made bankrupt.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
331(3) F518	Person made bankrupt in	1. On indictment. 2. Summary.	2 years or a fine, or both.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

	England, Wales or Scotland obtaining credit, etc., in Northern Ireland.		6 months or the statutory maximum, or both.
F516 332(1) F518	F516 Bankrupt failing to keep proper accounting records.	F516 1. On indictment. 2. Summary.	F516 2 years or a fine, or both. 6 months or the statutory maximum, or both.
F516 333(1) F518	F516 Bankrupt increasing extent of insolvency by gambling.	F516 1. On indictment. 2. Summary.	F516 2 years or a fine, or both. 6 months or the statutory maximum, or both.
348(1)	Acting as insolvency practitioner when not qualified.	1. On indictment. 2. Summary.	2 years or a fine, or both. 6 months or the statutory maximum, or both.
[^{F515} Sch. A1, para. 20(2).]	[^{F515} Directors failing to notify nominee of beginning of moratorium.]	[^{F515} 1. On indictment.] [^{F515} 2. Summary.]	[^{F515} 2 years or a fine, or both.] [^{F515} 6 months or the statutory maximum, or both.]
[^{F515} Sch. A1, para. 21(3).]	[^{F515} Nominee failing to advertise or notify beginning of moratorium.]	[^{F515} Summary.]	[^{F515} One-fifth of the statutory maximum.]
[^{F515} Sch. A1, para. 22(2).]	[^{F515} Nominee failing to advertise or notify end of moratorium.]	[^{F515} Summary.]	[^{F515} One-fifth of the statutory maximum.]
[^{F515} Sch. A1, para. 27(2).]	[^{F515} Company and officers failing to state in correspondence etc. that moratorium in force.]	[^{F515} Summary.]	[^{F515} One-fifth of the statutory maximum.]
[^{F515} Sch. A1, para. 28(3)(a).]	[^{F515} Company obtaining	[^{F515} 1. On indictment.]	[^{F515} A fine.]

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

	credit without disclosing existence of moratorium.]	[^{F515} 2. Summary.]	[^{F515} The statutory maximum.]
[^{F515} Sch. A1, para. 28(3)(b).]	[^{F515} Obtaining credit for company without disclosing existence of moratorium.]	[^{F515} 1. On indictment.]	[^{F515} 2 years or a fine, or both.]
		[^{F515} 2. Summary.]	[^{F515} 6 months or the statutory maximum, or both.]
[^{F515} Sch. A1, para. 29(3)(a).]	[^{F515} Company disposing of property otherwise than in ordinary way of business.]	[^{F515} 1. On indictment.]	[^{F515} A fine.]
		[^{F515} 2. Summary.]	[^{F515} The statutory maximum.]
[^{F515} Sch. A1, para. 29(3)(b).]	[^{F515} Authorising or permitting disposal of company property.]	[^{F515} 1. On indictment.]	[^{F515} 2 years or a fine, or both.]
		[^{F515} 2. Summary.]	[^{F515} 6 months or the statutory maximum, or both.]
[^{F515} Sch. A1, para. 30(3)(a).]	[^{F515} Company making payments in respect of liabilities existing before beginning of moratorium.]	[^{F515} 1. On indictment.]	[^{F515} A fine.]
		[^{F515} 2. Summary.]	[^{F515} The statutory maximum.]
[^{F515} Sch. A1, para. 30(3)(b).]	[^{F515} Authorising or permitting such a payment.]	[^{F515} 1. On indictment.]	[^{F515} 2 years or a fine, or both.]
		[^{F515} 2. Summary.]	[^{F515} 6 months or the statutory maximum, or both.]
[^{F515} Sch. A1, para. 31(9).]	[^{F515} Directors failing to send to registrar office copy of court order permitting disposal of charged property.]	[^{F515} Summary.]	[^{F515} One-fifth of the statutory maximum.]
[^{F515} Sch. A1, para. 32(1).]	[^{F515} Company disposing of charged property.]	[^{F515} 1. On indictment.]	[^{F515} A fine.]
		[^{F515} 2. Summary.]	[^{F515} The statutory maximum.]
[^{F515} Sch. A1, para. 32(2).]	[^{F515} Authorising or permitting such a disposal.]	[^{F515} 1. On indictment.]	[^{F515} 2 years or a fine, or both.]

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

		[^{F515} 2. Summary.]	[^{F515} 6 months or the statutory maximum, or both.]
[^{F515} Sch. A1, para. 33(1)(a).]	[^{F515} Company entering into market contract, etc.]	[^{F515} 1. On indictment.] [^{F515} 2. Summary.]	[^{F515} A fine.] [^{F515} The statutory maximum.]
[^{F515} Sch. A1, para. 33(1)(b).]	[^{F515} Authorising or permitting company to do so.]	[^{F515} 1. On indictment.] [^{F515} 2. Summary.]	[^{F515} 2 years or a fine, or both.] [^{F515} 6 months or the statutory maximum, or both.]
[^{F515} Sch. A1, para. 35(6).]	[^{F515} Nominee failing to give notice of withdrawal of consent to act.]	[^{F515} Summary.]	[^{F515} One-fifth of the statutory maximum.]
[^{F515} Sch. A1, para. 44(3).]	[^{F515} Nominee failing to give notice of extension of moratorium.]	[^{F515} Summary.]	[^{F515} One-fifth of the statutory maximum.]
[^{F515} Sch. A1, para. 51(2).]	[^{F515} Fraud or privity to fraud in anticipation of moratorium.]	[^{F515} 1. On indictment.] [^{F515} 2. Summary.]	[^{F515} 7 years or a fine, or both.] [^{F515} 6 months or the statutory maximum, or both.]
[^{F515} Sch. A1, para. 51(3).]	[^{F515} Fraud or privity to fraud during moratorium.]	[^{F515} 1. On indictment.] [^{F515} 2. Summary.]	[^{F515} 7 years or a fine, or both.] [^{F515} 6 months or the statutory maximum, or both.]
[^{F515} Sch. A1, para. 51(7).]	[^{F515} Knowingly taking in pawn or pledge, or otherwise receiving, company property.]	[^{F515} 1. On indictment.] [^{F515} 2. Summary.]	[^{F515} 7 years or a fine, or both.] [^{F515} 6 months or the statutory maximum, or both.]
[^{F515} Sch. A1, para. 52(1).]	[^{F515} False representation or fraud for purpose of obtaining	[^{F515} 1. On indictment.] [^{F515} 2. Summary.]	[^{F515} 7 years or a fine, or both.] [^{F515} 6 months or the statutory

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

or extending
moratorium.]

maximum, or
both. ^{F519F519F519F519F519}]

F515 2002 NI 6
F516 prosp. rep. by 2005 NI 10
F517 prosp. rep. by 1990 NI 10
F518 mod. by SR 2004/307
F519 prosp. addition by 2005 NI 10

SCHEDULE 8

Article 379.

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

COMPANY INSOLVENCY AND WINDING UP

Administration orders

1.—(1) Where any right to appoint an administrative receiver of a company is conferred by any debentures or floating charge created before the commencement date, the conditions precedent to the exercise of that right are deemed to include the presentation of a petition applying for an administration order to be made in relation to the company.

(2) In sub#paragraph (1) “administrative receiver” has the meaning assigned by Article 5(1).

Receivers and managers

2.—(1) Parts IV and VII do not apply in relation to any receiver or manager of a company's property who was appointed before the commencement date.

(2) In relation to any such receiver or manager as is mentioned in sub#paragraph (1) the Companies Order has effect without the amendments and repeals specified in Article 12 and in Schedules 9 and 10.

(3) This paragraph is without prejudice to the power conferred by this Order under which rules under Article 359 may make transitional provision in connection with the coming into operation of those rules; and such provision may apply those rules in relation to the receiver or manager of a company's property notwithstanding that he was appointed before the coming into operation of the rules or Article 359.

Winding up already in progress

3.—(1) Subject to the following provisions of this Part, Parts V to VII do not apply in relation to any winding up which has commenced, or is treated as having commenced, before the commencement date.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(2) In relation to any such winding up as is mentioned in sub#paragraph (1) the statutory provisions specified in Schedules 9 and 10 have effect without the amendments and repeals specified in Article 13 and in those Schedules.

(3) Where any instrument made under a statutory provision referred to in sub#paragraph (2) is in operation immediately before the commencement date, that instrument continues to have effect on and after that date in relation to any such winding up as is mentioned in sub#paragraph (1).

Statement of affairs

4.—(1) Where a winding up by the High Court has commenced, or is treated as having commenced, before the commencement date, the official receiver or (on appeal from a refusal by him) the Court may, at any time on or after that date—

- (a) release a person from an obligation imposed on him by or under Article 489 of the Companies Order (statement of affairs), or
- (b) extend the period specified in paragraph (6) of that Article.

(2) Accordingly, on and after the commencement date, Article 489(6) of the Companies Order has effect in relation to a winding up to which this paragraph applies with the omission of the words from “or within” onwards.

Provisions relating to liquidator

5.—(1) This paragraph applies as regards the liquidator in the case of a winding up by the High Court commenced, or treated as having commenced, before the commencement date.

(2) The official receiver may, at any time when he is liquidator of the company, apply to the Department for the appointment of a liquidator in his (the official receiver's) place; and on any such application the Department shall either make an appointment or decline to make one.

(3) Where immediately before the appointed day the liquidator of the company has not made an application under Article 506 of the Companies Order (release of liquidators), then—

- (a) except where the Department otherwise directs, Articles 124(1) and (2) and 146(7) of this Order apply, and Article 508 of the Companies Order does not apply, in relation to any liquidator of that company who holds office on or at any time after the commencement date and is not the official receiver;
- (b) Article 124(3) of this Order applies in relation to the carrying out at any time after that date by any liquidator of the company of any of his functions; and
- (c) a liquidator in relation to whom Article 146(7) of this Order has effect by virtue of this paragraph has his release with effect from the time specified in Article 148(4)(d) of this Order.

(4) Paragraph (6) of Article 148 of this Order has effect for the purposes of sub#paragraph (3) (c) as it has for the purposes of that Article, but as if the reference to Article 176 were to Article 584 of the Companies Order.

Saving for power to make rules

6. Paragraphs 3 to 5 are without prejudice to the power conferred by this Order under which rules made under Article 359 may make transitional provision in connection with the coming into operation of those rules; and such provision may apply those rules in relation to a winding up

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

notwithstanding that the winding up commenced, or is treated as having commenced, before the coming into operation of the rules or Article 359.

Setting aside of preferences and other transactions

7.—(1) Where a provision in Part V of this Order applies in relation to a winding up or in relation to a case in which an administration order has been made, a preference given, floating charge created or other transaction entered into before the commencement date shall not be set aside under that provision except to the extent that it could have been set aside under the law in operation immediately before that date, assuming for this purpose that any relevant administration order had been a winding#up order.

(2) The references in sub#paragraph (1) to setting aside a preference, floating charge or other transaction include the making of an order which varies or reverses any effect of a preference, floating charge or other transaction.

PART II

INDIVIDUAL INSOLVENCY

Bankruptcy general

8.—(1) Subject to the following provisions of this Part, Parts VIII to X do not apply in relation to any case in which a bankruptcy petition was presented, or an adjudication in bankruptcy was made, before the commencement date.

(2) In relation to any such case as is mentioned in sub#paragraph (1), the statutory provisions specified in Schedules 9 and 10, so far as they relate to bankruptcy, have effect without the amendments and repeals specified in those Schedules.

(3) Where any instrument made under a statutory provision referred to in sub#paragraph (2) is in operation immediately before the commencement date, that instrument continues to have effect on and after that date in relation to any such case as is mentioned in sub#paragraph (1).

9.—(1) In relation to any such case as is mentioned in paragraph 8(1) the references in any statutory provision to a petition, order or other matter which is provided for under the Bankruptcy Acts and corresponds to a petition, order or other matter provided for under provisions of Parts VIII to X of this Order continue on and after the commencement date to have effect as references to the petition, order or matter provided for by those Acts.

(2) Without prejudice to sub#paragraph (1), in determining for the purposes of Article 253 (period of bankruptcy) or paragraph 11 whether any person was an undischarged bankrupt at a time before the commencement date, an adjudication in bankruptcy and an annulment of a bankruptcy under the Bankruptcy Acts are to be taken into account in the same way, respectively, as a bankruptcy order under the provisions of Parts VIII to X of this Order and the annulment under Article 256 of this Order of such an order.

10. Transactions entered into before the commencement date have effect on and after that date as if references to acts of bankruptcy in the provisions for giving effect to those transactions continued to be references to acts of bankruptcy within the meaning of section 21 of the Bankruptcy (Ireland) Amendment Act 1872^{F520} but as if such acts included failure to comply with a statutory demand served under Article 242 of this Order.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

F520 1872 c. 58

Discharge from old bankruptcy

11.—(1) Where a person—

- (a) was adjudged bankrupt before the commencement date or is adjudged bankrupt on or after that date on a petition presented before that date, and
- (b) that person was not an undischarged bankrupt at any time in the period of 15 years ending with the adjudication,

that person is deemed (if not previously discharged) to be discharged from his bankruptcy for the purposes of the Bankruptcy Acts, at the end of the discharge period.

(2) Subject to sub#paragraph (3), the discharge period for the purposes of this paragraph is—

- (a) in the case of a person adjudged bankrupt before the commencement date, the period of 3 years beginning with that date, and
- (b) in the case of a person who is adjudged bankrupt on or after that date on a petition presented before that date, the period of 3 years beginning with the date of the adjudication.

(3) Where the High Court exercising jurisdiction in relation to a bankruptcy to which this paragraph applies is satisfied, on the application of the official receiver, that the bankrupt has failed, or is failing, to comply with any of his obligations under the Bankruptcy Acts, any rules made under those Acts or any such rules as are mentioned in paragraph 16(1), the Court may order that the discharge period shall cease to run for such period, or until the fulfilment of such conditions (including a condition requiring the Court to be satisfied as to any matter) as may be specified in the order.

Provisions relating to trustee

12.—(1) This paragraph applies as regards the trustee in the case of a person adjudged bankrupt before the commencement date, or adjudged bankrupt on or after that date on a petition presented before that date.

(2) Where on the commencement date the trustee of a bankrupt's estate has not made an application under Article 27 of the Bankruptcy Amendment (Northern Ireland) Order 1980^{F521} as applied by Article 39 of that Order (release of trustee), then—

- (a) except where the Department otherwise directs, Articles 271(7), 277 and 304(1) to (3) of this Order apply, and Article 27 of that Order of 1980 as applied by Article 39 of that Order does not apply, in relation to any trustee of the bankrupt's estate who holds office on or at any time after the commencement date;
- (b) Article 304(4) of this Order applies in relation to the carrying out at any time on or after the commencement date by the trustee of the bankrupt's estate of any of his functions; and
- (c) a trustee in relation to whom Article 271(7) of this Order has effect by virtue of this paragraph has his release with effect from the time specified in Article 272(3)(d).

(3) Paragraph (5) of Article 272 has effect for the purposes of sub#paragraph (2)(c) as it has for the purposes of that Article.

(4) In the application of paragraph (3) of Article 304 in relation to a case by virtue of this paragraph, the reference in that paragraph to Article 303(1) has effect as a reference to Article 22(7) and (8) of the Bankruptcy Amendment (Northern Ireland) Order 1980 as applied by Article 39 of that Order of 1980.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(5) The trustee of the bankrupt's estate may employ a solicitor to assist him in the carrying out of his functions without the permission of the committee of inspection; but if he does so employ a solicitor, he shall inform the committee of inspection that he has done so.

F521 1980 NI 4

Second bankruptcy

13.—(1) Articles 307 and 308 of this Order apply with the following modifications where the earlier bankruptcy (within the meaning of Article 307) is a bankruptcy in relation to which the Bankruptcy Acts apply instead of Parts VIII to X of this Order, that is to say—

- (a) references to the existing trustee include references to the assignees of the bankrupt's estate for the purposes of the earlier bankruptcy; and
- (b) references to property vested in the existing trustee under Article 280(3) of this Order have effect as references to such property vested in that trustee as was acquired by or devolved on the bankrupt after the commencement (within the meaning of the Bankruptcy Acts) of the earlier bankruptcy; and
- (c) references to an order under Article 283 of this Order have effect as references to an order under section 319 of the Irish Bankrupt and Insolvent Act 1857^{F522} or section 51 of the Bankruptcy (Ireland) Amendment Act 1872^{F523}.

(2) Section 11 of the Bankruptcy Amendment Act (Northern Ireland) 1929^{F524} (second bankruptcy) does not apply where a person who is an undischarged bankrupt under the Bankruptcy Acts is adjudged bankrupt under this order.

F522 1857 c. 60

F523 1872 c. 58

F524 1929 c. 1 (NI)

Setting aside of preferences and other transactions

14.—(1) A preference given, assignment made or other transaction entered into before the commencement date shall not be set aside under any of Articles 312 to 317 of this Order except to the extent that it could have been set aside under the law in operation immediately before that date.

(2) References in sub#paragraph (1) to setting aside a preference, assignment or other transaction include the making of any order which varies or reverses any effect of a preference, assignment or other transaction.

Bankruptcy offences

15.—(1) Where a bankruptcy order is made under this Order on or after the commencement date, a person is not guilty of an offence under Chapter VI of Part IX in respect of anything done before that date; but, notwithstanding the repeal by Article 382 and Schedule 10 of sections 11, 12 and 13(4) of the Debtors (Ireland) Act 1872^{F525} and sections 25 and 26 of the Bankruptcy Amendment Act (Northern Ireland) 1929 is guilty of an offence under the Act of 1872 or 1929 in respect of anything done before the commencement date which would have been an offence under that Act if the making of the bankruptcy order had been the making of an adjudication order under the Bankruptcy Acts.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

(2) Paragraph (5) of Article 321 of this Order applies (instead of section 25(2) or 26(2) of the Bankruptcy Amendment Act (Northern Ireland) 1929) in relation to proceedings for an offence under that Act which are instituted (whether by virtue of sub#paragraph (1) or otherwise) after the commencement date.

F525 1872 c. 57

Power to make rules

16.—(1) The preceding provisions of this Part of this Schedule are without prejudice to the power conferred by this Order under which rules under Article 359 may make transitional provision in connection with the coming into operation of those rules; and such provision may apply those rules in relation to a bankruptcy notwithstanding that it arose from a petition presented before either the coming into operation of the rules or the commencement date.

(2) Rules under Article 359 may provide for such debtor's summons served before the commencement date as may be prescribed to be treated for the purposes of this Order as statutory demands served under Article 242.

PART III

OTHER TRANSITIONAL PROVISIONS AND SAVINGS

Deeds of arrangement

17. Chapter I of Part VIII does not apply in relation to any deed of arrangement registered before the commencement date.

Insolvency practitioners

18. Where an individual began to act as an insolvency practitioner in relation to any person before the commencement date, nothing in Article 349(2) or (3) prevents that individual from being qualified to act as an insolvency practitioner in relation to that person.

Official receiver

19. Any property vested in the Official Assignee for bankruptcy for Northern Ireland, either alone or together with a creditor's assignee, before the commencement date, shall, on that date, vest in the official receiver without any conveyance, assignment or transfer.

Transitional effect of Articles 367 to 369

20.—(1) A transaction entered into before the commencement date shall not be set aside under Articles 367 to 369 except to the extent that it could have been set aside under the law in operation immediately before that date.

(2) References in sub#paragraph (1) to setting aside a transaction include the making of any order which varies or reverses any effect of a transaction.

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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)

Periods of time

21. Where any period of time specified in any provision repealed by Article 382 and Schedule 10 is current immediately before the commencement date, this Order has effect as if the corresponding provision had been in operation when the period began to run; and (without prejudice to the foregoing) any period of time so specified and current is deemed for the purposes of this Order—

- (a) to run from the date or event from which it was running immediately before the commencement date, and
- (b) to expire (subject to any provision of this Order for its extension) whenever it would have expired if this Order had not come into operation;

and any rights, priorities, liabilities, reliefs, obligations, requirements, powers, duties or exemptions dependent on the beginning, duration or end of such a period shall be under this Order as they were or would have been under that repealed provision.

Saving

22. The provisions of this Schedule shall have effect without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954^{F526}.

F526 1954 c. 33 (NI)

Interpretation

23. In this Schedule—

“the Bankruptcy Acts” means the Bankruptcy Acts (Northern Ireland) 1857 to 1980^{F527F528F529F530F531},

“the commencement date” for the purpose of any provision of this Schedule, means the day appointed under Article 1(2) for the coming into operation of that provision.

F527 1857 c. 60

F528 1872 c. 58

F529 1929 c. 1 (NI)

F530 1963 c. 23 (NI)

F531 1980 NI 4

Schedule 9—Amendments

Schedule 10—Repeals

Status:

Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation:

The Insolvency (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 12 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.