

2006 No. 22

INSOLVENCY

The Insolvency (2005 Order) (Transitional Provisions and Savings) Order (Northern Ireland) 2006

Made - - - - *2nd February 2006*

Coming into operation - *27th March 2006*

The Department of Enterprise, Trade and Investment in exercise of the powers conferred on it by Article 29(1) and (2) of the Insolvency (Northern Ireland) Order 2005(a) and of every other power enabling it in that behalf hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Insolvency (2005 Order) (Transitional Provisions and Savings) Order (Northern Ireland) 2006 and shall come into operation on 27 March 2006.

(2) Expressions used in this Order which are used in the Insolvency (Northern Ireland) Order 1989(b) shall have the same meaning as in that Order.

(3) In Articles 3, 4 and 5 references to provisions of, and procedures under, the Insolvency (Northern Ireland) Order 1989 include references to those provisions and procedures as they are applied by or under the provisions of any statutory power.

(4) In this Order—

“the commencement date” means 27 March 2006;

“the 2005 Order” means the Insolvency (Northern Ireland) Order 2005.

Administration – transitional provisions

2.—(1) In this Article “the former administration provisions” means the law relating to administration under Part III of the Insolvency (Northern Ireland) Order 1989 and paragraph 15 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 1994(c) without the amendments and repeals made by the provisions of the 2005 Order mentioned in paragraph (2).

(2) For the purposes of paragraph (1), the provisions of the 2005 Order are —

(a) Article 3 of, and Schedules 1 and 2 to, the 2005 Order;

(b) Article 31 of, and Schedule 9 to, the 2005 Order as respects the repeals relating to Articles 176, 194(1), 195(1) and (2), 196, 204(1) and 207(3) of the Insolvency (Northern Ireland) Order 1989;

(c) Article 31 of, and Schedule 9 to, the 2005 Order insofar as they effect the repeal of the entries in Schedule 7 to the Insolvency (Northern Ireland) Order 1989 which make

(a) S.I. 2005/1455 (N.I. 10)

(b) S.I. 1989/2405 (N.I. 19)

(c) S.I.1994/2795 (N.I. 15)

ancillary provision in relation to offences created by Articles 25(2), 28(8), 30(5), 33(3), 34(6), 35(3), 36(7) and 39(6) of that Order; and

(d) Article 31 of, and Schedule 9 to, the 2005 Order insofar as they effect the repeal of paragraph 15 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 1994.

(3) In any case where a petition for an administration order has been presented before the commencement date, the former administration provisions shall continue to apply.

(4) The former administration provisions shall continue to apply insofar as it is necessary to give effect to—

- (a) the Insolvent Partnerships Order (Northern Ireland) 1995^(a)
- (b) regulation 5 of the Limited Liability Partnerships Regulations (Northern Ireland) 2004^(b); and
- (c) the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) (Northern Ireland) Order 2005^(c)

Abolition of Crown Preference – transitional provisions

3.—(1) This Article applies to a case where before the commencement date—

- (a) a petition for an administration order pursuant to Part III of the Insolvency (Northern Ireland) Order 1989 is presented;
- (b) a voluntary arrangement under Part II of the Insolvency (Northern Ireland) Order 1989 has effect;
- (c) a receiver is appointed under the terms of a charge (which when created was a floating charge) in relation to the property of a company subject to the charge;
- (d) a petition for a winding-up order is presented;
- (e) a resolution for the winding up of a company is passed;
- (f) a petition for a bankruptcy order is presented; or
- (g) a voluntary arrangement pursuant to Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989 has effect.

(2) This Article also applies to a case where on or after the commencement date—

- (a) an administration order under Part III of the Insolvency (Northern Ireland) Order 1989 is made on a petition presented prior to the commencement date;
- (b) that order is discharged; and
- (c) immediately on the discharge of that order—
 - (i) a winding-up order is made in respect of the company in question; or
 - (ii) a resolution for the winding up of the company is passed,

(3) This Article also applies to a case where—

- (a) a winding-up order is made on a petition presented prior to the commencement date; and
- (b) the company in question enters administration by virtue of an order made under paragraph 38 or 39 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989.

(4) This Article also applies to a case where—

- (a) a resolution for the winding up of a company is passed before the commencement date; and
- (b) the company enters administration by virtue of an order made under paragraph 39 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989.

(a) S.R. 1995 No. 225
(b) S.R. 2004 No. 307
(c) S.I. 2005/1644

(5) This Article also applies to a case where—

- (a) a receiver is appointed before the commencement date in respect of a company;
- (b) the receiver vacates office; and
- (c) the company in respect of which the receiver is appointed enters administration within the meaning of paragraph 2(2)(b) of Schedule B1 to the Insolvency (Northern Ireland) Order 1989^(a) during the period that the receiver is in office or immediately after the end of that period.

(6) This Article also applies to a case where proposals for a voluntary arrangement under Part II of the Insolvency (Northern Ireland) Order 1989 are made (whether before or after the commencement date) by—

- (a) a liquidator in a winding up where the winding-up petition is presented or, as the case may be, the resolution for winding up is passed, before the commencement date; or
- (b) an administrator appointed in relation to an administration under Part III of the Insolvency (Northern Ireland) Order 1989 where the administration order is made on a petition which is presented before the commencement date.

(7) This Article also applies to a case in which a proposal for a voluntary arrangement under Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989 is made (whether before or after the commencement date) by a person who was adjudged bankrupt on a petition which was presented before the commencement date.

(8) In a case to which this article applies—

- (a) the provisions of Article 6 of the 2005 Order; and
- (b) the provisions of Article 31 of and Schedule 9 to the 2005 Order as respects repeals to paragraphs 1 to 7 of Schedule 4 to the Insolvency (Northern Ireland) Order 1989, paragraphs 22A and 23 of Schedule 2 to the Finance Act 1991^(b), paragraph 37 of Schedule 2 to the Social Security (Consequential Provisions) (Northern Ireland) Act 1992^(c), sections 36(4) and (5) of the Finance Act 1993^(d), paragraph 13(3) of Schedule 6 and paragraph 7(6) of Schedule 7 to the Finance Act 1994^(e), section 17 of the Finance Act 1995^(f), paragraph 12(5) of Schedule 5 to the Finance Act 1996^(g), Articles 201(7)(a), 228(3)(a) and 234(4) of the Employment Rights (Northern Ireland) Order 1996^(h), paragraph 5 of Schedule 7 to the Finance Act 2000⁽ⁱ⁾ and paragraphs 17(3) and (4) of Schedule 5 to the Finance Act 2001^(j),

shall have no effect.

Liquidator's powers

4. The insertion of paragraph 3A into Schedule 2 to the Insolvency (Northern Ireland) Order 1989 by Article 8 of the 2005 Order (liquidator's powers) shall have no effect in relation to any proceedings of a kind mentioned in paragraph 3A which were commenced prior to the commencement date.

(a) Schedule B1 to the Insolvency (Northern Ireland) Order 1989 was inserted by Article 3(2) of and Schedule 1 to the Insolvency (Northern Ireland) Order 2005 S.I. 2005/1455 (N.I. 10)

(b) 1991 c. 31

(c) 1992 c. 9

(d) 1993 c. 34

(e) 1994 c. 9

(f) 1995 c. 4

(g) 1996 c. 8

(h) S.I. 1996/1919 (N.I. 16)

(i) 2000 c. 17

(j) 2001 c. 9

Powers of trustee in bankruptcy

5. The insertion of paragraph 2A into Schedule 3 to the Insolvency (Northern Ireland) Order 1989 by Article 19 of the 2005 Order (powers of trustee) shall have no effect in relation to any proceedings of a kind mentioned in paragraph 2A which were commenced prior to the commencement date.

Bankruptcy restrictions orders

6. Where the High Court is considering whether or not a bankruptcy restrictions order should be made pursuant to the provisions of Article 255A of and Schedule 2A to the Insolvency (Northern Ireland) Order 1989(a), it shall not take into account any conduct of the bankrupt before the commencement date.

Transitional provisions – old summary cases

7.—(1) This Article applies to a bankruptcy (other than where the bankrupt has received his discharge) where a certificate of summary administration under Article 249 of the Insolvency (Northern Ireland) Order 1989 is in force on the commencement date.

(2) In a case to which this Article applies Articles 249, 265(1), 266(1), 267(1), 270, 271, 273(5), 273(6) and 273(7), of the Insolvency (Northern Ireland) Order 1989 shall continue to have effect.

(3) Where on or after the commencement date the court revokes a certificate of summary administration under Article 249(3) of the Insolvency (Northern Ireland) Order 1989 as it has effect by virtue of paragraph (2), the relevant period for the purposes of paragraph 4(1)(b) of Schedule 4 to the 2005 Order shall be the period specified in Article 253(1)(c) of the Insolvency (Northern Ireland) Order 1989 as it had effect immediately prior to the commencement date.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 2 February 2006



Michael J Bohill
A senior officer of the
Department of Enterprise, Trade and Investment

(a) Article 255A and Schedule 2A were inserted into the Insolvency (Northern Ireland) Order 1989 by Article 13 of the Insolvency (Northern Ireland) Order 2005

EXPLANATORY NOTE

(This note is not part of the Order)

The Insolvency (2005 Order) (Commencement No. 1) Order (Northern Ireland) 2006 (S.R. 2006 No. 21(C. 1)) brings the Insolvency (Northern Ireland) Order 2005 (“the 2005 Order”) into operation on 27 March 2006. This Order makes transitional provisions and savings in connection with the coming into operation of the 2005 Order.

Article 2 of this Order contains transitional provisions in relation to cases where petitions for administration orders were presented prior to the commencement date. The old law will continue to apply to those cases. It also saves the operation of the old law for the purposes of giving effect to the Insolvent Partnerships Order (Northern Ireland) 1995, Regulation 5 of the Limited Liability Partnerships Regulations (Northern Ireland) 2004 and the Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) (Northern Ireland) Order 2005.

Article 3 contains transitional provisions in relation to the abolition of preferential status for Crown debts. Broadly speaking preferential status will continue to apply in those cases which started before the commencement date. The provisions of Article 3 (and Articles 4 and 5) apply in cases where the provisions of the Insolvency (Northern Ireland) Order 1989 (“the 1989 Order”) are applied to other situations, for example in relation to insolvent partnerships (*see Article 1(3)*).

Articles 4 and 5 make transitional provisions in relation to certain types of proceedings taken by liquidators and trustees in bankruptcy. Article 8 of the 2005 Order amends Schedule 2 to the 1989 Order so that proceedings under Articles 177, 178, 202, 203 or 367 can only be brought with sanction (usually from the creditors’ committee). Similarly Article 19 of the 2005 Order amends Schedule 3 to the 1989 Order to provide that a trustee in bankruptcy can only bring proceedings under Articles 312, 313 or 367 with sanction (usually from the creditors’ committee). Articles 4 and 5 provide that these amendments to the 1989 Order are not to affect any proceedings that are already on foot under the provisions of the 1989 Order mentioned above.

Article 6 provides that where the High Court is considering whether to make a bankruptcy restrictions order it cannot take into account any conduct of the bankrupt which occurred prior to the commencement date.

Article 7 contains transitional provisions in relation to existing bankruptcies in Northern Ireland where a certificate of summary administration was in force.