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SCHEDULES

SCHEDULE 7

MORATORIUMS IN NORTHERN IRELAND: FURTHER AMENDMENTS

The Insolvency (Northern Ireland) Order 1989

- 1 The Insolvency (Northern Ireland) Order 1989 is amended as follows.
- 2 In each of the following places, for “Parts II to VII” substitute “ Parts 1A to 7 ”
the heading before Article 5;
Article 5(1);
Article 6(1) and (2);
Article 7;
Article 8;
the heading before Parts 2 to 7;
Article 315(6);
Article 366(1);
Article 374(1).
- 3 In Article 2(2), in the definition of “regulations”—
 - (a) after “(except in” insert “ Part 1A, Article 148A(6), ”;
 - (b) omit “and paragraph 16 of Schedule A1”.
- 4 (1) Article 3 (meaning of “act as insolvency practitioner”) is amended as follows.
(2) In paragraph (1)(a), for “or administrative receiver” substitute “ , administrative receiver or monitor ”.
(3) In paragraph (4), at the appropriate place insert—
““monitor” has the same meaning as in Part 1A (moratorium).”
- 5 In Article 6 (meaning of “insolvency” etc), in paragraph (1), after “includes” insert “ the coming into force of a moratorium for the company under Part 1A, ”.
- 6 Omit Article 14A (moratorium where directors propose voluntary arrangement).
- 7 In Article 15 (procedure where nominee is not the liquidator or administrator), in paragraph (1), omit from “and the directors” to the end.
- 8 (1) Article 17 (decision of the company and its creditors in relation to voluntary arrangement) is amended as follows.
(2) After paragraph (4) insert—
“(4A) Where the nominee's report under Article 15(2) is submitted to the Court before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part 1A, a meeting so summoned

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may not approve any proposal or modification under which the following are to be paid otherwise than in full—

- (a) moratorium debts (within the meaning given by Article 148A);
- (b) priority pre-moratorium debts (within the meaning given by Article 148A);

but this is subject to paragraph (4B).

(4B) Paragraph (4A) does not prevent the approval of such a proposal or modification with the concurrence of the creditor concerned.”

- (3) In paragraph (5), for “and (4)” substitute “ to (4B) ”.
- 9 (1) Article 17A (approval of voluntary arrangement) is amended as follows.
- (2) In paragraph (2)(b), for “(4)” substitute “ (6) ”.
- (3) In paragraph (5)—
- (a) for “within the meaning given by paragraph 54 of Schedule A1” substitute “ as defined by Article 13H(13) ”;
 - (b) for “within the meaning of paragraph 54 of Schedule A1” substitute “ as defined by Article 13H(13) ”.
- 10 (1) Article 18 (effect of approval of voluntary arrangement) is amended as follows.
- (2) In paragraph (3), for “paragraph (4)” substitute “ paragraphs (3A) and (4) ”.
- (3) After paragraph (3) insert—
- “(3A) Where immediately before the voluntary arrangement took effect a moratorium for the company was in force under Part 1A and a petition for the winding up of the company, other than an excepted petition within the meaning of Article 13DB, was presented before the beginning of the moratorium, the High Court must dismiss the petition.”
- (4) In paragraph (4) after “paragraph (3)(a)” insert “ or dismiss a petition under paragraph (3A) ”.
- 11 (1) Article 20A (prosecution of delinquent officers of company) is amended as follows.
- (2) For paragraph (1) substitute—
- “(1) This Article applies where the approval of a voluntary arrangement in relation to a company has taken effect under Article 17A.”
- (3) In paragraph (2)—
- (a) for the words before sub-paragraph (a) substitute “ If it appears to the supervisor that any past or present officer of the company has committed an offence in connection with the voluntary arrangement, the supervisor must forthwith ”;
 - (b) in sub-paragraph (b), omit “nominee or”.
- (4) In paragraph (8), omit “nominee or”.
- 12 In Article 20B (arrangements coming to an end prematurely) omit—
- (a) “or paragraph 46 of Schedule A1”;
 - (b) “or, as the case may be, paragraph 47(2)(b)(i) of Schedule A1”.

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- 13 In Article 100 (expenses of voluntary winding up), at the beginning insert “ After the payment of any liabilities to which Article 148A applies, ”.
- 14 In Article 102 (circumstances in which company may be wound up by the High Court), omit sub-paragraph (fa).
- 15 In Article 104 (application for winding up by the High Court), omit paragraph (4A).
- 16 In Article 107 (avoidance of property dispositions etc), after paragraph (2) insert—
- “(3) This Article has no effect in respect of anything done during a moratorium under Part 1A, or during a period mentioned in Article 18(4)(a) following the end of a moratorium, where the winding-up order was made on a petition presented before the moratorium begins, unless the petition was presented under section 367 of the Financial Services and Markets Act 2000 on the ground mentioned in section 367(3)(b) of that Act.”
- 17 Before Article 149 (and before the italic heading “Preferential debts” above that Article) insert—

*“Moratorium: order of priority of payment of debts
Moratorium debts etc: priority*

- 148A(1) This Article applies where proceedings for the winding up of a company are begun before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part 1A.
- (2) In the winding up, the following are payable out of the company's assets (in the order of priority shown) in preference to all other claims—
- (a) any prescribed fees or expenses of the official receiver acting in any capacity in relation to the company;
- (b) moratorium debts and priority pre-moratorium debts.
- (3) In paragraph (2)(b) “priority pre-moratorium debt” means—
- (a) any pre-moratorium debt that is payable in respect of—
- (i) the monitor's remuneration or expenses,
- (ii) goods or services supplied during the moratorium,
- (iii) rent in respect of a period during the moratorium, or
- (iv) wages or salary arising under a contract of employment, so far as relating to a period of employment before or during the moratorium,
- (b) any pre-moratorium debt that—
- (i) consists of a liability to make a redundancy payment, and
- (ii) fell due before or during the moratorium, and
- (c) any pre-moratorium debt that—
- (i) arises under a contract or other instrument involving financial services,
- (ii) fell due before or during the moratorium, and
- (iii) is not relevant accelerated debt (see paragraph (4)).
- (4) For the purposes of paragraph (3)(c)—
- “relevant accelerated debt” means any pre-moratorium debt that fell due during the relevant period by reason of the operation of,

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- or the exercise of rights under, an acceleration or early termination clause in a contract or other instrument involving financial services;
 “the relevant period” means the period—
- (a) beginning with the day on which the statement under Article 13BC(1)(e) is made, and
 - (b) ending with the last day of the moratorium.
- (5) The rules may make provision as to the order in which the debts mentioned in paragraph (2)(b) rank among themselves in a case where the assets of the company are insufficient to meet them in full.
- (6) Regulations may amend this Article for the purposes of changing the definition of “moratorium debt” or “priority pre-moratorium debt” in this Article.
- (7) Regulations under paragraph (6) may make consequential, supplementary, incidental or transitional provision or savings.
- (8) Regulations may not be made under paragraph (6) unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.
- (9) For the purposes of this Article proceedings for the winding up of a company are begun when—
- (a) a winding-up petition is presented, or
 - (b) a resolution for voluntary winding up is passed.
- (10) Any rules made under Article 13D(4) (meaning of supply of goods or services) apply also for the purposes of paragraph (3)(a)(ii) of this Article.
- (11) In this Article—
- “acceleration or early termination clause”, in relation to a contract or other instrument involving financial services, means a provision of the contract or other instrument—
- (a) under which, on the happening of an event—
 - (i) a debt or other liability falls due earlier than it otherwise would, or
 - (ii) a debt or other liability is terminated and replaced by another debt or liability, or
 - (b) which confers on a party a right which, if exercised, will result in —
 - (i) a debt or other liability falling due earlier than it otherwise would, or
 - (ii) a debt or other liability being terminated and replaced by another debt or liability;
- “contract or other instrument involving financial services” has the same meaning as it has for the purposes of Article 13D (see Schedule ZA2);
- “monitor's remuneration or expenses” has the meaning given by Article 13D;
- “moratorium debt” has the meaning given by Article 13HD;
- “pre-moratorium debt” has the meaning given by Article 13HD;

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- “redundancy payment” has the meaning given by Article 13D;
“wages or salary” has the meaning given by Article 13D.”
- 18 (1) Article 149 (preferential debts: general provision) is amended as follows.
- (2) In paragraph (1), at the end insert “after the payment of—
- (a) any liabilities to which Article 148A applies, and
- (b) expenses of the winding up.”
- (3) In paragraph (1A), omit “after the expenses of the winding up”.
- 19 (1) Article 197 (supplies of water, electricity, etc) is amended as follows.
- (2) In paragraph (1)—
- (a) omit sub-paragraph (ba) (including the “or” at the end);
- (b) in the words after sub-paragraph (e), omit “the nominee,”.
- (3) In paragraph (4), omit sub-paragraph (ba).
- 20 In Article 208ZA (remote attendance at meetings), as inserted by section 1(1) of the Insolvency (Amendment) Act (Northern Ireland) 2016, in paragraph (9), before sub-paragraph (a) insert—
- “(za) the monitor in relation to a moratorium under Part 1A;”.
- 21 In Article 208ZB (use of websites), as inserted by section 1(1) of the Insolvency (Amendment) Act (Northern Ireland) 2016, in paragraph (2), before sub-paragraph (a) insert—
- “(za) the monitor in relation to a moratorium under Part 1A;”.
- 22 In Article 347 (“the relevant date” in relation to preferential debts), omit paragraph (2A).
- 23 (1) Article 362 (monetary limits) is amended as follows.
- (2) In paragraph (1), before sub-paragraph (a) insert—
- “(za) increase or reduce any of the money sums for the time being specified in the following provisions of Part 1A—
- Article 13DG(1) (maximum amount of credit which company may obtain without disclosing moratorium);
- Article 13DJ(2) (maximum amount for certain payments without obtaining monitor consent etc);
- Article 13G(2) (minimum value of company property concealed or fraudulently removed, affecting criminal liability of company's officer); or”.
- (3) Omit paragraph (1)(c) (money sums: company moratorium) and the “or” before it.
- 24 In Article 373 (offences: disapplication of section 20(2) of the 1954 Act), in paragraph (4), after “Articles” insert “ 13DA(5), 13DG(3), 13DH(4), 13DI(1), 13DJ(5), 13DK(6), 13DL(2), 13DM(9), 13DN(4), ”.
- 25 In Article 383(a), for “Parts 2 to 7” substitute “ Parts 1A to 7 ”.
- 26 Omit Schedule A1 (moratorium where directors propose voluntary arrangement).
- 27 (1) Schedule B1 (administration) is amended as follows.
- (2) Omit paragraph 25.

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- (3) Before paragraph 66 (but after the italic heading “Distribution”) insert—
- “65A(1) This paragraph applies where a company enters administration before the end of the period of 12 weeks beginning with the day after the end of any moratorium under Part 1A.
- (2) The administrator must make a distribution to the creditors of the company in respect of—
- (a) moratorium debts (within the meaning given by Article 148A), and
 - (b) priority pre-moratorium debts (within the meaning given by Article 148A).
- (3) A sum payable under sub-paragraph (2) is to be paid in priority to—
- (a) any security to which paragraph 71 applies;
 - (b) any sums payable under paragraph 100.
- (4) The administrator must realise any property necessary to comply with sub-paragraph (2).
- (5) The rules may make provision as to the order in which the moratorium and priority pre-moratorium debts rank among themselves for the purposes of this paragraph in a case where the assets of the company are insufficient to meet them in full.”
- (4) In paragraph 66, for sub-paragraph (1) substitute—
- “(1) If the assets of a company are sufficient to meet any debts or other liabilities payable under paragraph 65A in full, the administrator of the company may make a distribution to any other creditor of the company.”
- (5) In paragraph 67, for “The administrator of a company” substitute “ If the debts or other liabilities payable under paragraph 65A have been met, the administrator of a company ”.

PROSPECTIVE

- 28 (1) Schedule 5 (provision capable of inclusion in company insolvency rules) is amended as follows.
- (2) In paragraph 8, after “is,” insert “ the monitor in relation to a moratorium under Part 1A or ”.
- 29 (1) Schedule 7 (punishment of offences under the Order) is amended as follows.
- (2) Omit the entries relating to Schedule A1.
- (3) At the appropriate place insert—

“13BE(4)	Directors failing to notify monitor of beginning of moratorium.	1. On indictment. 2 years or a fine or both.
		2. Summary. 6 months or the statutory maximum or both.

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13BE(5)	Monitor failing to notify creditors etc of beginning of moratorium.	Summary.	Level 3 on the standard scale.
13CH(6)	Directors failing to notify monitor of change in end of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13CH(7)	Monitor failing to notify creditors etc of change in end of moratorium.	Summary.	Level 3 on the standard scale.
13DA(5)	Company or officer failing to state in correspondence etc that moratorium in force.	Summary.	Level 3 on the standard scale.
13DF(4)	Directors failing to notify monitor of insolvency proceedings etc.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13DG(3)(a)	Company obtaining credit without disclosing existence of moratorium.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
13DG(3)(b)	Obtaining credit for company without disclosing existence of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13DH(4)(a)	Company granting security without monitor's consent.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
13DH(4)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13DI(1)(a)	Company entering into market contract, etc.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
13DI(1)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.

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13DJ(5)(a)	Company making unauthorised payments.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
13DJ(5)(b)	Authorising or permitting company to do so.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13DK(6)(a)	Company making unauthorised disposal of property.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
13DK(6)(b)	Authorising or permitting such a disposal.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13DL(2)(a)	Unauthorised disposal of hire-purchase property.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
13DL(2)(b)	Authorising or permitting such a disposal.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13DM(8)	Directors failing to send to registrar copy of court order permitting disposal of charged property.	Summary.	Level 3 on the standard scale.
13DM(9)(a)	Company failing to comply with requirements relating to disposal of charged property.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
13DM(9)(b)	Authorising or permitting such a failure.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13DN(4)(a)	Company failing to comply with requirements relating to disposal of hire-purchase property.	1. On indictment. 2. Summary.	A fine. The statutory maximum.
13DN(4)(b)	Authorising or permitting such a failure.	1. On indictment.	2 years or a fine or both.

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		2. Summary.	6 months or the statutory maximum or both.
13DN(6)	Directors failing to send to registrar copy of court order permitting disposal of hire-purchase property.	Summary.	Level 3 on the standard scale.
13EE(9)	Monitor failing to notify creditors etc of change in monitor.	Summary.	Level 3 on the standard scale.
13G(1)	Fraud or privity to fraud during or in anticipation of moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13G(4)	Knowingly taking in pawn or pledge, or otherwise receiving, company property.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13GA(1)	False representation or fraud for purpose of obtaining or extending moratorium.	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.
13H(5)	Directors failing to notify regulator of qualifying decision procedure in relation to regulated company	1. On indictment. 2. Summary.	2 years or a fine or both. 6 months or the statutory maximum or both.”

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