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## STATUTORY INSTRUMENTS

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# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### <sup>F1</sup>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<sup>F2</sup>.

(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<sup>F3</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) <sup>F4</sup> In this Order—

[<sup>F5</sup>“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;

<sup>F6</sup>“conditional sale agreement” and “hire#purchase agreement” have the same meanings as in the Consumer Credit Act 1974<sup>F7</sup>;

[<sup>F5</sup>“corporate member” means an insolvent member which is a company;]

“the Department” means the Department of Economic Development;

[<sup>F8</sup>“the EC Regulation” means Council Regulation (EC) No. 1346/2000;]

[<sup>F5</sup>“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—

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- (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—

- (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<sup>F9</sup> 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<sup>F9</sup> 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)<sup>F10</sup> 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<sup>F11</sup> Article 359(5) [<sup>F12</sup>and paragraph 16 of Schedule A1]) to negative resolution;

[<sup>F5</sup>“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<sup>F13</sup>;

“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

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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.

(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)

#### [<sup>F14</sup>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
  - [<sup>F15</sup>(b) where a voluntary arrangement in relation to the company is proposed or approved under Part II, as nominee or supervisor.]
- (2) [<sup>F16</sup> 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
  - [<sup>F15</sup>(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.
- [<sup>F17</sup>(3) [<sup>F16</sup> A person acts as an insolvency practitioner in relation to an insolvent partnership by acting—
- (a) as its liquidator, provisional liquidator or administrator, or

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(b) as trustee of the partnership under Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, or

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

[<sup>F15</sup>(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 <sup>F16</sup> 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<sup>F19</sup>.

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

[<sup>F20</sup>(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)**

**C1** [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).

[<sup>F21</sup>(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<sup>F21</sup> 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.

<sup>F22</sup>(4) A person is an associate of any person whom he employs or by whom he is employed.

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- (5) A person in his capacity as trustee of a trust other than—
- (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<sup>F23</sup> or the Bankruptcy (Scotland) Act 1985<sup>F24</sup>, 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<sup>F21</sup> and references to a civil partner include a former civil partner<sup>F25</sup> and a reputed civil partner].

(9) For the purposes of this Article any director or 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)<sup>F22</sup> 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

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

- C2** 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)**
- C3** 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)<sup>F26</sup> In Parts II to VII—

<sup>F27</sup>“administrator” means a person appointed as defined in Article 21(2);

<sup>F27</sup>“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<sup>F28</sup>;

“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—

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- (a) which does not constitute a charge on the goods, but
- (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,<sup>F29</sup> the making of an administration order or the appointment of an administrative receiver.

(2)<sup>F30</sup> 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.

[<sup>F31F29</sup>(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”

<sup>F32</sup>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

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

- C4 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**<sup>F33</sup>. 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**<sup>F34</sup>.—(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);



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“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;

[<sup>F35</sup>“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;

[<sup>F35</sup>“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);

[<sup>F35</sup>“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** <sup>F36</sup>.—(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

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## “Bankrupt's estate”

**11**<sup>F37</sup>.—(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<sup>F38</sup> (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.

<sup>F39</sup>(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—

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- (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 <sup>F40</sup> 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 <sup>F40</sup> 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 <sup>F40</sup> 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 <sup>F40</sup> 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

#### <sup>F41</sup>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)**

**C5** 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\(i\)](#))

**C6** 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](#)

**C7** 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.](#)

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## *The proposal*

### **Those who may propose an arrangement**

14.—(1 <sup>F42</sup> The directors of a company<sup>F43</sup> (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<sup>F44</sup> or authorised to act as nominee, in relation to the voluntary arrangement].

(3 <sup>F42</sup> Such a proposal may also be made—

<sup>F43</sup>(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.

<sup>F45</sup>(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

### **<sup>F46</sup>Moratorium**

14A.—(1 <sup>F47</sup> 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 <sup>F48</sup> This Article applies where the nominee under Article 14 is not the liquidator or administrator of the company<sup>F49</sup> 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—

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- (a) [<sup>F50</sup>whether, in his opinion, the proposed voluntary arrangement has a reasonable prospect of being approved and implemented,]
- [<sup>F50</sup>(aa)] <sup>F48</sup>whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal, and
- (b) <sup>F48</sup> 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) <sup>F48</sup> 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.
- [<sup>F51</sup>(4) The High Court may—
- (a) <sup>F48</sup> 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) <sup>F48</sup> 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) <sup>F52</sup> 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) <sup>F52</sup> 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) <sup>F53</sup> The meetings summoned under Article 16 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).

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(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<sup>F54</sup> 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)<sup>F53</sup> Subject to paragraphs (3) and (4), each of the meetings shall be conducted in accordance with the rules.

(6)<sup>F53</sup> 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

### <sup>F55</sup>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)<sup>F56</sup> 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)<sup>F56</sup> 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)<sup>F56</sup> 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)<sup>F56</sup> 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)<sup>F56</sup> 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

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

**F55** 2002 NI 6

**F56** mod. by SR 2004/307

### Effect of approval

**18.**—<sup>F57</sup>(1) This Article applies where a decision approving a voluntary arrangement has effect under Article 17A.]

(2) The<sup>F58</sup> . . . voluntary arrangement—

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

<sup>F57</sup>(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,]

<sup>F57</sup>as if he were a party to the voluntary arrangement.]

<sup>F57</sup>(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<sup>F59</sup> 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<sup>F59</sup> 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<sup>F58</sup> . . . voluntary arrangement.

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

(a)<sup>F60</sup> 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<sup>F61</sup> which has effect under Article 17A] unfairly prejudices the interests of a creditor, member or contributory of the company;

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- (b)<sup>F62</sup> 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)<sup>F62</sup> a person entitled, in accordance with the rules, to vote at either of the meetings;
- [<sup>F63</sup>(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;]
- <sup>F62</sup>(b) the nominee or any person who has replaced him under Article 15(4) or 17(2); and  
F62
- (c)<sup>F62</sup> if the company is being wound up or<sup>F64</sup> an administration order is in force, the liquidator or administrator.
- (3) An application under this Article shall not be made
- [<sup>F63</sup>(a)]<sup>F62</sup> 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[<sup>F63</sup> or]
- [<sup>F63</sup>(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,]
- [<sup>F63</sup>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)<sup>F62</sup> 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[<sup>F61</sup> any decision approving the voluntary arrangement which has effect under Article 17A] or, in a case falling within paragraph (1)(b), any[<sup>F61</sup> 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)<sup>F62</sup> 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[<sup>F61</sup> 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[<sup>F61</sup> under the voluntary arrangement since it took effect].
- (7) Except in pursuance of the preceding provisions of this Article,[<sup>F61</sup> a decision taken] at a meeting summoned under Article 16 is not invalidated by any irregularity at or in relation to the meeting.



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

**[<sup>F65</sup>False representations, etc.**

**19A.**—(1 )<sup>F66</sup> 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<sup>[<sup>F67</sup> has effect under Article 17A].</sup>

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

<sup>[<sup>F67</sup>(a )<sup>F68</sup> on the nominee by virtue of the approval given at one or both of the meetings summoned under Article 16]</sup>

(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<sup>[<sup>F67</sup> or authorised to act as supervisor, in relation to the voluntary arrangement],</sup> either in substitution for the existing supervisor or to fill a vacancy.

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(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

### [<sup>F69</sup> 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.

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(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.

[<sup>F73</sup>(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

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(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) <sup>F74</sup> 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.

[<sup>F73</sup>(4) <sup>F75</sup> An administration order shall not be made in relation to a company after it has gone into liquidation.

(5) <sup>F75</sup> An administration order shall not be made against a company if—

- [ it effects or carries out contracts of insurance, but is not—
- <sup>F76</sup>(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<sup>F77</sup>, but is not an authorised deposit taker, within the meaning given by paragraph (1B)].

(6) <sup>F75</sup> 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.]

[<sup>F78</sup>(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) <sup>F79</sup> 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

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contingent or prospective creditor or creditors),<sup>[F80]</sup> 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—

<sup>F81</sup>(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) <sup>F82</sup> no resolution may be passed or order made for the winding up of the company;
- <sup>[F83]</sup>(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,

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- (b)<sup>F84</sup> for the appointment of an administrative receiver of the company, or
  - (c)<sup>F84</sup> for the carrying out by such a receiver (whenever appointed) of any of his functions.
- (3)<sup>F85</sup> 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)<sup>F86</sup> 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)<sup>F87</sup> no resolution may be passed or order made for the winding up of the company;
- (b)<sup>F88</sup> no administrative receiver of the company may be appointed;
- [<sup>F89</sup>(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)<sup>F86</sup> 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,

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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<sup>F90</sup> 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<sup>F91</sup> 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

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(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)<sup>F92</sup> The administrator also has power—

(a)<sup>F92</sup> 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)<sup>F93</sup> 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)<sup>F94</sup> 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.



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(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.

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## 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, [<sup>F95</sup> the following paragraphs] apply.

(4) <sup>F96</sup> 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 <sup>F97</sup> . . . 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; <sup>F97</sup> . . .

[<sup>F98</sup>(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

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### **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;

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(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.

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(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.

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## 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<sup>F99</sup> 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

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## PART IV

### RECEIVERSHIP

#### RECEIVERS AND MANAGERS

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

**C8** 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

##### [<sup>F100</sup>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.

##### <sup>F101</sup>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.

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### *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.



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(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.

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### *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** <sup>F102</sup>.—(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).

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### *Administrative receivers: general*

#### **General powers**

**52**<sup>F103</sup>.—(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**<sup>F104</sup>.—(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

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## Agency and liability for contracts

**54**<sup>F105</sup>.—(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<sup>F106</sup>, 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.

<sup>F107</sup>(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**<sup>F108</sup>.—(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.

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- (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<sup>F109</sup> 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**<sup>F110</sup>.—(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**<sup>F111</sup>.—(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;

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- (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**<sup>F112</sup>.—(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—

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- (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**<sup>F113</sup>.—(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

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VALID FROM 27/03/2006

### <sup>F114</sup> 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—



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- (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,

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“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);

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- (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.]

## <sup>F115</sup>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 <sup>F116</sup> 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

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## Contributories

### Liability as contributories of present and past members

**61**<sup>F117</sup>.—(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**<sup>F118</sup>.—(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;

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- (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**<sup>F119</sup>.—(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**<sup>F120</sup>.—(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<sup>F121</sup>), 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<sup>F122</sup>).

(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

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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**<sup>F123</sup>.—(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<sup>F124</sup>).

(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.

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(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**<sup>F125</sup>.—(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<sup>F126</sup> 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)<sup>F127</sup> 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.

<sup>F128</sup>(2)<sup>F127</sup> 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).<sup>F127</sup>

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**F127** mod. by SR 2004/307

**F128** prosp. insertion by 2005 NI 10

### Notice of resolution to wind up voluntarily

**71.**—(1 <sup>F129</sup> 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** <sup>F130</sup>. 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 <sup>F131</sup> 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

<sup>F132</sup>**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)

**C9** 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))



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## Declaration of solvency

### Statutory declaration of solvency

**75**<sup>F133</sup>.—(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)<sup>F133</sup> 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)<sup>F133</sup> 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)<sup>F133</sup> 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**<sup>F134</sup>. 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)<sup>F135</sup> 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)<sup>F135</sup> 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.<sup>F135</sup>

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F135 mod. by SR 2004/307

### **Power to fill vacancy in office of liquidator**

78.—(1 <sup>F136</sup> 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 <sup>F136</sup> 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 <sup>F136</sup> 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. <sup>F136</sup>

F136 mod. by SR 2004/307

### **General company meeting at each year's end**

79.—(1 <sup>F137</sup> 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. <sup>F137</sup>

F137 mod. by SR 2004/307

### **Final meeting prior to dissolution**

80.—(1 <sup>F138</sup> 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.

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

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F138 mod. by SR 2004/307

### Effect of company's insolvency

**81.**—(1 <sup>F139</sup> 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 <sup>F139</sup> 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

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## 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) <sup>F140</sup> the directors' declaration under Article 75 had not been made; and
- (b) <sup>F140</sup> 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) <sup>F141</sup> 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) <sup>F141</sup> In this Article “the relevant period” means the period of 6 months immediately preceding the day on which were sent thenotices 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.

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F141 mod. by SR 2004/307

### Directors to lay statement of affairs before creditors

85.—(1 <sup>F142</sup> 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 <sup>F142</sup> 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 <sup>F142</sup> 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 <sup>F143</sup> 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 <sup>F143</sup> 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.<sup>F144</sup>

F143 mod. by SR 2004/307

F144 prosp. addition by 2005 NI 10

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### **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) <sup>F145</sup> 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) <sup>F146</sup> 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. <sup>F146</sup>

F146 mod. by SR 2004/307

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### **Final meeting prior to dissolution**

**92.**—(1) <sup>F147</sup> 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.

<sup>F147</sup>(6) <sup>F147</sup> 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** <sup>F148</sup>.—(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

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[<sup>F149</sup>(a)] to another company ( “the transferee company”), whether or not the latter is a company within the meaning of the Companies Order[<sup>F149</sup>, or]

[<sup>F149</sup>(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[<sup>F149</sup> sale—]

[<sup>F149</sup>(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[<sup>F149</sup> company may—]

[<sup>F149</sup>(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 <sup>F150</sup> 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 <sup>F150</sup> 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.



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(3)<sup>F150</sup> 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)<sup>F150</sup> For the purposes of an arbitration under this Article, the provisions of the Companies Clauses Consolidation Act 1845<sup>F151</sup> 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.

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## 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** <sup>F152</sup>. 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<sup>F153</sup>,
- (d) the company does not commence its business within one year from its incorporation or suspends its business for a year,
- (e) [<sup>F154</sup>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,
- <sup>F155</sup>(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) <sup>F156</sup> 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<sup>F157</sup>, or

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- (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)**

**C10** 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<sup>F158</sup>, 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),<sup>F159</sup> 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)<sup>F160</sup> 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)<sup>F160</sup> 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)<sup>F160</sup> 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.

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[<sup>F161</sup>(4A <sup>F160</sup> 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 <sup>F160</sup> if the ground of the petition is that in Article 102(b) or (c), or

[<sup>F162</sup>(b) in a case falling within Article 104A[<sup>F163</sup> or 104B].]

<sup>F164</sup>(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

#### [<sup>F165</sup>**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<sup>F166</sup> of the Companies Order (company investigations, &c.),

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

[ any report made by inspectors under—

<sup>F167</sup>(c) (i) section 167, 168, 169 or 284 of the Financial Services and Markets Act 2000, or

<sup>F168</sup>

(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 <sup>F168</sup> 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

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### [<sup>F169</sup>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

### [<sup>F170</sup>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

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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 <sup>F171</sup> 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** <sup>F172</sup>. <sup>F173</sup> 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. <sup>F174</sup>

**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.

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## *Commencement of winding up*

### **Commencement of winding up by the High Court**

**109.**—(1) <sup>F175</sup> 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.

<sup>F176</sup>(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) <sup>F177</sup> 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—

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- (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—



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- (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.

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(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.

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(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.**—<sup>F178</sup>(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.

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(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.

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(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 <sup>F179</sup>) 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 <sup>F180</sup>) 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 <sup>F180</sup>) 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 <sup>F180</sup>) 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.

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**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.

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### **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) <sup>F181</sup> 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) <sup>F181</sup> 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—

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- (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)<sup>F182</sup> 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)<sup>F182</sup> 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.

<sup>F182</sup>(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.*

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### **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) <sup>F183</sup> 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.

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## 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.

[<sup>F184</sup>(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 [<sup>F185</sup> 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.

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(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) <sup>F186</sup> 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) <sup>F186</sup> in the case of a members' voluntary winding up, a final meeting of the company has been held under Article 80, or
- (b) <sup>F186</sup> 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. <sup>F186</sup>

**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—

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- (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) <sup>F187</sup> 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.

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(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.).

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## 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)**

**C11** 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

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VALID FROM 06/04/2008

**[<sup>F189</sup>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)**

**C12** 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.

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(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.



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(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.

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(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**<sup>F190</sup>.—(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).

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### **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** <sup>F191</sup>. 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—

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- (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)<sup>F192</sup> 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,<sup>F193</sup> 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—

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- (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.

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## 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)

C13 mod. by SR 2004/307

#### *Offences of fraud, deception, etc.*

### Fraud, etc., in anticipation of winding up

170.—(1)<sup>F194</sup> 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

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- (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 <sup>F195</sup> 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

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### **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) <sup>F196</sup> 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.



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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<sup>F197</sup>, 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<sup>F197</sup> 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<sup>F197</sup> 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<sup>F197</sup> or administrator of the company is not exercisable, except with the leave of the High Court, after<sup>F198</sup> 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<sup>F199</sup> and “officer” includes a director (but not a shadow director) of a building society.

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**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) <sup>F200</sup> 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—

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“company” includes a building society within the meaning of the Building Societies Act 1986<sup>F201</sup>;

“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

.....<sup>F202</sup>

**F202** mod. by SR 2004/307

### Proceedings under Articles 177 and 178

**179.**—(1 <sup>F203</sup> On the hearing of an application under Article 177 or 178, the liquidator may himself give evidence or call witnesses.

(2 <sup>F203</sup> 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<sup>F204</sup> 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 <sup>F203</sup> 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 <sup>F203</sup> 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<sup>F205</sup>.

**F203** mod. by SR 2004/307  
**F204** 2004 c. 33

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**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<sup>F206</sup>;

“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.

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(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<sup>F207</sup>;

“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 <sup>F208</sup> 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 [<sup>F209</sup> the Department].

(2 <sup>F208</sup> 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 <sup>F208</sup> 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—

- [<sup>F209</sup>(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.]

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[<sup>F209</sup>(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 <sup>F208</sup> 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<sup>F210</sup> . . . 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[<sup>F211</sup> 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[<sup>F211</sup> 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.

[<sup>F212</sup>(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[<sup>F211</sup> 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[<sup>F211</sup> 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[<sup>F211</sup> Director of Public Prosecutions for Northern Ireland]

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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)

C14 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<sup>[F213]</sup>, 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

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### **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<sup>F214</sup>;
- (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.



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F214 1981 NI 6

### **Company incorporated outside Northern Ireland may be wound up though dissolved**

**189.**—<sup>[F215(1)]</sup> 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.

<sup>[F215(2)]</sup> 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.

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## PART VII

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

#### *Office#holders*

#### **Holders of office to be qualified insolvency practitioners**

**194.**<sup>F216</sup>(1) Where an administration order is made in relation to a company, the administrator must be a person who is qualified to act as an insolvency practitioner in relation to the company.

(2) Where an administrative receiver of a company is appointed, he must be a person who is so qualified.

(3) Where a company goes into liquidation, the liquidator must be a person who is so qualified.

(4) Where a provisional liquidator is appointed, he must be a person who is so qualified.

(5) Paragraphs (3) and (4) are without prejudice to any statutory provision under which the official receiver is to be, or may be, liquidator or provisional liquidator.

**F216** prosp. rep. by [2005 NI 10](#)

#### **Appointment to office of two or more persons**

**195.**—(1) This Article applies if an appointment or nomination of any person to the office of<sup>F217</sup> administrator, administrative receiver, liquidator or provisional liquidator—

(a) relates to more than one person, or

(b) has the effect that the office is to be held by more than one person.

(2) The appointment or nomination shall declare whether any act required or authorised under any statutory provision to be done by the<sup>F217</sup> administrator, administrative receiver, liquidator or provisional liquidator is to be done by all or any one or more of the persons for the time being holding the office in question.

**F217** prosp. rep. by [2005 NI 10](#)

#### **Validity of office#holder's acts**

**196.** The acts of an individual as<sup>F218</sup> administrator, administrative receiver, liquidator or provisional liquidator of a company are valid notwithstanding any defect in his appointment, nomination or qualifications.

**F218** prosp. rep. by [2005 NI 10](#)

*Management by administrators, liquidators, etc.*

#### **Supplies of water, electricity, etc.**

**197**<sup>F219</sup>.—(1) This Article applies in the case of a company where—

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- <sup>F220</sup>(a) an administration order is made in relation to the company, or
- (b) an administrative receiver is appointed, or
- [<sup>F221</sup>(ba) a moratorium under Article 14A is in force, or]
- (c) a voluntary arrangement[<sup>F222</sup> approved under Part II], has taken effect, or
- (d) the company goes into liquidation, or
- (e) a provisional liquidator is appointed;
- and “the office#holder” means the administrator, the administrative receiver[<sup>F221</sup> the nominee,], the supervisor of the voluntary arrangement, the liquidator or the provisional liquidator, as the case may be.
- (2) If a request is made by or with the concurrence of the office#holder for the giving, after the effective date, of any of the supplies mentioned in paragraph (3), 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 company before the effective date are paid.
- (3) The supplies referred to in paragraph (2) are—
- (a) a supply of electricity by[<sup>F223</sup> a public electricity supplier within the meaning of Part II of the Electricity (Northern Ireland) Order 1992],
- [<sup>F224</sup>(aa) a supply of gas by the 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,
- [<sup>F225</sup>(c) a supply of communications services by a provider of a public electronic communications service,]
- [<sup>F225</sup>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).]
- (4) “The effective date” for the purposes of this Article is whichever is applicable of the following dates—
- <sup>F220</sup>(a) the date on which the administration order was made,
- (b) the date on which the administrative receiver was appointed (or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed),
- [<sup>F221</sup>(ba) the date on which the moratorium came into force]
- (c) the date on which the voluntary arrangement[<sup>F222</sup> took effect],
- (d) the date on which the company went into liquidation,
- (e) the date on which the provisional liquidator was appointed.

**F219** mod.by SR 1990/177; SR 1991/411

**F220** prosp. subst. by 2005 NI 10

**F221** 2002 NI 6

**F222** 2002 NI 6

**F223** 1992 NI 1

**F224** 1996 NI 2

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**F225** 2003 c. 21

### Getting in the company's property

**198.**—(1) This Article applies in the case of a company where—

- <sup>F226</sup>(a) an administration order is made in relation to the company, or
- (b) an administrative receiver is appointed, or
- (c) the company goes into liquidation, or
- (d) a provisional liquidator is appointed;

and “the office#holder” means the administrator, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.

(2) Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the High Court may require that person forthwith (or within such period as the Court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office#holder.

(3) Where the office#holder—

- (a) seizes or disposes of any property which is not property of the company, and
- (b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property,

paragraph (4) has effect.

(4) In that case the office#holder—

- (a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office#holder's own negligence, and
- (b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

**F226** prosp. subst. by 2005 NI 10

### Duty to co#operate with office#holder

**199.**—(1) This Article applies as does Article 198; and it also applies, in the case of a company in respect of which a winding#up order has been made by the High Court, as if references to the office#holder included the official receiver, whether or not he is the liquidator.

(2) Each of the persons mentioned in paragraph (3) shall—

- (a) give to the office#holder such information concerning the company and its promotion, formation, business, dealings, affairs or property as the office#holder may at any time after the effective date reasonably require, and
- (b) attend on the office#holder at such times as the latter may reasonably require.

(3) The persons referred to in paragraph (2) are—

- (a) those who are or have at any time 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 effective date,

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- (c) those who are in the employment of the company, or have been in its employment (including employment under a contract for services) within that year, and are in the office#holder's opinion capable of giving information which he requires,
  - (d) those who are, or have within that year been, officers of, or in the employment (including employment under a contract for services) of, another company which is, or within that year was, an officer of the company in question, and
  - (e) in the case of a company being wound up by the High Court, any person who has acted as administrator, administrative receiver or liquidator of the company.
- (4) For the purposes of paragraphs (2) and (3), “the effective date” is whichever is applicable of the following dates—
- <sup>F227</sup>(a) the date on which the administration order was made,
  - (b) the date on which the administrative receiver was appointed or, if he was appointed in succession to another administrative receiver, the date on which the first of his predecessors was appointed,
  - (c) the date on which the provisional liquidator was appointed, and
  - (d) the date on which the company went into liquidation.
- (5) If a person without reasonable excuse fails to comply with any obligation imposed by this Article, he shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

F227 prosp. subst. by 2005 NI 10

### **Inquiry into company's dealings, etc.**

**200.**—(1) This Article applies as does Article 198; and it also applies, in the case of a company in respect of which a winding#up order has been made by the High Court, as if references to the office#holder included the official receiver, whether or not he is the liquidator.

- (2) The High Court may, on the application of the office#holder, summon to appear before it—
- (a) any officer of the company,
  - (b) any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or
  - (c) any person whom the Court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the company.
- (3) The High Court may require any such person as is mentioned in paragraph (2)(a) to (c) to submit an affidavit to the Court containing an account of his dealings with the company or to produce any books, papers or other records in his possession or under his control relating to the company or the matters mentioned in sub#paragraph (c) of that paragraph.
- (4) The following applies in a case where—
- (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.
- (5) 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.

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(6) 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.

### **High Court's enforcement powers under Article 200**

**201.**—(1) If it appears to the High Court, on consideration of any evidence obtained under Article 200 or this Article, that any person has in his possession any property of the company, the Court may, on the application of the office#holder, order that person to deliver the whole or any part of the property to the office#holder 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 so obtained, that any person is indebted to the company, the Court may, on the application of the office#holder, order that person to pay to the office#holder, at such time and in such manner as the Court may direct, the whole or any 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 200 or this Article shall be examined on oath, either orally or by interrogatories, concerning the company or the matters mentioned in Article 200(2)(c).

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

### **Transactions at an undervalue**

**202.**—(1) This Article applies in the case of a company where—

- <sup>F228</sup>(a) an administration order is made in relation to the company; or
- (b) the company goes into liquidation;

and “the office#holder” means the administrator or the liquidator, as the case may be.

(2) Where the company has at a relevant time (as defined in Article 204) entered into a transaction with any person at an undervalue, the office#holder may apply to the High Court for an order under this Article.

(3) Subject to paragraph (5) the High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.

(4) For the purposes of this Article and Article 205, a company enters into a transaction with a person at an undervalue if—

- (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or
- (b) the company 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 company.

(5) The High Court shall not make an order under this Article in respect of a transaction at an undervalue if it is satisfied—

- (a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and
- (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

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## Preferences

**203.**—(1) This Article applies as does Article 202.

(2) Where the company has at a relevant time (as defined in Article 204) given a preference to any person, the office#holder may apply to the High Court for an order under this Article.

(3) Subject to paragraph (5) and Article 205(2), the High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not given that preference.

(4) For the purposes of this Article and Article 205, a company gives a preference to a person if—

- (a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, and
- (b) the company 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 of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.

(5) The High Court shall not make an order under this Article in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in paragraph (4)(b).

(6) A company which has given a preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in paragraph (5).

(7) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

### “Relevant time” under Articles 202, 203

**204.**—(1) Subject to paragraph (2), the time at which a company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given—

- (a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the company (otherwise than by reason only of being its employee), at a time in the period of 2 years ending with the onset of insolvency,
- (b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of 6 months ending with the onset of insolvency,<sup>F229</sup> and
- <sup>F230</sup>(c) in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.

(2) Where a company enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (1)(a) or (b), that time is not a relevant time for the purposes of Article 202 or 203 unless the company—

- (a) is at that time unable to pay its debts within the meaning of Article 103, or
- (b) becomes unable to pay its debts within the meaning of Article 103 in consequence of the transaction or preference;

but the requirements of this paragraph are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a company with a person who is connected with the company.

(3) For the purposes of paragraph (1), the onset of insolvency is—

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- <sup>F230</sup>(a) in a case where Article 202 or 203 applies by reason of the making of an administration order or of a company going into liquidation immediately upon the discharge of an administration order, the date of the presentation of the petition on which the administration order was made,
- [<sup>F231</sup>(aa)] [<sup>F231</sup>in a case where Article 202 or 203 applies by reason of a company going into liquidation following conversion of administration into winding up by virtue of Article 37 of the EC Regulation, the date of the presentation of the petition on which the administration order was made,] and
- <sup>F230</sup>(b) in a case where the Article applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding up.

**F229** prosp. rep. by 2005 NI 10  
**F230** prosp. subst. by 2005 NI 10  
**F231** SR 2002/334

### Orders under Articles 202, 203

**205.**—(1) Without prejudice to the generality of Articles 202(3) and 203(3), an order under either of those Articles with respect to a transaction or preference entered into or given by a company may (subject to paragraph (2))—

- (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the company,
- (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 company,
- (d) require any person to pay, in respect of benefits received by him from the company, such sums to the office#holder 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, or by the giving of the preference, to be under such new or revived obligations to that person as the 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 the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference, and
- (g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under Article 202 or 203 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction or (as the case may be) the person to whom the preference was given; but such an order—

- (a) shall not prejudice any interest in property which was acquired from a person other than the company and was acquired [<sup>F232</sup> in good faith and for value], or prejudice any interest deriving from such an interest, and
- (b) shall not require a person who received a benefit from the transaction or preference [<sup>F232</sup> in good faith and for value] to pay a sum to the office#holder, except where that person was



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a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of the company.

[<sup>F233</sup>(2A) Where a person has acquired an interest in property from a person other than the company in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or
- (b) he was connected with, or was an associate of, either the company in question or the person with whom that company entered into the transaction or to whom that company gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of sub#paragraph (a) or (as the case may be) sub#paragraph (b) of paragraph (2) that the interest was acquired or the benefit was received otherwise than in good faith.]

[<sup>F234</sup>(3) For the purposes of paragraph (2A)(a), the relevant surrounding circumstances are (as the case may require)—

- (a) the fact that the company in question entered into the transaction at an undervalue; or
- (b) the circumstances which amounted to the giving of the preference by the company in question;

and paragraphs (3A) to (3C) have effect to determine whether, for those purposes, a person has notice of the relevant proceedings.

<sup>F235</sup>(3A) In a case where Article 202 or 203 applies by reason of the making of an administration order, a person has notice of the relevant proceedings if he has notice—

- (a) of the fact that the petition on which the administration order is made has been presented; or
- (b) of the fact that the administration order has been made.

<sup>F235</sup>(3B) In a case where Article 202 or 203 applies by reason of the company in question going into liquidation immediately upon the discharge of an administration order, a person has notice of the relevant proceedings if he has notice—

- (a) of the fact that the petition on which the administration order is made has been presented;
- (b) of the fact that the administration order has been made; or
- (c) of the fact that the company has gone into liquidation.

(3C) In a case where Article 202 or 203 applies by reason of the company in question going into liquidation at any other time, a person has notice of the relevant proceedings if he has notice—

- (a) where the company goes into liquidation on the making of a winding#up order, of the fact that the petition on which the winding#up order is made has been presented or of the fact that the company has gone into liquidation;
- (b) in any other case, of the fact that the company has gone into liquidation.]

(4) The provisions of Articles 202 to 204 and this Article apply without prejudice to the availability of any other remedy, even in relation to a transaction or preference which the company had no power to enter into or give.

**F232** 1994 c.12

**F233** 1994 c.12

**F234** 1994 c.12

**F235** prosp. subst. by 2005 NI 10

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### **Extortionate credit transactions**

**206.**—(1) This Article applies as does Article 202, and where the company is, or has been, a party to a transaction for, or involving, the provision of credit to the company.

(2) The High Court may, on the application of the office#holder, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending with<sup>F236</sup> the day on which the administration order was made or (as the case may be) the company went into liquidation.

(3) For the purposes of this Article a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or
- (b) it otherwise grossly contravened ordinary principles of fair dealing;

and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is or, as the case may be, was extortionate.

(4) An order under this Article with respect to any transaction may contain such one or more of the following as the High Court thinks fit, that is to say—

- (a) provision setting aside the whole or part of any obligation created by the transaction,
- (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held,
- (c) provision requiring any person who is or was a party to the transaction to pay to the office#holder any sums paid to that person, by virtue of the transaction, by the company,
- (d) provision requiring any person to surrender to the office#holder any property held by him as security for the purposes of the transaction,
- (e) provision directing accounts to be taken between any persons.

(5) The powers conferred by this Article are exercisable in relation to any transaction concurrently with any powers exercisable in relation to that transaction as a transaction at an undervalue.

**F236** prosp. subst. by [2005 NI 10](#)

### **Avoidance of certain floating charges**

**207.**—(1) This Article applies as does Article 202.

(2) Subject to the following provisions of this Article, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—

- (a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge,
- (b) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company, and
- (c) the amount of such interest (if any) as is payable on the amount falling within subparagraph (a) or (b) in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.

(3) Subject to paragraph (4), the time at which a floating charge is created by a company is a relevant time for the purposes of this Article if the charge is created—

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- (a) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of 2 years ending with the onset of insolvency,
  - (b) in the case of a charge which is created in favour of any other person, at a time in the period of 12 months ending with the onset of insolvency,<sup>F237</sup> or
  - <sup>F238</sup>(c) in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.
- (4) Where a company creates a floating charge at a time mentioned in paragraph (3)(b) and the person in favour of whom the charge is created is not connected with the company, that time is not a relevant time for the purposes of this Article unless the company—
- (a) is at that time unable to pay its debts within the meaning of Article 103, or
  - (b) becomes unable to pay its debts within the meaning of Article 103 in consequence of the transaction under which the charge is created.
- (5) For the purposes of paragraph (3), the onset of insolvency is—
- <sup>F238</sup>(a) in a case where this Article applies by reason of the making of an administration order, the date of the presentation of the petition on which the order was made, and
  - <sup>F238</sup>(b) in a case where this Article applies by reason of a company going into liquidation, the date of the commencement of the winding up.
- (6) For the purposes of paragraph (2)(a) the value of any goods or services supplied by way of consideration for a floating charge is the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.

**F237** prosp. rep. by [2005 NI 10](#)

**F238** prosp. subst. by [2005 NI 10](#)

### **Unenforceability of liens on books, etc.**

**208.**—(1) This Article applies in the case of a company where—

- <sup>F239</sup>(a) an administration order is made in relation to the company, or
- (b) the company goes into liquidation, or
- (c) a provisional liquidator is appointed;

and the office#holder means the administrator, the liquidator or the provisional liquidator, as the case may be.

(2) Subject to paragraph (3), a lien or other right to retain possession of any of the books, papers or other records of the company is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the office#holder.

(3) Paragraph (2) does not apply to a lien on documents which give a title to property and are held as such.

**F239** prosp. subst. by [2005 NI 10](#)

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## PARTS VIII TO X

### INSOLVENCY OF INDIVIDUALS; BANKRUPTCY

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

- C15** Pts. VIII-X (arts. 209-345) modified (prosp.) by [Foyle Fisheries Act \(Northern Ireland\) 1952 \(c. 5\)](#), s. **52K(2)** (as inserted by [Foyle and Carlingford Fisheries \(Northern Ireland\) Order 2007 \(S.I. 2007/915 \(N.I. 9\)\)](#), arts. **1(3)**, 3(1) (with art. 32)

VALID FROM 30/06/2011

## [<sup>F240</sup>PART 7A

### DEBT RELIEF ORDERS

- F240** Pt. 7A (arts. 208A-208X) inserted (30.6.2011) by [Debt Relief Act \(Northern Ireland\) 2010 \(c. 16\)](#), ss. **1(b)**, 7(1); S.R. 2011/13, art. 2

#### *Preliminary*

#### Debt relief orders

**208A.**—(1) An individual who is unable to pay his debts may apply for an order under this Part (“a debt relief order”) to be made in respect of his qualifying debts.

- (2) In this Part “qualifying debt” means (subject to paragraph (3)) a debt which—
- (a) is for a liquidated sum payable either immediately or at some certain future time; and
  - (b) is not an excluded debt.
- (3) A debt is not a qualifying debt to the extent that it is secured.
- (4) In this Part “excluded debt” means a debt of any description prescribed for the purposes of this paragraph.

#### *Applications for a debt relief order*

#### Making of application

**208B.**—(1) An application for a debt relief order must be made to the official receiver through an approved intermediary.

- (2) The application must include—
- (a) a list of the debts to which the debtor is subject at the date of the application, specifying the amount of each debt (including any interest, penalty or other sum that has become payable in relation to that debt on or before that date) and the creditor to whom it is owed;
  - (b) details of any security held in respect of any of those debts; and

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- (c) such other information about the debtor's affairs (including his creditors, debts and liabilities and his income and assets) as may be prescribed.
- (3) The rules may make further provision as to—
  - (a) the form of an application for a debt relief order;
  - (b) the manner in which an application is to be made; and
  - (c) information and documents to be supplied in support of an application.
- (4) For the purposes of this Part an application is not to be regarded as having been made until—
  - (a) the application has been submitted to the official receiver; and
  - (b) any fee required in connection with the application by an order under Article 361 has been paid to such person as the order may specify.

#### **Duty of official receiver to consider and determine application**

- 208C.**—(1) This Article applies where an application for a debt relief order is made.
- (2) The official receiver may stay consideration of the application until he has received answers to any queries raised with the debtor in relation to anything connected with the application.
- (3) The official receiver must determine the application by—
  - (a) deciding whether to refuse the application;
  - (b) if he does not refuse it, by making a debt relief order in relation to the specified debts he is satisfied were qualifying debts of the debtor at the application date;but he may only refuse the application if he is authorised or required to do so by any of the following provisions of this Article.
- (4) The official receiver may refuse the application if he considers that—
  - (a) the application does not meet all the requirements imposed by or under Article 208B;
  - (b) any queries raised with the debtor have not been answered to the satisfaction of the official receiver within such time as he may specify when they are raised;
  - (c) the debtor has made any false representation or omission in making the application or on supplying any information or documents in support of it.
- (5) The official receiver must refuse the application if he is not satisfied that—
  - (a) the debtor is an individual who is unable to pay his debts;
  - (b) at least one of the specified debts was a qualifying debt of the debtor at the application date;
  - (c) each of the conditions set out in Part 1 of Schedule 2ZA is met.
- (6) The official receiver may refuse the application if he is not satisfied that each condition specified in Part 2 of Schedule 2ZA is met.
- (7) If the official receiver refuses an application he must give reasons for his refusal to the debtor in the prescribed manner.
- (8) In this Article “specified debt” means a debt specified in the application.

#### **Presumptions applicable to the determination of an application**

- 208D.**—(1) The following presumptions are to apply to the determination of an application for a debt relief order.

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- (2) The official receiver must presume that the debtor is an individual who is unable to pay his debts at the determination date if—
- (a) that appears to the official receiver to be the case at the application date from the information supplied in the application and he has no reason to believe that the information supplied is incomplete or inaccurate; and
  - (b) he has no reason to believe that, by virtue of a change in the debtor's financial circumstances since the application date, the debtor may be able to pay his debts.
- (3) The official receiver must presume that a specified debt (of the amount specified in the application and owed to the creditor so specified) is a qualifying debt at the application date if—
- (a) that appears to him to be the case from the information supplied in the application; and
  - (b) he has no reason to believe that the information supplied is incomplete or inaccurate.
- (4) The official receiver must presume that the condition specified in paragraph 1 of Schedule 2ZA is met if—
- (a) that appears to him to be the case from the information supplied in the application;
  - (b) any prescribed verification checks relating to the condition have been made; and
  - (c) he has no reason to believe that the information supplied is incomplete or inaccurate.
- (5) The official receiver must presume that any other condition specified in Part 1 or 2 of Schedule 2ZA is met if—
- (a) that appears to him to have been the case as at the application date from the information supplied in the application and he has no reason to believe that the information supplied is incomplete or inaccurate;
  - (b) any prescribed verification checks relating to the condition have been made; and
  - (c) he has no reason to believe that, by virtue of a change in circumstances since the application date, the condition may no longer be met.
- (6) References in this Article to information supplied in the application include information supplied to the official receiver in support of the application.
- (7) In this Article “specified debt” means a debt specified in the application.

#### *Making and effect of debt relief order*

#### **Making of debt relief orders**

- 208E.**—(1) This Article applies where the official receiver makes a debt relief order on determining an application under Article 208C.
- (2) The order must be made in the prescribed form.
- (3) The order must include a list of the debts which the official receiver is satisfied were qualifying debts of the debtor at the application date, specifying the amount of the debt at that time and the creditor to whom it was then owed.
- (4) The official receiver must—
- (a) give a copy of the order to the debtor; and
  - (b) make an entry for the order in the register containing the prescribed information about the order or the debtor.
- (5) The rules may make provision as to other steps to be taken by the official receiver or the debtor on the making of the order.

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(6) Those steps may include in particular notifying each creditor to whom a qualifying debt specified in the order is owed of—

- (a) the making of the order and its effect,
- (b) the grounds on which a creditor may object under Article 208K, and
- (c) any other prescribed information.

(7) In this Part the date on which an entry relating to the making of a debt relief order is first made in the register is referred to as “the effective date”.

#### **Effect of debt relief order on administration order**

**208F** Where—

- (a) a debt relief order is made; and
- (b) immediately before the order is made, an administration order under Part 6 of the Judgments Enforcement Order is in force in respect of the debtor,

the administration order ceases to be in force when the debt relief order is made.

#### **Moratorium from qualifying debts**

**208G.**—(1) A moratorium commences on the effective date for a debt relief order in relation to each qualifying debt specified in the order (“a specified qualifying debt”).

(2) During the moratorium, the creditor to whom a specified qualifying debt is owed—

- (a) has no remedy in respect of the debt, and
- (b) may not—
  - (i) commence a creditor's petition in respect of the debt, or
  - (ii) otherwise commence any action or other legal proceedings against the debtor for the debt,

except with the permission of the High Court and on such terms as the Court may impose.

(3) If on the effective date a creditor to whom a specified qualifying debt is owed has any such petition, action or other proceeding as mentioned in paragraph (2)(b) pending in any court, that court may—

- (a) stay the proceedings on the petition, action or other proceedings (as the case may be), or
- (b) allow them to continue on such terms as that court thinks fit.

(4) In paragraph (2)(a) and (b) references to the debt include a reference to any interest, penalty or other sum that becomes payable in relation to that debt after the application date.

(5) Nothing in this Article affects the right of a secured creditor of the debtor to enforce his security.

#### **The moratorium period**

**208H.**—(1) The moratorium relating to the qualifying debts specified in a debt relief order continues for the period of one year beginning with the effective date for the order, unless—

- (a) the moratorium terminates early; or
- (b) the moratorium period is extended by the official receiver under this Article or by the High Court under Article 208M.

(2) The official receiver may only extend the moratorium period for the purpose of—

- (a) carrying out or completing an investigation under Article 208K;

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(b) taking any action he considers necessary (whether as a result of an investigation or otherwise) in relation to the order; or

(c) in a case where he has decided to revoke the order, providing the debtor with the opportunity to make arrangements for making payments towards his debts.

(3) The official receiver may not extend the moratorium period for the purpose mentioned in paragraph (2)(a) without the permission of the High Court.

(4) The official receiver may not extend the moratorium period beyond the end of the period of 3 months beginning after the end of the initial period of one year mentioned in paragraph (1).

(5) The moratorium period may be extended more than once, but any extension (whether by the official receiver or by the High Court) must be made before the moratorium would otherwise end.

(6) References in this Part to a moratorium terminating early are to its terminating before the end of what would otherwise be the moratorium period, whether on the revocation of the order or by virtue of any other statutory provision.

#### **Discharge from qualifying debts**

**208I.**—(1) Subject to the following provisions of this Article, at the end of the moratorium applicable to a debt relief order the debtor is discharged from all the qualifying debts specified in the order (including all interest, penalties and other sums which may have become payable in relation to those debts since the application date).

(2) Paragraph (1) does not apply if the moratorium terminates early.

(3) Paragraph (1) does not apply in relation to any qualifying debt which the debtor incurred in respect of any fraud or fraudulent breach of trust to which the debtor was a party.

(4) The discharge of the debtor under paragraph (1) does not release any other person from—

(a) any liability (whether as partner or co-trustee of the debtor or otherwise) from which the debtor is released by the discharge; or

(b) any liability as surety for the debtor or as a person in the nature of such a surety.

(5) If the order is revoked by the High Court under Article 208M after the end of the moratorium period, the qualifying debts specified in the order shall (so far as practicable) be treated as though paragraph (1) had never applied to them.

#### *Duties of debtor*

#### **Providing assistance to official receiver, etc.**

**208J.**—(1) The duties in this Article apply to a debtor at any time after the making of an application by him for a debt relief order.

(2) The debtor must—

(a) give to the official receiver such information as to his affairs,

(b) attend on the official receiver at such times, and

(c) do all such other things,

as the official receiver may reasonably require for the purpose of carrying out his functions in relation to the application or, as the case may be, the debt relief order made as a result of the application.

(3) The debtor must notify the official receiver as soon as reasonably practicable if he becomes aware of—



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- (a) any error in, or omission from, the information supplied to the official receiver in, or in support of, the application;
  - (b) any change in his circumstances between the application date and the determination date that would affect (or would have affected) the determination of the application.
- (4) The duties under paragraphs (2) and (3) apply after (as well as before) the determination of the application, for as long as the official receiver is able to exercise functions of the kind mentioned in paragraph (2).
- (5) If a debt relief order is made as a result of the application, the debtor must notify the official receiver as soon as reasonably practicable if—
- (a) there is an increase in his income during the moratorium period applicable to the order;
  - (b) he acquires any property or any property is devolved upon him during that period;
  - (c) he becomes aware of any error in or omission from any information supplied by him to the official receiver after the determination date.
- (6) A notification under paragraph (3) or (5) must give the prescribed particulars (if any) of the matter being notified.

#### *Objections, investigations and revocation*

#### **Objections and investigations**

**208K.**—(1) Any person specified in a debt relief order as a creditor to whom a specified qualifying debt is owed may object to—

- (a) the making of the order;
  - (b) the inclusion of the debt in the list of the debtor's qualifying debts; or
  - (c) the details of the debt specified in the order.
- (2) An objection under paragraph (1) must be—
- (a) made during the moratorium period relating to the order and within the prescribed period for objections;
  - (b) made to the official receiver in the prescribed manner;
  - (c) based on a prescribed ground;
  - (d) supported by any information and documents as may be prescribed;

and the prescribed period mentioned in sub-paragraph (a) must not be less than 28 days after the creditor in question has been notified of the making of the order.

(3) The official receiver must consider every objection made to him under this Article.

- (4) The official receiver may—
- (a) as part of his consideration of an objection, or
  - (b) on his own initiative,

carry out an investigation of any matter that appears to the official receiver to be relevant to the making of any decision mentioned in paragraph (5) in relation to a debt relief order or the debtor.

- (5) The decisions to which an investigation may be directed are—
- (a) whether the order should be revoked or amended under Article 208L;
  - (b) whether an application should be made to the High Court under Article 208M; or
  - (c) whether any other steps should be taken in relation to the debtor.

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(6) The power to carry out an investigation under this Article is exercisable after (as well as during) the moratorium relating to the order.

(7) The official receiver may require any person to give him such information and assistance as he may reasonably require in connection with an investigation under this Article.

(8) Subject to anything prescribed in the rules as to the procedure to be followed in carrying out an investigation under this Article, an investigation may be carried out by the official receiver in such manner as he thinks fit.

#### **Power of official receiver to revoke or amend a debt relief order**

**208L.**—(1) The official receiver may revoke or amend a debt relief order during the applicable moratorium period in the circumstances provided for by this Article.

(2) The official receiver may revoke the order on the ground that—

(a) any information supplied to him by the debtor—

(i) in, or in support of, the application, or

(ii) after the determination date,

was incomplete, incorrect or otherwise misleading;

(b) the debtor has failed to comply with a duty under Article 208J;

(c) a bankruptcy order has been made in relation to the debtor; or

(d) the debtor has made a proposal under Chapter 2 of Part 8 (or has notified the official receiver of his intention to do so).

(3) The official receiver may revoke the order on the ground that he should not have been satisfied—

(a) that the debts specified in the order were qualifying debts of the debtor as at the application date;

(b) that the conditions specified in Part 1 of Schedule 2ZA were met;

(c) that the conditions specified in Part 2 of that Schedule were met or that any failure to meet such a condition did not prevent his making the order.

(4) The official receiver may revoke the order on the ground that either or both of the conditions in paragraphs 7 and 8 of Schedule 2ZA (monthly surplus income and property) are not met at any time after the order was made. For this purpose those paragraphs are to be read as if references to the determination date were references to the time in question.

(5) Where the official receiver decides to revoke the order, he may revoke it either—

(a) with immediate effect, or

(b) with effect from such date (not more than 3 months after the date of the decision) as he may specify.

(6) In considering when the revocation should take effect the official receiver must consider (in the light of the grounds on which the decision to revoke was made and all the other circumstances of the case) whether the debtor ought to be given the opportunity to make arrangements for making payments towards his debts.

(7) If the order has been revoked with effect from a specified date the official receiver may, if he thinks it appropriate to do so at any time before that date, revoke the order with immediate effect.

(8) The official receiver may amend a debt relief order for the purpose of correcting an error in or omission from anything specified in the order.

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(9) But paragraph (8) does not permit the official receiver to add any debts that were not specified in the application for the debt relief order to the list of qualifying debts.

(10) The rules may make further provision as to the procedure to be followed by the official receiver in the exercise of his powers under this Article.

### *Role of the High Court*

#### **Powers of High Court in relation to debt relief orders**

**208M.**—(1) Any person may make an application to the High Court if he is dissatisfied by any act, omission or decision of the official receiver in connection with a debt relief order or an application for such an order.

(2) The official receiver may make an application to the High Court for directions or an order in relation to any matter arising in connection with a debt relief order or an application for such an order.

(3) The matters referred to in paragraph (2) include, among other things, matters relating to the debtor's compliance with any duty arising under Article 208J.

(4) An application under this Article may, subject to anything in the rules, be made at any time.

(5) The High Court may extend the moratorium period applicable to a debt relief order for the purposes of determining an application under this Article.

(6) On an application under this Article the High Court may dismiss the application or do one or more of the following—

- (a) quash the whole or part of any act or decision of the official receiver;
- (b) give the official receiver directions (including a direction that he reconsider any matter in relation to which his act or decision has been quashed under sub-paragraph (a));
- (c) make an order for the enforcement of any obligation on the debtor arising by virtue of a duty under Article 208J;
- (d) extend the moratorium period applicable to the debt relief order;
- (e) make an order revoking or amending the debt relief order;
- (f) make an order under Article 208N; or
- (g) make such other order as the Court thinks fit.

(7) An order under paragraph (6)(e) for the revocation of a debt relief order—

- (a) may be made during the moratorium period applicable to the debt relief order or at any time after that period has ended;
- (b) may be made on the High Court's own motion if the Court has made a bankruptcy order in relation to the debtor during that period;
- (c) may provide for the revocation of the order to take effect on such terms and at such a time as the Court may specify.

(8) An order under paragraph (6)(e) for the amendment of a debt relief order may not add any debts that were not specified in the application for the debt relief order to the list of qualifying debts.

#### **Inquiry into debtor's dealings and property**

**208N.**—(1) An order under this Article may be made by the High Court on the application of the official receiver.

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(2) An order under this Article is an order summoning any of the following persons to appear before the High Court—

- (a) the debtor;
- (b) the debtor's spouse or former spouse or the debtor's civil partner or former civil partner;
- (c) any person appearing to the Court to be able to give information or assistance concerning the debtor or his dealings, affairs and property.

(3) The High Court may require a person falling within paragraph (2)(c)—

- (a) to provide a written account of his dealings with the debtor; or
- (b) to produce any documents in his possession or under his control relating to the debtor or to the debtor's dealings, affairs or property.

(4) Paragraph (5) applies where a person fails without reasonable excuse to appear before the High Court when he is summoned to do so by an order under this Article.

(5) 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 records or other documents in that person's possession.

(6) 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.

### *Offences*

#### **False representations and omissions**

**208O.**—(1) A person who makes an application for a debt relief order shall be guilty of an offence if he knowingly or recklessly makes any false representation or omission in making the application or providing any information or documents to the official receiver in support of the application.

(2) A person who makes an application for a debt relief order shall be guilty of an offence if—

- (a) he intentionally fails to comply with a duty under Article 208J(3) in connection with the application; or
- (b) he knowingly or recklessly makes any false representation or omission in providing any information to the official receiver in connection with such a duty or otherwise in connection with the application.

(3) It is immaterial for the purposes of an offence under paragraph (1) or (2) whether or not a debt relief order is made as a result of the application.

(4) A person in respect of whom a debt relief order is made shall be guilty of an offence if—

- (a) he intentionally fails to comply with a duty under Article 208J(5) in connection with the order; or
- (b) he knowingly or recklessly makes any false representation or omission in providing information to the official receiver in connection with such a duty or otherwise in connection with the performance by the official receiver of functions in relation to the order.

(5) It is immaterial for the purposes of an offence under paragraph (4)—

- (a) whether the offence is committed during or after the moratorium period; and

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- (b) whether or not the order is revoked after the conduct constituting the offence takes place.

### **Concealment or falsification of documents**

**208P.**—(1) A person in respect of whom a debt relief order is made shall be guilty of an offence if, during the moratorium period in relation to that order—

- (a) he does not provide, at the request of the official receiver, all his books, papers and other records of which he has possession or control and which relate to his affairs;
- (b) he prevents the production to the official receiver of any books, papers or other records relating to his affairs;
- (c) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his affairs;
- (d) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his affairs; or
- (e) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his affairs.

(2) A person in respect of whom a debt relief order is made shall be guilty of an offence if—

- (a) he did anything falling within sub-paragraphs (c) to (e) of paragraph (1) during the period of 12 months ending with the application date; or
- (b) he did anything falling within sub-paragraphs (b) to (e) of paragraph (1) after that date but before the effective date.

(3) It shall be a defence for a person charged with an offence under this Article to prove that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(4) In its application to a trading record paragraph (2)(a) has effect as if the reference to 12 months were a reference to 2 years.

(5) In paragraph (4) “trading record” means a book, document or record which shows or explains the transactions or financial position of a person's business, including—

- (a) a periodic record of cash paid and received,
- (b) a statement of periodic stock-taking, and
- (c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.

(6) It is immaterial for the purposes of an offence under this Article whether or not the debt relief order in question is revoked after the conduct constituting the offence takes place (but no offence is committed under this Article by virtue of conduct occurring after the order is revoked).

### **Fraudulent disposal of property**

**208Q.**—(1) A person in respect of whom a debt relief order is made shall be guilty of an offence if he made or caused to be made any gift or transfer of his property during the period between—

- (a) the start of the period of 2 years ending with the application date; and
- (b) the end of the moratorium period.

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(2) The reference in paragraph (1) to making a transfer of any property includes causing or conniving at the enforcement of a judgment, or the levying of any execution, against that property.

(3) It shall be a defence for a person charged with an offence under this Article to prove that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(4) For the purposes of paragraph (3) a person is to be taken to have proved that he had no such intent if—

- (a) sufficient evidence is adduced to raise an issue as to whether he had such intent; and
- (b) the contrary is not proved beyond reasonable doubt.

(5) It is immaterial for the purposes of this Article whether or not the debt relief order in question is revoked after the conduct constituting an offence takes place (but no offence is committed by virtue of conduct occurring after the order is revoked).

### **Fraudulent dealing with property obtained on credit**

**208R.**—(1) A person in respect of whom a debt relief order is made shall be guilty of an offence if during the relevant period he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for it.

(2) Any other person shall be guilty of an offence if during the relevant period he acquired or received property from a person in respect of whom a debt relief order was made (the “debtor”) knowing or believing—

- (a) that the debtor owed money in respect of the property, and
- (b) that the debtor did not intend, or was unlikely to be able, to pay the money he so owed.

(3) In paragraphs (1) and (2) “relevant period” means the period between—

- (a) the start of the period of 2 years ending with the application date; and
- (b) the determination date.

(4) In the case of an offence under paragraph (1) or (2) it shall be a defence for the person charged to prove that the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the debtor at the time of the disposal, acquisition or receipt.

(5) In determining for the purposes of paragraph (4) whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the debtor, regard may be had, in particular, to the price paid for the property.

(6) It shall be a defence for a person charged with an offence under paragraph (1) to prove that, in respect of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(7) In this Article references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

(8) It is immaterial for the purposes of this Article whether or not the debt relief order in question is revoked after the conduct constituting an offence takes place (but no offence is committed by virtue of conduct occurring after the order is revoked).

### **Obtaining credit or engaging in business**

**208S.**—(1) A person in respect of whom a debt relief order is made shall be guilty of an offence if, during the relevant period—

- (a) he obtains credit (either alone or jointly with any other person) without giving the person from whom he obtains the credit the relevant information about his status; or

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(b) he engages directly or indirectly in any business under a name other than that in which the order was made without disclosing to all persons with whom he enters into any business transaction the name in which the order was made.

(2) For the purposes of paragraph (1)(a) the relevant information about a person's status is the information that—

- (a) a moratorium is in force in relation to the debt relief order,
- (b) a debt relief restrictions order is in force in respect of him, or
- (c) both a moratorium and a debt relief restrictions order are in force,

as the case may be.

(3) In paragraph (1) “relevant period” means—

- (a) the moratorium period relating to the debt relief order, or
- (b) the period for which a debt relief restrictions order is in force in respect of the person in respect of whom the debt relief order is made,

as the case may be.

(4) Paragraph (1)(a) does not apply if the amount of the credit is less than the amount (if any) specified by order under Article 362(1)(b).

(5) The reference in paragraph (1)(a) to a person 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;
- (b) where he is paid in advance (in money or otherwise) for the supply of goods or services.

#### **Offences: supplementary**

**208T.**—(1) Proceedings for an offence under this Part may only be instituted by the Director of Public Prosecutions for Northern Ireland.

(2) It is not a defence in proceedings for an offence under this Part that anything relied on, in whole or in part, as constituting the offence was done outside Northern Ireland.

(3) A person guilty of an offence under this Part is liable to imprisonment or a fine, or both.

#### *Supplementary*

#### **Approved intermediaries**

**208U.**—(1) In this Part “approved intermediary” means an individual for the time being approved by a competent authority to act as an intermediary between a person wishing to make an application for a debt relief order and the official receiver.

(2) In this Article “competent authority” means a person or body for the time being designated by the Department for the purposes of granting approvals under this Article.

(3) Designation as a competent authority may be limited so as to permit the authority only to approve persons of a particular description.

(4) The Department may by regulations make provision as to—

- (a) the procedure for designating persons or bodies as competent authorities;
- (b) descriptions of individuals who are ineligible to be approved under this Article;
- (c) the procedure for granting approvals under this Article;

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(d) the withdrawal of designations or approvals under this Article; and provision made under sub-paragraph (a) or (c) may include provision requiring the payment of fees.

(5) The rules may make provision about the activities to be carried out by an approved intermediary in connection with an application for a debt relief order, which may in particular include—

- (a) assisting the debtor in making the application;
- (b) checking that the application has been properly completed;
- (c) sending the application to the official receiver.

(6) The rules may also make provision about other activities to be carried out by approved intermediaries.

(7) An approved intermediary may not charge a debtor any fee in connection with an application for a debt relief order.

(8) An approved intermediary is not liable to any person in damages for anything done or omitted to be done when acting (or purporting to act) as an approved intermediary in connection with a particular application by a debtor for a debt relief order.

(9) Paragraph (8) does not apply if the act or omission was in bad faith.

(10) The Department may, out of the proceeds of fees charged under Article 361(1)(za), make payments to competent authorities or approved intermediaries in connection with the exercise of the functions of approved intermediaries under this Part.

### **Debt relief restrictions orders and undertakings**

**208V** Schedule 2ZB (which makes provision about debt relief restrictions orders and debt relief restrictions undertakings) has effect.

### **Register of debt relief orders, etc.**

**208W** The Department must maintain a register of matters relating to—

- (a) debt relief orders;
- (b) debt relief restrictions orders; and
- (c) debt relief restrictions undertakings.

### **Interpretation**

**208X.**—(1) In this Part—

“the application date”, in relation to a debt relief order or an application for a debt relief order, means the date on which the application for the order is made to the official receiver;

“approved intermediary” has the meaning given in Article 208U(1);

“debt relief order” means an order made by the official receiver under this Part;

“debtor” means—

- (a) in relation to an application for a debt relief order, the applicant; and
  - (b) in relation to a debt relief order, the person in relation to whom the order is made;
- “debt relief restrictions order” and “debt relief restrictions undertaking” means an order made, or an undertaking accepted, under Schedule 2ZB;



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“the determination date”, in relation to a debt relief order or an application for a debt relief order, means the date on which the application for the order is determined by the official receiver;

“the effective date” has the meaning given in Article 208E(7);

“excluded debt” is to be construed in accordance with Article 208A;

“moratorium” and “moratorium period” are to be construed in accordance with Articles 208G and 208H;

“qualifying debt”, in relation to a debtor, has the meaning given in Article 208A(2);

“the register” means the register maintained under Article 208W;

“specified qualifying debt” has the meaning given in Article 208G(1).

(2) In this Part references to a creditor specified in a debt relief order as the person to whom a qualifying debt is owed by the debtor include a reference to any person to whom the right to claim the whole or any part of the debt has passed, by assignment or operation of law, after the date of the application for the order.]

## PART VIII

### INDIVIDUAL VOLUNTARY ARRANGEMENTS

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

**C16** 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))

#### CHAPTER I

#### DEEDS OF ARRANGEMENT

#### Deeds of arrangement to which this Chapter applies

**209.**—(1) A deed of arrangement to which this Chapter applies shall include any of the instruments mentioned in paragraph (2), whether under seal or not,—

- (a) made by, for or in respect of the affairs of a debtor for the benefit of his creditors generally;
- (b) made by, for or in respect of the affairs of a debtor who was insolvent at the date of the execution of the instrument for the benefit of any 3 or more of his creditors;

otherwise than in pursuance of Chapter II or Chapter I of Part IX.

(2) The instruments referred to in paragraph (1) are—

- (a) an assignment of property;
- (b) a deed of or agreement for a composition;

and in cases where creditors of the debtor obtain any control over his property or business—

- (c) a deed of inspectorship entered into for the purpose of carrying on or winding up a business;
- (d) a letter of licence authorising the debtor or any other person to manage, carry on, realise or dispose of a business with a view to the payment of debts; and

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- (e) any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise or dispose of the debtor's business with a view to the payment of his debts.
- (3) Articles 218, 221, 222(1)(a) and 223 shall not apply to a deed of arrangement made for the benefit of any 3 or more of the debtor's creditors unless it is in fact for the benefit of the debtor's creditors generally.
- (4) In determining for the purposes of this Chapter the number of creditors for whose benefit a deed is made, any 2 or more joint creditors shall be treated as a single creditor.

### *Registration of deeds of arrangement*

#### **Registrar and deputy registrar**

- 210.**—(1) The Department may for the purposes of the registration of deeds of arrangement under this Chapter appoint an officer of the Department as registrar.
- (2) The Department may, if it thinks expedient to do so, appoint one or more than one officer of the Department to act as deputy to the registrar.

#### **Mode of registration**

- 211.**—(1) Subject to paragraph (2), a deed of arrangement under this Chapter shall be registered by presenting to and filing with the registrar within 7 clear days from the execution of the deed—
- (a) such number of copies as the registrar may determine of the deed, and of every schedule or inventory annexed to the deed or referred to in the deed; and
  - (b) an affidavit verifying the time of execution, and containing—
    - (i) the name, residential address and occupation of, the debtor; and
    - (ii) the address of the place or places where his business is carried on; and
  - (c) an affidavit by the debtor stating—
    - (i) the total estimated amount of property and liabilities included under the deed; and
    - (ii) the total amount of the composition (if any) payable under the deed; and
    - (iii) the names and addresses of his creditors.
- (2) A deed of arrangement shall not be registered unless the original of the deed, duly stamped with the proper revenue duty, is produced to the registrar at the time of the registration.

#### **Form of register**

- 212.** The registrar shall keep a register in which he shall record in respect of each deed of arrangement presented for registration—
- (a) the date of the deed;
  - (b) the name, residential address and occupation of the debtor;
  - (c) the address of the place or places where his business was carried on at the date of the execution of the deed;
  - (d) the title of the firm or firms under which the debtor carried on business;
  - (e) the name and address of the trustee (if any) under the deed;
  - (f) the date of registration;
  - (g) the amount of property and liabilities included under the deed, as estimated by the debtor;

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- (h) such other particulars as may be prescribed.

### **Rectification of register**

**213.** Where, on the application of any party interested, the High Court is satisfied that—

- (a) the omission to register a deed of arrangement within the time required by this Chapter, or  
(b) the omission or misstatement of the name, residential address, place of business or occupation of any person,

was accidental, or due to inadvertence, or to some cause beyond the control of the debtor and not imputable to any negligence on his part, the Court may, on such terms and conditions as are just and expedient, extend the time for registration, or order the omission or misstatement to be supplied or rectified by the insertion in the register of the true name, residential address and place of business or occupation.

### *Avoidance of deeds of arrangement*

#### **Avoidance of unregistered deeds of arrangement**

**214.** A deed of arrangement shall be void unless—

- (a) it is registered—  
(i) within 7 clear days from the first execution of the deed by the debtor or any creditor;  
or  
(ii) if it is executed in any place out of Northern Ireland, within 7 clear days from the time at which it would, in the ordinary course of post, arrive in Northern Ireland, if posted within one week after the execution of the deed; and  
(b) it bears such stamp as is mentioned in Article 211(2).

#### **Avoidance of deeds of arrangement unless assented to by a majority of the creditors**

**215.—(1)** A deed of arrangement, which either is expressed to be or is in fact for the benefit of a debtor's creditors generally, shall be void unless, before the expiration of 21 days from the registration of the deed, or within such extended time as the High Court may allow, it has received the assent of a majority in number and value of the creditors of the debtor.

(2) The list of creditors annexed to the affidavit of the debtor filed on the registration of the deed of arrangement shall be prima facie evidence of the names of the creditors and the amounts of their claims.

(3) The assent of a creditor for the purposes of paragraph (1) shall be established by his executing the deed of arrangement or sending to the trustee his assent in writing attested by a witness, but not otherwise.

(4) The trustee shall file with the registrar at the time of the registration of a deed of arrangement, or, in the case of a deed of arrangement assented to after registration, within 28 days from registration or within such extended time as the High Court may allow, a statutory declaration by the trustee that the requisite majority of the creditors of the debtor have assented to the deed of arrangement, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be prima facie evidence, of the fact declared.

(5) In calculating a majority of creditors for the purposes of this Article, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding £100 shall be reckoned in the majority in value but not in the majority in number.

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## **Deeds otherwise void or voidable**

**216.** Nothing in this Chapter shall give validity to any deed or instrument which is by law void or voidable.

### *Provisions as to trustees*

## **Notice to creditors of avoidance of deed**

**217.**—(1) When a deed of arrangement is void by virtue of this Chapter for any reason other than that, being for the benefit of creditors generally, it has not been registered within the time allowed for the purpose by Article 214, the trustee shall—

- (a) as soon as practicable after he has become aware that the deed is void, give notice in writing thereof to each creditor whose name and address he knows; and
  - (b) file a copy of the notice with the registrar.
- (2) If paragraph (1) is contravened the trustee shall be guilty of an offence.

## **Trustee acting when deed of arrangement void**

**218.**—(1) If a trustee acts under a deed of arrangement—

- (a) after it has to his knowledge become void by reason of non-compliance with any of the requirements of this Chapter or any statutory provision repealed by this Order, or
- (b) after he has failed to give security within the time provided for by Article 221,

he shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(2) It is a defence for a person charged under this Article to prove that the contravention was due to inadvertence, or that his action has been confined to taking such steps as were necessary for the protection of the estate.

## **Protection of trustees under void deeds**

**219.** Where a deed of arrangement is void by reason—

- (a) that the requisite majority of creditors have not assented to the deed, or
- (b) in the case of a deed for the benefit of 3 or more creditors,—
  - (i) that the debtor was insolvent at the time of the execution of the deed, and
  - (ii) the deed was not registered as required by this Chapter,

but is not void for any other reason, and a bankruptcy order is made against the debtor upon a petition presented after the expiration of 3 months from the execution of the deed, the trustee under the deed shall not be liable to account to the trustee in the bankruptcy for any dealings with or payments made out of the debtor's property which would have been proper if the deed had been valid, if he proves that at the time of such dealings or payments he did not know, and had no reason to suspect, that the deed was void.

## **Payment of expenses incurred by trustees**

**220.** Where a deed of arrangement is avoided by reason of the bankruptcy of the debtor, any expenses properly incurred by the trustee under the deed in the performance of any of the duties imposed on him by this Chapter shall be allowed or paid to him by the trustee in the bankruptcy as a first charge on the estate.

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## Security by trustee

**221.**—(1) The trustee under a deed of arrangement shall, within 7 days from the date on which the statutory declaration certifying the assent of the creditors is filed, give security with respect to the proper administration of the deed and to account fully for the assets which come to his hands, unless a majority in number and value of the debtor's creditors, either by resolution passed at a meeting convened by notice to all the creditors, or by writing addressed to the trustee, dispense with his giving such security.

(2) When a dispensation such as is mentioned in paragraph (1) has been so given, the trustee shall forthwith make and file with the registrar a certificate to that effect, which certificate shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be prima facie evidence, of the facts certified.

(3) If a trustee under a deed of arrangement contravenes this Article, on the application of any creditor the High Court may, after hearing such persons as it may think fit, declare the deed of arrangement to be void or make an order appointing another trustee in the place of the trustee appointed by the deed of arrangement.

(4) In calculating a majority of creditors for the purposes of this Article, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding £100 shall be reckoned in the majority in value but not in the majority in number.

## Transmission of accounts

**222.**—(1) Every trustee under a deed of arrangement shall—

- (a) at the expiration of 6 months from the date of the registration of the deed, and thereafter at the expiration of every subsequent period of 6 months until the estate has been finally wound up, send to each creditor who has assented to the deed a statement in the prescribed form of the trustee's accounts and of the proceedings under the deed down to the date of the statement; and
- (b) when verifying his accounts transmitted to the Department under paragraph (2), state whether or not he has duly sent such statements, and the dates on which the statements were sent.

(2) Every trustee under a deed of arrangement shall, at such times as may be prescribed, transmit to the Department, or as it directs, an account of his receipts and payments as trustee, in the prescribed form and verified in the prescribed manner.

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

## Preferential payment to creditor

**223.** If a trustee under a deed of arrangement pays to any creditor out of the debtor's property a sum larger in proportion to the creditor's claim than that paid to other creditors entitled to the benefit of the deed, then, unless the deed authorises him to do so, or unless such payments are either made to a creditor entitled to enforce his claim by distress or are such as would be lawful under Chapter II and Parts IX and X, he shall be guilty of an offence.

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## Miscellaneous

### Applications to the High Court

**224.** Any application by the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, or by the debtor or by any creditor entitled to the benefit of such a deed of arrangement, for the enforcement of the trusts or the determination of questions under it, shall be made to the High Court.

### Inspection of register, etc., certified copies and evidence

**225.**—(1) Any person may, on payment of the specified fee, at all reasonable times,—

- (a) search the register, and
- (b) inspect any registered deed of arrangement;

and copies certified by the registrar of, or extracts from, any deed registered under this Chapter shall on payment of the specified fee, be furnished to any person.

(2) The accounts transmitted to the Department under Article 222(2) may be inspected by the debtor or any creditor or other person interested on payment of the specified fee, and copies of the accounts shall, on payment of the specified fee, be furnished to the debtor, the creditors, or any other persons interested.

(3) Any copy or extract purporting to be a certified copy or extract shall, in all courts and before all arbitrators or other persons, be admitted as prima facie evidence thereof, and of the fact and date of registration as shown thereon.

## CHAPTER II

### VOLUNTARY ARRANGEMENTS

#### *Moratorium for insolvent debtor*

### Interim order of High Court

**226.**—(1) In the circumstances specified in Articles 227 and 229, the High Court may in the case of a debtor (being an individual) make an interim order under this Article.

(2) An interim order has the effect that, during the period for which it is in force—

- (a) no bankruptcy petition relating to the debtor may be presented or proceeded with,
- [<sup>F241</sup>(aa)] [<sup>F241</sup>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 debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the High Court,] and
- (b) no other proceedings, and no execution or other legal process, may be commenced or continued[<sup>F241</sup> and no distress may be levied] against the debtor or his property except with the leave of the High Court.

**F241** 2002 NI 6

### Application for interim order

**227.**—(1) Application to the High Court for an interim order may be made where the debtor intends to make a proposal[<sup>F242</sup> under this Part, that is, a proposal] to his creditors for a composition

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in satisfaction of his debts or a scheme of arrangement of his affairs (referred to, in either case, as a “voluntary arrangement”).

(2) The proposal must provide 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<sup>[F242]</sup> and the nominee must be a person who is qualified to act as an insolvency practitioner, or authorised to act as nominee, in relation to the voluntary arrangement].

(3) Subject to paragraphs (4) and (5), the application may be made—

- (a) if the debtor is an undischarged bankrupt, by the debtor, the trustee of his estate, or the official receiver, and
- (b) in any other case, by the debtor.

(4) An application shall not be made under paragraph (3)(a) unless the debtor has given notice of<sup>[F243]</sup> the proposal] to the official receiver and, if there is one, the trustee of his estate.

(5) An application shall not be made while a bankruptcy petition presented by the debtor is pending, if the High Court has, under Article 247, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

F242 2002 NI 6  
F243 2002 NI 6

### Effect of application

**228.**—(1) At any time when an application under Article 227 for an interim order is pending

<sup>[F244]</sup>(a) 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 debtor in respect of a failure by the debtor to comply with any term or condition of his tenancy of such premises, except with the leave of the High Court, and]

<sup>[F244]</sup>(b) , the High Court may<sup>[F244]</sup> forbid the levying of any distress on the debtor's property or its subsequent sale, or both, and] stay any action, proceedings, execution or other legal process against the property or person of the debtor.

(2) Any court in which proceedings are pending against an individual may, on proof that an application under Article 227 has been made in respect of that individual, either stay the proceedings or allow them to continue on such terms as it thinks fit.

F244 2002 NI 6

### Cases in which interim order can be made

**229.**—(1) The High Court shall not make an interim order on an application under Article 227 unless it is satisfied—

- (a) that the debtor intends to make<sup>[F245]</sup> a proposal under this Part];
- (b) that on the day of the making of the application the debtor was an undischarged bankrupt or was able to petition for his own bankruptcy;
- (c) that no previous application has been made by the debtor for an interim order within the 12 months immediately preceding that day; and
- (d) that the nominee under the debtor's proposal<sup>F246</sup> . . . is willing to act in relation to the proposal.

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(2) The High Court may make an order if it thinks that it would be appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal.

(3) Where the debtor is an undischarged bankrupt, the interim order may contain provision as to the conduct of the bankruptcy, and the administration of the bankrupt's estate, during the period for which the order is in force.

(4) Subject to paragraph (5), the provision contained in an interim order by virtue of paragraph (3) may include provision staying proceedings in the bankruptcy or modifying any provision in Parts VIII to X, and any provision of the rules in their application to the debtor's bankruptcy.

(5) An interim order shall not, in relation to a bankrupt, make provision relaxing or removing any of the requirements of provisions in Parts VIII to X, or of the rules, unless the High Court is satisfied that that provision is unlikely to result in any significant diminution in, or in the value of, the debtor's estate for the purposes of the bankruptcy.

(6) Subject to Articles 230, 233, 234 and 236, an interim order made on an application under Article 227 ceases to have effect on the expiration of 14 days from the day on which it is made.

F245 2002 NI 6

F246 2002 NI 6

### **Nominee's report on debtor's proposal**

**230.**—(1) Where an interim order has been made on an application under Article 227, the nominee shall, before the order ceases to have effect, submit a report to the High Court stating—

- (a) [<sup>F247</sup>whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,]
- [<sup>F247</sup>(aa)] whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and
- (b) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.

(2) For the purpose of enabling the nominee to prepare his report the debtor shall submit to the nominee—

- (a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and
- (b) a statement of his affairs containing—
  - (i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and
  - (ii) such other information as may be prescribed.

[<sup>F248</sup>(3) The High Court may—

- (a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this Article or has died, or
- (b) on an application made by the debtor 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 shall 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.

(3A) The High Court may, on an application made by the debtor in a case where the nominee has failed to submit the report required by this Article, direct that the interim order shall continue,



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or (if it has ceased to have effect) be renewed, for such further period as the Court may specify in the direction.]

(4) The High Court may, on the application of the nominee, extend the period for which the interim order has effect so as to enable the nominee to have more time to prepare his report.

(5) If the High Court is satisfied on receiving the nominee's report that a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, the Court shall direct that the period for which the interim order has effect shall be extended, for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the following provisions of this Chapter.

(6) The High Court may discharge the interim order if it is satisfied, on the application of the nominee—

- (a) that the debtor has failed to comply with his obligations under paragraph (2), or
- (b) that for any other reason it would be inappropriate for a meeting of the debtor's creditors to be summoned to consider the debtor's proposal.

F247 2002 NI 6

F248 2002 NI 6

*[<sup>F249</sup>Procedure where no interim order made*

F249 2002 NI 6

### **Debtor's proposal and nominee's report**

**230A.**—(1) This Article applies where a debtor (being an individual)—

- (a) intends to make a proposal under this Part (but an interim order has not been made in relation to the proposal and no application for such an order is pending), and
- (b) if he is an undischarged bankrupt, has given notice of the proposal to the official receiver and, if there is one, the trustee of his estate,

unless a bankruptcy petition presented by the debtor is pending and the High Court has, under Article 247, appointed an insolvency practitioner to inquire into the debtor's affairs and report.

(2) For the purpose of enabling the nominee to prepare a report to the High Court, the debtor shall submit to the nominee—

- (a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and
- (b) a statement of his affairs containing—
  - (i) such particulars of his creditors and of his debts and other liabilities and of his assets as may be prescribed, and
  - (ii) such other information as may be prescribed.

(3) If the nominee is of the opinion that the debtor is an undischarged bankrupt, or is able to petition for his own bankruptcy, the nominee shall, within 14 days (or such longer period as the High Court may allow) after receiving the document and statement mentioned in paragraph (2), submit a report to the Court stating—

- (a) whether, in his opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being approved and implemented,

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- (b) whether, in his opinion, a meeting of the debtor's creditors should be summoned to consider the debtor's proposal, and
  - (c) if in his opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.
- (4) The High Court may—
- (a) on an application made by the debtor in a case where the nominee has failed to submit the report required by this Article or has died, or
  - (b) on an application made by the debtor 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 shall 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.

(5) The High Court may, on an application made by the nominee, extend the period within which the nominee is to submit his report.]

#### *[<sup>F250</sup>Creditors' meeting]*

**F250** 2002 NI 6

### **Summoning of creditors' meeting**

**231.**—(1) Where it has been reported to the High Court under Article 230<sup>[F251]</sup> or 230A] that a meeting of the debtor's creditors should be summoned, the nominee (or his replacement under Article<sup>[F252]</sup> 230(3) or 230A(4)) shall, unless the Court otherwise directs, summon that meeting for the time, date and place proposed in his report.

(2) The persons to be summoned to the meeting are every creditor of the debtor of whose claim and address the person summoning the meeting is aware.

- (3) For this purpose the creditors of a debtor who is an undischarged bankrupt include—
- (a) every person who is a creditor of the bankrupt in respect of a bankruptcy debt, and
  - (b) every person who would be such a creditor if the bankruptcy had commenced on the day on which notice of the meeting is given.

**F251** 2002 NI 6

**F252** 2002 NI 6

#### *Consideration and implementation of debtor's proposal*

### **Decisions of creditors' meeting**

**232.**—(1) A creditors' meeting summoned under Article 231 shall decide whether to approve the proposed voluntary arrangement.

(2) The meeting may approve the proposed voluntary arrangement with modifications, but shall not do so unless the debtor consents to each modification.

(3) Subject to paragraph (4), the modifications subject to which the proposed voluntary arrangement may be approved may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner<sup>[F253]</sup> or authorised to act as nominee, in relation to the voluntary arrangement].

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(4) The modifications mentioned in paragraph (3) shall not include any modification by virtue of which the proposal ceases to be a proposal<sup>F253</sup> under this Part].

(5) The meeting shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security, except with the concurrence of the creditor concerned.

(6) Subject to paragraph (7), the meeting shall not approve any proposal or modification under which—

- (a) any preferential debt of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts, or
- (b) a preferential creditor of the debtor 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.

(7) The meeting may approve a proposal or modification such as is mentioned in paragraph (6) with the concurrence of the preferential creditor concerned.

(8) Subject to paragraphs (2) to (7), the meeting shall be conducted in accordance with the rules.

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

F253 2002 NI 6

### Report of decisions to High Court

**233.**—(1) After the conclusion in accordance with the rules of the meeting summoned under Article 231, the chairman of the meeting shall report the result of it to the High Court and, immediately after so reporting, shall give notice of the result of the meeting to such persons as may be prescribed.

(2) If the report is that the meeting has declined (with or without modifications) to approve the debtor's proposal, the High Court may discharge any interim order which is in force in relation to the debtor.

### Effect of approval

**234.**—(1) This Article has effect where the meeting summoned under Article 231 approves the proposed voluntary arrangement (with or without modifications).

(2) The approved arrangement—

(a) takes effect as if made by the debtor at the meeting, and

<sup>F254</sup>(b) binds every person who in accordance with the rules—

(i) was entitled to vote at the 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 arrangement.]

<sup>F254</sup>(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,

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

(3) Chapter I does not apply to the approved voluntary arrangement.

(4) Any interim order in force in relation to the debtor immediately preceding the expiration of the period of 28 days from the day on which the report with respect to the creditors' meeting was made to the High Court under Article 233 ceases to have effect at the end of that period.

(5) Paragraph (4) applies except to such extent as the High Court may direct for the purposes of any application under Article 236.

(6) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under paragraph (4), that petition is deemed, unless the High Court otherwise orders, to have been dismissed.

**F254** 2002 NI 6

#### <sup>F255</sup> **Effect where debtor an undischarged bankrupt**

**235.**—(1) Subject to paragraph (2), where the creditors' meeting summoned under Article 231 approves the proposed voluntary arrangement (with or without modifications) and the debtor is an undischarged bankrupt, the High Court may do one or both of the following, namely—

- (a) annul the bankruptcy order by which he was adjudged bankrupt;
- (b) give such directions with respect to the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

(2) The High Court shall not annul a bankruptcy order under paragraph (1)—

- (a) at any time before the expiration of 28 days from the day on which the report of the creditors' meeting was made to the Court under Article 233, or
- (b) at any time when an application under Article 236, 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.

**F255** prosp. subst. by 2005 NI 10

#### **Challenge of meeting's decision**

**236.**—(1) Subject to the following provisions of 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 approved by a creditors' meeting summoned under Article 231 unfairly prejudices the interests of a creditor of the debtor;
- (b) that there has been some material irregularity at or in relation to such a meeting.

(2) The persons who may apply under this Article are—

(a) the debtor;

<sup>F256</sup>(b) a person who—

- (i) was entitled, in accordance with the rules, to vote at the creditors' meeting, or
- (ii) would have been so entitled if he had had notice of it,]

(c) the nominee (or his replacement under Article<sup>F256</sup> 230(3), 230A(4)] or 232(3)); and

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- (d) if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.
- (3) An application under this Article shall not be made
- [<sup>F257</sup>(a)] after the expiration of 28 days from the day on which the report of the creditors' meeting was made to the High Court under Article 233[<sup>F257</sup> or]
- [<sup>F257</sup>(b) in the case of a person who was not given notice of the creditor's 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,]
- [<sup>F257</sup> but (subject to that) an application made by a person within paragraph (2)(b)(ii) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it has come to an end prematurely.]
- (4) Where on an application under this Article 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 any approval given by the meeting;
- (b) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal the debtor may make or, in a case falling within paragraph (1)(b), to reconsider his original proposal.
- (5) Where at any time after giving a direction under paragraph (4)(b) for the summoning of a meeting to consider a revised proposal the High Court is satisfied that the debtor does not intend to submit such a proposal, the Court shall revoke the direction and revoke or suspend any approval given at the previous meeting.
- (6) Where the High Court gives a direction under 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 in relation to the debtor of any interim order.
- (7) In any case where the High Court, on an application made under this Article with respect to a creditors' meeting, gives a direction under paragraph (4)(b) or 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—
- (a) things done since the meeting under any voluntary arrangement approved by the meeting, and
- (b) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.
- (8) Except in pursuance of the preceding provisions of this Article, an approval given at a creditors' meeting summoned under Article 231 is not invalidated by any irregularity at or in relation to the meeting.

**F256** 2002 NI 6

**F257** 2002 NI 6

[<sup>F258</sup>**False representations etc.**

**236A.**—(1) If for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement, the debtor—

- (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.]

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F258 2002 NI 6

### Prosecution of delinquent debtors

**236B.**—(1) This Article applies where a voluntary arrangement approved by a creditors' meeting summoned under Article 231 has taken effect.

(2) If it appears to the nominee or supervisor that the debtor has been guilty of any offence in connection with the arrangement for which he is criminally liable, he 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 his possession or under his control and relating to the matter in question) as the Department requires.

(3) Where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings following any report under paragraph (2), the nominee or, as the case may be, supervisor shall give the Director all assistance in connection with the prosecution which he is reasonably able to give.

(4) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct a nominee or supervisor to comply with paragraph (3) if he has failed to do so.

### Arrangements coming to an end prematurely

**236C.** For the purposes of this Part, a voluntary arrangement approved by a creditors' meeting summoned under Article 231 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 234(2)(b)(i).

### Implementation and supervision of approved voluntary arrangement

**237.**—(1) This Article applies where a voluntary arrangement approved by a creditors' meeting summoned under Article 231 has taken effect.

(2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred by virtue of the approval on the nominee (or his replacement under Article<sup>F259</sup> 230(3), 230A(4)] or 232(3)) shall be known as the supervisor of the voluntary arrangement.

(3) If the debtor, any of his 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 such an 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 may apply to the High Court for directions in relation to any particular matter arising under the voluntary arrangement.

(5) Without prejudice to section 40(2) of the Trustee Act (Northern Ireland) 1958<sup>F260</sup> (power of court to appoint trustees), 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,

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make an order appointing a person who is qualified to act as an insolvency practitioner<sup>F259</sup> or authorised to act as supervisor, in relation to the voluntary arrangement], either in substitution for the existing supervisor or to fill a vacancy.

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

**F259** 2002 NI 6

**F260** 1958 c. 23 (NI)

VALID FROM 27/03/2006

*<sup>F261</sup>Fast-track voluntary arrangement*

**F261** Arts. 237A - 237G and preceding cross - heading inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 21, Sch. 7 para. 2 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

**Availability**

**237A.** Article 237B applies where an individual debtor intends to make a proposal to his creditors for a voluntary arrangement and—

- (a) the debtor is an undischarged bankrupt,
- (b) the official receiver is specified in the proposal as the nominee in relation to the voluntary arrangement, and
- (c) no interim order is applied for under Article 227.

**Decision**

**237B.**—(1) The debtor may submit to the official receiver—

- (a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and
- (b) a statement of his affairs containing such particulars as may be prescribed of his creditors, debts, other liabilities and assets and such other information as may be prescribed.

(2) If the official receiver thinks that the voluntary arrangement proposed has a reasonable prospect of being approved and implemented, he may make arrangements for inviting creditors to decide whether to approve it.

(3) For the purposes of paragraph (2) a person is a “creditor” only if—

- (a) he is a creditor of the debtor in respect of a bankruptcy debt, and
- (b) the official receiver is aware of his claim and his address.

(4) Arrangements made under paragraph (2)—

- (a) must include the provision to each creditor of a copy of the proposed voluntary arrangement,

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- (b) must include the provision to each creditor of information about the criteria by reference to which the official receiver will determine whether the creditors approve or reject the proposed voluntary arrangement, and
- (c) may not include an opportunity for modifications to the proposed voluntary arrangement to be suggested or made.

(5) Where a debtor submits documents to the official receiver under paragraph (1) no application under Article 227 for an interim order may be made in respect of the debtor until the official receiver has—

- (a) made arrangements as described in paragraph (2), or
- (b) informed the debtor that he does not intend to make arrangements (whether because he does not think the voluntary arrangement has a reasonable prospect of being approved and implemented or because he declines to act).

### **Result**

**237C.** As soon as is reasonably practicable after the implementation of arrangements under Article 237B(2) the official receiver shall report to the High Court whether the proposed voluntary arrangement has been approved or rejected.

### **Approval of voluntary arrangement**

**237D.**—(1) This Article applies where the official receiver reports to the High Court under Article 237C that a proposed voluntary arrangement has been approved.

(2) The voluntary arrangement—

- (a) takes effect,
- (b) binds the debtor, and
- (c) binds every person who was entitled to participate in the arrangements made under Article 237B(2).

(3) The High Court shall annul the bankruptcy order in respect of the debtor on an application made by the official receiver.

(4) An application under paragraph (3) may not be made—

- (a) during the period specified in Article 237F(3) during which the voluntary arrangement can be challenged by application under Article 237F(2),
- (b) while an application under that Article is pending, or
- (c) while an appeal in respect of an application under that Article is pending or may be brought.

(5) The High Court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.

(6) Chapter I of Part VIII does not apply to the voluntary arrangement.

(7) A reference in this Order or another statutory provision to a voluntary arrangement approved under this Part includes a reference to a voluntary arrangement which has effect by virtue of this Article.

### **Implementation**

**237E.** Article 237 shall apply to a voluntary arrangement which has effect by virtue of Article 237D(2) as it applies to a voluntary arrangement approved by a creditors' meeting.



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## Revocation

**237F.**—(1) The High Court may make an order revoking a voluntary arrangement which has effect by virtue of Article 237D(2) on the ground—

- (a) that it unfairly prejudices the interests of a creditor of the debtor, or
  - (b) that a material irregularity occurred in relation to the arrangements made under Article 237B(2).
- (2) An order under paragraph (1) may be made only on the application of—
- (a) the debtor,
  - (b) a person who was entitled to participate in the arrangements made under Article 237B(2),
  - (c) the trustee of the bankrupt's estate, or
  - (d) the official receiver.

(3) An application under paragraph (2) may not be made after the end of the period of 28 days beginning with the date on which the official receiver makes his report to the High Court under Article 237C.

(4) But a creditor who was not made aware of the arrangements under Article 237B(2) at the time when they were made may make an application under paragraph (2) during the period of 28 days beginning with the date on which he becomes aware of the voluntary arrangement.

## Offences

**237G.**—(1) Article 236A shall have effect in relation to obtaining approval to a proposal for a voluntary arrangement under Article 237D.

(2) Article 236B shall have effect in relation to a voluntary arrangement which has effect by virtue of Article 237D(2) (for which purposes the words “by a creditors' meeting summoned under Article 231” shall be disregarded).]

# PART IX BANKRUPTCY

## Modifications etc. (not altering text)

- C17** 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))

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## CHAPTER I BANKRUPTCY PETITIONS; BANKRUPTCY ORDERS

### *Preliminary*

#### **Who may present a bankruptcy petition**

**238.**—(1) A petition for a bankruptcy order (a bankruptcy petition) to be made against an individual may be presented to the High Court in accordance with the following provisions of this Part—

- (a) by one of the individual's creditors or jointly by more than one of them,
- (b) by the individual himself,
- [<sup>F262</sup>(ba) by a temporary administrator (within the meaning of Article 38 of the EC Regulation),
- (bb) 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,]
- (c) by the supervisor of, or any person (other than the individual) who is for the time being bound by, a voluntary arrangement proposed by the individual and approved under Part VIII,<sup>F263</sup> or
- <sup>F263</sup>(d) where, in the case of a solicitor, the Law Society of Northern Ireland have been appointed his attorney by virtue of Part III of the Solicitors (Northern Ireland) Order 1976<sup>F264</sup>, by that Society.

(2) Subject to those provisions, the High Court may make a bankruptcy order on any such petition.

**F262** SR 2002/334  
**F263** prosp. rep. by 2005 NI 10  
**F264** 1976 NI 12

#### **Conditions to be satisfied in respect of debtor**

**239.**—(1) A bankruptcy petition shall not be presented to the High Court under Article 238(1) (a) or (b) unless the debtor—

- (a) is domiciled in Northern Ireland,
  - (b) is personally present in Northern Ireland on the day on which the petition is presented, or
  - (c) at any time in the 3 years immediately preceding that day—
    - (i) has been ordinarily resident, or has had a place of residence, in Northern Ireland, or
    - (ii) has carried on business in Northern Ireland.
- (2) The reference in paragraph (1)(c) to an individual carrying on business includes—
- (a) the carrying on of business by a firm or partnership of which the individual is a member, and
  - (b) the carrying on of business by an agent or manager for the individual or for such a firm or partnership.

[<sup>F265</sup>(3) This Article is subject to Article 3 of the EC Regulation.]

**F265** SR 2002/334

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## **Other preliminary conditions**

**240.**—(1) Where a bankruptcy petition relating to an individual is presented by a person who is entitled to present a petition under 2 or more sub#paragraphs of Article 238(1), the petition is to be treated for the purposes of this Part as a petition under such one of those sub#paragraphs as may be specified in the petition.

(2) A bankruptcy petition shall not be withdrawn without the leave of the High Court.

(3) The High Court may, if it appears to it appropriate to do so on the grounds that there has been a contravention of the rules or for any other reason, dismiss a bankruptcy petition or stay proceedings on such a petition; and, where it stays proceedings on a petition, it may do so on such terms and conditions as it thinks fit.

### *Creditor's petition*

## **Grounds of creditor's petition**

**241.**—(1) A creditor's petition must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or (as the case may be) at least one of the debts is owed.

(2) Subject to Articles 242 to 244, a creditor's petition may be presented to the High Court in respect of a debt or debts only if, at the time the petition is presented—

- (a) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the bankruptcy level,
- (b) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain, future time, and is unsecured,
- (c) the debt, or each of the debts, is a debt which the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay, and
- (d) there is no outstanding application to set aside a statutory demand served (under Article 242) in respect of the debt or any of the debts.

(3) “The bankruptcy level” is £750; but the Department may by order subject to affirmative resolution substitute any amount specified in the order for that amount or (as the case may be) for the amount which by virtue of such an order is for the time being the amount of the bankruptcy level.

## **Definition of “inability to pay”, etc.; the statutory demand**

**242.**—(1) For the purposes of Article 241(2)(c), the debtor appears to be unable to pay a debt if, but only if, the debt is payable immediately and either—

- (a) the petitioning creditor to whom the debt is owed has served on the debtor a demand (known as “the statutory demand”) in the prescribed form requiring him to pay the debt or to secure or compound for it to the satisfaction of the creditor, at least 3 weeks have elapsed since the demand was served and the demand has been neither complied with nor set aside in accordance with the rules; or
- (b) a certificate of unenforceability has been granted under Article 19 of the Judgments Enforcement (Northern Ireland) Order 1981<sup>F266</sup> in respect of the debt on a judgment or order of any court in favour of the petitioning creditor, or one or more of the petitioning creditors to whom the debt is owed.

(2) For the purposes of Article 241(2)(c) the debtor appears to have no reasonable prospect of being able to pay a debt if, but only if, the debt is not immediately payable and—

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- (a) the petitioning creditor to whom it is owed has served on the debtor a demand (also known as “the statutory demand”) in the prescribed form requiring him to establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due,
- (b) at least 3 weeks have elapsed since the demand was served, and
- (c) the demand has been neither complied with nor set aside in accordance with the rules.

**F266** 1981 NI 6

### **Creditor with security**

**243.**—(1) A debt which is the debt, or one of the debts, in respect of which a creditor's petition is presented need not be unsecured if either—

- (a) the petition contains a statement by the person having the right to enforce the security that he is willing, in the event of a bankruptcy order being made, to give up his security for the benefit of all the bankrupt's creditors, or
- (b) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of the estimated value at the date of the petition of the security for the secured part of the debt.

(2) In a case falling within paragraph (1)(b) the secured and unsecured parts of the debt are to be treated for the purposes of Articles 241 to 244 as separate debts.

### **Expedited petition**

**244.** In the case of a creditor's petition presented wholly or partly in respect of a debt which is the subject of a statutory demand under Article 242, the petition may be presented before the expiration of the period of 3 weeks mentioned in that Article if there is a serious possibility that the debtor's property or the value of any of his property will be significantly diminished during that period and the petition contains a statement to that effect.

### **Proceedings on creditor's petition**

**245.**—(1) The High Court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either—

- (a) a debt which, having been payable at the date of the petition or having since become payable, has been neither paid nor secured or compounded for, or
- (b) a debt which the debtor has no reasonable prospect of being able to pay when it falls due.

(2) In a case in which the petition contains such a statement as is required by Article 244, the High Court shall not make a bankruptcy order within 3 weeks from the service of any statutory demand under Article 242.

(3) The High Court may dismiss the petition if it is satisfied that the debtor is able to pay all his debts or is satisfied—

- (a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented,
- (b) that the acceptance of that offer would have required the dismissal of the petition, and
- (c) that the offer has been unreasonably refused;

and, in determining for the purposes of this paragraph whether the debtor is able to pay all his debts, the Court shall take into account his contingent and prospective liabilities.

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(4) In determining for the purposes of this Article what constitutes a reasonable prospect that a debtor will be able to pay a debt when it falls due, it is to be assumed that the prospect given by the facts and other matters known to the creditor at the time he entered into the transaction resulting in the debt was a reasonable prospect.

(5) Nothing in Articles 241 to 244 and this Article prejudices the power of the High Court, in accordance with the rules, to authorise a creditor's petition to be amended by the omission of any creditor or debt and to be proceeded with as if things done for the purposes of those Articles and this Article had been done only by or in relation to the remaining creditors or debts.

### *Debtor's petition*

#### **Grounds of debtor's petition**

[<sup>F267</sup>246. A joint debtor's petition in Form 8 in Schedule 3 to the Insolvent Partnerships Order (Northern Ireland) 1991 may be presented to the High Court by individual members only on the grounds that the partnership is unable to pay its debts.]

F267 SR 1991/366

#### **Appointment of insolvency practitioner by the High Court**

247.—(1) Subject to Article 248, on the hearing of a debtor's petition the High Court shall not make a bankruptcy order if it appears to the Court—

- (a) that if a bankruptcy order were made the aggregate amount of the bankruptcy debts, so far as unsecured, would be less than the small bankruptcies level,
- (b) that if a bankruptcy order were made, the value of the bankrupt's estate would be equal to or more than the minimum amount,
- (c) that within the 5 years immediately preceding the presentation of the petition the debtor has neither been adjudged bankrupt nor made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs, and
- (d) that it would be appropriate to appoint a person to prepare a report under Article 248;

and in this paragraph “the minimum amount” and “the small bankruptcies level” mean such amounts as may for the time being be specified by order under Article 362(1)(b).

(2) Where on the hearing of the petition it appears to the High Court as mentioned in paragraph (1), the Court shall appoint a person who is qualified to act as an insolvency practitioner in relation to the debtor—

- (a) to prepare a report under Article 248, and
- (b) subject to Article 232(3), to act in relation to any voluntary arrangement to which the report relates either as trustee or otherwise for the purpose of supervising its implementation.

#### **Action on report of insolvency practitioner**

248.—(1) A person appointed under Article 247 shall inquire into the debtor's affairs and, within such period as the High Court may direct, shall submit a report to the Court stating whether the debtor is willing, for the purposes of Part VIII, to make a proposal for a voluntary arrangement.

(2) A report which states that the debtor is willing as is mentioned in paragraph (1) shall also state—

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- (a) whether, in the opinion of the person making the report, a meeting of the debtor's creditors should be summoned to consider the proposal, and
  - (b) if in that person's opinion such a meeting should be summoned, the date on which, and time and place at which, he proposes the meeting should be held.
- (3) On considering a report under this Article the High Court may—
- (a) without any application, make an interim order under Article 226, if it thinks that it is appropriate to do so for the purpose of facilitating the consideration and implementation of the debtor's proposal, or
  - (b) if it thinks it would be inappropriate to make such an order, make a bankruptcy order.
- (4) An interim order made by virtue of this Article ceases to have effect at the end of such period as the High Court may specify for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with the applicable provisions of Part VIII.
- (5) Where it has been reported to the High Court under this Article that a meeting of the debtor's creditors should be summoned, the person making the report shall, unless the Court otherwise directs, summon that meeting for the time, date and place proposed in his report; and the meeting is then deemed to have been summoned under Article 231, and paragraphs (2) and (3) of that Article, and Articles 232 to 237 apply accordingly.

VALID FROM 30/06/2011

**[<sup>F268</sup> Debtor who meets conditions for a debt relief order**

**248A.**—(1) This Article applies where, on the hearing of a debtor's petition—

- (a) it appears to the High Court that a debt relief order would be made in relation to the debtor if, instead of presenting the petition, he had made an application under Part 7A; and
- (b) the Court does not appoint an insolvency practitioner under Article 247.

(2) If the High Court thinks it would be in the debtor's interests to apply for a debt relief order instead of proceeding on the petition, the Court may refer the debtor to an approved intermediary (within the meaning of Part 7A) for the purposes of making an application for a debt relief order.

(3) Where a reference is made under paragraph (2) the High Court shall stay proceedings on the petition on such terms and conditions as it thinks fit; but if following the reference a debt relief order is made in relation to the debtor the Court shall dismiss the petition.]

**F268** Art. 248A inserted (30.6.2011) by [Debt Relief Act \(Northern Ireland\) 2010 \(c. 16\)](#), ss. 6, 7(1), [Sch. para. 4\(7\)](#); S.R. 2011/13, [art. 2](#)

**<sup>F269</sup> Summary administration**

**249.**—(1) Where on the hearing of a debtor's petition the High Court makes a bankruptcy order and the case is as specified in paragraph (2), the Court shall, if it appears to it appropriate to do so, issue a certificate for the summary administration of the bankrupt's estate.

(2) The case mentioned in paragraph (1) is where it appears to the High Court—

- (a) that if a bankruptcy order were made the aggregate amount of the bankruptcy debts so far as unsecured would be less than the small bankruptcies level (within the meaning of Article 247), and

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- (b) that within the 5 years immediately preceding the presentation of the petition the debtor has neither been adjudged bankrupt nor made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs,

whether the bankruptcy order is made because it does not appear to the Court as mentioned in Article 247(1)(b) or (d), or it is made because the Court thinks it would be inappropriate to make an interim order under Article 226.

(3) The High Court may at any time revoke a certificate issued under this Article if it appears to it that, on any grounds existing at the time the certificate was issued, the certificate ought not to have been issued.

**F269** prosp. rep. by [2005 NI 10](#)

*Other cases for special consideration*

**Default in connection with voluntary arrangement**

**250.**—(1) The High Court shall not make a bankruptcy order on a petition under Article 238(1)(c) (supervisor of, or person bound by, voluntary arrangement proposed and approved) unless it is satisfied—

- (a) that the debtor has failed to comply with his obligations under the voluntary arrangement, or
- (b) that information which was false or misleading in any material particular or which contained material omissions—
- (i) was contained in any statement of affairs or other document supplied by the debtor under Part VIII to any person, or
- (ii) was otherwise made available by the debtor to his creditors at or in connection with a meeting summoned under that Part, or
- (c) that the debtor has failed to do all such things as may for the purposes of the voluntary arrangement have been reasonably required of him by the supervisor of the arrangement.

(2) Where a bankruptcy order is made on a petition under Article 238(1)(c), any costs properly incurred as costs of the administration of the voluntary arrangement in question shall be a first charge on the bankrupt's estate.

<sup>F270</sup> **Petition in respect of a solicitor**

**251.**—(1) Subject to paragraph (2) and Article 240(3), the High Court may make a bankruptcy order on a petition under Article 238(1)(d) on production of an office copy of the order appointing the Law Society for Northern Ireland as the attorney of the solicitor on which the petition is based notwithstanding that the Society do not allege or prove that any debt is owing by the solicitor to the Society.

(2) The High Court may dismiss a petition under Article 238(1)(d) if it is satisfied that the solicitor is able to pay all his debts.

**F270** prosp. rep. by [2005 NI 10](#)

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### *Commencement and duration of bankruptcy; discharge*

#### **Commencement and continuance**

- 252.** The bankruptcy of an individual against whom a bankruptcy order has been made—
- (a) commences with the day on which the order is made, and
  - (b) continues until the individual is discharged under the following provisions of this Chapter.

#### **<sup>F271</sup>Duration**

- 253.**—(1) Subject to paragraph (2), a bankrupt is discharged from bankruptcy—
- (a) in the case of an individual who had been an undischarged bankrupt at any time within the 15 years immediately preceding the commencement of the bankruptcy, by an order of the High Court under Article 254; and
  - (b) in the case of an individual who is a solicitor and who is not an individual to whom sub# paragraph (a) applies, by an order of the Court under Article 254; and
  - (c) in any other case, by the expiration of the relevant period under this Article.
- (2) That period is as follows—
- (a) where a certificate for the summary administration of the bankrupt's estate has been issued and is not revoked before the bankrupt's discharge, the period of 2 years from the commencement of the bankruptcy, and
  - (b) in any other case, the period of 3 years from the commencement of the bankruptcy.
- (3) Where the High Court is satisfied on the application of the official receiver that an undischarged bankrupt in relation to whom paragraph (1)(c) applies has failed or is failing to comply with any of his obligations under this Part, the Court may order that the relevant period under this Article 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.
- (4) This Article is without prejudice to any power of the High Court to annul a bankruptcy order.

**F271** prosp. subst. by [2005 NI 10](#)

#### **<sup>F272</sup>Discharge by order of the High Court**

- 254.**—<sup>F272</sup>(1) An application for an order of the High Court discharging an individual from bankruptcy—
- (a) in a case falling within Article 253(1)(a), may be made by the bankrupt at any time after the expiration of 5 years from the commencement of the bankruptcy; and
  - (b) in a case falling within Article 253(1)(b), may be made by the bankrupt at any time.
- (2) On an application under this Article the High Court may—
- (a) refuse to discharge the bankrupt from bankruptcy,
  - (b) make an order discharging him absolutely, or
  - (c) make an order discharging him subject to such conditions with respect to any income which may subsequently become due to him, or with respect to property devolving upon him, or acquired by him, after his discharge, as may be specified in the order.
- (3) The High Court may provide for an order falling within paragraph (2)(b) or (c) to have immediate effect or to have its effect suspended for such period, or until the fulfilment of such



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conditions (including a condition requiring the Court to be satisfied as to any matter), as may be specified in the order.

F272 prosp. subst. by 2005 NI 10

### Effect of discharge

**255.**—(1) Subject to the following provisions of this Article, where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts, but has no effect—

- (a) on the functions (so far as they remain to be carried out) of the trustee of his estate, or
- (b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Part;

and, in particular, discharge does not affect the right of any creditor of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released.

(2) Discharge does not affect the right of any secured creditor of the bankrupt to enforce his security for the payment of a debt from which the bankrupt is released.

(3) Discharge does not release the bankrupt from any bankruptcy debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was a party.

(4) Discharge does not release the bankrupt from any liability in respect of a fine imposed for an offence or from any liability under a recognisance except, in the case of a penalty imposed for an offence under a statutory provision relating to the public revenue or of a recognisance, with the consent of the Treasury.

[<sup>F273</sup>(4A) In paragraph (4) the reference to a fine includes a reference to a confiscation order under Part 2, 3 or 4 of the Proceeds of Crime Act 2002.]

(5) Discharge does not, except to such extent and on such conditions as the High Court may direct, release the bankrupt from any bankruptcy debt which—

- (a) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, or to pay damages by virtue of Part II of the Consumer Protection (Northern Ireland) Order 1987<sup>F274</sup>, being in either case damages in respect of personal injuries to any person, or
- (b) arises under any order made in family proceedings or in domestic proceedings<sup>[<sup>F275</sup> or under a maintenance assessment made under the Child Support (Northern Ireland) Order 1991]</sup>.

(6) Discharge does not release the bankrupt from such other bankruptcy debts, not being debts provable in his bankruptcy, as are prescribed.

(7) Discharge does not release any person other than the bankrupt from any liability (whether as partner or co-trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in the nature of such a surety.

(8) In this Article—

“domestic proceedings” means domestic proceedings within the meaning of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F276</sup>;

[<sup>F277</sup>“family proceedings” has the meaning given by Article 12(5) of the Family Law (Northern Ireland) Order 1993;]

“fine” includes any pecuniary penalty, pecuniary forfeiture or pecuniary compensation payable on a conviction; and

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“personal injuries” includes death and any disease or other impairment of a person's physical or mental condition.

F273 2002 c. 29  
 F274 1987 NI 20  
 F275 1991 NI 23  
 F276 1981 NI 26  
 F277 1995 NI 2

F278

F278 prosp. insertion by 2005 NI 10

### Power of High Court to annul bankruptcy order

256.—(1) The High Court may annul a bankruptcy order if it at any time appears to the Court—

- (a) that, on any grounds existing at the time the order was made, the order ought not to have been made, or
- (b) that, to the extent required by the rules, the bankruptcy debts and the expenses of the bankruptcy have all, since the making of the order, been either paid or secured for to the satisfaction of the Court.

(2) The High Court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.

<sup>F279</sup>(3) The High Court shall annul a bankruptcy order made on a petition under Article 238(1)(d) if it at any time appears to the Court that the order appointing the Law Society of Northern Ireland as attorney for the solicitor has been rescinded in consequence of an appeal.

(4) Where the High Court annuls a bankruptcy order (whether under this Article or under Article 235<sup>F280</sup>)—

- (a) any sale or other disposition of property, payment made or other thing duly done, under any provision in Parts VIII to X, by or under the authority of the official receiver or a trustee of the bankrupt's estate or by the Court is valid, but
- (b) if any of the bankrupt's estate is then vested, under any such provision, in such a trustee, it shall vest in such person as the Court may appoint or, in default of any such appointment, revert to the bankrupt on such terms (if any) as the Court may direct;

and the Court may include in its order such supplemental provisions as may be authorised by the rules.

<sup>F279</sup>(5) In determining for the purposes of Article 253 whether a person was an undischarged bankrupt at any time, any time when he was a bankrupt by virtue of an order that was subsequently annulled is to be disregarded.

F279 prosp. rep. by 2005 NI 10  
 F280 prosp. insertion by 2005 NI 10

## CHAPTER II

### PROTECTION OF BANKRUPT'S ESTATE AND INVESTIGATION OF HIS AFFAIRS

F281F282F283

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- F281** prosp. insertion by [2005 NI 10](#)  
**F282** mod. of art. 256A by [2005 NI 10](#) - the insertion of art. 256A is prosp. (until 27.03.06)  
**F283** prosp. (until 27.03.06) amendment of art. 256A by [2005 NI 10](#) - the insertion of art. 256A is prosp. (until 27.03.06)

### Restrictions on dispositions of property

**257.**—(1) Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this Article applies is void except to the extent that it is or was made with the consent of the High Court, or is or was subsequently ratified by the Court.

(2) Paragraph (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that paragraph, the person paid shall hold the sum paid for the bankrupt as part of his estate.

(3) This Article applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting, under Articles 278 to 308, of the bankrupt's estate in a trustee.

- (4) The preceding provisions of this Article do not give a remedy against any person—
- (a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the petition had been presented, or
  - (b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this paragraph, no remedy.

(5) Where after the commencement of his bankruptcy the bankrupt has incurred a debt to a banker or other person by reason of the making of a payment which is void under this Article, that debt is deemed for the purposes of any of Parts VIII to X to have been incurred before the commencement of the bankruptcy unless—

- (a) that banker or person had notice of the bankruptcy before the debt was incurred, or
- (b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.

(6) A disposition of property is void under this Article notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate; but nothing in this Article affects any disposition made by a person of property held by him on trust for any other person.

### Modifications etc. (not altering text)

- C18** Art. 257 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)**

### Restriction on proceedings and remedies

**258.**—(1) At any time when proceedings on a bankruptcy petition are pending or an individual has been adjudged bankrupt the High Court may stay any action, proceedings, execution or other legal process against the property or person of the debtor or, as the case may be, of the bankrupt.

(2) Any court in which proceedings are pending against any individual may, on proof that a bankruptcy petition has been presented in respect of that individual or that he is an undischarged bankrupt, either stay the proceedings or allow them to continue on such terms as it thinks fit.

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(3) Subject to paragraph (4) and to Part VI of the Judgments Enforcement (Northern Ireland) Order 1981<sup>F284</sup> after the making of a bankruptcy order no person who is a creditor of the bankrupt in respect of a debt provable in the bankruptcy shall—

- (a) have any remedy against the property or person of the bankrupt in respect of that debt, or
- (b) before the discharge of the bankrupt, commence any action or other legal proceedings against the bankrupt except with the leave of the High Court and on such terms as the Court may impose.

(4) Nothing in Parts VIII to X affects any right of distress against property comprised in a bankrupt's estate and such right is exercisable notwithstanding that the property has vested in the trustee.

(5) Subject to paragraphs (6) and (7), paragraph (3) does not affect the right of a secured creditor of the bankrupt to enforce his security.

(6) Where any goods of an undischarged bankrupt are held by any person by way of pledge, pawn or other security, the official receiver may, after giving notice in writing of his intention to do so, inspect the goods.

(7) Where a notice such as is mentioned in paragraph (6) has been given to any person, that person is not entitled, without leave of the High Court, to realise his security unless he has given the trustee of the bankrupt's estate a reasonable opportunity of inspecting the goods and of exercising the bankrupt's right of redemption.

(8) References in this Article to the property or goods of the bankrupt are to any of his property or goods, whether or not comprised in his estate.

**F284** 1981 NI 6

### **Power to appoint interim receiver**

**259.**—(1) The High Court may, if it is shown to be necessary for the protection of the debtor's property, at any time after the presentation of a bankruptcy petition and before making a bankruptcy order, appoint the official receiver to be interim receiver of the debtor's property.

(2) Where the High Court has, on a debtor's petition, appointed an insolvency practitioner under Article 247 and it is shown to the Court as mentioned in paragraph (1) of this Article, the Court may, without making a bankruptcy order, appoint that practitioner, instead of the official receiver, to be interim receiver of the debtor's property.

(3) The High Court may by an order appointing any person to be an interim receiver direct that his powers shall be limited or restricted in any respect; but, save as so directed, an interim receiver has, in relation to the debtor's property, all the rights, powers, duties and immunities of a receiver and manager under Article 260.

(4) An order of the High Court appointing any person to be an interim receiver shall require that person to take immediate possession of the debtor's property or, as the case may be, the part of it to which his powers as interim receiver are limited.

(5) Where an interim receiver has been appointed, the debtor shall give him such inventory of his property and such other information, and shall attend on the interim receiver at such times, as the latter may for the purpose of carrying out his functions under this Article reasonably require.

(6) Where an interim receiver is appointed, Article 258(3) applies for the period between the appointment and the making of a bankruptcy order on the petition, or the dismissal of the petition, as if the appointment were the making of such an order.

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(7) A person ceases to be interim receiver of a debtor's property if the bankruptcy petition relating to the debtor is dismissed, if a bankruptcy order is made on the petition or if the High Court by order otherwise terminates the appointment.

(8) References in this Article to the debtor's property are to all his property, whether or not it would be comprised in his estate if he were adjudged bankrupt.

### **Receivership pending appointment of trustee**

**260.**—(1) Between the making of a bankruptcy order and the time at which the bankrupt's estate vests in a trustee under Articles 278 to 308, the official receiver is the receiver and (subject to Article 341 (special manager)) the manager of the bankrupt's estate and is under a duty to act as such.

(2) The function of the official receiver while acting as receiver or manager of the bankrupt's estate under this Article is to protect the estate; and for this purpose—

- (a) he has the same powers as if he were a receiver or manager appointed by the High Court, and
- (b) he is entitled to sell or otherwise dispose of any perishable goods comprised in the estate and any other goods so comprised the value of which is likely to diminish if they are not disposed of.

(3) The official receiver while acting as receiver or manager of the estate under this Article—

- (a) shall take all such steps as he thinks fit for protecting any property which may be claimed for the estate by the trustee of that estate,
- (b) is not, except in pursuance of directions given by the Department, required to do anything that involves his incurring expenditure,
- (c) may, if he thinks fit (and shall, if so directed by the High Court) at any time summon a general meeting of the bankrupt's creditors.

(4) Where—

- (a) the official receiver acting as receiver or manager of the estate under this Article seizes or disposes of any property which is not comprised in the estate, and
- (b) at the time of the seizure or disposal the official receiver believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property,

the official receiver is not to be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by his negligence; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

(5) This Article does not apply where by virtue of Article 270 (appointment of trustee; special cases) the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.

### **Statement of affairs**

**261** <sup>F285</sup>.—(1) Where a bankruptcy order has been made otherwise than on a debtor's petition, the bankrupt shall submit a statement of his affairs to the official receiver within 21 days from the commencement of the bankruptcy.

(2) The statement of affairs shall contain—

- (a) such particulars of the bankrupt's creditors and of his debts and other liabilities and of his assets as may be prescribed, and
- (b) such other information as may be prescribed.

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- (3) The official receiver may, if he thinks fit—
- (a) release the bankrupt from his duty under paragraph (1), or
  - (b) extend the period specified in paragraph (1);

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

- (4) A bankrupt who—
- (a) without reasonable excuse fails to comply with the obligation imposed by this Article, or
  - (b) without reasonable excuse submits a statement of affairs that does not comply with the prescribed requirements,

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).

**F285** mod. by SR 1991/365

#### <sup>F286</sup>**Investigatory duties of official receiver**

**262.**—(1) Subject to paragraph (5), it is the duty of the official receiver to investigate the conduct and affairs of every bankrupt and to make such report (if any) to the High Court as he thinks fit.

(2) Where an application is made by the bankrupt under Article 254 for his discharge from bankruptcy, the official receiver shall make a report to the High Court with respect to the prescribed matters; and the Court shall consider that report before determining what order (if any) to make under that Article.

(3) A report by the official receiver under this Article shall, in any proceedings, be prima facie evidence of the facts stated in it.

(4) In paragraph (1) the reference to the conduct and affairs of a bankrupt includes his conduct and affairs before the making of the order by which he was adjudged bankrupt.

(5) Where a certificate for the summary administration of the bankrupt's estate is for the time being in force, the official receiver shall carry out an investigation under paragraph (1) only if he thinks fit.

**F286** prosp. subst. by 2005 NI 10

#### **Public examination of bankrupt**

**263.**—(1) Where a bankruptcy order has been made, the official receiver may at any time before the discharge of the bankrupt apply to the High Court for the public examination of the bankrupt.

(2) Unless the High Court otherwise orders, the official receiver shall make an application under paragraph (1) if notice requiring him to do so is given to him, in accordance with the rules, by one of the bankrupt's creditors with the concurrence of not less than one-half, in value, of those creditors (including the creditor giving notice).

(3) On an application under paragraph (1), the High Court shall direct that a public examination of the bankrupt shall be held on a day appointed by the Court; and the bankrupt shall attend on that day and be publicly examined as to his affairs, dealings and property.

(4) The following may take part in the public examination of the bankrupt and may question him concerning his affairs, dealings and property and the causes of his failure, namely—

- (a) the official receiver,

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- (b) the trustee of the bankrupt's estate, if his appointment has taken effect,
- (c) any person who has been appointed as special manager of the bankrupt's estate or business,
- (d) any creditor of the bankrupt who has tendered a proof in the bankruptcy.

(5) If a bankrupt without reasonable excuse fails at any time to attend his public examination under this Article 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).

### **Duties of bankrupt in relation to official receiver**

**264.**—(1) Where a bankruptcy order has been made, the bankrupt is under a duty—

- (a) to deliver possession of his estate to the official receiver, and
- (b) to deliver up to the official receiver all books, papers and other records of which he has possession or control and which relate to his estate and affairs (including any which would be privileged from disclosure in any proceedings).

(2) In the case of any part of the bankrupt's estate which consists of things possession of which cannot be delivered to the official receiver, and in the case of any property that may be claimed for the bankrupt's estate by the trustee, it is the bankrupt's duty to do all such things as may reasonably be required by the official receiver for the protection of those things or that property.

(3) Paragraphs (1) and (2) do not apply where by virtue of Article 270 the bankrupt's estate vests in a trustee immediately on the making of the bankruptcy order.

<sup>F287</sup>(4) The bankrupt shall give the official receiver such inventory of his estate and such other information, and shall attend on the official receiver at such times, as the official receiver may for any of the purposes of this Chapter reasonably require.

(5) Paragraph (4) applies to a bankrupt after his discharge.

(6) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this Article, 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).

**F287** prosp. subst. by [2005 NI 10](#)

## CHAPTER III

### TRUSTEES IN BANKRUPTCY

#### *Tenure of office as trustee*

### **Power to make appointments**

**265.**—(1) The power to appoint a person as trustee of a bankrupt's estate (whether the first such trustee or a trustee appointed to fill any vacancy) is exercisable—

- (a) <sup>F288</sup>except at a time when a certificate for the summary administration of the bankrupt's estate is in force, by a general meeting of the bankrupt's creditors;
- (b) under Articles 268(2), 269(2) or 273(6) by the Department; or
- (c) under Article 270, by the High Court.

(2) No person may be appointed as trustee of a bankrupt's estate unless he is, at the time of the appointment, qualified to act as an insolvency practitioner in relation to the bankrupt.

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(3) Any power to appoint a person as trustee of a bankrupt's estate includes power to appoint 2 or more persons as joint trustees; but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

(4) Subject to paragraph (5), the appointment of any person as trustee takes effect at the time specified in his certificate of appointment.

(5) The appointment of any person as trustee takes effect only if that person accepts the appointment in accordance with the rules.

(6) This Article is without prejudice to the provisions of this Chapter under which the official receiver is, in certain circumstances, to be trustee of the estate.

**F288** prosp. rep. by [2005 NI 10](#)

### Summoning of meeting to appoint first trustee

**266.**—(1) Subject to Articles 267(3) and 270(5), where a bankruptcy order has been made<sup>F289</sup> and no certificate for the summary administration of the bankrupt's estate has been issued, the official receiver shall, as soon as practicable within the 12 weeks from the day on which the order was made, decide whether to summon a general meeting of the bankrupt's creditors for the purpose of appointing a trustee of the bankrupt's estate.

(2) Subject to Article 267, if the official receiver decides not to summon such a meeting, he shall, before the expiration of the period of 12 weeks mentioned in paragraph (1), give notice of his decision to the High Court and to every creditor of the bankrupt who is known to the official receiver or is identified in the bankrupt's statement of affairs.

(3) As from the giving to the High Court of a notice under paragraph (2), the official receiver is the trustee of the bankrupt's estate.

**F289** prosp. rep. by [2005 NI 10](#)

### Power of creditors to requisition meeting

**267.**—(1) Where in the case of any bankruptcy—

(a) the official receiver has not yet summoned, or has decided not to summon, a general meeting of the bankrupt's creditors for the purpose of appointing the trustee,<sup>F290</sup> and

<sup>F290</sup>(b) a certificate for the summary administration of the estate is not for the time being in force, any creditor of the bankrupt may request the official receiver to summon such a meeting for that purpose.

(2) If such a request appears to the official receiver to be made with the concurrence of not less than one-quarter, in value, of the bankrupt's creditors (including the creditor making the request), the official receiver shall summon the requested meeting.

(3) Accordingly, where the duty imposed by paragraph (2) has arisen, the official receiver is required neither to reach a decision for the purposes of Article 266(1) nor (if he has reached one) to serve any notice under Article 266(2).

**F290** prosp. rep. by [2005 NI 10](#)



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### **Failure of meeting to appoint trustee**

**268.**—(1) If a meeting summoned under Article 266 or 267 is held but no appointment of a person as trustee is made, the official receiver shall decide whether to refer the need for an appointment to the Department.

(2) On a reference made in pursuance of that decision, the Department shall either make an appointment or decline to make one.

(3) If—

- (a) the official receiver decides not to refer the need for an appointment to the Department, or
- (b) on such a reference the Department declines to make an appointment,

the official receiver shall give notice of his decision or, as the case may be, of the Department's decision to the High Court.

(4) As from the giving of notice under paragraph (3) in a case in which no notice has been given under Article 266(2), the official receiver shall be trustee of the bankrupt's estate.

### **Appointment of trustee by Department**

**269.**—(1) At any time when the official receiver is the trustee of a bankrupt's estate by virtue of any provision of this Chapter he may apply to the Department for the appointment of a person as trustee instead of the official receiver.

(2) On an application under paragraph (1) the Department shall either make an appointment or decline to make one.

(3) Such an application may be made notwithstanding that the Department has declined to make an appointment either on a previous application under paragraph (1) or on a reference under Article 268 or under Article 273(4).

(4) Where the trustee of a bankrupt's estate has been appointed by the Department (whether under this Article or otherwise), the trustee shall give notice to the bankrupt's creditors of his appointment or, if the High Court so allows, shall advertise his appointment in accordance with the Court's directions.

(5) In that notice or advertisement the trustee shall—

- (a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditors' committee under Article 274, and
- (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

### **Special cases**

**270.**—<sup>F291</sup>(1) Subject to paragraph (2), where the High Court issues a certificate for the summary administration of a bankrupt's estate, the official receiver shall, as from the issue of that certificate, be the trustee.

<sup>F291</sup>(2) Where such a certificate is issued or is in force, the High Court may, if it thinks fit, appoint a person other than the official receiver as trustee.

(3) Where a bankruptcy order is made in a case in which an insolvency practitioner's report has been submitted to the High Court under Article 248<sup>F291</sup> but no certificate for the summary administration of the estate is issued, the Court, if it thinks fit, may on making the order appoint the person who made the report as trustee.

(4) Where a bankruptcy order is made (whether or not on a petition under Article 238(1)(c)) at a time when there is a supervisor of a voluntary arrangement approved in relation to the bankrupt

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under Part VIII, the High Court, if it thinks fit, may on making the order appoint the supervisor of the arrangement as trustee.

(5) Where an appointment is made under paragraph (3) or (4), the official receiver is not under the duty imposed by Article 266(1) (to decide whether or not to summon a meeting of creditors).

(6) Where the trustee of a bankrupt's estate has been appointed by the High Court, the trustee shall give notice to the bankrupt's creditors of his appointment or, if the Court so allows, shall advertise his appointment in accordance with the directions of the Court.

(7) In that notice or advertisement he shall—

- (a) state whether he proposes to summon a general meeting of the bankrupt's creditors for the purpose of establishing a creditors' committee under Article 274, and
- (b) if he does not propose to summon such a meeting, set out the power of the creditors under this Part to require him to summon one.

**F291** prosp. rep. by [2005 NI 10](#)

#### **Removal of trustee; vacation of office**

**271.**—(1) Subject to paragraph (4), the trustee of a bankrupt's estate may be removed from office only by an order of the High Court or by a general meeting of the bankrupt's creditors summoned specially for that purpose in accordance with the rules.

<sup>F292</sup>(2) A general meeting of the bankrupt's creditors shall not be held for the purpose of removing the trustee at any time when a certificate for the summary administration of the estate is in force.

(3) Where the official receiver is trustee by virtue of Article 266(3) or 268(4) or a trustee is appointed by the Department or (otherwise than under Article 270(4)) by the High Court, a general meeting of the bankrupt's creditors shall be summoned for the purpose of replacing the trustee only if—

- (a) the trustee thinks fit, or
- (b) the High Court so directs, or
- (c) the meeting is requested by one of the bankrupt's creditors with the concurrence of not less than one-quarter, in value, of the creditors (including the creditor making the request).

(4) If the trustee was appointed by the Department, he may be removed by a direction of the Department.

(5) The trustee (not being the official receiver) shall vacate office if he ceases to be a person who is for the time being qualified to act as an insolvency practitioner in relation to the bankrupt.

(6) The trustee may, in the prescribed circumstances, resign his office by giving notice of his resignation to the High Court.

(7) The trustee shall vacate office on giving notice to the High Court that a final meeting has been held under Article 304 and of the decision (if any) of that meeting.

(8) The trustee shall vacate office if the bankruptcy order is annulled.

**F292** prosp. rep. by [2005 NI 10](#)

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## Release of trustee

**272.**—(1) Where the official receiver has ceased to be the trustee of a bankrupt's estate and a person is appointed in his stead, the official receiver shall have his release with effect from the following time, that is to say—

- (a) where that person is appointed by a general meeting of the bankrupt's creditors or by the Department, the time at which the official receiver gives notice to the High Court that he has been replaced, and
- (b) where that person is appointed by the High Court, such time as the Court may determine.

(2) If the official receiver while he is the trustee gives notice to the Department that the administration of the bankrupt's estate in accordance with Chapter IV is for practical purposes complete, he shall have his release with effect from such time as the Department may determine.

(3) A person other than the official receiver who has ceased to be the trustee shall have 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 the bankrupt's 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 the bankrupt's creditors that has resolved against his release, or by the High Court, or by the Department, or who has vacated office under Article 271(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 271(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 the person vacated office.

(4) Where a bankruptcy order is annulled, the trustee at the time of the annulment has his release with effect from such time as the High Court may determine.

(5) Where the official receiver or the trustee has his release under this Article, he shall, with effect from the time specified in paragraphs (1) to (4), be discharged from all liability both in respect of acts or omissions of his in the administration of the estate and otherwise in relation to his conduct as trustee.

(6) 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 277.

## Vacancy in office of trustee

**273.**—(1) This Article applies where the appointment of any person as trustee of a bankrupt's estate fails to take effect or, such an appointment having taken effect, there is otherwise a vacancy in the office of trustee.

(2) The official receiver shall be trustee until the vacancy is filled.

(3) The official receiver may summon a general meeting of the bankrupt's creditors for the purpose of filling the vacancy and shall summon such a meeting if required to do so in pursuance of Article 287(9) (creditors' requisition).

(4) If at the expiration of 28 days from the day on which the vacancy first came to the official receiver's attention he has not summoned, and is not proposing to summon, a general meeting of

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creditors for the purpose of filling the vacancy, he shall refer the need for an appointment to the Department.

<sup>F293</sup>(5) Where a certificate for the summary administration of the estate is for the time being in force—

- (a) the official receiver may refer the need to fill any vacancy to the High Court or, if the vacancy arises because a person appointed by the Department has ceased to hold office, to the High Court or the Department, and
- (b) paragraphs (3) and (4) do not apply.

(6) On a reference to the Department under paragraph (4)<sup>F293</sup> or (5) the Department shall either make an appointment or decline to make one.

(7) If on a reference under paragraph (4)<sup>F293</sup> or (5) no appointment is made, the official receiver shall continue to be trustee of the bankrupt's estate, but without prejudice to his power to make a further reference.

(8) References in this Article to a vacancy include a case where it is necessary, in relation to any property which is or may be comprised in a bankrupt's estate, to revive the trusteeship of that estate after the holding of a final meeting summoned under Article 304 or the giving by the official receiver of notice under Article 272(2).

**F293** prosp. rep. by [2005 NI 10](#)

### *Control of trustee*

#### **Creditors' committee**

**274.**—(1) Subject to paragraph (2), a general meeting of a bankrupt's creditors (whether summoned under the preceding provisions of this Chapter or otherwise) may, in accordance with the rules, establish a committee (“the creditors' committee”) to exercise the functions conferred on it by or under this Order.

(2) A general meeting of the bankrupt's creditors shall not establish such a committee, or confer any functions on such a committee, at any time when the official receiver is the trustee of the bankrupt's estate, except in connection with an appointment made by that meeting of a person to be trustee instead of the official receiver.

#### **Exercise by Department of functions of creditors' committee**

**275.**—(1) The creditors' committee is not to be able or required to carry out its functions at any time when the official receiver is trustee of the bankrupt's estate; but at any such time the functions of the committee under this Order shall be vested in the Department, except to the extent that the rules otherwise provide.

(2) Where in the case of any bankruptcy there is for the time being no creditors' committee and the trustee of the bankrupt's estate is a person other than the official receiver, the functions of such a committee shall be vested in the Department, except to the extent that the rules otherwise provide.

#### **General control of trustee by the High Court**

**276.**—(1) If a bankrupt or any of his creditors or any other person is dissatisfied by any act, omission or decision of a trustee of the bankrupt's estate, he may apply to the High Court; and on such an application the Court may confirm, reverse or modify any act or decision of the trustee, may give him directions or may make such other order as it thinks fit.

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(2) The trustee of a bankrupt's estate may apply to the High Court for directions in relation to any particular matter arising under the bankruptcy.

[<sup>F294</sup>(2A) Where at any time after a bankruptcy petition has been presented to the High Court against any person, whether under 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.

(2B) Where a bankruptcy petition has been presented against more than one individual in the circumstances mentioned in paragraph (2A), the High Court may give such directions for consolidating the proceedings, or any of them, as it thinks just.

(2C) Any order or directions under paragraph (2A) or (2B) 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.]

F294 SR 1995/225

### Liability of trustee

277.—(1) Where on an application under this Article the High Court is satisfied—

- (a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate, or
- (b) that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his functions,

the Court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other property (together with interest at such rate as the Court thinks just) or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court thinks just.

(2) Paragraph (1) is without prejudice to any liability arising apart from this Article.

(3) An application under this Article may be made by the official receiver, the Department, a creditor of the bankrupt or (whether or not there is, or is likely to be, a surplus for the purposes of Article 303(5) (final distribution)) the bankrupt himself.

(4) Where an application under paragraph (3) is to be made by the bankrupt or if it is to be made after the trustee has had his release under Article 272, the leave of the High Court is required for the making of the application.

(5) Where—

- (a) the trustee seizes or disposes of any property which is not comprised in the bankrupt's estate, and
- (b) at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property,

the trustee is not liable to any person (whether under this Article or otherwise) in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the negligence of the trustee; and he has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

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## CHAPTER IV ADMINISTRATION BY TRUSTEE

### *Preliminary*

#### **General functions of trustee**

**278.**—(1) This Chapter applies in relation to any bankruptcy where either—

- (a) the appointment of a person as trustee of a bankrupt's estate takes effect, or
- (b) the official receiver becomes trustee of a bankrupt's estate.

(2) The function of the trustee is to get in, realise and distribute the bankrupt's estate in accordance with the following provisions of this Chapter; and in the carrying out of that function and in the management of the bankrupt's estate the trustee is entitled, subject to those provisions, to use his own discretion.

(3) It is the duty of the trustee, 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 purpose of enabling him to carry out his functions in relation to the bankruptcy.

(4) The official name of the trustee shall be “the trustee of the estate of a bankrupt” (inserting the name of the bankrupt); but he may be referred to as “the trustee in bankruptcy” of the particular bankrupt.

### *Acquisition, control and realisation of bankrupt's estate*

#### **Vesting of bankrupt's estate in trustee**

**279.**—(1) The bankrupt's estate shall vest in the trustee immediately on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

(2) Where any property which is, or is to be, comprised in the bankrupt's estate vests in the trustee (whether under this Article or under any other provision of this Part), it shall so vest without any conveyance, assignment or transfer.

#### **Property subject to restraint order**

<sup>[F295]</sup>**279A.**—(1) This Article applies where—

- (a) property is excluded from the bankrupt's estate by virtue of section 423(2)(a) of the Proceeds of Crime Act 2002 (property subject to a restraint order),
- (b) an order under section 50, 52, 128, 198 or 200 of that Act has not been made in respect of the property, and
- (c) the restraint order is discharged.

(2) On the discharge of the restraint order the property vests in the trustee as part of the bankrupt's estate.

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(3) But paragraph (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).]

F295 2002 c. 29

VALID FROM 01/06/2015

[<sup>F295</sup>[<sup>F296</sup>**Property released from detention**

**279AA.**—(1) This Article applies where—

- (a) property is excluded from the bankrupt's estate by virtue of section 423(2)(b) of the Proceeds of Crime Act 2002 (property detained under certain provisions),
  - (b) no order is in force in respect of the property under section 41, 50, 120, 128, 190 or 198 of that Act, and
  - (c) the property is released.
- (2) The property vests in the trustee as part of the bankrupt's estate.]

F295 2002 c. 29

F296 Art. 279AA inserted (prosp.) by Policing and Crime Act 2009 (c. 26), ss. 112(1), 116(1), Sch. 7 para. 61

[<sup>F295</sup>**Property in respect of which receivership or administration order made**

**279B.**—(1) This Article applies where—

- (a) property is excluded from the bankrupt's estate by virtue of section 423(2)(b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which an order for the appointment of a receiver or administrator under certain provisions of that Act is in force),
  - (b) a confiscation order is made under section 6, 92 or 156 of that Act,
  - (c) the amount payable under the confiscation order is fully paid, and
  - (d) any of the property remains in the hands of the receiver or administrator (as the case may be).
- (2) The property vests in the trustee as part of the bankrupt's estate.

F295 2002 c. 29

VALID FROM 01/06/2015

[<sup>F297</sup>**Property in respect of which realisation order made**

**279BA.**—(1) This Article applies where—

- (a) property is excluded from the bankrupt's estate by virtue of section 423(2)(d) of the Proceeds of Crime Act 2002 (property in respect of which an order has been made authorising realisation of the property by an appropriate officer),

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- (b) a confiscation order is made under section 6, 92 or 156 of that Act,
  - (c) the amount payable under the confiscation order is fully paid, and
  - (d) any of the property remains in the hands of the appropriate officer.
- (2) The property vests in the trustee as part of the bankrupt's estate.]]

**F295** 2002 c. 29

**F297** Art. 279BA inserted (prosp.) by Policing and Crime Act 2009 (c. 26), ss. 112(1), 116(1), Sch. 7 para. 63

### Property subject to certain orders where confiscation order discharged or quashed

**279C.**—(1) This Article applies where—

- (a) property is excluded from the bankrupt's estate by virtue of section 423(2)(a), (b), (c) or (d) of the Proceeds of Crime Act 2002 (property in respect of which a restraint order or an order for the appointment of a receiver or administrator under that Act is in force),
- (b) a confiscation order is made under section 6, 92 or 156 of that Act, and
- (c) the confiscation order is discharged under section 30, 114 or 180 of that Act (as the case may be) or quashed under that Act or in pursuance of any enactment relating to appeals against conviction or sentence.

(2) Any such property in the hands of a receiver appointed under Part 2 or 4 of that Act or an administrator appointed under Part 3 of that Act vests in the trustee as part of the bankrupt's estate.

(3) But paragraph (2) does not apply to the proceeds of property realised by a management receiver under section 49(2)(d) or 197(2)(d) of that Act (realisation of property to meet receiver's remuneration and expenses).]

**F295** 2002 c. 29

### After#acquired property

**280.**—(1) Subject to this Article and Article 282, the trustee may by notice in writing claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt since the commencement of the bankruptcy.

(2) A notice under this Article shall not be served in respect of—

- (a) any property falling within paragraph (2) or (3) of Article 11,
- <sup>F298</sup>(b) any property which by virtue of any other statutory provision is excluded from the bankrupt's estate, or
- (c) without prejudice to Article 254(2)(c) (order of High Court on application for discharge), any property which is acquired by, or devolves upon, the bankrupt after his discharge.

(3) Subject to paragraph (4), upon the service on the bankrupt of a notice under this Article the property to which the notice relates shall vest in the trustee as part of the bankrupt's estate; and the trustee's title to that property has relation back to the time at which the property was acquired by, or devolved upon, the bankrupt.

(4) Where, whether before or after service of a notice under this Article—

- (a) a person acquires property in good faith, for value and without notice of the bankruptcy, or
- (b) a banker enters into a transaction in good faith and without such notice,



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the trustee is not in respect of that property or transaction entitled by virtue of this Article to any remedy against that person or banker, or any person whose title to any property derives from that person or banker.

(5) References in this Article to property do not include any property which, as part of the bankrupt's income, may be the subject of an income payments order under Article 283.

**F298** prosp. insertion by [2005 NI 10](#)

### **Vesting in trustee of certain items of excess value**

**281.**—(1) Subject to Article 282, where—

- (a) property is excluded by virtue of Article 11(2) (tools of trade, household effects, etc.) from the bankrupt's estate, and
- (b) it appears to the trustee that the realisable value of the whole or any part of that property exceeds the cost of a reasonable replacement for that property or that part of it,

the trustee may by notice in writing claim that property or, as the case may be, that part of it for the bankrupt's estate.

(2) Upon the service on the bankrupt of a notice under this Article, the property to which the notice relates vests in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that property has relation back to the commencement of the bankruptcy.

(3) The trustee shall apply funds comprised in the estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any property vested in the trustee under this Article; and the duty imposed by this paragraph has priority over the obligation of the trustee to distribute the estate.

(4) For the purposes of this Article property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

### **Time#limit for notice under Article 280 or 281**

**282.**—(1) Except with the leave of the High Court, a notice shall not be served—

- (a) under Article 280, after the expiration of 42 days from the day on which it first came to the knowledge of the trustee that the property in question had been acquired by, or had devolved upon, the bankrupt;
- (b) under Article 281, after the expiration of 42 days from the day on which the property in question first came to the knowledge of the trustee.

(2) For the purposes of this Article—

- (a) anything which comes to the knowledge of the trustee is deemed in relation to any successor of his as trustee to have come to the knowledge of the successor at the same time; and
- (b) anything which comes (otherwise than under sub#paragraph (a)) to the knowledge of a person before he is the trustee is deemed to come to his knowledge on his appointment taking effect or, in the case of the official receiver, on his becoming trustee.

### **Income payments orders**

**283.**—(1) The High Court may<sup>F299</sup>, on the application of the trustee, make an order (“an income payments order”) claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.

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<sup>F300</sup>(2) The High Court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt<sup>F301</sup> when taken together with any payments to which paragraph (8) applies] below what appears to the Court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.

(3) An income payments order shall, in respect of any payment of income to which it is to apply, either—

- (a) require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order, or
- (b) require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.

(4) Where the High Court makes an income payments order it may, if it thinks fit, discharge or vary any attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(5) Sums received by the trustee under an income payments order form part of the bankrupt's estate.

<sup>F302</sup>(6) An income payments order shall not be made after the discharge of the bankrupt, and if made before, shall not have effect after his discharge except—

- (a) in the case of a discharge under Article 253(1)(a) or (b) (order of High Court), by virtue of a condition imposed by the Court under Article 254(2)(c) (income, etc., after discharge), or
- (b) in the case of a discharge under Article 253(1)(c) (expiration of relevant period), by virtue of a provision of the order requiring it to continue in force for a period ending after the discharge but no later than 3 years after the making of the order.

(7) For the purposes of this Article the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment<sup>F303</sup> and<sup>F304</sup> (despite anything in Article 12 or 13 of the Welfare Reform and Pensions (Northern Ireland) Order 1999)] any payment under a pension scheme but excluding any scheme to which paragraph (8) applies.]

<sup>F303</sup>(8) This paragraph applies to—

- (a) payments by way of guaranteed minimum pension; and
- (b) payments giving effect to the bankrupt's protected rights as a member of a pension scheme.

(9) In this Article, “guaranteed minimum pension” and “protected rights” have the same meaning as in the Pension Schemes (Northern Ireland) Act 1993.]

**F299** prosp. rep. by [2005 NI 10](#)

**F300** prosp. insertion by [2005 NI 10](#)

**F301** [1995 NI 22](#)

**F302** prosp. subst. by [2005 NI 10](#)

**F303** [1995 NI 22](#)

**F304** [1999 NI 11](#)

**F305**

**F305** prosp. insertion by [2005 NI 10](#)

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### **Acquisition by trustee of control**

**284.**—(1) The trustee shall take possession of all books, papers and other records which relate to the bankrupt's estate or affairs and which belong to him or are in his possession or under his control (including any which would be privileged from disclosure in any proceedings).

(2) In relation to, and for the purpose of acquiring or retaining possession of, the bankrupt's estate, the trustee is in the same position as if he were a receiver of property appointed by the High Court; and the Court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the bankrupt's estate consists of stock or shares in a company, shares in a ship or any other property transferable in the books of a company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the estate consists of things in action, they are deemed to have been assigned to the trustee; but notice of the deemed assignment need not be given except in so far as it is necessary, in a case where the deemed assignment is from the bankrupt himself, for protecting the priority of the trustee.

(5) Where any goods comprised in the estate are held by any person by way of pledge, pawn or other security and no notice has been served in respect of those goods by the official receiver under paragraph (6) of Article 258 (restriction on realising security), the trustee may serve such a notice in respect of the goods; and whether or not a notice has been served under this paragraph or that paragraph, the trustee may, if he thinks fit, exercise the bankrupt's right of redemption in respect of any such goods.

(6) A notice served by the trustee under paragraph (5) has the same effect as a notice served by the official receiver under Article 258(6).

### **Obligation to surrender control to trustee**

**285.**—(1) Without prejudice to the general duties of the bankrupt under Article 306, the bankrupt shall deliver up to the trustee possession of any property, books, papers or other records of which he has possession or control and of which the trustee is required to take possession.

(2) If any of the following is in possession of any property, books, papers or other records of which the trustee is required to take possession, namely—

- (a) the official receiver,
- (b) a person who has ceased to be trustee of the bankrupt's estate, or
- (c) a person who has been the supervisor of a voluntary arrangement approved in relation to the bankrupt under Part VIII,

the official receiver or, as the case may be, that person shall deliver up possession of the property, books, papers or records to the trustee.

(3) Any banker or agent of the bankrupt or any other person who holds any property to the account of, or for, the bankrupt shall pay or deliver to the trustee all property in his possession or under his control which forms part of the bankrupt's estate and which he is not by law entitled to retain as against the bankrupt or trustee.

(4) If any person without reasonable excuse fails to comply with any obligation imposed by this Article, 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).

### **Charge on bankrupt's home**

**286.**—(1) Where any property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse<sup>F306</sup> or by his civil partner or former civil partner]

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is comprised in the bankrupt's estate and the trustee is, for any reason, unable for the time being to realise that property, the trustee may apply to the High Court for an order imposing a charge on the property for the benefit of the bankrupt's estate.

(2) If on an application under this Article the High Court imposes a charge on any property, the benefit of that charge shall be comprised in the bankrupt's estate and is enforceable<sup>F307</sup>, up to the value from time to time of the property secured, for the payment of any amount which is payable otherwise than to the bankrupt out of the estate and of interest on that amount at the prescribed rate.

<sup>F308</sup>(3) An order under this Article made in respect of property vested in the trustee shall provide, in accordance with the rules, for the property to cease to be comprised in the bankrupt's estate and, subject to the charge (and any prior charge), to vest in the bankrupt.

(4) An order under this Article may be made either absolutely or subject to conditions as to notifying the bankrupt or any person holding any interest in the property to which the order relates or as to the time when the charge is to become enforceable, or as to other matters.

(5) Subject to any provision made by rules, a charge imposed by an order under this Article shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the bankrupt by writing under his hand.

(6) The High Court may at any time, on the application of the bankrupt or of any person holding any interest in the property to which the order relates make an order discharging or varying the order imposing a charge on the property.

(7) Where an order under this Article has been protected by an entry registered under the Land Registration Act (Northern Ireland ) 1970<sup>F309</sup> or the Registration of Deeds Acts, an order under paragraph (6) discharging that order may direct that the entry be vacated.<sup>F308</sup>

**F306** 2004 c. 33

**F307** prosp. subst. by 2005 NI 10

**F308** prosp. insertion by 2005 NI 10

**F309** 1970 c. 18 (NI)

F310F311

**F310** prosp. insertion by 2005 NI 10

**F311** prosp. (until 27.03.06) amendment of art. 286A by 2005 NI 10 - the insertion of art. 286A is prosp. (until 27.03.06)

## Powers of trustee

**287.**—(1) The trustee may—

- (a) with the permission of the creditors' committee or the High Court, exercise any of the powers specified in Part I of Schedule 3, and
- (b) without that permission, exercise any of the general powers specified in Part II of Schedule 3.

(2) With the permission of the creditors' committee or the High Court, the trustee may appoint the bankrupt—

- (a) to superintend the management of his estate or any part of it,
- (b) to carry on his business (if any) for the benefit of his creditors, or
- (c) in any other respect to assist in administering the estate in such manner and on such terms as the trustee may direct.

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(3) A permission given for the purposes of paragraph (1)(a) or (2) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required in either case has been given.

(4) Subject to paragraph (5), where the trustee has done anything without the permission required by paragraph (1)(a) or (2), the High Court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

(5) The committee shall not ratify the trustee's action under paragraph (4) unless it is satisfied that the trustee has acted in a case of urgency and has sought its ratification without undue delay.

(6) Part III of Schedule 3 has effect with respect to the things which the trustee is able to do for the purposes of, or in connection with, the exercise of any of his powers under Parts VIII to X.

(7) Where the trustee (not being the official receiver) in exercise of the powers conferred on him by any provision in Parts VIII to X—

- (a) disposes of any property comprised in the bankrupt's estate to an associate of the bankrupt, or
- (b) employs a solicitor,

he shall, if there is for the time being a creditors' committee, give notice to the committee of that exercise of his powers.

(8) Without prejudice to the generality of paragraph (6) and Part III of Schedule 3, the trustee may, if he thinks fit, at any time summon a general meeting of the bankrupt's creditors.

(9) Subject to the preceding provisions in Part VIII and this Part, he shall summon such a meeting if he is requested to do so by a creditor of the bankrupt and the request is made with the concurrence of not less than one-tenth, in value, of the bankrupt's creditors (including the creditor making the request).

(10) Nothing in this Order is to be construed as restricting the capacity of the trustee to exercise any of his powers outside Northern Ireland.

#### *Disclaimer of onerous property*

#### **Disclaimer (general power)**

**288.**—(1) Subject to paragraph (4) and Articles 289 to 291, the trustee may, by the giving of the prescribed notice, disclaim any onerous property and 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, that is to say—

- (a) any unprofitable contract, and
- (b) any other property comprised in the bankrupt's estate 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 bankrupt and his estate in or in respect of the property disclaimed, and
- (b) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship,

but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.

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(4) A notice of disclaimer shall not be given under this Article in respect of any property that has been claimed for the estate under Article 280 (after-acquired property) or 281 (personal property of bankrupt exceeding reasonable replacement value), except with the leave of the High Court.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article is deemed to be a creditor of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

#### **Notice requiring trustee's decision**

**289.**—(1) Notice of disclaimer shall not be given under Article 288 in respect of any property if—

- (a) a person interested in the property has applied in writing to the trustee or one of his predecessors as trustee requiring the trustee 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 has expired without a notice of disclaimer having been given under Article 288 in respect of that property.

(2) The trustee is deemed to have adopted any contract which by virtue of this Article he is not entitled to disclaim.

#### **Disclaimer of leaseholds**

**290.**—(1) The disclaimer of any property of a leasehold nature does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person claiming under the bankrupt as underlessee of mortgagee and either—

- (a) no application under Article 293 is made with respect to the 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 is to take effect.

(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 293, 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.

#### **Disclaimer of dwelling house**

**291.** Without prejudice to Article 290, the disclaimer of any property in a dwelling house does not take effect unless a copy of the disclaimer has been served (so far as the trustee is aware of their addresses) on every person in occupation of or claiming a right to occupy the dwelling house and either—

- (a) no application under Article 293 is made with respect to the property before the expiration of 14 days from the day on which the last notice served under this Article was served, or
- (b) where such an application has been made, the High Court directs that the disclaimer is to take effect.

#### **Disclaimer of land subject to rentcharge**

**292.**—(1) The following applies where, in consequence of the disclaimer under Article 288 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”).

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(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.

### **High Court order vesting disclaimed property**

**293.**—(1) This Article and Article 294 apply where the trustee has disclaimed property under Article 288.

(2) An application may be made to the High Court under this Article by—

- (a) any person who claims an interest in the disclaimed property,
- (b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer, or
- (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(3) Subject to the following provisions of this Article and to Article 294, the High Court may, on an application under this Article, 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,
- (b) a person subject to such a liability as is mentioned in paragraph (2)(b) or a trustee for such a person, or
- (c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.

(4) The High Court shall not make an order by virtue of paragraph (3)(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.

(5) The effect of any order under this Article shall be taken into account in assessing for the purposes of Article 288(5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(6) An order under this Article vesting property in any person need not be completed by any conveyance, assignment or transfer.

### **Order under Article 293 in respect of leaseholds**

**294.**—(1) The High Court shall not make an order under Article 293 vesting property of a leasehold nature in any person, except on terms making that person—

- (a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease on the day the bankruptcy petition was presented, 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 on that day.

(2) For the purposes of an order under Article 293 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 is willing to accept an order under Article 293 on the terms required by that paragraph, the High Court may (by order under Article 293) vest the estate or interest of the bankrupt in the property in any person who is liable (whether personally or

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in a representative capacity and whether alone or jointly with the bankrupt) 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 bankrupt.

(5) Where paragraph (1) applies and a person declines to accept any order under Article 293, that person shall be excluded from all interest in the property.

(6) Paragraph (3) of Article 290 shall apply for the purposes of this Article as it applies for the purposes of that Article.

### *Distribution of bankrupt's estate*

#### **Proof of debts**

**295.**—(1) Subject to this Article and Article 296, the proof of any bankruptcy debt by a secured or unsecured creditor of the bankrupt and the admission or rejection of any proof shall take place in accordance with the rules.

(2) Where a bankruptcy debt bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the commencement of the bankruptcy.

(3) The trustee shall estimate the value of any bankruptcy debt which, by reason of its being subject to any contingency or contingencies or for any other reason, does not bear a certain value.

(4) Where the value of a bankruptcy debt is estimated by the trustee under paragraph (3) or, by virtue of Article 276, by the High Court, the amount provable in the bankruptcy in respect of the debt is the amount of the estimate.

#### **Mutual credit and set#off**

**296.**—(1) This Article applies where before the commencement of the bankruptcy there have been mutual credits, mutual debts or other mutual dealings between the bankrupt and any creditor of the bankrupt proving or claiming to prove for a bankruptcy debt.

(2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(3) Sums due from the bankrupt to another party shall not be included in the account taken under paragraph (2) if that other party had notice at the time they became due that a bankruptcy petition relating to the bankrupt was pending.

(4) Only the balance (if any) of the account taken under paragraph (2) is provable as a bankruptcy debt or, as the case may be, to be paid to the trustee as part of the bankrupt's estate.

#### **Distribution by means of dividend**

**297.**—(1) Whenever the trustee has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the bankruptcy, declare and distribute dividends among the creditors in respect of the bankruptcy debts which they have respectively proved.

(2) The trustee shall give notice of his intention to declare and distribute a dividend.

(3) Where the trustee has declared a dividend, he shall give notice of the dividend and of how it is proposed to distribute it; and a notice given under this paragraph shall contain the prescribed particulars of the bankrupt's estate.

(4) In the calculation and distribution of a dividend the trustee shall make provision—



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- (a) for any bankruptcy debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their proofs,
- (b) for any bankruptcy debts which are the subject of claims which have not yet been determined, and
- (c) for disputed proofs and claims.

### Claims by unsatisfied creditors

**298.**—(1) A creditor who has not proved his debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his debt was proved, but—

- (a) when he has proved that debt he is entitled to be paid, out of any money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive; and
- (b) any dividend or dividends payable under sub#paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.

(2) No action lies against the trustee for a dividend, but if the trustee refuses to pay a dividend the High Court may, if it thinks fit, order him to pay it and also to pay, out of his own money—

- (a) interest on the dividend, at the rate applicable to a money judgment of the Court at the time it was withheld, from that time, and
- (b) the costs of the proceedings in which the order to pay is made.

### Distribution of property in specie

**299.**—(1) Without prejudice to Articles 288 to 292 (disclaimer), the trustee may, with the permission of the creditors' committee, divide in its existing form among the bankrupt's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) A permission given for the purposes of paragraph (1) shall not be a general permission but shall relate to a particular proposed exercise of the power in question; and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required by paragraph (1) has been given.

(3) Where the trustee has done anything without the permission required by paragraph (1), the High Court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

(4) The committee shall not ratify the trustee's action under paragraph (3) unless it is satisfied that the trustee acted in a case of urgency and has sought its ratification without undue delay.

### Priority of debts

**300.**—(1) In the distribution of the bankrupt's estate, his preferential debts (within the meaning of Article 346) shall be paid in priority to other debts.

(2) Preferential debts rank equally between themselves after the expenses of the bankruptcy and shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.

(3) Debts which are neither preferential debts nor debts to which Article 302 applies also rank equally between themselves and, after the preferential debts, shall be paid in full unless the bankrupt's

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estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.

(4) Any surplus remaining after the payment of the debts that are preferential or rank equally under paragraph (3) shall be applied in paying interest on those debts in respect of the period during which they have been outstanding since the commencement of the bankruptcy; and interest on preferential debts ranks equally with interest on debts other than preferential debts.

(5) The rate of interest payable under paragraph (4) in respect of any debt is whichever is the greater of the following—

- (a) the rate applicable to a money judgment of the High Court at the commencement of the bankruptcy, and
- (b) the rate applicable to that debt apart from the bankruptcy.

(6) This Article and Article 302 are without prejudice to any provision of this Order or any other statutory provision under which the payment of any debt or the making of any other payment is, in the event of bankruptcy, to have a particular priority or to be postponed.

### **Preferential charge on goods distrained**

**301.**—(1) Where any person has distrained upon the goods or effects of an individual who is adjudged bankrupt within 3 months from the distraint, those goods or effects, or the proceeds of their sale, shall be charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting them.

(2) Where by virtue of a charge under paragraph (1) any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or (as the case may be) the amount of the payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate as is available for the payment of preferential creditors by virtue of the surrender or payment.

### **Debts to spouse<sup>F312</sup> or civil partner]**

**302.**—(1) This Article applies to bankruptcy debts owed in respect of credit provided by a person who (whether or not the bankrupt's spouse<sup>F312</sup> or civil partner] at the time the credit was provided) was the bankrupt's spouse<sup>F312</sup> or civil partner] at the commencement of the bankruptcy.

(2) Such debts—

- (a) rank in priority after the debts and interest required to be paid in pursuance of Article 300(3) and (4), and
- (b) are payable with interest at the rate specified in Article 300(5) in respect of the period during which they have been outstanding since the commencement of the bankruptcy;

and the interest payable under sub#paragraph (b) has the same priority as the debts on which it is payable.

**F312** 2004 c. 33

### **Final distribution**

**303.**—(1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the trustee's opinion, be realised without needlessly protracting the trusteeship, he shall give notice in the prescribed manner either—

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- (a) of his intention to declare a final dividend, or
  - (b) that no dividend, or further dividend, will be declared.
- (2) The notice under paragraph (1) shall contain the prescribed particulars and shall require claims against the bankrupt's estate to be established by a date ( "the final date") specified in the notice.
- (3) The High Court may, on the application of any person, postpone the final date.
- (4) After the final date, the trustee shall—
- (a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate, and
  - (b) <sup>F313</sup> if he intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.
- (5) If a surplus remains after payment in full and with interest of all the bankrupt's creditors and the payment of the expenses of the bankruptcy, the bankrupt is entitled to the surplus.
- [<sup>F314</sup>(6) Paragraph (5) is subject to Article 35 of the EC Regulation (surplus in secondary proceedings to be transferred to main proceedings).]

**F313** mod. by SR 1991/365  
**F314** SR 2002/334

### Final meeting

- 304.**—(1) Subject to the provisions of this Article and to Article 305, this Article applies where—
- (a) it appears to the trustee that the administration of the bankrupt's estate in accordance with this Chapter is for practical purposes complete, and
  - (b) the trustee is not the official receiver.
- (2) The trustee shall summon a final general meeting of the bankrupt's creditors which—
- (a) shall receive the trustee's report of his administration of the bankrupt's estate, and
  - (b) shall determine whether the trustee should have his release under Article 272.
- (3) The trustee may, if he thinks fit, give the notice summoning the final general meeting at the same time as giving notice under Article 303(1); but, if summoned for an earlier date, that meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.
- (4) In the administration of the estate it is the trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the meeting required by this Article.

### Saving for bankrupt's home

- 305.**—(1) This Article applies where—
- (a) there is comprised in the bankrupt's estate property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse<sup>F315</sup> or by his civil partner or former civil partner], and
  - (b) the trustee has been unable for any reason to realise that property.
- (2) The trustee shall not summon a meeting under Article 304 unless either—
- (a) the High Court has made an order under Article 286 imposing a charge on that property for the benefit of the bankrupt's estate, or
  - (b) the Court has declined, on an application under that Article, to make such an order, or

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- (c) the Department has issued a certificate to the trustee stating that it would be inappropriate or inexpedient for such an application to be made in the case in question.

F315 2004 c. 33

### *Supplemental*

#### **Duties of bankrupt in relation to trustee**

- 306.**—(1) The bankrupt shall—
- (a) give to the trustee such information as to his affairs,
  - (b) attend on the trustee at such times, and
  - (c) do all such other things,

as the trustee may for the purposes of carrying out his functions under Parts VIII to X reasonably require.

(2) Where at any time after the commencement of the bankruptcy any property is acquired by, or devolves upon, the bankrupt or there is an increase of the bankrupt's income, the bankrupt shall, within the prescribed period, give the trustee notice of the property or, as the case may be, of the increase.

(3) Paragraph (1) applies to a bankrupt after his discharge.

(4) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this Article, 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).

#### **Stay of distribution in case of second bankruptcy**

**307.**—(1) This Article and Article 308 apply where a bankruptcy order is made against an undischarged bankrupt; and in both Articles—

- (a) “the later bankruptcy” means the bankruptcy arising from that order,
- (b) “the earlier bankruptcy” means the bankruptcy (or, as the case may be, most recent bankruptcy) from which the bankrupt has not been discharged at the commencement of the later bankruptcy, and
- (c) “the existing trustee” means the trustee (if any) of the bankrupt's estate for the purposes of the earlier bankruptcy.

(2) Without prejudice to Article 257 (restrictions on dispositions of property following bankruptcy order), where the existing trustee has been given the prescribed notice of the presentation of the petition for the later bankruptcy, any distribution or other disposition by him of anything to which paragraph (3) applies, if made after the giving of the notice, is void except to the extent that it was made with the consent of the High Court or is or was subsequently ratified by the Court.

- (3) This paragraph applies to—
- (a) any property which is vested in the existing trustee under Article 280(3) (after#acquired property);
  - (b) any money paid to the existing trustee in pursuance of an income payments order under Article 283; and
  - (c) any property or money which is, or in the hands of the existing trustee represents, the proceeds of sale or application of property or money falling within sub#paragraph (a) or (b).

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## **Adjustment between earlier and later bankruptcy estates**

**308.**—(1) With effect from the commencement of the later bankruptcy anything to which Article 307(3) applies which, immediately before the commencement of that bankruptcy, is comprised in the bankrupt's estate for the purposes of the earlier bankruptcy is to be treated as comprised in the bankrupt's estate for the purposes of the later bankruptcy and, until there is a trustee of that estate, is to be dealt with by the existing trustee in accordance with the rules.

(2) Any sums which in pursuance of an income payments order under Article 283 are payable after the commencement of the later bankruptcy to the existing trustee shall form part of the bankrupt's estate for the purposes of the later bankruptcy; and the High Court may give such consequential directions for the modification of the order as it thinks fit.

(3) Anything comprised in a bankrupt's estate by virtue of paragraph (1) or (2) is so comprised subject to a first charge in favour of the existing trustee for any bankruptcy expenses incurred by him in relation thereto.

(4) Except as provided by paragraphs (1) and (2) and in Article 307, property which is, or by virtue of Article 281 (personal property of bankrupt exceeding reasonable replacement value) is capable of being, comprised in the bankrupt's estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to it, shall not be comprised in his estate for the purposes of the later bankruptcy.

(5) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier one, are not to be creditors of his in the later bankruptcy in respect of the same debts; but the existing trustee may prove in the later bankruptcy for—

- (a) the unsatisfied balance of the debts (including any debt under this paragraph) provable against the bankrupt's estate in the earlier bankruptcy;
- (b) any interest payable on that balance; and
- (c) any unpaid expenses of the earlier bankruptcy.

(6) Any amount provable under paragraph (5) ranks in priority after all the other debts provable in the later bankruptcy and after interest on those debts and, accordingly, shall not be paid unless those debts and that interest have first been paid in full.

## **CHAPTER V**

### **EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS, TRANSACTIONS, ETC.**

#### *Rights of occupation*

#### **Rights of occupation, etc., of bankrupt's spouse<sup>F316</sup>**

**309.**—(1) Nothing occurring in the initial period of the bankruptcy (that is to say, the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting of the bankrupt's estate in a trustee) is to be taken as having given rise to any<sup>F317</sup><sup>F318</sup> home rights] under the Family Homes and Domestic Violence (Northern Ireland) Order 1998] in relation to a dwelling house comprised in the bankrupt's estate.

(2) Where<sup>F318</sup> a spouse's or civil partner's home rights]<sup>F317</sup> under the Order of 1998] are a charge on the estate or interest of the other spouse<sup>F318</sup> or civil partner], or of trustees for the other spouse<sup>F318</sup> or civil partner], and the other spouse<sup>F318</sup> or civil partner] is adjudged bankrupt—

- (a) the charge continues to subsist notwithstanding the bankruptcy and, subject to the provisions of that Order, binds the trustee of the bankrupt's estate and persons deriving title under that trustee, and

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(b) any application for an order under<sup>F317</sup> Article 11] of that Order shall be made to the High Court.

(3) Notwithstanding any provision of the Partition Act 1868<sup>F319</sup>, where a person and his spouse or former spouse<sup>F318</sup> or civil partner or former civil partner] have a legal or equitable estate in a dwelling house vested in them jointly or as tenants in common and that person is adjudged bankrupt, in a suit for partition maintained by the trustee of the bankrupt's estate the High Court may make such order as it thinks fit.

(4) On an application such as is mentioned in paragraph (2) or in a suit such as is mentioned in paragraph (3) the High Court shall make such order under paragraph (3) or<sup>F317</sup> Article 11 of the Order of 1998] as it thinks just and reasonable having regard to—

- (a) the interests of the bankrupt's creditors,
- (b) the conduct of the spouse or former spouse<sup>F316</sup>, so far as contributing to the bankruptcy,
- (c) the needs and financial resources of the spouse or former spouse<sup>F316</sup>,
- (d) the needs of any children, and
- (e) all the circumstances of the case other than the needs of the bankrupt.

(5) Where such an application is made or such a suit is maintained after the expiration of one year from the first vesting under Chapter IV of the bankrupt's estate in a trustee, the High Court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

**F316** prosp. insertion by 2005 NI 10

**F317** 1998 NI 6

**F318** 2004 c. 33

**F319** 1868 c. 40

## **Rights of occupation of bankrupt**

**310.**—(1) This Article applies where—

- (a) a person who is entitled to occupy a dwelling house by virtue of a beneficial estate or interest is adjudged bankrupt, and
- (b) any persons under the age of 18 with whom that person had at some time occupied that dwelling house had their home with that person at the time when the bankruptcy petition was presented and at the commencement of the bankruptcy.

(2) Whether or not the bankrupt's<sup>F320</sup> spouse or civil partner (if any) has home rights<sup>F321</sup> under the Family Homes and Domestic Violence (Northern Ireland) Order 1998]

- (a) the bankrupt has the following rights as against the trustee of his estate—
  - (i) if in occupation, a right not to be evicted or excluded from the dwelling house or any part of it, except with the leave of the High Court,
  - (ii) if not in occupation, a right with the leave of the Court to enter into and occupy the dwelling house, and
- (b) the bankrupt's rights are a charge, having the like priority as an equitable interest created immediately before the commencement of the bankruptcy, on so much of his estate or interest in the dwelling house as vests in the trustee.

<sup>F321</sup>(3) The Order of 1998 has effect, with the necessary modifications, as if—

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- (a) the rights conferred by sub-paragraph (a) of paragraph (2) were<sup>F320</sup> home rights] under that Order,
  - (b) any application for leave such as is mentioned in that sub-paragraph were an application for an order under Article 11 of that Order, and
  - (c) any charge under sub-paragraph (b) of that paragraph on the estate or interest of the trustee were a charge under that Order on the estate or interest of a spouse<sup>F320</sup> or civil partner].]
- (4) Any application for leave such as is mentioned in paragraph (2)(a) or otherwise by virtue of this Article for an order under<sup>F321</sup> Article 11 of the Order of 1998] shall be made to the High Court.
- (5) On such an application the High Court shall make such order under<sup>F321</sup> Article 11 of the Order of 1998] as it thinks just and reasonable having regard to the interests of the creditors, to the bankrupt's financial resources, to the needs of the children and to all the circumstances of the case other than the needs of the bankrupt.
- (6) Where such an application is made after the expiration of one year from the first vesting (under Chapter IV) of the bankrupt's estate in a trustee, the High Court shall assume, unless the circumstances of the case are exceptional, that the interests of the bankrupt's creditors outweigh all other considerations.

**F320** 2004 c. 33

**F321** 1998 NI 6

### **Payments in respect of premises occupied by bankrupt**

**311.** Where any premises comprised in a bankrupt's estate are occupied by him (whether by virtue of Article 310 or otherwise) on condition that he makes payments towards satisfying any liability arising under a mortgage of the premises or otherwise towards the outgoings of the premises, the bankrupt does not, by virtue of those payments, acquire any interest in the premises.

*Adjustment of prior transactions, etc.*

### **Transactions at an undervalue**

**312.**—(1) Subject to the following provisions of this Article and to Articles 314 and 315, where an individual is adjudged bankrupt and he has at a relevant time (defined in Article 314) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) The High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.

(3) For the purposes of this Article and Articles 314 and 315, an individual 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<sup>F322</sup> 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.

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F322 2004 c. 33

## Preferences

**313.**—(1) Subject to the following provisions of this Article and Articles 314 and 315, where an individual is adjudged bankrupt and he has at a relevant time (defined in Article 314) given a preference to any person, the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) The High Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not given that preference.

(3) For the purposes of this Article and Articles 314 and 315, an individual gives a preference to a person if—

- (a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities, and
- (b) the individual 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 of the individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.

(4) The High Court shall not make an order under this Article in respect of a preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in paragraph (3)(b).

(5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of his (otherwise than by reason only of being his employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in paragraph (4).

(6) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

## “Relevant time” under Articles 312, 313

**314.**—(1) Subject to the provisions of this Article, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given—

- (a) in the case of a transaction at an undervalue, at a time within the 5 years immediately preceding the day of the presentation of the bankruptcy petition on which the individual is adjudged bankrupt,
- (b) in the case of a preference which is not a transaction at an undervalue and is given to a person who is an associate of the individual (otherwise than by reason only of being his employee), at a time within the 2 years immediately preceding that day, and
- (c) in any other case of a preference which is not a transaction at an undervalue, at a time within the 6 months immediately preceding that day.

(2) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in sub#paragraph (a), (b) or (c) of paragraph (1) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the expiration of the period of 5 years mentioned in sub#paragraph (a)), that time is not a relevant time for the purposes of Articles 312 and 313 unless the individual—

- (a) is insolvent at that time, or
- (b) becomes insolvent in consequence of the transaction or preference;



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but the requirements of this paragraph are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by an individual with a person who is an associate of his (otherwise than by reason only of being his employee).

- (3) For the purposes of paragraph (2), an individual is insolvent if—
- (a) he is unable to pay his debts as they fall due, or
  - (b) the value of his assets is less than the amount of his liabilities, taking into account his contingent and prospective liabilities.

### **Orders under Articles 312, 313**

**315.**—(1) Without prejudice to the generality of Article 312(2) or 313(2), an order under either of those Articles with respect to a transaction or preference entered into or given by an individual who is subsequently adjudged bankrupt may (subject as follows)—

- (a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the trustee of the bankrupt's estate as part of that estate;
- (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 individual;
- (d) require any person to pay, in respect of benefits received by him from the individual, such sums to the trustee of his estate 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 or by the giving of the preference to be under such new or revived obligations to that person as the 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 the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and
- (g) provide for the extent to which any person whose property is vested by the order in the trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under Article 312 or 313 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the individual in question entered into the transaction or, as the case may be, the person to whom the preference was given; but such an order—

- (a) shall not prejudice any interest in property which was acquired from a person other than that individual and was acquired<sup>[F323]</sup> in good faith and for value], or prejudice any interest deriving from such an interest, and
- (b) shall not require a person who received a benefit from the transaction or preference<sup>[F323]</sup> in good faith and for value] to pay a sum to the trustee of the bankrupt's estate, except where he was a party to the transaction or the payment is to be in respect of a preference given to that person at a time when he was a creditor of that individual.

<sup>[F324]</sup>(2A) Where a person has acquired an interest in property from a person other than the individual in question, or has received a benefit from the transaction or preference, and at the time of that acquisition or receipt—

- (a) he had notice of the relevant surrounding circumstances and of the relevant proceedings, or

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- (b) he was an associate of, or was connected with, either the individual in question or the person with whom that individual entered into the transaction or to whom that individual gave the preference,

then, unless the contrary is shown, it shall be presumed for the purposes of sub#paragraph (a) or (as the case may be) sub#paragraph (b) of paragraph (2) that the interest was acquired or the benefit was received otherwise than in good faith.]

(3) Any sums required to be paid to the trustee in accordance with an order under Article 312 or 313 shall be comprised in the bankrupt's estate.

[<sup>F325</sup>(4) For the purposes of paragraph (2A)(a), the relevant surrounding circumstances are (as the case may require)—

- (a) the fact that the individual in question entered into the transaction at an undervalue; or  
(b) the circumstances which amounted to the giving of the preference by the individual in question.

(5) For the purposes of paragraph (2A)(a), a person has notice of the relevant proceedings if he has notice—

- (a) of the fact that the petition on which the individual in question is adjudged bankrupt has been presented; or  
(b) of the fact that the individual in question has been adjudged bankrupt.

(6) Article 7 shall apply for the purposes of paragraph (2A)(b) as it applies for the purposes of Parts II to VII.]

**F323** 1994 c. 12

**F324** 1994 c. 12

**F325** 1994 c. 12

#### [<sup>F326</sup>**Recovery of excessive pension contributions**

**315A** <sup>F327</sup>.—(1) Where an individual who is adjudged bankrupt—

- (a) has rights under an approved pension arrangement, or  
(b) has excluded rights under an unapproved pension arrangement,

the trustee of the bankrupt's estate may apply to the High Court for an order under this Article.

(2) If the High Court is satisfied—

- (a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and  
(b) that the making of any of the relevant contributions ( “the excessive contributions”) has unfairly prejudiced the individual's creditors,

the Court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.

(3) Paragraph (4) applies where the High Court is satisfied that the value of the rights under the arrangement is, as a result of rights of the individual under the arrangement or any other pension arrangement having at any time become subject to a debit under Article 26(1)(a) of the Welfare Reform Order (debits giving effect to pension-sharing), less than it would otherwise have been.

(4) Where this paragraph applies—

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- (a) any relevant contributions which were represented by the rights which became subject to the debit shall, for the purposes of paragraph (2), be taken to be contributions of which the rights under the arrangement are the fruits, and
  - (b) where the relevant contributions represented by the rights under the arrangement (including those so represented by virtue of sub-paragraph (a)) are not all excessive contributions, relevant contributions which are represented by the rights under the arrangement otherwise than by virtue of sub-paragraph (a) shall be treated as excessive contributions before any which are so represented by virtue of that sub-paragraph.
- (5) In paragraphs (2) to (4) “relevant contributions” means contributions to the arrangement or any other pension arrangement—
- (a) which the individual has at any time made on his own behalf, or
  - (b) which have at any time been made on his behalf.
- (6) The High Court shall, in determining whether it is satisfied under paragraph (2)(b), consider in particular—
- (a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the individual's creditors or any of them, and
  - (b) whether the total amount of any contributions—
    - (i) made by or on behalf of the individual to pension arrangements, and
    - (ii) represented (whether directly or indirectly) by rights under approved pension arrangements or excluded rights under unapproved pension arrangements,is an amount which is excessive in view of the individual's circumstances when those contributions were made.
- (7) For the purposes of this Article and Articles 315B and 315C ( “the recovery provisions”), rights of an individual under an unapproved pension arrangement are excluded rights if they are rights which are excluded from his estate by virtue of regulations under Article 13 of the Welfare Reform Order.
- (8) In the recovery provisions—
- “approved pension arrangement” has the same meaning as in Article 12 of the Welfare Reform Order,
- “unapproved pension arrangement” has the same meaning as in Article 13 of that Order.]

**F326** 1999 NI 11

**F327** functions transf. SR 1999/481

## Orders under Article 315A

**315B** <sup>F328</sup>.—(1) Without prejudice to the generality of Article 315A(2), an order under Article 315A may include provision—

- (a) requiring the person responsible for the arrangement to pay an amount to the individual's trustee in bankruptcy,
- (b) adjusting the liabilities of the arrangement in respect of the individual,
- (c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the individual under the arrangement,
- (d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that

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person in complying in the bankrupt's case with any requirement under Article 315C(1) or in giving effect to the order.

(2) In paragraph (1), references to adjusting the liabilities of the arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(3) In paragraph (1)(c), the reference to liabilities of the arrangement does not include liabilities in respect of a person which result from giving effect to an order or provision falling within Article 25(1) of the Welfare Reform Order (pension sharing orders and agreements).

(4) The maximum amount which the person responsible for an arrangement may be required to pay by an order under Article 315A is the lesser of—

- (a) the amount of the excessive contributions, and
- (b) the value of the individual's rights under the arrangement (if the arrangement is an approved pension arrangement) or of his excluded rights under the arrangement (if the arrangement is an unapproved pension arrangement).

(5) An order under Article 315A which requires the person responsible for an arrangement to pay an amount (“the restoration amount”) to the individual's trustee in bankruptcy must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of paragraph (5), liabilities are correspondingly reduced if the difference between—

- (a) the amount of the liabilities immediately before the reduction, and
- (b) the amount of the liabilities immediately after the reduction,

is equal to the restoration amount.

(7) An order under Article 315A in respect of an arrangement—

- (a) shall be binding on the person responsible for the arrangement, and
- (b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.

**F328** functions transf. SR 1999/481

### **Orders under Article 315A: supplementary**

<sup>F329</sup>**315C.**—(1) The person responsible for—

- (a) an approved pension arrangement under which a bankrupt has rights,
- (b) an unapproved pension arrangement under which a bankrupt has excluded rights, or
- (c) a pension arrangement under which a bankrupt has at any time had rights,

shall, on the bankrupt's trustee in bankruptcy making a written request, provide the trustee with such information about the arrangement and rights as the trustee may reasonably require for, or in connection with, the making of applications under Article 315A.

(2) Nothing in—

- (a) any provision of section 155 of the Pension Schemes (Northern Ireland) Act 1993 or Article 89 of the Pensions (Northern Ireland) Order 1995 (which prevent assignment and the making of orders that restrain a person from receiving anything which he is prevented from assigning),
- (b) any statutory provision (whether passed or made before or after the making of the Welfare Reform Order) corresponding to any of the provisions mentioned in sub-paragraph (a), or

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(c) any provision of the arrangement in question corresponding to any of those provisions, applies to the High Court exercising its powers under Article 315A.

(3) Where any sum is required by an order under Article 315A to be paid to the trustee in bankruptcy, that sum shall be comprised in the bankrupt's estate.

(4) Regulations may, for the purposes of the recovery provisions, make provision about the calculation and verification of—

- (a) any such value as is mentioned in Article 315B(4)(b);
- (b) any such amounts as are mentioned in Article 315B(6)(a) and (b).

(5) The power conferred by paragraph (4) includes power to provide for calculation or verification—

- (a) in such manner as may, in the particular case, be approved by a prescribed person; or
- (b) in accordance with guidance—
  - (i) from time to time prepared by a prescribed person, and
  - (ii) approved by the Department.

(6) References in the recovery provisions to the person responsible for a pension arrangement are to—

- (a) the trustees, managers or provider of the arrangement, or
- (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.

(7) In this Article and Articles 315A and 315B—

“the Department” means the Department of Health and Social Services;

“prescribed” means prescribed by regulations;

“the recovery provisions” means this Article and Articles 315A and 315B;

“regulations” means regulations made by the Department;

“the Welfare Reform Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999.

(8) Regulations under the recovery provisions may contain such incidental, supplemental and transitional provisions as appear to the Department necessary or expedient.

(9) Regulations under the recovery provisions shall be subject to negative resolution.

**F329** functions transf. SR 1999/481

### <sup>F330</sup> **Recovery of excessive contributions in pension-sharing cases**

**315D**<sup>F331</sup>.—(1) For the purposes of Articles 312, 314 and 315, a pension-sharing transaction shall be taken—

- (a) to be a transaction, entered into by the transferor with the transferee, by which the appropriate amount is transferred by the transferor to the transferee; and
- (b) to be capable of being a transaction entered into at an undervalue only so far as it is a transfer of so much of the appropriate amount as is recoverable.

(2) For the purposes of Articles 313 to 315, a pension-sharing transaction shall be taken—

- (a) to be something (namely a transfer of the appropriate amount to the transferee) done by the transferor; and

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- (b) to be capable of being a preference given to the transferee only so far as it is a transfer of so much of the appropriate amount as is recoverable.
- (3) If on an application under Article 312 or 313 any question arises as to whether, or the extent to which, the appropriate amount in the case of a pension-sharing transaction is recoverable, the question shall be determined in accordance with paragraphs (4) to (8).
- (4) The High Court shall first determine the extent (if any) to which the transferor's rights under the shared arrangement at the time of the transaction appear to have been (whether directly or indirectly) the fruits of contributions ( "personal contributions")—
- (a) which the transferor has at any time made on his own behalf, or
  - (b) which have at any time been made on the transferor's behalf,
- to the shared arrangement or any other pension arrangement.
- (5) Where it appears that those rights were to any extent the fruits of personal contributions, the High Court shall then determine the extent (if any) to which those rights appear to have been the fruits of personal contributions whose making has unfairly prejudiced the transferor's creditors ( "the unfair contributions").
- (6) If it appears to the High Court that the extent to which those rights were the fruits of the unfair contributions is such that the transfer of the appropriate amount could have been made out of rights under the shared arrangement which were not the fruits of the unfair contributions, then the appropriate amount is not recoverable.
- (7) If it appears to the High Court that the transfer could not have been wholly so made, then the appropriate amount is recoverable to the extent to which it appears to the Court that the transfer could not have been so made.
- (8) In making the determination mentioned in paragraph (5) the High Court shall consider in particular—
- (a) whether any of the personal contributions were made for the purpose of putting assets beyond the reach of the transferor's creditors or any of them, and
  - (b) whether the total amount of any personal contributions represented, at the time the pension-sharing transaction was made, by rights under pension arrangements is an amount which is excessive in view of the transferor's circumstances when those contributions were made.
- (9) In this Article and Articles 315E and 315F—
- "appropriate amount", in relation to a pension-sharing transaction, means the appropriate amount in relation to that transaction for the purposes of Article 26(1) of the Welfare Reform Order (creation of pension credits and debits);
- "pension-sharing transaction" means an order or provision falling within Article 25(1) of the Welfare Reform Order (orders and agreements which activate pension-sharing);
- "shared arrangement", in relation to a pension-sharing transaction, means the pension arrangement to which the transaction relates;
- "transferee", in relation to a pension-sharing transaction, means the person for whose benefit the transaction is made;
- "transferor", in relation to a pension-sharing transaction, means the person to whose rights the transaction relates;
- "the Welfare Reform Order" means the Welfare Reform and Pensions (Northern Ireland) Order 1999.]

**F330** 1999 NI 11

**F331** functions transf. SR 1999/481

*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.*

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## Orders under Article 312 or 313 in respect of pension-sharing transactions

**315E**<sup>F332</sup>.—(1) This Article and Article 315F apply if the High Court is making an order under Article 312 or 313 in a case where—

- (a) the transaction or preference is, or is any part of, a pension-sharing transaction, and
- (b) the transferee has rights under a pension arrangement ( “the destination arrangement”, which maybe the shared arrangement or any other pension arrangement) that are derived, directly or indirectly, from the pension-sharing transaction.

(2) Without prejudice to the generality of Article 312(2) or 313(2), or of Article 315, the order may include provision—

- (a) requiring the person responsible for the destination arrangement to pay an amount to the transferor's trustee in bankruptcy,
- (b) adjusting the liabilities of the destination arrangement in respect of the transferee,
- (c) adjusting any liabilities of the destination arrangement in respect of any other person that derive, directly or indirectly, from rights of the transferee under the destination arrangement,
- (d) for the recovery by the person responsible for the destination arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the transferor's case with any requirement under Article 315F(1) or in giving effect to the order,
- (e) for the recovery, from the transferor's trustee in bankruptcy, by the person responsible for a pension arrangement, of costs incurred by that person in complying in the transferor's case with any requirement under Article 315F(2) or (3).

(3) In paragraph (2), references to adjusting the liabilities of the destination arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.

(4) The maximum amount which the person responsible for the destination arrangement may be required to pay by the order is the smallest of—

- (a) so much of the appropriate amount as, in accordance with Article 315D is recoverable,
- (b) so much (if any) of the amount of the unfair contributions (within the meaning given by Article 315D(5)) as is not recoverable by way of an order under Article 315A containing provision such as is mentioned in Article 315B(1)(a), and
- (c) the value of the transferee's rights under the destination arrangement so far as they are derived, directly or indirectly, from the pension-sharing transaction.

(5) If the order requires the person responsible for the destination arrangement to pay an amount ( “the restoration amount”) to the transferor's trustee in bankruptcy it must provide for the liabilities of the arrangement to be correspondingly reduced.

(6) For the purposes of paragraph (5), liabilities are correspondingly reduced if the difference between—

- (a) the amount of the liabilities immediately before the reduction, and
- (b) the amount of the liabilities immediately after the reduction,

is equal to the restoration amount.

(7) The order—

- (a) shall be binding on the person responsible for the destination arrangement, and
- (b) overrides provisions of the destination arrangement to the extent that they conflict with the provisions of the order.

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**F332** functions transf. SR 1999/481

### Orders under Article 312 or 313 in pension-sharing cases: supplementary

<sup>F333</sup>**315F.**—(1) On the transferor's trustee in bankruptcy making a written request to the person responsible for the destination arrangement, that person shall provide the trustee with such information about—

- (a) the arrangement,
- (b) the transferee's rights under it, and
- (c) where the destination arrangement is the shared arrangement, the transferor's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(2) Where the shared arrangement is not the destination arrangement, the person responsible for the shared arrangement shall, on the transferor's trustee in bankruptcy making a written request to that person, provide the trustee with such information about—

- (a) the arrangement, and
- (b) the transferor's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(3) On the transferor's trustee in bankruptcy making a written request to the person responsible for any intermediate arrangement, that person shall provide the trustee with such information about—

- (a) the arrangement, and
- (b) the transferee's rights under it,

as the trustee may reasonably require for, or in connection with, the making of applications under Articles 312 and 313.

(4) In paragraph (3) “intermediate arrangement” means a pension arrangement, other than the shared arrangement or the destination arrangement, in relation to which the following conditions are fulfilled—

- (a) there was a time when the transferee had rights under the arrangement that were derived (directly or indirectly) from the pension-sharing transaction, and
- (b) the transferee's rights under the destination arrangement (so far as derived from the pension-sharing transaction) are to any extent derived (directly or indirectly) from the rights mentioned in sub-paragraph (a).

(5) Nothing in—

- (a) any provision of section 155 of the Pension Schemes (Northern Ireland) Act 1993 or Article 89 of the Pensions (Northern Ireland) Order 1995 (which prevent assignment and the making of orders which restrain a person from receiving anything which he is prevented from assigning),
- (b) any statutory provision (whether passed or made before or after the making of the Welfare Reform Order) corresponding to any of the provisions mentioned in sub-paragraph (a), or
- (c) any provision of the destination arrangement corresponding to any of those provisions,

applies to the High Court exercising its powers under Article 312 or 313.

(6) Regulations may, for the purposes of Articles 312 to 315, Articles 315D and 315E and this Article, make provision about the calculation and verification of—



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- (a) any such value as is mentioned in Article 315E(4)(c);
  - (b) any such amounts as are mentioned in Article 315E(6)(a) and (b).
- (7) The power conferred by paragraph (6) includes power to provide for calculation or verification—
- (a) in such manner as may, in the particular case, be approved by a prescribed person; or
  - (b) in accordance with guidance—
    - (i) from time to time prepared by a prescribed person, and
    - (ii) approved by the Department.
- (8) In Article 315E and this Article, references to the person responsible for a pension arrangement are to—
- (a) the trustees, managers or provider of the arrangement, or
  - (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.
- (9) In this Article—
- “the Department” means the Department of Health and Social Services;
  - “prescribed” means prescribed by regulations;
  - “regulations” means regulations made by the Department.
- (10) Regulations under this Article may contain such incidental, supplemental and transitional provisions as appear to the Department necessary or expedient.
- (11) Regulations under this Article shall be subject to negative resolution.

**F333** functions transf. SR 1999/481

### **Extortionate credit transactions**

**316.**—(1) This Article applies where a person is adjudged bankrupt who is or has been a party to a transaction for, or involving, the provision to him of credit.

(2) The High Court may, on the application of the trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than the 3 years immediately preceding the commencement of the bankruptcy.

(3) For the purposes of this Article a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit, or
- (b) it otherwise grossly contravened ordinary principles of fair dealing;

and it shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is or, as the case may be, was extortionate.

(4) An order under this Article with respect to any transaction may contain such one or more of the following as the High Court thinks fit, that is to say—

- (a) provision setting aside the whole or part of any obligation created by the transaction;
- (b) provision otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;

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- (c) provision requiring any person who is or was party to the transaction to pay to the trustee any sums paid to that person, by virtue of the transaction, by the bankrupt;
  - (d) provision requiring any person to surrender to the trustee any property held by him as security for the purposes of the transaction;
  - (e) provision directing accounts to be taken between any persons.
- (5) Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this Article shall be comprised in the bankrupt's estate.
- (6) Neither the trustee of a bankrupt's estate nor an undischarged bankrupt is entitled to make an application under section 139(1)(a) of the Consumer Credit Act 1974<sup>F334</sup> (re#opening of extortionate credit agreements) for any agreement by which credit is or has been provided to the bankrupt to be re#opened.
- (7) The powers conferred by this Article are exercisable in relation to any transaction concurrently with any powers exercisable under this Order in relation to that transaction as a transaction at an undervalue.

**F334** 1974 c. 39

#### **Avoidance of general assignment of book debts**

**317.**—(1) This Article applies where a person engaged in any business makes a general assignment to another person of his existing or future book debts, or any class of them, and is subsequently adjudged bankrupt.

(2) The assignment is void against the trustee of the bankrupt's estate as regards book debts which were not paid before the presentation of the bankruptcy petition, unless the assignment has been registered under the Bills of Sale (Ireland) Acts 1879<sup>F335</sup> and 1883<sup>F336</sup>.

(3) For the purposes of paragraphs (1) and (2)—

- (a) “assignment” includes an assignment by way of security or charge on book debts, and
- (b) “general assignment” does not include—
  - (i) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts, or
  - (ii) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

(4) For the purposes of registration under the Acts of 1879 and 1883 an assignment of book debts is to be treated as if it were a bill of sale given otherwise than by way of security for the payment of a sum of money; and the provisions of those Acts with respect to the registration of bills of sale apply accordingly with such necessary modifications as may be made by rules under those Acts.

**F335** 1879 c. 50

**F336** 1883 c. 7

#### **Contracts to which bankrupt is a party**

**318.**—(1) This Article applies where a contract has been made with a person who is subsequently adjudged bankrupt.

(2) The High Court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non#performance or otherwise as appear to the Court to be equitable.

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(3) Any damages payable by the bankrupt by virtue of an order of the High Court under this Article are provable as a bankruptcy debt.

(4) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

### **Apprenticeships, etc.**

**319.**—(1) This Article applies where—

- (a) a bankruptcy order is made in respect of an individual to whom another individual was an apprentice or articulated clerk at the time when the petition on which the order was made was presented, and
- (b) the bankrupt or the apprentice or clerk gives notice to the trustee terminating the apprenticeship or articles.

(2) Subject to paragraph (6), the indenture of apprenticeship or, as the case may be, the articles of agreement shall be discharged with effect from the commencement of the bankruptcy.

(3) If any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on an application made by or on behalf of the apprentice or clerk, pay such sum to the apprentice or clerk as the trustee thinks reasonable, having regard to—

- (a) the amount of the fee,
- (b) the proportion of the period in respect of which the fee was paid that has been served by the apprentice or clerk before the commencement of the bankruptcy, and
- (c) the other circumstances of the case.

(4) The power of the trustee to make a payment under paragraph (3) has priority over his obligation to distribute the bankrupt's estate.

(5) Instead of making a payment under paragraph (3), the trustee may, if it appears to him expedient to do so on an application made by or on behalf of the apprentice or clerk, transfer the indenture or articles to a person other than the bankrupt.

(6) Where a transfer is made under paragraph (5), paragraph (2) has effect only as between the apprentice or clerk and the bankrupt.

### **Unenforceability of liens on books, etc.**

**320.**—(1) Subject to paragraph (2), a lien or other right to retain possession of any of the books, papers or other records of a bankrupt is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the official receiver or the trustee of the bankrupt's estate.

(2) Paragraph (1) does not apply to a lien on documents which give a title to property and are held as such.

### **[<sup>F337</sup> Arbitration agreements to which bankrupt is party.**

**320A.**—(1) This Article applies where a bankrupt had become party to a contract containing an arbitration agreement before the commencement of his bankruptcy.

(2) If the trustee in bankruptcy adopts the contract, the arbitration agreement is enforceable by or against the trustee in relation to matters arising from or connected with the contract.

(3) If the trustee in bankruptcy does not adopt the contract and a matter to which the arbitration agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings—

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- (a) the trustee with the consent of the creditors' committee, or
- (b) any other party to the agreement,

may apply to the court which may, if it thinks fit in all the circumstances of the case, order that the matter be referred to arbitration in accordance with the arbitration agreement.

(4) In this Article—

“arbitration agreement” has the same meaning as in Part I of the Arbitration Act 1996; and  
 “the court” means the court which has jurisdiction in the bankruptcy proceedings.]

F337 1996 c. 23

## CHAPTER VI

### BANKRUPTCY OFFENCES

#### *Preliminary*

#### **Scheme of this Chapter**

**321.**—(1) Subject to Article 331(3), this Chapter applies where the High Court has made a bankruptcy order on a bankruptcy petition.

(2) This Chapter applies whether or not the bankruptcy order is annulled under Article 256, but proceedings for an offence under this Chapter shall not be instituted after the annulment.

(3) Without prejudice to his liability in respect of a subsequent bankruptcy, the bankrupt is not guilty of an offence under this Chapter in respect of anything done after his discharge; but nothing in Parts VIII to X prevents the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.

<sup>F338</sup>(4) It is not a defence in proceedings for an offence under this Chapter that anything relied on, in whole or in part, as constituting that offence was done outside Northern Ireland.

(5) Proceedings for an offence under this Chapter or under the rules shall not be instituted except by the Department or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

F338 prosp. insertion by 2005 NI 10

#### **Definitions for the purposes of this Chapter**

**322.** In this Chapter—

- (a) references to property comprised in the bankrupt's estate or to property possession of which is required to be delivered up to the official receiver or the trustee of the bankrupt's estate include any property which would be such property if a notice in respect of it were given under Article 280 (after#acquired property) or 281 (personal property and effects of bankrupt having more than replacement value);
- (b) “the initial period” means the period between the presentation of the bankruptcy petition and the commencement of the bankruptcy; and
- (c) a reference to a number of months or years immediately preceding petition is to that period ending with the presentation of the bankruptcy petition.

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## Defence of innocent intention

**323.** Where in the case of an offence under any provision of this Chapter it is stated that this Article applies, it shall be a defence for the person charged to prove that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

### *Wrongdoing by the bankrupt before and after bankruptcy*

## Non#disclosure

**324.**—(1) The bankrupt shall be guilty of an offence if—

- (a) he does not to the best of his knowledge and belief disclose all the property comprised in his estate to the official receiver or the trustee, or
- (b) he does not inform the official receiver or the trustee of any disposal of any property which but for the disposal would be so comprised, stating how, when, to whom and for what consideration the property was disposed of.

(2) Paragraph (1)(b) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.

(3) Article 323 applies to an offence under this Article.

## Concealment of property

**325.**—(1) The bankrupt shall be guilty of an offence if—

- (a) he does not deliver up possession to the official receiver or trustee, or as the official receiver or trustee may direct, of such part of the property comprised in his estate as is in his possession or under his control and possession of which he is required by law so to deliver up,
- (b) he conceals any debt due to or from him (b) conceals any property the value of which is not less than the amount specified by order under Article 362(1)(b) and possession of which he is required to deliver up to the official receiver or trustee, or
- (c) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (b) if the bankruptcy order had been made immediately before he did it.

(2) Article 323 applies to an offence under paragraph (1).

(3) The bankrupt shall be guilty of an offence if he removes, or in the initial period removed, any property the value of which was not less than the amount specified by order under Article 362(1)(b) and possession of which he has or would have been required to deliver up to the official receiver or the trustee.

(4) Article 323 applies to an offence under paragraph (3).

(5) The bankrupt shall be guilty of an offence if he without reasonable excuse fails, on being required to do so by the official receiver<sup>F339</sup> or the High Court—

- (a) to account for the loss of any substantial part of his property incurred in the 12 months immediately preceding petition or in the initial period, or
- (b) to give a satisfactory explanation of the manner in which such a loss was incurred.

**F339** prosp. insertion by 2005 NI 10

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### Concealment of books and papers; falsification

**326.**—(1) The bankrupt shall be guilty of an offence if he does not deliver up possession to the official receiver or the trustee, or as the official receiver or trustee may direct, of all books, papers and other records of which he has possession or control and which relate to his estate or his affairs.

(2) The bankrupt shall be guilty of an offence if—

- (a) he prevents, or in the initial period prevented, the production of any books, papers or records relating to his estate or affairs;
- (b) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his estate or affairs;
- (c) he makes, or causes or permits the making of, any false entries in any book, document or record relating to his estate or affairs; or
- (d) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (b) or (c) if the bankruptcy order had been made before he did it.

(3) The bankrupt shall be guilty of an offence if—

- (a) he disposes of, or alters or makes any omission in, or causes or permits the disposal, altering or making of any omission in, any book, document or record relating to his estate or affairs, or
- (b) in the 12 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (a) if the bankruptcy order had been made before he did it.

(4) Article 323 applies to an offence under this Article.<sup>F340</sup>

**F340** prosp. addition by [2005 NI 10](#)

### False statements

**327.**—(1) The bankrupt shall be guilty of an offence if he makes or has made any material omission in any statement made under any provision in Parts VIII to X and relating to his affairs.

(2) Article 323 applies to an offence under paragraph (1).

(3) The bankrupt shall be guilty of an offence if—

- (a) knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails to inform the trustee as soon as practicable; or
- (b) he attempts to account for any part of his property by fictitious losses or expenses; or
- (c) at any meeting of his creditors in the 12 months immediately preceding petition or (whether or not at such a meeting) at any time in the initial period, he did anything which would have been an offence under sub#paragraph (b) if the bankruptcy order had been made before he did it; or
- (d) he is, or at any time has been, guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

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### **Fraudulent disposal of property**

**328.**—(1) The bankrupt shall be guilty of an offence if he makes or causes to be made, or has in the 5 years immediately preceding the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on, his property.

(2) The reference to making a transfer of or charge on any property includes causing or conniving at the enforcement of a judgment, or the levying of any execution, against that property.

(3) The bankrupt shall be guilty of an offence if he conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his property after, or within the 2 months immediately preceding, the date on which a judgment or order for the payment of money has been obtained against him, being a judgment or order which was not satisfied before the commencement of the bankruptcy.

(4) Article 323 applies to an offence under this Article.

### **Absconding**

**329.**—(1) The bankrupt shall be guilty of an offence if—

- (a) he leaves, or attempts or makes preparations to leave, Northern Ireland with any property the value of which is not less than the amount specified by order under Article 362(1)(b) and possession of which he is required to deliver up to the official receiver or the trustee, or
- (b) in the 6 months immediately preceding petition, or in the initial period, he did anything which would have been an offence under sub#paragraph (a) if the bankruptcy order had been made immediately before he did it.

(2) Article 323 applies to an offence under this Article.

### **Fraudulent dealing with property obtained on credit**

**330.**—(1) The bankrupt shall be guilty of an offence if, in the 12 months immediately preceding petition, or in the initial period, he disposed of any property which he had obtained on credit and, at the time he disposed of it, had not paid for.

(2) Article 323 applies to an offence under paragraph (1).

(3) A person shall be guilty of an offence if, in the 12 months immediately preceding petition or in the initial period, he acquired or received property from the bankrupt knowing or believing—

- (a) that the bankrupt owed money in respect of the property, and
- (b) that the bankrupt did not intend, or was unlikely to be able, to pay the money he so owed.

(4) In the case of an offence under paragraph (1) or (3) it shall be a defence for the person charged to prove that the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.

(5) In determining for the purposes of this Article whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the property.

(6) In this Article references to disposing of property include pawning or pledging it; and references to acquiring or receiving property shall be read accordingly.

### **Obtaining credit; engaging in business**

**331.**—(1) The bankrupt shall be guilty of an offence if—

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- (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.<sup>F341</sup>

**F341** prosp. insertion by 2005 NI 10

#### <sup>F342</sup>**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



### <sup>F343</sup> **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

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- (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<sup>F344</sup> 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—

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- (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

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- (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.

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### 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<sup>F345</sup> 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<sup>F345</sup> 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)

**C19** 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**<sup>F346</sup>.—(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.

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- (4) The supplies referred to in paragraph (2) are—
- (a) a supply of electricity by<sup>F347</sup> a public electricity supplier within the meaning of Part II of the Electricity (Northern Ireland) Order 1992,
    - <sup>F348</sup>(aa) 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,
  - <sup>F349</sup>(c) a supply of communications services by a provider of a<sup>F350</sup> 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

#### <sup>F351</sup>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)

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## Categories of preferential debts

**346.**—(1) <sup>F352</sup> A reference in this Order to the preferential debts of a company or an individual is to the debts listed in Schedule 4 <sup>F353</sup> (money owed to the Inland Revenue for income tax deducted at source; VAT, [<sup>F354</sup> insurance premium tax][<sup>F355</sup> landfill tax], [<sup>F356</sup> climate change levy,] car tax, betting and gaming duties [<sup>F357</sup>, beer duty][<sup>F358</sup>, lottery duty][<sup>F359</sup>, 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) <sup>F352</sup> 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 <sup>F360</sup> (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—

<sup>F361</sup>(a) where an administration order is in force in relation to the company, the date of the making of that order, and

<sup>F361</sup>(b) where no such order has been made, the date [<sup>F362</sup> on which the voluntary arrangement takes effect].

[<sup>F363</sup>(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 <sup>F361</sup> the date of the making of the administration order;

[<sup>F364</sup>(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 <sup>F361</sup> the date of the making of the administration order;

(ab) <sup>F365</sup> 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 <sup>F361</sup> the date of the making of the administration order;]

(b) if the case does not fall within sub#paragraph (a) [<sup>F364</sup>, (aa) or (ab)] and the company—  
(i) is being wound up by the Court, and

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(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;

<sup>F366</sup>(c) if the case does not fall within<sup>F364</sup> sub-paragraph (a), (aa), (ab) or (b)], the relevant date<sup>F365</sup> is the date of the passing of the resolution for the winding up of the company.

<sup>F366</sup>(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 <sup>F365</sup> 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

[<sup>F362</sup>(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 <sup>F365</sup> 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](#)

## <sup>F367</sup>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 <sup>F368</sup> 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.

[<sup>F369</sup>(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](#)



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## [<sup>F370</sup> Authorisation of nominees and supervisors

**348A.**—(1 <sup>F371</sup> 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 [<sup>F372</sup>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

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### *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,
  - <sup>F374</sup>(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<sup>F375</sup>, section 125(1) of the Mental Health (Scotland) Act 1984<sup>F376</sup> or Part VIII of the Mental Health (Northern Ireland) Order 1986<sup>F377 F378</sup>.

**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<sup>F379</sup>, 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

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(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.<sup>F380</sup>

**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.

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- (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.

## <sup>F381</sup>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)

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## *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.

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**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<sup>F383</sup> or the EC Regulation].

<sup>F384</sup>(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) <sup>F385</sup> 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<sup>F386</sup> (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.

[<sup>F383</sup>(2A) <sup>F385</sup> 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<sup>F387</sup> 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

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**F387** 1946 c. 36

### Committee to review rules under Article 359

**360.**—(1) There shall<sup>F388F389</sup> 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<sup>#at#</sup>law;
- (d) a practising solicitor of the Supreme Court;
- (e) a practising accountant; and
- (f) such additional persons, if any, as appear to the<sup>F388F389</sup> Lord Chancellor to have qualifications or experience that would be of value to the committee in considering any matter with which it is concerned.<sup>F390</sup>

**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<sup>F391</sup> (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)<sup>F392</sup> 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.

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(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) <sup>F394</sup> 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) <sup>F394</sup> 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);

<sup>F395</sup>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)<sup>F396</sup> or]

<sup>F396</sup>(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).]



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(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** <sup>F397</sup>.—(1) The Lord Chancellor may, by order made with the concurrence of <sup>F398</sup> the Department, provide that such provisions of this Order, Part VI of the Judgments Enforcement (Northern Ireland) Order 1981<sup>F399</sup>, the Land Registration Act (Northern Ireland) 1970<sup>F400</sup> 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.

[<sup>F401F398</sup>(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.]

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(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<sup>F402</sup> 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**<sup>F403</sup>.—(1) The Lord Chancellor may, by order made with the concurrence of<sup>F404</sup> 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<sup>F405</sup> in relation] to the administration of the insolvent estates of deceased persons with such modifications as may be so specified.

[<sup>F406F404</sup>(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

### [<sup>F407</sup> 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

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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

#### [<sup>F408</sup>Formerly authorised banks]

**366** <sup>F409</sup>.—[<sup>F410</sup>(1)] The Department may, by order subject to negative resolution, made after consultation with the [<sup>F411</sup> Financial Services Authority], provide that such provisions in Parts II to VII as may be specified in the order shall apply in relation to [<sup>F412</sup><sup>F408</sup> 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.]<sup>F413</sup> with such modifications as may be so specified.

[<sup>F410</sup><sup>F414</sup>(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

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## 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<sup>F416</sup> 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<sup>F417</sup> 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;

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- (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 sub#paragraphs 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.

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### *Disqualifications, reviews and reports*

#### **<sup>F418</sup>Northern Ireland Assembly disqualification**

**370** <sup>F419</sup>.—(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

#### **[<sup>F420</sup>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**)

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## 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<sup>F421</sup> 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<sup>F422</sup> (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)

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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.**—<sup>[F423(1)]</sup> 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.

<sup>[F424(2)]</sup> 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



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## 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** <sup>F425</sup>. 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);

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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

#### [<sup>F426</sup>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;

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- (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)

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