

2006 No. 61

INSOLVENCY

**The Insolvency (Northern Ireland) Order 2005 (Minor and
Consequential Amendments) Order (Northern Ireland) 2006**

Made - - - - - *22nd February 2006*

Coming into operation - *27th March 2006*

The Department of Enterprise, Trade and Investment, in exercise of the powers conferred upon it by Articles 3(4) and 30 of the Insolvency (Northern Ireland) Order 2005^(a) and of every other power enabling it in that behalf hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Insolvency (Northern Ireland) Order 2005 (Minor and Consequential Amendments) Order (Northern Ireland) 2006 and shall come into operation on 27 March 2006.

Consequential amendments to primary legislation

2. Subject to Article 4, the amendments to the primary legislation set out in Part 1 of the Schedule shall have effect.

Consequential amendments to secondary legislation

3. Subject to Article 4, the amendments to the secondary legislation set out in Part 2 of the Schedule shall have effect.

Transitional provisions

4. Nothing in Articles 2 and 3 or the Schedule shall apply in any case where a petition for an administration order was presented before the date mentioned in Article 1.

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

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 22nd
February 2006



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

SCHEDULE

Articles 2 and 3

PART 1

PRIMARY LEGISLATION

THE INSOLVENCY (NORTHERN IRELAND) ORDER 1989

1. The Insolvency (Northern Ireland) Order 1989(a) shall be amended as specified in paragraphs 2 and 3.
2. In Article 2(3) (general interpretation) after “the winding up of a company” there shall be inserted “or where a company is in administration”.
3. In Article 5(1) (interpretation) —
 - (a) in the definition of “debt” after “winding up of a company” there shall be inserted “or where a company is in administration”;
 - (b) after sub-paragraph (a) (and before the semicolon) there shall be inserted “or enters administration”;
 - (c) in sub-paragraph (c) after “the liquidation” there shall be inserted “or in the administration” and at the end (and before the semicolon) there shall be inserted “or entered administration”.

THE INSOLVENCY (NORTHERN IRELAND) ORDER 2005

4. The Insolvency (Northern Ireland) Order 2005 shall be amended as specified in paragraph 5.
5. In Schedule 2 paragraph 25 shall be omitted.

PART 2

SECONDARY LEGISLATION

The Statutory Sick Pay (General) Regulations (Northern Ireland) 1982

6. In regulation 9B(2) of the Statutory Sick Pay (General) Regulations (Northern Ireland) 1982(b) (insolvency of employer)—
 - (a) for sub-paragraph (b) there shall be substituted—

“(b) he has died and his estate falls to be administered in accordance with an order under Article 365 of the Insolvency (Northern Ireland) Order 1989; or”;
 - (b) in sub-paragraph (c)—
 - (i) after “with respect to it” there shall be inserted “or it enters administration”, and
 - (ii) after “or subject to the charge” there shall be inserted “or a voluntary arrangement proposed for the purposes of Part II of the Insolvency (Northern Ireland) Order 1989 is approved under that Part”.

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

(b) S.R. 1982 No. 263; regulation 9B(2) was inserted by regulation 2 of the Statutory Sick Pay (General) (Amendment) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 131)

The Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987

7. In regulation 7(4) of the Statutory Maternity Pay (General) Regulations (Northern Ireland) 1987(a) (liability of the Board to pay statutory maternity pay)—

- (a) for sub-paragraph (b) there shall be substituted—
 - “(b) he has died and his estate falls to be administered in accordance with an order under Article 365 of the Insolvency (Northern Ireland) Order 1989; or”;
- (b) in sub-paragraph (c)—
 - (i) after “with respect to it” there shall be inserted “or it enters administration”, and
 - (ii) after “or subject to the charge” there shall be inserted “or a voluntary arrangement for the purposes of Part II of the Insolvency (Northern Ireland) Order 1989 is approved under that Part”.

The Financial Markets and Insolvency Regulations (Northern Ireland) 1991

8. The Financial Markets and Insolvency Regulations (Northern Ireland) 1991(b) shall be amended as specified in paragraphs 9, 10 and 11.

9. In regulation 14 (limitation on disapplication of Articles 23(1)(b) and 24(3)(c) of the Insolvency Order in relation to CGO Service charges)

- (a) for the sub-heading to that regulation there shall be substituted—
 - “Limitation on disapplication of moratorium on certain legal processes under Schedule B1(c) to the Insolvency Order (administration) in relation to CGO Service charges”.
- (b) in paragraph (1) for “a petition” there shall be substituted “an application”,
- (c) after paragraph (1) there shall be inserted—
 - “(1A) A reference in paragraph (1) to an application for an administration order shall be treated as including a reference to—
 - (a) appointing an administrator under paragraph 15 or 23 of Schedule B1 to the Insolvency Order or
 - (b) filing with the Court a notice of intention to appoint an administrator under either of those paragraphs,

and a reference to “an administration order” shall include the appointment of an administrator under paragraph 15 or 23 of Schedule B1 to the Insolvency Order.”, and

- (d) in paragraph (2) for “The disapplication of Articles 23(1)(b) and 24(3)(c) of the Insolvency Order” there shall be substituted—

“The disapplication of paragraph 44(2) of Schedule B1 to the Insolvency Order (including that provision as applied by paragraph 45 of that Schedule)”.

10. In regulation 15 (ability of administrator or receiver to recover assets in case of property subject to CGO service charge or Talisman charge)—

- (a) in paragraph (1) for “The disapplication of Articles 28(1) and (2), and 53 of the Insolvency Order by Article 97(1)(b) and (3) shall cease to have effect” there shall be substituted—

“The disapplication—

- (a) by Article 97(1)(b) of paragraphs 71, 72 and 73 of Schedule B1 to the Insolvency Order, and

(a) S.R. 1987 No. 30

(b) S.R. 1991 No. 443

(c) Schedule B1 was inserted by Article 3(2) of, and Schedule 1 to, the Insolvency (Northern Ireland) Order 2005

(b) by Article 97(3) of Article 53 of the Insolvency Order,
shall cease to have effect”, and

(b) after paragraph (1) there shall be inserted—

“(1A) A reference in paragraph (1) to “an administration order” shall include the appointment of an administrator under paragraph 15 or 23 of Schedule B1 to the Insolvency Order.”.

11. In regulation 17(1) (court having jurisdiction in respect of proceedings under Part V of the Order) after “97(2)” there shall be inserted “, (2A)”.

The Land Registration Rules (Northern Ireland) 1994

12. In Rule 166(1) of the Land Registration Rules (Northern Ireland) 1994(a) (administration orders and liquidation of a company)—

(a) in paragraph (1), for the words “an administration order has been made by the High Court in respect of a company” there shall be substituted “a company enters administration”,
and

(b) after the words “the order” there shall be inserted “or the notice of appointment”.

The Financial Markets and Insolvency Regulations (Northern Ireland) 1996

13. The Financial Markets and Insolvency Regulations (Northern Ireland) 1996(b) shall be amended as specified in paragraphs 14, 15 and 16.

14. In regulation 6 (limitation on disapplication of Articles 23(1)(b) and 24(3)(c) of the Insolvency (Northern Ireland) Order 1989 in relation to system-charges)—

(a) for the sub-heading to that regulation there shall be substituted—

“Limitation on disapplication of moratorium on certain legal processes under Schedule B1 to the Insolvency Order (administration) in relation to system- charges”,

(b) after paragraph (1) there shall be inserted—

“(1A) A reference in paragraph (1) to “an administration order” shall include the appointment of an administrator under paragraph 15 or 23 of Schedule B1 to the Insolvency Order. ”,

(c) in paragraph (2) for “The disapplication of Articles 23(1)(b) and 24(3)(c) of the Insolvency (Northern Ireland) Order 1989 ” there shall be substituted “The disapplication of paragraph 44(2) of Schedule B1 to the Insolvency Order (including that provision as applied by paragraph 45 of that Schedule)”,

(d) in paragraph (5) for “the petition” there shall be substituted “the application”, and

(e) after paragraph (5) there shall be inserted—

“(5A) A reference in paragraph (5) to an application for an administration order shall be treated as including a reference to—

(a) appointing an administrator under paragraph 15 or 23 of Schedule B1 to the Insolvency Order, or

(b) filing with the High Court a notice of intention to appoint an administrator under either of those paragraphs,

and a reference to “an administration order” shall include the appointment of an administrator under paragraph 15 or 23 of Schedule B1 to the Insolvency Order .”.

(a) S.R. 1994 No. 424

(b) S.R. 1996 No. 252

15. In regulation 7 (limitation on disapplication of Articles 23(1)(b) and 24(3)(c) of the Insolvency (Northern Ireland) Order 1989 in relation to system-charges granted by a system-beneficiary)—

(a) for the sub-heading to that regulation there shall be substituted—

“Limitation on disapplication of moratorium on certain legal processes under Schedule B1 to the Insolvency Order (administration) in relation to system-charges granted by a system-beneficiary”,

(b) after paragraph (1) there shall be inserted—

“(1A) A reference in paragraph (1) to “an administration order” shall include the appointment of an administrator under paragraph 15 or 23 of Schedule B1 to the Insolvency Order”, and

(c) in paragraph (2) for “The disapplication of Articles 23(1)(b) and 24(3)(c) of the Insolvency (Northern Ireland) Order 1989” there shall be substituted “The disapplication of paragraph 44(2) of Schedule B1 to the Insolvency Order (including that provision as applied by paragraph 45 of that Schedule)”.

16. In regulation 8 (ability of administrator or receiver to recover assets in case of property subject to system-charge)—

(a) after paragraph (1) there shall be inserted—

“(1A) A reference in paragraph (1) to “an administration order” shall include the appointment of an administrator under paragraph 15 or 23 of Schedule B1 to the Insolvency Order.”,

(b) in paragraph (2) for “The disapplication, by Article 97(1)(b) and (3) of the Order, of Articles 28(1) and (2) and 53 of the Insolvency (Northern Ireland) Order 1989 shall cease to have effect” there shall be substituted—

“The disapplication—

(a) by Article 97(1)(b) of the Order, of paragraphs 71,72 and 73 of Schedule B1 to the Insolvency Order, and

(b) by Article 97(3) of the Order, of Article 53 of the Insolvency Order,

shall cease to have effect”, and

(c) in paragraph (7) for “administration order is made” there shall be substituted “company enters administration”.

The Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 1999

17. In Part III of Schedule 10 to the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 1999(a) (incapacity) in paragraph 21 for the words “to an administration order being made in relation to it” there shall be substituted “entering administration”.

The Motor Vehicles (Construction And Use) Regulations (Northern Ireland) 1999

18. In Schedule 3 to the Motor Vehicles (Construction and Use) Regulations (Northern Ireland) 1999(b) (authorised sealers) in paragraph 5(3)(a) for “an administration order is made in relation to it” there shall be substituted “enters administration”.

(a) S.R. 1999 No. 115
(b) S.R. 1999 No. 454

The General Insurance Reserves (Tax) Regulations 2001

19. In regulation 6(1)(b) of the General Insurance Reserves (Tax) Regulations 2001(a) (excluded descriptions of general insurer) “in relation to which an administration order has been made under Article 21 of the Order or a company” shall be omitted and at the end there shall be added “or Schedule B1 to the Order”.

The Statutory Paternity Pay And Statutory Adoption Pay (General) Regulations (Northern Ireland) 2002

20. In regulation 43(3)(c) of the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations (Northern Ireland) 2002(b) (liability of the Board to pay statutory paternity pay or statutory adoption pay) “or an administration order” shall be omitted and after “respect to it” there shall be inserted “or it enters administration”.

The Insolvent Companies (Reports On Conduct Of Directors) Rules (Northern Ireland) 2003

21. The Insolvent Companies (Reports on Conduct of Directors) Rules (Northern Ireland) 2003(c) shall be amended as specified in paragraphs 22 and 23.

22. In Rule 4(1)(c) (reports required under Article 10(4) of the Order) omit “in relation to which the High Court makes an administration order” and substitute “which enters administration”.

23. In Rule 5(4)(d) (return by office-holder) for “of the administration order made in relation to the company” there shall be substituted “that the company enters administration”.

The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005

24. The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005(d) shall be amended as specified in paragraphs 25 and 26.

25. In regulation 5 (prescribed insolvency events)—

(a) for sub-paragraph (a) of paragraph (1) there shall be substituted—

“in relation to a company where—

- (i) an administration order is made by the High Court in respect of the company by virtue of any statutory provision which applies Part III of the Insolvency Order(e) (administration orders) (with or without modification);
- (ii) a notice from an administrator under paragraph 84(2) of Schedule B1 to the Insolvency Order (moving from administration to creditors’ voluntary liquidation) in relation to the company is registered by the registrar of companies;
- (iii) the company moves from administration to winding up pursuant to an order of the High Court under Rule 2.133 of the Insolvency Rules(f) (conversion of administration to winding up – power of court), or
- (iv) an administrator or liquidator of the company, being the nominee in relation to a proposal for a voluntary arrangement under Part II of the Insolvency Order (company voluntary arrangements), summons meetings of the company and

(a) S.I.2001/1757. Originally Regulation 6(b). Amended by Article 5 of, and paragraph 78 in Part 2 of the Schedule to, the Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096). Re-numbered as Regulation 6(1)(b) under Regulation 8 of the General Insurance Reserves (Tax) (Amendment) Regulations 2003 (S.I. 2003/2862)

(b) S.R. 2002 No. 378

(c) S.R. 2003 No. 357

(d) S.R. 2005 No. 126 as amended by S.R. 2005 No. 364

(e) Part III of the Insolvency (Northern Ireland) Order 1989 was substituted by Article 3(1) of the Insolvency (Northern Ireland) Order 2005

(f) Part II of the Insolvency Rules (Northern Ireland) 1991, S.R. 1991 No. 364 including Rule 2.133 was substituted by The Insolvency (Amendment) Rules Northern Ireland 2006 S.R. 2006 No. 47

of its creditors, to consider the proposal, in accordance with Article 16(2) of that Order (summoning of meetings);”

(b) for sub-paragraph (aa)(i) of paragraph (1) there shall be substituted—

“(i) the partnership moves from administration to winding up pursuant to an order of the High Court under Rule 2.65 of the Insolvency Rules (as applied by an order under Article 364 of the Insolvency Order^(a) (insolvent partnerships)) as that Rule stood before the coming into operation of the Insolvency (Amendment) Rules (Northern Ireland) 2006^(b), or”,

(c) after paragraph (2) there shall be inserted—

“(3) In this regulation, a reference to Part III of the Insolvency Order (administration orders) shall, in so far as it relates to a company or society listed in Article 4(1) of the Insolvency (Northern Ireland) Order 2005 (special administration regimes), have effect as if it referred to Part III of the Insolvency Order as it had effect immediately before the coming into operation of Article 3 of the Insolvency (Northern Ireland) Order 2005 (replacement of Part III of the Insolvency Order).”.

26. In regulation 6 (circumstances in which insolvency proceedings in relation to the employer are stayed or come to an end)—

(a) for sub-paragraph (a)(iii) of paragraph (1) there shall be substituted—

“(iii) the appointment of an administrator in respect of the company ceases to have effect except where—

(aa) the company moves from administration into winding up pursuant to paragraph 84 (moving from administration to creditor’s voluntary liquidation) of Schedule B1 (administration) to that Order or pursuant to an order of the High Court under Rule 2.133 of the Insolvency Rules (conversion of administration to winding up – power of court), or

(bb) a winding up order is made by the High Court immediately upon the appointment of the administrator ceasing to have effect;”,

(b) for sub-paragraph (a)(v) of paragraph (1) there shall be substituted—

“(v) all proceedings in the winding up of the company are stayed altogether or an order for the winding up of the company is rescinded or discharged except in circumstances where the High Court has made an administration order in accordance with paragraph 38 or 39 (application where company in liquidation) of Schedule B1 to that Order;”,

(c) for sub-paragraph (c)(iii) of paragraph (1) there shall be substituted—

“(iii) an administration order in relation to a partnership under Part III of that Order (administration orders) is discharged except where—

(aa) a winding up order is made by the High Court immediately upon the discharge of the administration order, or

(bb) the discharge is pursuant to an order of the High Court for the administration to be converted into winding up under Rule 2.65(1) of the Insolvency Rules (conversion of administration into winding up – power of court) as those Rules stood before the coming into operation of the Insolvency (Amendment) Rules (Northern Ireland) 2006, or”.

(a) Article 364 was amended by S.R. 2002 No. 223

(b) S.R. 2006 No. 47

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to primary and secondary legislation consequent upon the changes made by the Insolvency (Northern Ireland) Order 2005 (“the 2005 Order”) to the Insolvency (Northern Ireland) Order 1989 (“the 1989 Order”).

Articles 2 and 3 give effect to the Schedule to the Order; Part 1 of the Schedule makes amendments to the 1989 Order and the 2005 Order and Part 2 of the Schedule makes amendments to secondary legislation all of which are consequential upon changes made by the 2005 Order to the law on the procedure for administration as set out in the 1989 Order. Article 4 contains transitional provisions for cases where a petition for an administration order is presented before 27 March 2006.

The costs to business of the commencement of the provisions of the 2005 Order are set out in the Regulatory Impact Assessment prepared for that Order. Copies of the assessment are available from Legislation Unit, The Insolvency Service, Fermanagh House, Ormeau Avenue, Belfast BT2 8NJ.