
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PART I

INTRODUCTORY

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.

(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.

General interpretation

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

(2) In this Order—

“business” includes a trade or profession;

“the Companies Order” means the Companies (Northern Ireland) Order 1986⁽²⁾;

“conditional sale agreement” and “hire-purchase agreement” have the same meanings as in the Consumer Credit Act 1974⁽³⁾;

“the Department” means the Department of Economic Development;

“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 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 or winding up;

“prescribed”—

(a) in Articles 48(3), 95(1), 212(h) and 222 and in Part XII, means prescribed by regulations; and

⁽¹⁾ 1954 c. 33 (N.I.)

⁽²⁾ 1986 NI 6

⁽³⁾ 1974 c. 39

(b) except as provided in sub-paragraph (a) 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 Article 359(5)) to negative resolution;

“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(4);

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

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

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

(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.

“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
- (b) as supervisor of a voluntary arrangement approved by it under Part II.

(2) 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
- (c) as supervisor of a voluntary arrangement proposed by him and approved under Part VIII; or
- (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.

(3) References in this Article to an individual include references to a partnership.

(4) 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⁽⁵⁾.

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

“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).

(2) A person is an associate of an individual if that person is the individual’s husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual’s husband or wife.

(3) A person is an associate of any person with whom he is in partnership, and of the husband or wife 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.

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

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

(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⁽⁶⁾ or the Bankruptcy (Scotland) Act 1985⁽⁷⁾, 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.

(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—

(5) 1986 c. 53

(6) 1986 c. 45

(7) 1985 c. 66

(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) 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.

Interpretation for Parts II to VII

Interpretation

5.—(1) In Parts II to VII—

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

“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(8);

“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 subparagraphs of Article 70(1);

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

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

“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, the making of an administration order or the appointment of an administrative receiver.

(2) 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.

“Connected with a company”

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.

“Member of a company”

8. 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.

Interpretation for Parts VIII to X

Interpretation

9.—(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);

“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;

“interim order” means an order under Article 226;

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

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

“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.

“Security”, etc.

10.—(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.

“Bankrupt’s estate”

11.—(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(9) (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.

(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.

Interpretation for this Order and the Companies Order

“Receiver or manager”

12. In this Order or the Companies Order—

- (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) 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) 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) 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) 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.