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STATUTORY INSTRUMENTS

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**1989 No. 2405**

**The Insolvency (Northern Ireland) Order 1989**

PARTS II TO VI COMPANY INSOLVENCY; COMPANIES WINDING UP

**PART VII**

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

*Office-holders*

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

**194.**—(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.

**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 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 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.

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

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

*Management by administrators, liquidators, etc.*

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

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

- (a) an administration order is made in relation to the company, or
- (b) an administrative receiver is appointed, or
- (c) a voluntary arrangement under Part II, approved by meetings summoned under Article 16, 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, 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 Northern Ireland Electricity,
- (b) a supply of water by the Department of the Environment,
- (c) a supply of telecommunication services by a public telecommunications operator,

and in this paragraph “telecommunication services” and “public telecommunications operator” mean the same as in the Telecommunications Act 1984(1), except that the former does not include services consisting in the conveyance of programmes included in cable programme services (within the meaning of the Cable and Broadcasting Act 1984(2)).

(4) “The effective date” for the purposes of this Article is whichever is applicable of the following dates—

- (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 voluntary arrangement was approved by the meetings summoned under Article 16,
- (d) the date on which the company went into liquidation,
- (e) the date on which the provisional liquidator was appointed.

**Getting in the company’s property**

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

- (a) an administration order is made in relation to the company, or

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(1) 1984 c. 12

(2) 1984 c. 46

- (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.

### **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,
- (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—

- (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.

### **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.

(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—

- (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.

### **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, and
- (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—

- (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, and
- (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.

### **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 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 or preference in good faith, for value and without notice of the relevant circumstances to pay a sum to the office-holder, except where that person 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 the company.
- (3) For the purposes of this Article the relevant circumstances, in relation to a transaction or preference, are—
- (a) the circumstances by virtue of which an order under Article 202 or (as the case may be) Article 203 could be made in respect of the transaction or preference if the company were to go into liquidation, or an administration order were made in relation to the company, within a particular period after the transaction is entered into or the preference given, and
  - (b) if that period has expired, the fact that the company has gone into liquidation or that such an order has been made.
- (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.

### **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 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.

### **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—

- (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, or
- (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—

- (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
- (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.

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

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

- (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.